

# FOUR STEPS TO EFFECTIVE EMPLOYEE PROGRESSIVE DISCIPLINE

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**NOTE:** The information set forth in these materials is intended to provide an outline of the law existing as of the presentation date. It is not intended as, nor should it be considered, "legal advice." If you are presented with a specific issue, you should consult with legal counsel.

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## Introduction

Correcting and disciplining unacceptable employee conduct is one of the least favored responsibilities of a manager.

Baseline expectations of employee performance should be described in documents prepared by the employer, including:

- job description; and
- employee handbook.

Effective and successful management of employee conduct that does not conform to the employer expectations include:

- Promptly address the issue (don't linger).
- Be direct (opaque comments can be misunderstood).
- Focus on the employee's conduct—not the person.
- Avoid criticism that includes possible bias.
- Be specific.
- Document the discussion.
- Include information about the employee's perspective.

## I. Progressive Discipline Steps

### STEP 1: Verbal Counseling – Oral Warning

#### Issue:

It is possible the employee is unfamiliar with an employer's policy or how certain conduct is interfering with the organization's mission.

Manager Response:

- Arrange to meet with the employee.
- Identify the issue.
- Describe the offending conduct.
- Obtain the employee's response.
- Refer to applicable policy in the employee handbook or job description.
- Describe required change of conduct or behavior.
- Draft written summary of conversation in memo to employee.

**JIE Progressive Discipline – Oral Warning**

- I. The immediate supervisor will give the employee an oral warning that may include a time frame for correction of the issue. The immediate supervisor will document the date, time and subject matter of the oral warning.

**Question:** Should/Must the oral warning be placed in the employee's personnel file?

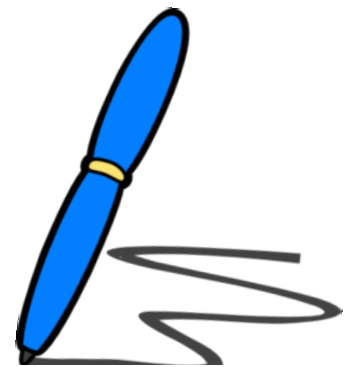
STEP 2: Written Warning

Issue:

Either the employee has not properly addressed the conduct discussed during the verbal counseling or a more serious performance issue is brought to the manager's attention.

Manager Response:

- Promptly address the issue
- Be specific
- Obtain the employee's perspective.
- Emphasize seriousness of issue.
- Describe required improvement.
- Establish time frame for improvement.
- List consequence for failed improvement.
- Document discussion.



**JIE Progressive Discipline – Written Warning**

- II. If the oral warning is not effective in producing the desired results within the specified time frame, the supervisor then will give the employee a written warning at the next review meeting. All written disciplinary statements will include specific information as to the improvement needed and corrective measures required. The supervisor will give a copy of the written warning to the employee and place a copy in the employee's personnel file.

**Question:** Must every instance of progressive discipline begin with an oral warning?

**Question:** Should the employee be given a copy of the written warning?

**Question:** Should a copy of the written warning be placed in the employee's personnel file?

**Question:** Is it always advisable to set deadlines for the improved performance?

**Question:** Is the employee allowed to provide a written response to a written warning? How is that handled?

Employee Statement Disputing Information in Personnel File:

Minnesota law allows an employee who disputes information in the employee's personnel file (such as a written warning or unsatisfactory performance review) to submit a written statement identifying the disputed information and explaining the employee's position. The employee's statement may not exceed five (5) pages. It must be maintained in the personnel file as long as the disputed information is included in the personnel file. Minn. Stat. § 181.962.

Resolution of Work Related Issues per JIE:

An employee may choose to follow the Resolution of Work Related Issues policy to address "an unresolved complaint or dispute, disagreement, misunderstanding or expressed dissatisfaction . . . relating to the conditions of employment or to the meaning and application of these written policies."

STEP 3: Final Written Warning / Suspension

Issue:

The employee's performance or conduct is so serious that continued employment is in doubt.

Manager Response:

A. If the issue relates to performance discussed in verbal counseling and written warning:

- Meet with employee and refer to prior warning documents, including description of required improved performance.
- Identify continued performance concerns.
- Obtain employee response.
- Consider short-term suspension.
- Document action – provide notice of possible termination.

B. If the issue relates to new issue:

- Gather information to support concern (witness information, written documents, photographs, social media information).
- Meet with the employee to discuss performance issue.
- Refer to applicable handbook policy or job description responsibility.
- Obtain employee response.
- Consider short-term suspension.
- Document action – provide notice of possible termination.

