



**DISCIPLINARY COMMUNICATIONS WITH EMPLOYEES**

**SUMMARY**

This BMA explains progressive discipline-how to apply it, the type of "paperwork" which must be kept, and outlines a sample discharge letter. By applying progressive discipline and maintaining proper records, an employer's ability to successfully defend against discrimination and unfair labor charges will be greatly enhanced.

In today's industrial society, with virtually every conceivable federal, state and local administrative agency and court looking over management's shoulder, employers should put in writing the reprimand or disciplinary action taken against an employee guilty of wrong-doing. Increasingly, employees are filing actions or bringing suits against their employers for disciplinary action taken by the employer, and the employer is frequently unable to prove that the disciplinary action was simply the final act taken after one or more previous disciplinary steps had failed.

The purpose of this BMA is to show the employer how to compile the necessary paperwork to support a position and defend the company when confronted with an action seeking to hold the employer liable for some type of alleged discrimination against a disciplined or terminated employee. First and foremost, the employee must be aware of the type of conduct which is expected by the employer.

**WORK RULES**

All orderly operations require a set of standards by which all persons are to be governed. This is especially true in the non-union facility where consistency and uniformity in administration of discipline must be assured to avoid the impression of unfairness or lack of impartiality.

These rules should either be conspicuously posted or given to employees in booklet form for which a receipt is obtained. Do NOT allow deviation from these procedures by the individual supervisors. Remember, too, that habitually making exceptions effectively destroys the advantages of having a standardized, uniform set of rules.

Finally, it should be noted that the following list of work rules will undoubtedly include some things which are not applicable to a particular plant and has probably omitted items that should be covered to meet special circumstances. Hopefully, however, these suggested rules will provide a frame of reference within which a meaningful set of regulations can be devised.

The following work rules have been designed to maintain a safe, clean and efficiently operated plant. Infractions of these rules will merit penalties shown on the chart as follows:

- VW - Verbal Warning
- WW - Written Warning

- 5S - 5-Day or less Suspension
- D - Discharge

| Type of Violation   | Frequency of Offense<br>(Number of Times) |    |    |   |
|---|---|----|----|---|
|   | 1   | 2  | 3  | 4 |
| 1. Wasting time, loafing, or loitering during working hours.              | VW  | WW | 5S | D |
| 2. Habitual tardiness or absenteeism.                                     | D   | -  | -  | - |
| 3. Unauthorized visiting in another department during working hours.      | WW  | 5S | D  | - |
| 4. Sleeping during working hours.   | 5S  | D  | -  | - |
| 5. Leaving plant during working hours without foreman's written approval. | 5S  | D  | -  | - |
| 6. Stopping work before quitting time.                                    | VW  | WW | 5S | D |
| 7. Reading books or magazines while on duty.                              | VW  | WW | D  | - |

|  |    |    |    |   |                                   |    |   |   |   |
|--|----|----|----|---|-----------------------------------|----|---|---|---|
| 8. Failure to report to work.  | VW | WW | 5S | - | time card for the express         |    |   |   |   |
| 9. Taking unauthorized leave of absence.   | D  | -  | -  | - | purpose of avoiding an extra      |    |   |   |   |
| 10. Submitting false reason for absence from work.                               | WW | 5S | D  | - | trip to the time clock when       |    |   |   |   |
| 11. Failure to wear safety equipment where and when prescribed.                  | WW | 5S | D  | - | the other employee is in          | 5S | D | - | - |
| 12. Engaging in horse play, disorderly conduct, or foul language and arguments.  | WW | 5S | D  | - | 35. Punching another employee's   |    |   |   |   |
| 13. Violation of minimum safety rules.   | WW | S  | D  | - | time card when that other         |    |   |   |   |
| 14. Serious violation of safety rules.   | D  | -  | -  | - | employee is not in the            | D  | - | - | - |
| 15. Possession of or discharging of firearms on company property.                | D  | -  | -  | - | 36. Falsification of production   | D  | - | - | - |
| 16. Careless and reckless operation of company owned vehicle or equipment.       | WW | 5S | D  | - | records.                          | D  | - | - | - |
| 17. Falsification of work application.   | D  | -  | -  | - | 37. Submitting false or erroneous | D  | - | - | - |
| 18. Theft of company-owned property.   | D  | -  | -  | - | insurance claims.                 | D  | - | - | - |
| 19. Reporting to work purportedly under the influence of alcohol or drugs.       | WW | 5S | D  | - | 38. Fighting on company           | D  | - | - | - |
| 20. Refusal to obey foreman's orders.  | 5S | D  | -  | - | property.                         | D  | - | - | - |
| 21. Serious violation of foreman's orders.                                       | D  | -  | -  | - | 39. Gambling on company           | D  | - | - | - |
| 22. Interfering with another employee doing his or her job.                      | VW | WW | D  | - | property.                         | D  | - | - | - |
| 23. Defacing or damaging company notices or company property.                    | 5S | D  | -  | - | 40. Immoral behavior.             | D  | - | - | - |
| 24. Unauthorized solicitations during working time.                              | D  | -  | -  | - |                                   |    |   |   |   |
| 25. Unauthorized distribution of literature in working areas or on working time. | D  | -  | -  | - |                                   |    |   |   |   |
| 26. Smoking in non-designated areas after proper notice.                         | VW | WW | 5S | D |                                   |    |   |   |   |
| 27. Unauthorized possession of company-owned property.                           | SS | D  | -  | - |                                   |    |   |   |   |
| 28. Inducing another employee to break any of the work rules.                    | 5S | D  | -  | - |                                   |    |   |   |   |
| 29. Assault on any member of management.   | D  | -  | -  | - |                                   |    |   |   |   |
| 30. Operating company equipment without authority.                               | WW | 5S | D  | - |                                   |    |   |   |   |
| 31. Unsatisfactory work due to carelessness.                                     | VW | VW | 5S | D |                                   |    |   |   |   |
| 32. Poor work effort.  | VW | WW | 5S | D |                                   |    |   |   |   |
| 33. Parking violations.  | VW | WW | 5S | D |                                   |    |   |   |   |
| 34. Punching another employee's  |    |    |    |   |                                   |    |   |   |   |

