Problem Employees? Here's A Solution

Insights
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Issuing employee discipline is one of the hardest aspects of being a supervisor and, since it's so difficult, it's often not done well – when it is done at all. Discipline delayed or mishandled is one of the primary causes of federal and state-agency discrimination charges as well as claims of wrongful discharge, all of which create a distraction from the business and an unplanned expenditure of resources to defend against claims. As long as employees are imperfect, various degrees of discipline will be required in every organization. But correct discipline is neither intuitive nor easy, either for the supervisor or for the employee.

The Traditional Approach
The usual way of disciplining employees is similar to disciplining children, which frequently is not very effective either. Standard disciplinary procedures involve a standard discipline form which points out the problem from management's perspective and a warning that further discipline will follow if performance does not improve. The usual discipline form is relatively easy to fill out because it requires little thought and it allows the supervisor to get through a difficult interview relatively quickly.

But using this check-the-box approach is not the best for an employer who is genuinely interested in improving employee performance. Improved employee performance is, theoretically at least, the objective of disciplinary warning actions. We believe that discipline done right improves the chances that discipline need not be done again, whereas discipline done wrong decreases chances for improved performance, and increases the odds of employee disaffection and possible legal action. While the process set out below requires slightly more thought, we believe it is significantly more effective than the "further-violations-of-this-rule-will-result-in-additional-discipline-up-to-and-including-discharge" approach.

A Method For The Hard Cases
Note that the process described below is not appropriate for every type of employee misbehavior. For example, we do not recommend consideration of this method where the particular offense warrants discharge. If termination is called for, then termination it should be, without further delay or dithering. Nor is this process recommended for a first minor offense, say of the absenteeism program, where it is not at all clear that there is or will be an ongoing performance problem.

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The use of this methodology is best suited for the chronic and persistent performance problems, the tough problems that you do not really know how to solve; the problems that are bothering you because you know they are causing the business real difficulties but you don't know exactly how to quantify or deal with them. This methodology is best suited for the situation where you are in doubt whether you should take action now or just put up with the problems until some indefinite day in the distant future when something else may happen.

Successful businesses anticipate and manage problems and successful Human Resources organizations should do the same with people problems.

We're not suggesting that a notice about needed performance improvements should be viewed as a reason for merriment. No amount of alchemy or verbiage will turn a disciplinary warning into a cause for celebration. But after giving some thought about the specifics of the problem, the disciplinary process can be focused on mutually-devised solutions rather than on unilaterally-imposed punishment. A shift in focus can make all the difference.

Unfortunately, this process cannot be implemented without some prior thought and effort. It will take more than one minute to fill out the form and two minutes to hand it to the offending employee. The method we recommend requires the active participation of the supervisor *and* the employee as integral elements of the process. It is our experience that spending more time to devise an effective solution at the front end is more than compensated by not having to deal with litigation or agency inquiries at the back end of the process.

We advocate an interactive process between the supervisor and the employee to identify and address the problem. If the interactive dialogue does not resolve the problem, discipline flows from the failure of resolution but the discipline is only used after alternative avenues have first been documented and exhausted.

Summarize The Problem – And Your Desire To Resolve It

The first step is to go over the specifics of the performance challenges and to express your belief that the employee can actually correct the problem, while at the same time communicating the fact that failure to resolve it is unacceptable.

In the example we have assumed that the problem to be addressed involves one employee's consistent failure to work well with other employees. Obviously there are hundreds of possible scenarios but this example provides a fair idea of the use of the methodology.

In the best-case scenario, the improvement plan accomplishes its aim and the employee becomes a more effective, cooperative and productive member of the team. That is true success to be celebrated and savored.

And If There Is No Improvement?

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What if this interactive process is unsuccessful? What if the employee's relations with fellow employees do not improve and you ultimately terminate him or her? Suppose further the employee refuses to accept any of the blame and decides to find a plaintiff's lawyer to sue you. Imagine the reaction of the plaintiff's lawyer when, during the intake interview with your former employee, the lawyer asks whether your employee has received any discipline before being discharged and is handed this document – filled out in part by his prospective client. At a bare minimum, this would not be an encouraging start to the possible attorney-client relationship.

We believe this is a better way to manage employees with performance issues and improving performance advances an employer's objectives more effectively than does termination. Adopting the methodology outlined above is no guarantee of success, but it improves the chances for a positive outcome where an employer finds deteriorating job performance from an individual who is capable of doing better. At a minimum, the thoughtful use of the methodology incorporated into this form has the potential of discouraging employee challenges to reasonable employer disciplinary decisions.

Try It

As a test, consider the one most significant performance concern on the payroll. You won't have to think more than fifteen seconds before a clear image of this individual will come to mind. This will be someone whose performance is poor, perhaps not completely terrible, but someone who comes to the forefront when you think of problem employees. Give thought to this employee's performance and write down exactly what bothers you, using the methodology set out above. After preparing the memorandum, sit with the employee to discuss the problem and ask the employee to propose solutions.

We have seen this methodology work wonders, both in improving employee performance and/or by eliminating the performance issue from the work force, often by self-selection. The first time you try this process, you will have invested fifteen minutes to a half an hour in addressing a genuine concern. We believe the results of this time and effort will be worth the investment and that you will find yourself on the way to a resolution of the problem, hopefully by improved employee performance. No matter how busy or harried, employers always make the time to deal with the crises; we urge you to take the time to eliminate the crises.

If you would like to review a template of additional example scenarios of this form, please email your regular Fisher Phillips attorney.

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