

Determining Discipline

It is important for an organization to be able to prove that reasonable factors are considered for determining discipline, up to and including termination. The following checklist may be utilized to ensure consistency and fairness in reaching disciplinary decisions for all employees.

Consult with those designated within the organization that primarily handle employee performance issues (Fire Chief, Administrator, Human Resources Department, Supervisors).

Consult with the organization's legal counsel (experienced in labor and employment matters).

Don't make hasty or emotional decisions, which often lead to future problems (i.e., in litigation, the disciplinary decision is not fully supported by documentation).

Has the organization followed what is required by its written personnel policies or guidelines (such as Personnel Handbook/Manual or collective bargaining agreement)?

When applicable, follow the terms and conditions of the individual's employment contract.

Were relevant progressive discipline policies followed?

Are there legitimate business reasons for the discipline or termination that can be supported by written evidence typically found in the employee's personnel file?

What prior notice or disciplinary documentation exists with respect to performance deficiencies, misconduct and an opportunity to correct such actions?

Has the employee had sufficient time and an opportunity to correct performance, behavior or conduct that may lead to the disciplinary action?

How were other employees disciplined for similar acts or performance in the past?

Has the disciplinary decision been reviewed by appropriate persons as designated in written policies or guidelines (i.e., Personnel Manual or collective bargaining agreement)?

Has the organization or third-party investigator conducted an impartial review of the facts and circumstances surrounding the potential discipline or termination?

Is the employee afforded a reasonable opportunity to present his or her point of view?

What harmful impact did the employee's performance, conduct or wrongdoing have on other personnel, the organization, or the community? Consider possible future impact as well.

If minimal or no harm was caused, what was or could be the potential harm to co-workers, the organization or the community?

What action best prevents further sub-standard performance, wrongdoing or misconduct while protecting co-workers, outsiders and providing a safe and productive work environment?

Was the employee's conduct malicious, intentional or negligent?

Is the employee likely to commit future wrongdoing or misconduct?

When applicable, did the employee cooperate with investigation efforts?

If the employee committed workplace wrongdoing or otherwise violated the organization's rules, did the employee show remorse?

Is an alternative to termination appropriate to give additional time to investigate and deliberate before termination, or otherwise allow the employee's performance to "turn around"? Examples include instituting a performance improvement plan, probation, leave of absence, reassignment, demotion, or suspension.

In the event of litigation, would witnesses and documentation be available to help justify the disciplinary or termination decision?

Would a jury conclude that the organization's treatment of the disciplined or dismissed employee was unquestionably fair and reasonable?

Has the organization hired or does it plan to hire another person to take over the terminated employee's job responsibilities? Be prepared to explain when and why those arrangements were made. What are the qualifications of the replacement employee? Are there any facts present that could suggest unlawful discrimination?

This checklist offers guidelines to help your organization determine and administer discipline in a fair and consistent manner. The checklist refers to "employees," but these risk management tips may also apply to volunteer members of your emergency services organization.

DISCLAIMER: This is a sample guideline furnished to you by VFIS. Your organization should review this guideline and make the necessary modifications to meet your organization's needs. The intent of this guideline is to assist you in reducing exposure to the risk of injury, harm, or damage to personnel, property, and the general public. For additional information on this topic, contact your VFIS Risk Control Representative at (800) 233-1957.

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