

Is Progressive Discipline a Thing of the Past?

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By Rebecca R. Hastings, SPHR

When employees violate a rule, report to work late or fail to perform as expected, they might find themselves subject to progressive discipline, a series of warnings intended to change undesirable employee behavior. But experts say such discipline systems might not work as well as anticipated.

"Progressive discipline policies, if properly drafted, can be very effective tools for managing employee behavior in the workplace and are the discipline policy of choice for most employers," said Damon Kitchen, a partner with Constangy, Brooks & Smith's Jacksonville, Fla., office.

The primary benefit of progressive discipline policies is that they provide an employee with a second or third chance to change their inappropriate behavior to conform to the company's standards of conduct, Kitchen said. "Thus, on their face, they are employee-friendly and less susceptible to challenge in litigation than discipline policies without progressive steps," he told *SHRM Online*.

Progressive discipline commonly uses three steps, according to Dick Grote, founder of Grote Consulting and author of [*Discipline Without Punishment*](#) (AMACOM, 2006): an oral warning, a written warning and termination, though some companies insert a final warning, formally or informally, into the process.

"If used quickly to resolve a performance issue and to get the employee back on track, [progressive discipline] can be very effective," said Brenda Rigney, CHRP, HR director at Aritzia, a fashion boutique in Vancouver, Canada. "If you have a top performer that has made a critical mistake, a stern talk and a performance letter can reset things again quickly," she told *SHRM Online*.

But this is not effective when used as a last resort to tie up loose ends, she said. "Why bother at this point? It would be better to part ways, maintain the employee's dignity and invest the time and effort into your top performers."

Progressive discipline policies have widespread support among HR and legal professionals.

"With progressive discipline, employees know that they—and their co-workers—are held to certain standards and know the repercussions for inappropriate behavior or performance," said Claudia St. John, SPHR, founder of St. John Strategic HR Consulting LLC in Cazenovia, N.Y. "It is a part of a modern, trusting work environment."

When an employee sees that they are given as many 'chances' as the person across the hall, it boosts their confidence in the organization as a fair and equitable place to work, Cheri Baker, SPHR, president of Emergence Consulting in Seattle, told *SHRM Online*.

Len Brignac, a partner at King, Krebs & Jurgens PLLC, said that progressive discipline, if applied properly, can yield several positive results. It can minimize employee misunderstandings about the consequences for violating company rules, improve employee behavior, limit discrimination claims and make it easier to terminate poor performers.

But Debra Love, senior director of client HR at Oasis Outsourcing, a firm that represents more than 3,000 client companies employing between 25 and 2,000 employees each, said progressive discipline should be viewed as an opportunity to coach employees to be better workers and thus reduce the cost of turnover.

Andrea Ballard, SPHR, director of HR and administration for Peterson Sullivan LLP in Seattle, agrees: "For me, the worst thing in the world would be to have a conversation with someone terminating their employment and having it come as a complete surprise to them," she told *SHRM Online*. "By the time someone is at the termination point, I want them to feel they have been given every opportunity to turn the situation around if they want to stay employed, and/or look for another situation if they don't feel they can do what they need to do to stay with our company."

Impact on Unemployment Costs

Becky Singer, senior counsel with Underwood, Perkins & Ralston PC, said the existence and use of progressive discipline policies is a common area of inquiry during unemployment hearings. "Use or non-use, or inconsistent or flawed use, of your progressive discipline policy can really impact you when you are trying to defend an unemployment claim," she told *SHRM Online*.

"The more you can demonstrate to the unemployment hearing examiner—who is biased on the employee's side—that what you have done is everything you possibly could have done, then the odds of your prevailing in the hearing go way up," Grote agrees, such as when a company can demonstrate that managers have had a series of well-documented, increasingly serious discussions with the employee.

But when it comes to defending an unemployment claim, Love said, employers need to be able to prove that the employee was aware of what was expected of him or her. Moreover, an employer should be able to provide evidence that company policy was executed in a consistent manner. "Everything comes back to the documentation," she added.

