

Discipline and Discharge: Necessary Documentation

Lauren A. Smith

Lanier Ford Shaver & Payne P.C.

2101 West Clinton Ave., Suite 102

Huntsville, AL 35805

256-535-1100

LAS@LanierFord.com

www.LanierFord.com

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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/threats
 - Stealing
 - Property damage/destruction (intentional)
 - Major safety violations
 - No show

Progressive Discipline

- Again, look to your policy.
- Common grounds:
 - Attendance/tardiness issues



Progressive Discipline

- Again, look to your policy.
- Common grounds:
 - Attendance or 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 (the Do's)

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

Common Mistakes to Avoid (the Don'ts)

- Not documenting discipline or discharge meeting



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

Waivers and Releases

- Employee agrees to waive/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?

