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An Employer Guide

Employee Discipline

Your 2024 Employer Guide

Introduction to Employee Discipline Guidelines for Managers

Properly administered discipline can correct behavior, improve performance, and contribute to overall organizational success. However, when mishandled, disciplinary actions can lead to legal complications, decreased employee morale, and potential reputational damage.

Key Components of Effective Discipline

- **Clear Expectations:** Establishing and communicating clear performance and behavior expectations.
- **Consistent Enforcement:** Applying disciplinary measures consistently across all employees to avoid claims of favoritism or discrimination.
- **Progressive Discipline:** Utilizing a step-by-step approach that escalates consequences appropriately based on the severity and frequency of the behavior.
- **Documentation:** Keeping thorough and accurate records of all disciplinary actions to support decisions and protect against legal claims.
- **Confidentiality:** Maintaining the confidentiality of disciplinary proceedings to protect employee privacy and organizational integrity.

To mitigate potential liabilities, managers must approach disciplinary actions with a focus on legal compliance and ethical standards. This includes providing employees with opportunities to improve, offering support and resources for development, and ensuring that all actions are free from bias.

Each year the EEOC files millions of dollars' worth of lawsuits against employers for allegations of all types of discrimination including violations against ADA for failure to make reasonable accommodations often coming from disciplinary action that has been labeled discriminatory.

Employers should consider implementing and reviewing following the steps outlined. The creation of work conduct policies and manager training are critical in a company's risk management.

Clear Expectations

In any organization, establishing clear work conduct policies is essential. Having clear conduct policies foster a professional and fair work environment. Additionally, work conduct policies are often used in unemployment claims and potential litigation. In all most all cases for unemployment the UC offices typically requests employers to provide the policy that an employee violated and the dates of any prior counseling and/or write-ups. Terminations without warning generally fall within a “serious” violation.

Here are key areas of work conduct policies that should be in your Employee Handbook :

General Standards of Conduct

- **Professional Behavior:** Outline expected professional behavior, including respect for colleagues, clients, and company property.
- **Dress Code:** Specify appropriate workplace attire, if applicable.
- **Attendance and Punctuality:** Define expectations for attendance, punctuality, and procedures for reporting absences.
- **Information Updates:** Employees should know they are required to report status updates like criminal charges or loss of a license if applicable to their job.

Workplace Harassment and Discrimination

- **Zero Tolerance Policy:** State the company’s commitment to a harassment-free and discrimination-free workplace.
- **Examples:** Provide examples of what constitutes harassment and discrimination.
- **Reporting Mechanisms:** Describe how employees can report incidents and the process for handling complaints.

Confidentiality and Data Protection

- **Confidential Information:** Define what constitutes confidential information and the importance of protecting it.
- **Data Security:** Outline protocols for handling sensitive data and IT security measures.

Use of Company Resources

- **Resources and Equipment:** Explain appropriate use of company resources, including computers, internet, email, and other equipment.
- **Personal Use:** Specify any limitations on personal use of company resources.

Conflict of Interest

- **Definition:** Explain what constitutes a conflict of interest.

- **Disclosure:** Outline the process for disclosing potential conflicts of interest.

Substance Abuse

- **Prohibition:** Clearly state the prohibition of alcohol and drug use in the workplace.
- **Testing:** If applicable, describe the company's drug testing policy and procedures.

Health and Safety

- **Safety Protocols:** Detail the company's health and safety policies, including reporting procedures for unsafe conditions or accidents.
- **Emergency Procedures:** Provide information on emergency procedures and contacts.

Disciplinary Action

- **Consequences:** Outline the potential disciplinary actions for policy violations, ranging from warnings to termination.
- **Procedure:** Describe the process for addressing violations, including investigation and appeals.

All of your work conduct policies should set expectations, guiding employee behavior, and providing a framework for addressing workplace issues.

All policies should clarify whom the policy applies to (e.g., all employees, contractors, interns).

By clearly defining acceptable and unacceptable behaviors, employers can have an efficient workplace while minimizing risks of misunderstandings and legal liabilities.

Consistent Enforcement

Consistent enforcement of workplace rules by managers is crucial for maintaining a fair, productive, and legally compliant work environment. Inconsistent enforcement can lead to dissatisfaction, reduced morale, and increased risk of litigation.

Here are common employer mistakes:

Different Rules, Different Managers: All managers should follow company rules on enforcement. If there are differences in management styles, employers should address them quickly. Managers often make the mistake of focusing solely on how they manage their own direct reports. However, employers are required to treat all employees and applicants equally. If one manager follows different hiring practices or disciplinary procedures than their counterpart, it can lead to perceptions of unequal treatment and potentially adverse actions that can end up in court.