**JIE Progressive Discipline – Final Written Warning**

III. If sufficient improvement does not occur within the noted time frame or if serious work performance or behavior issues warrant immediate attention, disciplinary action in the form of a final written warning and/or a suspension without pay may be taken by the supervisor.

***Question:*** Can the suspension for either an exempt employee or a non-exempt employee be unpaid?

***Question:*** Is it permissible to suggest that an employee consider resignation?

***Question:*** Is it useful/necessary to implement a performance improvement plan?

Pros:

- Useful if there is a good faith basis to believe coaching will lead to improvement.
- Demonstrates employer's good faith (be careful about imposing unreasonable responsibilities on employer).
- Empowers the employee to take ownership of performance concerns.

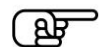
Cons:

- Typically viewed by employee as indicating an irreversible decision to terminate employment.
- Time-consuming for manager and disrupts other work.
- Typically not successful.

STEP 4: Termination – Discharge: Just Cause

Issue:

When is the right time to terminate an underperforming employee?



**JIE Discharge – Following Progressive Discipline**

I. Discharge following progressive discipline:

\* \* \*

Discharge may result if progressive discipline fails to bring about desired results.

Prior to discharging any employee for cause, the employer or his or her designate shall seek and follow the advice of an attorney qualified in employment law and familiar with these policies, to ensure that these policies are followed.

**JIE Discharge – Immediate Discharge**

II. Immediate discharge without progressive discipline:

*Justice in Employment* states that any of the following acts may result in immediate discharge without progressive discipline:

- A) Illegal discrimination or harassment
- B) Theft, misappropriation, falsification of records
- C) Misconduct at the work place which endangers others
- D) Insubordination or breach of professional ethics
- E) Working under the influence of illegal or controlled substances
- F) Consumption of alcohol (unless authorized) or drugs at work or prior to work, so as to affect the employee's performance.
- G) Public conduct which is inconsistent with the faith, morals, teachings and laws of the Catholic Church
- H) Other gross violations of the employer/employee relationship

Legal Note:

Minnesota law allows an employee who has been involuntarily terminated (did not resign) to ask the employer for the “truthful” reasons for the termination. The former employee must make the request within 15 working days following the termination. The employer response is due within 10 working days following receipt of the request. Minn. Stat. § 181.933

**JIE Reduction in Staff or Lay Off**

A reduction in staff or lay off may occur because of a change in the organization's institutional goals or the prevailing economic condition of the employer. A termination under this section is a termination for cause.

The employer must decide who will be affected based on valid criteria such as past performance, seniority, education, training and work skills needed by the organization.

**II. Should the employer pay severance?**

No law requires an employer to pay severance. An employer may elect to pay severance as a matter of good will or if the employer seeks to reduce the possibility that the former employee might file a legal claim against the employer.

As a general rule of thumb, severance pay usually amounts to a week of pay for each year of employment by the employee. To avoid claims of discrimination, the amount of severance pay should be generally consistent.

If the parish or school is enrolled in the unemployment compensation program, the amount of severance pay will have an impact on when unemployment compensation benefits will start. It typically will not affect the amount of unemployment compensation benefits. Conversely, enrollment by the parish in the unemployment compensation program can cause an employer to consider paying a lesser amount of severance pay.

### **III. Termination Checklist**

#### Type of Termination:

##### *Voluntary:*

- Is there written confirmation of the employee's resignation? (This can be done by the employer.)

##### *Involuntary:*

- Is severance pay offered along with a release of claims?
- Is the employer enrolled in the unemployment compensation program?
- Has the employee requested the truthful reasons for the termination?

#### Unemployment Compensation:

- Is the employer parish/school enrolled in the State of Minnesota unemployment compensation program?
- Why is that important?

#### Benefits:

- Has the COBRA notice been issued?
- Are accrued vacation/PTO benefits payable?





### Compensation:

- When is the final paycheck due to the employee?

### Information Technology:

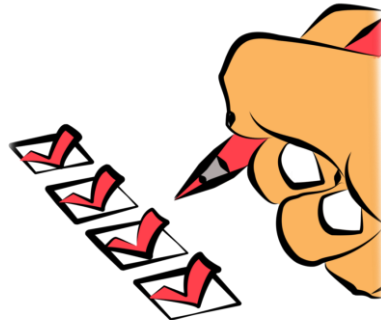
- Disable email.
- Disable remote computer access.
- Disable voicemail.

### Office Access:

- Disable passcode or pass key.
- Collect office keys.

### Collect Items:

- Keys (office, building, desk, file cabinets, etc.)
- ID card
- Name badge
- Company cell phone
- Company computer
- Company tools
- Other



*Questions?*