Downsides to Progressive Discipline

Progressive discipline can be time-consuming. It requires strict adherence and complete and faithful documentation, Brignac cautioned. Moreover, such a policy can limit the employer's discretion in cases where the employer might not want to impose mandated discipline. It undercuts the employer's right to terminate at will, and it can lead to employer liability if misapplied, he said.

"Adhering to a progressive policy helps managers and HR professionals ensure that they have an appropriate record of documenting and addressing employee behavior problems," St. John said, adding that "it can be frustrating for managers and employees to tolerate poor behavior and performance while they 'wait out' the progressive discipline process."

Baker agrees: "Managers want the flexibility to offer more 'chances' to employees they feel can be successful in the long run and fewer 'chances' to those who have clear behavioral problems," she said. Thus, they get frustrated when they spend weeks or months disciplining a problem employee, when the conclusion seems foregone that the eventual result will be a termination. "Meanwhile, that employee could be causing harm to the team and organization, and it delays hiring someone who is a better fit," she added.

As a result, some managers try to work around, rather than with, such policies.

Often, managers will "try to memorialize performance-related problems after the fact in an

effort to 'document' the file to justify a termination," Paul Lopez, director of the labor and employment practice of Tripp Scott, told *SHRM Online*. "Unfortunately, when this happens, the employee's performance deficiencies look contrived and the timing of the documentation becomes suspect."

Greg Schinkel, president of Unique Training & Development Inc. and co-author of *Employees Not Doing What You Expect* (Unique Development Corp., 2005), said supervisors sometimes misuse progressive discipline by:

- Thinking of it as punishment instead of an opportunity to correct the situation.
- Taking an apologetic approach, such as saying, "HR told me to do this."
- Trying to maintain friendships and therefore letting people get away with things too long.
- Failing to keep good documentation.

"If managers keep in mind that it is a tool to help them manage their employees, it won't seem so bureaucratic to them," said Maureen Mack, a business services consultant at H.R. Principal LLC in San Francisco.

Other Considerations

Progressive discipline can generate rebelliousness in employees, according to Michael R. Mantell, Ph.D., author of the Dr. San Diego blog and the book *Don't Sweat the Small Stuff: P.S. It's All Small Stuff* (Impact Pub, 1988). "If you put someone out for a day of suspension, they don't come back seeing the error of their ways; they come back pissed off," he told *SHRM Online*. "They feel like they had their wrists slapped."

"Some employees will play a game with the system—screwing up until termination is imminent and then suddenly behaving until enough time passes for them to misbehave again," Schinkel added.

"Today it seems like progressive discipline is some nefarious management scheme inflicted on the poor worker," Grote said. Moreover, it relies on a criminal justice mentality, he said, as if companies are saying, "Here's what you did, and here's the punishment." But progressive discipline originated in the 1930s, he explained, as a way to protect employees from unjustified termination: "Unions realized that by having a progressive discipline process, companies couldn't unilaterally sack people," Grote told *SHRM Online*.

"To start creating adversarial relationships in the world of work makes no sense," Mantell said. That's why he advocates the principles outlined in Grote's book *Discipline Without Punishment*, in which a manager gives an employee two "reminders" of the expectations of the job, followed by a day of paid "decision-making leave" in lieu of the customary series of "warnings" used in progressive discipline.

The differences between the two approaches are subtle. When an employee is given the first reminder to correct a specific issue, such as tardiness or compliance with a safety precaution, he or she is asked for assurances that it will not happen again, Mantell explained. If it does, the supervisor makes it clear that the employee went back on his word. If the employee violates expectations a third time, he is told to take a company-paid day to think about whether he is prepared to meet the expectations of the job.

"By the time you get to decision-making leave, what the company at the final step of disciplinary action should demand is a total commitment to fully acceptable performance in every area of the job, whether related to this job or any other," Grote said.

"All we are asking is that the person agrees that they will do the job they are being paid to do at the minimum level of performance," he added. That's why it's easier to defend a decision to terminate if a person fails to live up to his or her commitment to perform following a decision-making leave.

At that point, if the employee returns to work but fails to honor his or her commitment, termination occurs.

"Your job is very simple," Mantell said, quoting from Grote's book: "To either help them become a good employee or an ex-employee."

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