Lack of Training: Training reduces the risk of legal action related to discrimination or wrongful terminations. The EEOC governs employment laws and investigates discriminatory charges and wrongful terminations. In some states, you are required to do yearly interactive Harassment training.

Lack of clear Documentation: Managers should create a clear, documented record of rule enforcement that can be crucial in defending against legal claims.

Progressive Discipline

A progressive disciplinary policy is a proactive approach to managing employee behavior, fostering a fair and productive workplace, and protecting the organization from legal risks. By clearly outlining the steps and consequences, it helps ensure that all employees are treated equitably and given the opportunity to succeed.

Show “Good Faith and Good Dealing”:

Legal Protection

- **Documentation:** Provides a documented process of addressing issues, which can be crucial in defending against wrongful termination or discrimination claims.
- **Compliance:** Demonstrates compliance with employment laws and EEOC guidelines by showing a structured approach to discipline.

Employee Improvement

- **Opportunity for Correction:** Gives employees a chance to improve their behavior or performance through clear, incremental steps.
- **Feedback Mechanism:** Provides a structured way for managers to give constructive feedback and support employee development.

Workplace Morale

- **Positive Environment:** Promotes a positive work environment by addressing issues promptly and fairly, which can boost overall morale and productivity.
- **Trust and Respect:** Builds trust and respect between employees and management when everyone knows the rules are applied uniformly.

Risk Management

- **Preventative Measure:** Helps identify and address minor issues before they escalate into major problems.
- **Reduced Turnover:** Can reduce turnover by giving employees the opportunity to correct their behavior rather than facing immediate termination.

Documentation

Creating clear and thorough documentation on employee discipline is crucial for maintaining a fair and legally compliant workplace. By following these guidelines, managers can ensure that all disciplinary actions are well-documented, transparent, and consistent, thereby protecting both the company and its employees.

Use Standard Forms

- Use standardized forms for documenting disciplinary actions to ensure consistency.

A Uniform Process

- Follow a uniform process for all disciplinary cases to maintain fairness.

Keep Detailed Records

- Include detailed descriptions of the incident, including dates, times, locations, and involved parties. Do not include information that can be viewed as opinions or “emotional responses”.

Employee's Perspective

- Document the employee's explanation or response to the incident.

Have Clear Policy References

- Clearly reference the specific company policies or rules that were violated.

Previous Incidents: Note any previous related incidents or warnings that have been given to the employee.

Disciplinary Actions Taken

- Clearly outline the disciplinary actions taken, including any warnings, suspensions, or terminations.

Improvement Plans

- Include any performance improvement plans or corrective actions that have been implemented.

Signatures and Acknowledgments

- Have the employee sign the document to acknowledge receipt and understanding, even if they do not agree with the contents.
- Ensure that the manager and any other relevant parties sign the documentation.

Confidentiality and Storage

- Confidential Records: Keep disciplinary records confidential and store them securely.
- Access Control: Limit access to disciplinary records to authorized personnel only.

Review and Follow-Up

- Regularly review documentation to ensure accuracy and completeness.
- Document any follow-up actions taken and the employee's progress or improvement.

Confidentiality

Maintaining the confidentiality of sensitive information is crucial for managers to protect employee privacy and the integrity of the organization. Managers need to understand what they can share and what they can't.

Managers should also be aware of legal precautions of sharing too much information including personal information to co-workers and posting confidential information about the company or their direct reports on social media.

Here are several ways managers can keep confidential information secure:

General

- Restrict access to confidential information to only those who need it to perform their job duties.
- Do not share private information about employees with large groups, including group chain emails for all supervisors. Items like group call-off lists that accidentally share personal medical information can be problematic. The reason for call-offs should be limited to certain individuals.
- Do not discipline employees in front of other employees.
- Implement role-based access controls to ensure employees only have access to information relevant to their responsibilities.

Secure Storage

- Store physical documents in locked cabinets or secure rooms with limited access.
- Use encrypted storage solutions and secure servers for digital records.
- Maintain logs of who accessed confidential information and when, and regularly review these logs for any suspicious activity.
- Conduct regular security audits to identify potential vulnerabilities and address them promptly.
- Shred physical documents containing confidential information before disposal.
- Use secure data wiping methods for disposing of electronic devices and digital files.

Summary

In conclusion, the practices outlined here serve as a guide to ensuring fair and effective employee discipline within your organization. While these best practices provide a solid foundation for managing employee behavior and maintaining confidentiality, it is important to recognize that each situation can present unique challenges. For specific issues or complex scenarios, consulting with legal professionals is essential to ensure compliance with applicable laws and regulations. This approach not only helps protect your organization from potential legal risks but also ensures that disciplinary actions are handled appropriately and in accordance with legal requirements.

