



H.R. ALERT

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Counseling and Discipline

At last February's Employment Law Update we focused on terminations and how to avoid law suits for wrongful terminations. As you recall, we emphasized the need for documentation, consistency, employment arbitration while stressing the importance of employee handbooks.

Now I would like to present some material on counseling and discipline – the two important procedures to be taken **prior to** terminations and hopefully, a change of performance and yes, attitude.

Counseling is a very important management skill with the purpose of not only informing employees what they are doing wrong but also to acknowledge his/her good performance. Simply put, it is a wake-up call.

It is also a means of alerting your employees they are heading for troubled waters and the consequences if they continue to head that way. For good performers it is a means of letting your employees know they are doing an exceptional job and the positive consequences if they continue to perform in an outstanding manner.

Counseling is a profound way of communicating with your staff. It is a skill acquired through experience, sensitivity, compassion and firmness. The primary focus is to get the attention of your employee and to obtain his/her commitment that she/he will either change or continue performing an exceptional job. Counseling is hard work and requires you to listen carefully coupled with the skill of "reflective feedback".

Reflective feedback is a skill that involves a two-step process:

1. When you think you understand what your employee is saying **and** why they are saying it, you confirm. You confirm by stating your understanding of what your employee said and why she/he said it.
2. You wait for your employee to confirm your statement or understanding.

The following are the important strategies to counseling and disciplining employees:

1. Ensure that the problem performance is clearly defined as a policy in your employee handbook.
2. Counseling the employee about his/her performance is showing him/her that his/her performance is violating an agreement that is clearly defined as a policy and documented in the employee handbook. If we are addressing an issue of punctuality and tardiness you may reference the offer letter or discussions during the interview in which you stressed the importance of punctuality.
3. Acknowledge whatever excuses the employee has for his/her tardiness but do not accommodate (enable) the problem.
4. Inform your employee how to address the problem, e.g., "I understand your personal issues but it is very important for you to be at the jobsite no later than 7:00 A.M. It is your responsibility to be there on time".
5. Indicate the consequences your employee's poor performance has on other workers, e.g. "We cannot start the job until you arrive at the jobsite. When you are late, all the other employees stand around waiting for your arrival. You are the only employee who knows how to operate the pneumatic hammer".

6. Tell your employee the consequences if she/he continues to come in late (violation of any of your policies):
 - a. "In the future if you come in five minutes late I will send you home and you will lose a day's wages".
 - b. If your tardiness occurs more than twice you will be placed upon six months of performance probation with punctuality as a condition of this performance".
 - c. "If you are tardy during the probation period your employment may be terminated".
7. This process should be accomplished in a clear and concise manner.
8. Every step of this process should be carefully documented and ensure that your employee signs the document verifying she/he understands the performance or lack of performance that has created the issue as well as the consequences if the poor performance continues.
9. The written documentation should include a space for your employee to provide his/her comments and she/he should sign as an acknowledgement.
10. It would be a smart idea to have another manager or supervisor witness this discussion.
11. The ultimate goal is to get your employee to improve his/her performance to an acceptable level, regardless of the area of improvement or violation.
12. It is also prudent to have the written warning state that nothing in the written-warning changes your Company's At-Will status.
13. A word of caution about progressive discipline. Progressive discipline is a procedure of increasing penalties to attempt to get the employee's attention. It starts with a verbal warning and if the performance does not improve it evolves into a written warning that documents the issue and the consequences. Should the employee reoffend after receiving a written warning she/he is placed upon a period of performance probation where adherence to a policy is made a condition of probation. Finally, if your employee reoffends during the probation period termination ensues. Progressive discipline is a double-edged

sword: on one hand it demonstrates that your termination was not capricious or impulsive. On the other hand, progressive discipline should not jeopardize your At-Will status. There are situations that warrant termination on a first time offense: brandishing a weapon, making threats of violence, purposely touching women inappropriately, and under certain circumstances using profanity.

14. There are situations in which you feel that you are being set-up for a law suit or a claim with the Equal Employment Opportunity Commission (E.E.O.C.) or the state's Department of Fair Employment and Housing (D.F.E.H.). History has shown you were right. Pick up your phone and call me.
15. Needless to say, ensure that all counseling and disciplinary discussions should be conducted in private. Further, the content of these discussions should be kept confidential.

I hope this has been helpful and if you have any questions please call.

Thank you for your past business.

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