

PERSONNEL NOTEBOOK

For Your Most Important Resource — The Human Resource

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The Disciplinary Process Is Not About Discipline

For many companies, the disciplinary process is the step-by-step plan by which employees can legally be terminated. Usually, this process is laid out pretty clearly in a company's employee handbook.

In my experience, once an individual is officially placed into the disciplinary process, it's almost a given that he or she will be terminated. The process has often been referred to as "a verbal, two writtens, and out." The reason, and the problem, is that in most instances the decision to fire the employee is made before the process begins.

Does this process protect the company from claims of unfair termination, Equal Employment Opportunity Commission (EEOC) charges, or lawsuits? Sometimes it does, but, more often, it can fall apart when challenged. There has to be a better way, so let's take a closer look at the process of "disciplining" employees.

Discipline comes from the word "disciple" or "one who believes in and follows the teachings of a leader or a philosophy." It is primarily defined as:

- Training to ensure proper behavior.
- A method to maintain order and control.
- The ability to behave in a calm and controlled manner.
- Education of a subject or field of activity.
- The ability to control one's life activities.
- Punishment.

None of these definitions agree with the process just described. The disciplinary process is seldom used as punishment, and it is very rare to see it used to accomplish any of the other purposes listed. In HR, the process often begins with a senior executive coming to HR and saying, "I've got to get rid of this guy. Do whatever you have to do. Now, how long is this going to take?" This kind of assignment makes the HR job tough as well as unpopular. It's up to HR to do the right thing and to do that right thing right. So, what is that right thing?

There are many concerns about how to handle the disciplinary process. We're going to focus on what, I think, are the three most important:

- Changing the mind-set about the process.
- Keeping your eyes on the prize.
- Assuring that the process is applied in a consistent manner.

Changing the Mind-Set

What is the reason for this process? It *should not* be to dispose of a problem that is already too far gone. The process is meant to help an employee improve his or her job performance or behavior, not to fire him or her for the bad performance we've already seen.

The tone of the conversation should be that of one adult to another. "We have chosen to work with each other. Let's work together on making us a better team." Our approach should not be like that of a parent or cop, but more like that of a coach. We want to help them achieve the performance we want. So, let's start by throwing out the term "discipline." This is about improving performance, so let's change the name to the **Performance Improvement Program (PIP)**. Following is a model policy for your employee handbook:

Performance Improvement Program (PIP)

It is our desire to help you be the best in your job that you can be. When and if there is a need to improve your performance or change behavior, we hope to work with you to develop those improvements. Initially, you may go to your supervisor to request guidance or assistance. You proactively seeking to improve your abilities and skills is certainly the preferred way to achieve improvement.

However, in some cases, management may take the lead by addressing the desire for improvement or change to you as a Performance Improvement Program.

This Performance Improvement Program (PIP) consists of three steps:

- I. **Verbal Discussion:** Your supervisor or a member of management will personally and verbally bring the matter to your attention with the goal of helping you to develop better performance or behavior.
- II. **Written Notice:** If there is no success through step I, a written notice, stating the need for improvement and the necessary actions to be taken, will be sent to you and also placed in your personnel file. Time lines and measured progress may be identified. This is an opportunity for both you and your supervisor to refocus on your goals and to recognize the more urgent need for commitment.
- III. **Probation:** If steps I and II have not proven successful, you may be placed on a performance probation. This will be a written document, identifying the history of the issue, and it will include specific milestones that must be achieved. There will be a specific duration of this probation that will be from 30 to 90 days, in most cases. In rare and specific cases (such as drug rehabilitation), this probation could be for one year. Failure to achieve the stated results can result in termination of your employment.

However, if at any time during the PIP process it becomes identifiably clear that proceeding through the steps will be fruitless, the process may be stopped and progress immediately to termination.

If you find yourself in an EEOC hearing, a Department of Labor audit, or facing adversarial lawyers in a court case, you will want to establish the following:

- The performance you were getting from the employee was not acceptable. Be specific.
- The employee was made aware of the specific functions that he was to do or to cease doing. Identify the dates and details.
- The employee was given a reasonable opportunity, and your support, to achieve the desired performance.
- The employee was aware, from the first written notice, of the ultimate consequences (termination) if she could not achieve the desired goals.
- The employee was unable or unwilling to achieve the desired goals. This was just not a good fit and it was time to move on.

Keeping Your Eyes on the Prize

You will clearly have to establish that your intent throughout the process was not to terminate the employee but to gain the performance you wanted. How do you do that?

Identify the performance you want in this job. What is the end result of the employee's work supposed to be? A good job description will tell you that. Be sure you can tell whether you are getting that or not.

Be respectful and supportive. Don't make the situation personal. Focus on what the employee needs to do to succeed in this job. Ask him to discuss why he thinks he's having these difficulties and what he would do if the roles were reversed. Ask him to write down, at home, how he sees the issue and what he sees as the resolution. Coach him like a coach.

Keep the employee informed. Keep her aware of her progress. Acknowledge her successes, even the small ones, and keep her aware of her lapses, mistakes, and failures. Whether she ultimately succeeds or fails should come as no surprise to her! She should know how the journey is progressing all along the way. A common mistake is to let her continue without any feedback until the day she is told it isn't working out and termination is at hand. She should be provided with regular advice and guidelines focused on the identified goals.

However, even in view of all this, if it's clear that things are not working out and the decision to terminate is imminent, have the courage to make the decision, take the action, and move on. Employees left in limbo to just "keep on, keeping on" may ultimately become a nightmare when you realize that you will have to live with the bad performance or have to explain why you felt it was acceptable for so long.

Assuring That the Process Is Applied in a Consistent Manner

Let's first understand that every human being is unique. HR professionals and informed people managers know that people must be treated as individuals. Let's also understand that the employer has the right to determine the performance

and behavior it wants from its employees. Whether to set high or low standards or whether to be rigid, strict, or casual are for the employer to decide.

Having established that, you must have some basic consistency to how you administer the PIP process. If you are terminating this employee for substandard performance that you previously accepted from another employee, you could be charged with discrimination. If you provided coaching, counseling, or training to previous employees on PIP, but did not provide those things to this employee, you could also be facing problems.

You should have some record of how you handled previous performance problems and why. There are, on rare occasions, reasons to treat one case different from another. Your employee of 15 years might get a little more consideration than someone you hired last month, and an employee who was injured on the job might be more in-line for some extra skill training than one who didn't perform well on his last assignment. However, you should be sure your reasons will stand up to a dispassionate hearing officer, judge, or lawyer who wants you to lose that case.

PIP is about treating each other as adults — with respect. It's about sharing the same goal and working like a team to help someone be more professional, about wanting that person to succeed and doing something to help make their success happen, and about coaching each member of your team to be the best they can be. And, it's mostly an opportunity to build the skilled and talented team you want.

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