

Employee Discipline and Privacy

- Basis for a fair and just discipline process
 - Clear rules and regulations
 - Define workplace issues
 - Inform employees
 - A system of progressive penalties
 - The range and severity of the penalty is a function of the offense and number of occurrences.
 - An appeals process
 - The right of the employee to grieve the decision helps to ensure that supervisors mete out discipline fairly and equitably.



Disciplining an Employee

- Does the facts support the charge of employee wrongdoing?
- Were the employee's due process rights protected?
- Was the employee warned of disciplinary consequences?
- Was a rule violated and was it “reasonably related” to the efficient and safe operation of the work environment?
- Was the matter fairly and adequately investigated before administering discipline?
- Did the investigation produce substantial evidence of misconduct?
- Have rules, orders, or penalties been applied evenhandedly?
- Is the penalty reasonably related to the misconduct and to the employee's past work history?
- Did the employee have the right to counsel?
- Did anger, hearsay, or personal impression affect the decision?

Formal Disciplinary Appeals Processes

- FedEx's guaranteed fair treatment multi-step program



- Step 1: Management review
- Step 2: Officer complaint
- Step 3: Executive appeals review

Discipline without Punishment (Nonpunitive Discipline)

- Issue an oral reminder.
- Should another incident arise within six weeks, issue a formal written reminder, a copy of which is placed in the employee's personnel file.
- Give a paid one-day “decision-making leave.”
- If no further incidents occur in the next year, then purge the one-day paid suspension from the person's file. If the behaviour is repeated, the next step is dismissal.

Employee Privacy

- **Employee privacy violations upheld by courts:**
 - Intrusion (locker room and bathroom surveillance)
 - Publication of private matters
 - Disclosure of medical records
 - Appropriation of an employee's name or likeness
- **Actions triggering privacy violations:**
 - Background checks
 - Monitoring off-duty conduct and lifestyle
 - Drug testing
 - Workplace searches
 - Monitoring of workplace

- What do employers monitor about employees:

- E-mail activity

- Internet use

- Telephone calls



- Employers monitor employees to:

- Improve productivity.

- Protect from computer viruses

- Detect leaks of confidential information

- Guard against liability for illegal acts and harassment suits caused by employee misuse

Restrictions on Workplace Monitoring

- The Electronic Communications Privacy Act (ECPA)
 - The “business purpose exception” permits employers to monitor communications if they can show a legitimate business reason for doing so.
 - The “consent exception” allows employers to monitor communications if they have their employees’ consent to do so.
- Common-law provides protections against invasion of privacy.

Managing Dismissals

- Dismissal
 - Involuntary termination of an employee's employment with the firm.
- Terminate-at-will rule
 - Without a contract, the employee can resign for any reason, at will, and the employer can similarly dismiss the employee for any reason (or no reason), at will.
 - Limitations on “terminate-at-will”
 - Violation of public
 - Implied contract
 - Good faith

- Limitations on terminate-at-will
 - Public policy exception
 - Discharge is wrongful when it is against an explicit, well-established public policy: employee fired for refusing to break the law.
 - Implied contract exception
 - Employer statements about future employment create a contractual obligation for the employer to continue to employ the employee.
 - Covenant of good faith exception
 - Suggests that employers should not fire employees without good cause.



Grounds for Dismissal

- **Unsatisfactory performance**
 - Persistent failure to perform assigned duties or to meet prescribed standards on the job.
- **Misconduct in the workplace**
 - Deliberate and wilful violation of the employer's rules: stealing, rowdy behaviour, and insubordination.
- **Lack of qualifications for the job**
 - An employee's inability to do the assigned work although he or she is diligent.
- **Changed requirements or elimination of the job.**
 - An employee's inability to do the work assigned, after the nature of the job has changed.
 - Elimination of the employee's job.

Insubordination

- *Direct disregard of the boss's authority.*
- *Flat-out disobedience of, or refusal to obey, the boss's orders—particularly in front of others.*
- *Deliberate defiance of clearly stated company policies, rules, regulations, and procedures.*
- *Public criticism of the boss. Contradicting or arguing with him or her is also negative and inappropriate.*
- *Blatant disregard of reasonable instructions.*
- *Contemptuous display of disrespect and, portraying these feelings while on the job.*
- *Disregard for the chain of command, shown by going around the immediate supervisor or manager with a complaint, suggestion, or political manoeuvre.*
- *Participation in (or leadership of) an effort to undermine and remove the boss from power.*

Managing Dismissals (cont'd)

- Foster a perception of fairness in the dismissal situation by:
 - Instituting a formal multi-step procedure (including warning).
 - Having a supervising manager give full explanations of why and how termination decisions were made.
 - Establishing a neutral appeal process also fosters fairness.