Any other infraction of a similar nature to those listed will be treated accordingly.

The company reserves the right to amend, add to, delete or change in any manner any of the work rules at anytime when it may be in the Company's best interest to do so.

**PROGRESSIVE DISCIPLINE**

It has become increasingly clear that an arbitrator, administrative law judge, and so forth will look more favorably upon the just cause nature of discipline or discharge if it can be shown that the employee was warned of any misconduct previously and told to "shape up." This is known as the progressive discipline doctrine and it applies to minor types of misconduct such as excessive absenteeism, tardiness, leaving the plant early and failure to clean up the work area.

1. *Verbal Warning.* For the first offense, the employee should be given a verbal warning, The employee should be told what was done wrong, how to improve (or what is expected) and that further discipline will occur should there be failure to improve. Some offenses might warrant additional verbal warnings, but all verbal warnings should be documented. The documentation should reflect: who, what, when, where, why and how. These documents should be placed in the employee's personnel file for future reference.

2. *Written Warning.* If the same offense occurs again, or if the same employee commits a more serious offense, a written warning should be given. This warning should also state the nature of the misconduct, when and where it occurred, why and how it occurred. It should state what the employer expects in the way of conduct from the employee in the future and what discipline will be taken if the employee continues to disregard company rules. In the written warning, any prior verbal warnings for similar offenses should be recounted, with reference to the misconduct and the date it occurred. A normal rule of thumb is that a warning given over a year before is "stale" and probably should not be counted against the employee. Copies of all written warnings should also be placed in the employee's personnel file.

3. *Disciplinary Suspension.* When the employee is given a disciplinary suspension, the length of the suspension depends

upon the nature of the misconduct. Usually suspensions amount to from one day to a maximum of two weeks. Here again, the nature, date, time and place of the offense and any previous verbal and/or written warnings should be included in the written report. This written report then goes in the employee's permanent file, as well as a copy to the employee.

4. *Discharge*. If an employee is discharged for continual breaches of company rules, the record should show that the employee had been warned previously and financially hurt by a layoff or disciplinary suspension. A sample termination letter follows:

### **SAMPLE DISCHARGE LETTER**

Dear

You are hereby terminated from employment with this company. The reason for your discharge is *excessive absenteeism*.

On \_\_\_\_\_ you were verbally warned by your supervisor about your absenteeism record and told that you were expected to meet the standards of attendance acceptable to the company. You continued, however, to be absent from work, and on \_\_\_\_\_, you were given a written warning about your attendance record and told that the company expected substantial improvement or further discipline would follow.

You apparently paid no attention to that warning and were absent again and because of that, on \_\_\_\_\_ you were given a 3-day disciplinary suspension or layoff in an attempt to show you that absenteeism cannot and would not be condoned by the company.

Since \_\_\_\_\_, you have been absent four more times in a thirty-day period. The company cannot operate its plant under these conditions because your absenteeism has placed a burden on your fellow employees and added to the overtime costs of our production.

I hope this experience, as painful as it is now, will motivate you to change your work habits with your next employer and that you will be able to make a success of your future employment.

Very truly yours,  
Company representative and title

### **SERIOUS OFFENSES**

For serious offenses such as insubordination, drunkenness and fighting, the verbal and written warnings should be dispensed with, and either disciplinary *suspension* or *discharge* as the proper penalty. Again. It is recommended that the suspension, termination or layoff be documented in writing. Keep in mind that a disciplinary discharge letter should state the clear facts: *who, what, when, where, why & how*. Copies of all disciplinary communications should be placed in the offending employee's personnel file.

### **STATE LAWS**

Some states have laws generally known as "Service Letter Statutes" or "Anti-Blacklisting Statutes." These statutes require employers to furnish a letter to a terminated employee stating matters such as length of service, wage and the truthful reason for the termination. Employers can be sued for normal and punitive damages if they fail to supply this letter. Employers can be sued for libel if they fail to state the truth in such letters. The recommended progressive discipline documentation will help those employers in states with such statutes. Should there be any questions regarding these statutes the employer should consult local legal counsel.

If progressive discipline is followed consistently in all employee matters, your chances of success in making the disciplinary action hold up in arbitration at the Labor Board or before the Equal Employment Opportunity Commission (EEOC) are greatly enhanced.

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