

# The Basics of Discipline & Discharge

Lauren A. Smith

**Lanier Ford Shaver & Payne P.C.**

2101 West Clinton Avenue, Suite 102

Huntsville, AL 35805

256-535-1100

LAS@LanierFord.com



# Putting a Discipline Policy in Place

- Communication
- Sets expectations
- Creates necessary procedures
- Helps supervisors
- Risk management



# What if there is no specific policy?

Look to other policies.



# Performance Evaluations

- BE HONEST!
- Avoid negative statements associated with a protected class
- Use specific language and examples

Remember this is part of your **record keeping**

# Discipline v. Discharge

- First step: Investigate
- Second step: DOCUMENT, DOCUMENT, DOCUMENT
- Third step: Evaluate
  - Automatic discharge
  - Progressive discipline

**Be consistent!**



# Automatic Discharge

- Look to your policy!
- Common grounds:
  - Lying on application
  - Workplace violence and threats
  - Stealing
  - Property damage and destruction (intentional)
  - Major safety violations
  - No show



# Progressive Discipline

- Again, look to your policy.
- Common grounds:
  - Attendance and tardiness issues
  - Minor safety violations
  - Poor job performance
  - Poor communication or interpersonal skills
  - Insubordination
  - Other misconduct

# Progressive Discipline Procedure

1. Oral reprimand
2. Written warning
3. Formal punishment
4. Termination





# Alternatives to Discharge

- Changes in pay
- Transfer
- Demotion
- Resignation



**You've decided to discipline  
or discharge an employee.**

**Now what?**



# Discipline Letter

- What is the problem?
- What does the employee need to do to solve the problem?
- How long does the employee have to solve the problem? – Last chance?
- What will the employer do to help the employee?
- Consequences

# Discharge Letter

- Date and time of discharge
- Benefits the employee will be given
- COBRA and HIPAA notices

Should I include the **reason** for termination?

# Minimizing Risk During Termination (the Do's)

- Have a witness in the room
- Keep the meeting private
- Be considerate
- Be honest
- Remind employee of non-competition and non-disclosure agreements
- Arrange for return of company equipment
- Cut off computer and email access
- Allow employee to gather personal belongings

# Common Mistakes to Avoid (the Don'ts)

- Not documenting discipline or discharge meeting
- Not involving legal counsel
- Being too nice
- Not having at-will disclaimer in handbook
- Taking the bait

# Waivers and Releases

- Employee agrees to waive or release any claims he or she may have against employer
- Usually accompanied by additional severance benefits or some other type of payment
- Need specific language
- May involve mandatory waiting period

# Questions?

Lauren A. Smith

**Lanier Ford Shaver & Payne P.C.**

2101 West Clinton Avenue, Suite 102

Huntsville, AL 35805

256-535-1100

LAS@LanierFord.com