Avoiding Wrongful Discharge Suits

- **Bases for wrongful discharge suits:**
 - Discharge does not comply with the law.
 - Discharge does not comply with the contractual arrangement stated or implied by the firm via its employment application forms, employee manuals, or other promises.
- **Avoiding wrongful discharge suits**
 - Set up employment policies and dispute resolution procedures that make employees feel treated fairly.
 - Do the preparatory work that helps to avoid such suits.

Steps in Avoiding Wrongful Discharge Suits

- *Have applicants sign the employment application and make sure it contains a clearly worded statement that employment is for no fixed term and that the employer can terminate at any time.*
- *Review your employee manual to look for and delete statements that could prejudice your defense in a wrongful discharge case.*
- *Have clear written rules listing infractions that may require discipline and discharge, and then make sure to follow the rules.*
- *If a rule is broken, get the worker's side of the story in front of witnesses, and preferably get it signed. Then make sure to check out the story, getting both sides of the issue.*
- *Be sure to appraise employees at least annually. If an employee shows evidence of incompetence, give that person a warning and provide an opportunity to improve. All evaluations should be in writing and signed by the employee.*
- *Keep careful confidential records of all actions such as employee appraisals, warnings or notices, memos outlining how improvement should be accomplished, and so on.*

Steps in Avoiding Wrongful Discharge Suits

- *A final 10-step checklist would include:*
 - Is employee covered by any type of written agreement, including a collective bargaining agreement?
 - Have any representations been made to form a contract?
 - Is a defamation claim likely?
 - Is there a possible discrimination allegation?
 - Is there any workers' compensation involvement?
 - Have reasonable rules and regulations been communicated and enforced?
 - Has employee been given an opportunity to explain any rule violations or to correct poor performance?
 - Have all monies been paid within 24 hours after separation?
 - Has employee been advised of his or her rights under COBRA?
 - Has employee been advised of what the employer will tell a prospective employer in response to a reference inquiry?

Personal Supervisory Liability

- **Avoiding personal supervisory liability:**
 - **Be familiar with federal, state, and local statutes and know how to uphold their requirements.**
 - **Follow company policies and procedures**
 - **Be consistent in the application of the rule or regulation is important.**
 - **Don't administer discipline in a manner that adds to the emotional hardship on the employee.**
 - **Do not act in anger.**
 - **Utilize the HR department for advice regarding how to handle difficult disciplinary matters.**

The Termination Interview

- Plan the interview carefully.
 - Make sure the employee keeps the appointment time.
 - Never inform an employee over the phone.
 - Allow 10 minutes as sufficient time for the interview.
 - Use a neutral site, never your own office.
 - Have employee agreements, the human resource file, and a release announcement (internal and external) prepared in advance.
 - Be available at a time after the interview in case questions or problems arise.
 - Have phone numbers ready for medical or security emergencies.

The Termination Interview (cont'd)

- **Get to the point.**
 - Do not beat around the bush by talking about the weather or making other small talk.
 - As soon as the employee enters, give the person a moment to get comfortable and then inform him or her of your decision.
- **Describe the situation.**
 - Briefly explain why the person is being let go.
 - Remember to describe the situation rather than attack the employee personally
 - Emphasize that the decision is final and irrevocable.

The Termination Interview (cont'd)

- **Listen.**
 - Continue the interview until the person appears to be talking freely and reasonably calmly about the reasons for his or her termination and the support package (including severance pay).
- **Review all elements of the severance package.**
 - Describe severance payments, benefits, access to office support people, and the way references will be handled. However, under no conditions should any promises or benefits beyond those already in the support package be implied.

The Termination Interview (cont'd)

- Identify the next step.
 - The terminated employee may be disoriented and unsure what to do next.
 - Explain where the employee should go next, upon leaving the interview.

Termination Assistance

- **Outplacement Counselling**

- A systematic process by which a terminated employee is trained and counselled in the techniques of conducting a self-appraisal and securing a new job appropriate to his or her needs and talents.

- Outplacement does not imply that the employer takes responsibility for placing the person in a new job.
- Outplacement counselling is part of the terminated employee's support or severance package and is often done by specialized outside firms.

Termination Assistance (cont'd)

- Outplacement firms

- Can help the employer devise its dismissal plan regarding:



- How to break the news to dismissed employees.
 - Deal with dismissed employees' emotional reactions.
 - Institute the appropriate severance pay and equal opportunity employment plans.

Interviewing Departing Employees

- Exit Interview

- Its aim is to elicit information about the job or related matters that might give the employer a better insight into what is right—or wrong—about the company.

- The assumption is that because the employee is leaving, he or she will be candid.
 - The quality of information gained from exit interviews is questionable.

Exit Interview Questions

- *How were you recruited?*
- *Why did you join the company?*
- *Was the job presented correctly and honestly?*
- *Were your expectations met?*
- *What was the workplace environment like?*
- *What was your supervisor's management style like?*
- *What did you like most/least about the company?*
- *Were there any special problem areas?*
- *Why did you decide to leave, and how was the departure handled?*