

DEALING WITH EMPLOYEES WHO DON'T FOLLOW THE RULES

**Salem Area Safety Council
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**Martin J. Boetcher
Harrington, Hoppe & Mitchell, Ltd.
26 Market Street, Suite 1200
P.O. Box 6077
Youngstown, Ohio 44501-6077
Telephone: (330) 744-1111**

I. HAVE WRITTEN WORK RULES

1. Written Work Rules can be located in a Company Policy, or
2. Written Work Rules can be located in an Employee Handbook.

II. REASONS FOR HAVING WRITTEN WORK RULES:

1. It notifies the employee of what is expected of them.
2. It notifies the employee of what will happen if the employee violates these work rules.
3. It helps to prevent excuses of “I didn’t know” and “No one told me.”
4. The employer’s work rules should have a catchall provision stating that the work rules outlined is a general guide and is not an exclusive list of impermissible conduct.

III. TWO MAIN TYPES OF WORK RULE INFRACTIONS:

A. Performance Based Work Rule Violations.

B. Misconduct / Behavior Based Work Rule Violations.

IV. EXAMPLES OF PERFORMANCE BASED WORK RULE VIOLATIONS:

1. Unsatisfactory or poor work performance.
2. Excessive absenteeism or tardiness.
3. Absent from work without notification or permission. Unexcused absence.
4. Careless or willful acts that result in damage to company property or equipment.
5. Failing to report known improprieties and failure to cooperate with any investigation.

6. Accident prevention, maintain a safe workplace free from hazards.
7. Inappropriate treatment of customers.
8. Reporting to work in a condition unfit for duty.
9. Failure to report a work-related injury, illness or accident in a timely manner.
10. Bringing unauthorized persons into employee only areas.
11. Substandard quality and quantity of work.
12. Excessive time at rest periods.

V. MISCONDUCT / BEHAVIOR BASED WORK RULE VIOLATIONS:

Examples:

1. Fighting or disorderly conduct (threatening, intimidating or interfering with other employees).
2. Insubordination (refusal to obey any order given by the employee's supervisor or management).
3. Dishonesty, cheating, theft or misappropriation of property or money.
4. Providing false information on any employment application, personnel record or company document.
5. Falsifying time records.

6. Possessing weapons, firearms or explosives on company property.
7. Altering an employee's timecard or another employee's timecard.
8. Failing or refusing to cooperate fully with the company investigation of a workplace issue.
9. Using company's equipment for personal use.
10. Misuse of company vehicle.
11. Refusal to submit to a random drug or alcohol test or violation of the company's policy against substance abuse (of drugs and/or alcohol).
12. Gross neglect of duty (e.g., leaving assigned work area before scheduled time without permission, sleeping, loafing, playing computer games, reading magazines or newspapers, playing cards or gambling).

13. Unauthorized or inappropriate use of communication systems.
14. Unauthorized or inappropriate use of company computers, including, but not limited to, software and email systems.
15. Possession, distribution, manufacture, use, sale or being under the influence of or impaired by illegal drugs or alcohol while at work or on the company property.
16. Willful or reckless disregard of posted or published safety rules and procedures.
17. Violation of health or safety rules.
18. Sexual or other unlawful or unwelcome discrimination, harassment, or retaliation.

19. Taking property of others without permission.
20. Taking company property without permission.
21. Unauthorized smoking.

VI. TYPES OF DISCIPLINARY PROCEDURES:

- A. Complete Discretion Type of Disciplinary Procedure.
- B. Progressive Type of Disciplinary Procedure.

VII. TYPICAL ELEMENTS OF COMPLETE DISCRETION TYPE OF DISCIPLINARY PROCEDURE:

The company does not have a progressive discipline schedule.

Rather, the company will evaluate the work rule violation on a violation by violation basis which could result in discipline ranging from warnings to termination.

VIII. PROGRESSIVE DISCIPLINE PROCEDURE – EXAMPLE:

First violation – verbal warning.

Second violation – written warning.

Third violation – three day suspension.

Fourth violation – termination.

Even with progressive discipline, include a catchall phrase stating that the disciplinary schedule is a general guide and the company reserves the right to deviate from the schedule depending on the nature and seriousness of the violation.

EXAMPLE:

If an employee shoots another employee with a gun, the employer would not follow the disciplinary schedule and just give a verbal warning. The employer would proceed directly to termination due to the nature and seriousness of the violation.

IX. DOCUMENTATION

1. Document what happened, when it happened, where it happened, why it happened and who was involved. (Who, what, when, where, why).
2. Obtain written statements from witnesses and employees.
3. Provide written warning or written termination letter with reasons listed.

X. RECOMMENDATIONS:

1. The employer should have written work rules.
2. The employer should follow their own established work rules.
3. If the employer has a progressive discipline schedule, follow the progressive discipline schedule.
4. The company should be uniform in its application of its work rules.
5. The company should document what has occurred, when it has occurred, where it occurred, who was involved and what discipline the employer gave to the employee in response to the work rule violation.

XI. PROBLEMS ASSOCIATED WITH NOT FOLLOWING YOUR OWN WORK RULES OR FAILING TO BE UNIFORM IN THE APPLICATION OF THE WORK RULES:

1. Potential lawsuit based upon alleged discriminatory conduct.
2. Potential wrongful discharge lawsuit.
3. Potential EEOC Claims and OCRC Claims.
4. Unemployment Claims.
5. Potential Retaliation Claims.

XII. AREAS OF CONCERN WHEN DISCIPLINING OR FIRING AN EMPLOYEE:

1. Situations involving where an employee has not returned to work after a leave of absence due to a medical issue (unexcused absence):
 - a. Family Medical Leave Act – 12 weeks of unpaid leave. “Applies to serious health conditions.”
 - b. American Disability Act As Amended – maybe more than the 12 weeks of leave required under the Family Medical Leave Act. Applies to “disability.”
 - c. Follow Company Policy on leave.

2. Claims of Discrimination:

Claims based upon allegations of being treated different from other employees. Employer should be uniform in the application of its work rules and discipline.

Employees in Protected Classes

- a. Age (40 and over)
- b. Race
- c. Sex (Gender)
- d. Disability
- e. Religion
- f. Natural Origin
- g. Pregnancy
- h. Veteran Status
- i. Genetic Information

3. Claims of Retaliation:

Situations where an employer disciplines or terminates an employee from participating in a protected activity.

XIII. SUMMARY

DOS AND DON'TS

1. Do have written work rules that explain what is not permitted and what will happen if there is a violation of that work rule.
2. Do decide whether to have a complete discretion disciplinary policy or progressive disciplinary policy.
3. Do follow your company's written work rules and disciplinary policy. Don't deviate from Company Policy unless there is a very good reason.
4. Do be uniform in the application of the work rules. Don't play favorites.
5. Do document what happened, when it happened, where it happened, why it happened, who it involved and what the company did in response.

QUESTIONS AND ANSWERS