Discipline And Due Process In The Workplace

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Abstract
In the article - Discipline and Due Process in the Workplace – by Edwin B. Dean, Assistant Professor, the School of Hospitality Management at Florida International University, Assistant Professor Dean prefaces his article with the statement: "Disciplining employees is often necessary for the maintenance of an effective operation. The author discusses situations which require discipline and methods of handling employees, including the need for rules and due process.”

In defining what constitutes appropriate discipline and what doesn't, Dean says, “Fair play is the keystone to discipline in the workplace. Discrimination, caprice, favoritism, and erratic and inconsistent discipline can be costly and harmful to employee relations, and often are a violation of law.” Violation of law is a key phrase in this statement.

The author offers a short primer on tact in regard to disciplining an employee.

“Discipline must be tailored to the individual,” Dean offers a pearl of wisdom. “A frown for one can cause a tearful outbreak; another employee may need the proverbial two-by-four in order to get his attention.” This is a perceptive comment, indeed, and one in which most would concede but not all would follow.

Dean presents a simple outline for steps in the disciplinary process by submitting this suggestion for your approval: “The steps in the disciplinary process begin perhaps with a friendly warning or word of advice. The key here is friendly,” Dean declares. “It could progress to an oral or written reprimand, followed by a disciplinary layoff, terminating in that equivalent of capital punishment, discharge.”

Ouch [!]; in order from lenient to strident. Dean suggests these steps are necessary in order to maintain decorum in the workplace.

Assistant Professor Dean references the Weingarter Rule. It is a rule that although significant, most employees, at least non-union employees, don’t know is in their quiver.

“If an interview is likely to result in discipline, the employee is entitled to have a representative present, whether a union is involved or not,” the rule states. “The employer is not obligated to inform the employee of the rule, but he is obligated to honor the employee's request, if made,” Dean explains.

Dean makes an interesting point by revealing that a termination often reflects as much on the institution as it does the employee suffering the termination.

The author goes on to list several infractions that could warrant an employee disciplinary action, with possible approaches toward each. Dean also cautions against capricious disciplinary action; if not handled properly a discipline could and can result in a lawsuit against the institution itself.

Keywords
Edwin B. Dean, Discipline and Due Process in the Workplace, Arbitration, Termination/Dismissal, Weingarter Rule, FIU

This article is available in Hospitality Review: https://digitalcommons.fiu.edu/hospitalityreview/vol3/iss2/9
Discipline and Due Process

In The Workplace

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Disciplining employees is often necessary for the maintenance of an effective operation. The author discusses situations which require discipline and methods of handling employees, including the need for rules and due process.

In the course of managing an enterprise, it is sometimes necessary to discipline an employee. However, discipline must be handled judiciously and fairly, to avoid the potential for poor morale, union difficulties, a lawsuit, or government intervention by a variety of agencies.

The steps in the disciplinary process begin with a friendly verbal warning, followed by a written reprimand, or, in some cases, a layoff. The key is to handle the situation with empathy and respect for the employee's dignity and sense of worth. It is important to avoid disciplinary actions that are arbitrary, capricious, or inconsistent.

Discipline must be tailored to the individual. A frown for one can cause a tearful outburst; another employee may need the proverbial two-by-four to get his or her attention. Discipline must be administered as closely as possible to the time of the infraction, and never in anger.

If an interview is likely to result in discipline, the employee is entitled to have a representative present, whether a union is involved or not. The name of that lawful rule is Weingarten. The employer is not obligated to inform the employee of the rule, but he is obligated not to inform the employee of the rule if the rule is negotiated. The employer is not the name of the handbook rule is Weingarten, but the employee is entitled to have a representative present. Whether a union is involved is irrelevant. If an interview is likely to result in discipline, the employee is entitled to have a representative present.

Discipline must be administered as closely as possible to the time of the infraction, and never in anger. Saying, "I want to see you in the morning," lets the employee stew over the infraction, without any opportunity for a friendly warning or word of advice. If they are directly involved, the discharge must take place as quickly as possible.

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Most Discipline Is For House Rules

Infractions of house rules are the most frequent causes of employee discipline. Those rules should be, insofar as possible, in writing, and must be known to the employee. General rules apply to all employees, but departmental rules are specific to departments. For example, rules pertaining to maids removing articles left in hotel rooms would not be applicable to waiters and waitresses.

One problem with rules is that sometimes they are unevenly enforced. Management may enforce them, seemingly, by whim, then "lower the boom" after a number of unpunished infractions. If this is the case, it would be necessary to make sure that employees are warned in advance that management is planning to enforce rules which heretofore had had lax or sporadic enforcement. If rules are in writing, employers can require employees to sign an acknowledgement of receiving the rules, together with a statement that they have been read and are understood. Management should also carefully check employee handbooks to make sure there are no conflicting statements in them.

The number of employers who have instituted a sequential series of warnings, such as three over a period of time before a discharge, is growing. On its face, this seems fair enough, but there are shortcomings because there is a presupposition that all such reprimands carry the same weight. It is better to treat each case on its own merits.

There is no question that offenses such as drinking, fighting, or theft should not be tolerated or condoned under the progressive discipline policy. Such fairness is the sine qua non of employee discipline; good personnel administration would make the three-step system unnecessary, and sometimes unwise.

In a sense, discharge can be an indictment of management for previous failure to invoke lesser disciplinary measures. This makes previous warnings even more necessary. The burden of proof is on management in such cases, and management must be prepared to go through a series of steps to present its case.

Virtually every labor contract has a provision requiring just cause for a discharge. Such contracts also have a provision for arbitration if the union does not agree that a discharge is for just cause. An arbitrator looks at the employee's work history and previous disciplinary steps, and the burden of proof is on management. For a discharge to stand, such contracts also have a provision for arbitration if just cause is in question.

Specific examples of just cause follow, with comments that have been tested in arbitration proceedings:

Drinking or being under the influence of alcohol. Don't depend on another rank and file employee to testify on your behalf. At best, he will be most reluctant to do so, and your position as head of your department and your employee to testify on your behalf depends on another rank and file employee to testify on your behalf. Don't.
the behavior and conduct at close range, i.e., alcoholic breath, slurred speech, etc. Make the accusation at the time and record the response. This may forestall an attempt later to blame medication for the infraction.

Insubordination. Is the order clear? Is it related to the employee's normal duties? For example, a waitress's refusal to go upstairs to make beds would surely be upheld. The best procedure is to repeat the order in the presence of a witness and to tell the employee that refusal would result in his or her being sent home and subject to discharge.

Stealing. This charge is very difficult and dangerous for the employer. Unless the culprit is caught red-handed in the presence of witnesses, it is better to discipline for a violation of rules and procedures. Relying on an arrest followed by prosecution is risky and may backfire. The higher court standard of guilty beyond a reasonable doubt may result in a failure to convict, and you may be left with a lawsuit for false arrest.

Inefficiency. This may be a tough one to sustain. You will have to have answers for: (a) How long employed? (b) When did this become apparent? (c) What steps have you taken to cure it? (d) Is there another job this employee can handle? There is normal disbelief if an employee with medium seniority is terminated. Why didn't you act sooner?

Fighting on the premises. It is good practice to discharge both participants. Later investigation may result in the reinstatement of one without the other. Careful records of absences and infraction must be kept, and after repeated warn-
carries, the employer should avoid these calls in the presence of witnesses. If you can prove that the employee was involved in the altercation, then a predatory gesture was made, there is an该案, and where there was a case where a predatory gesture was made, there is a case where a predatory gesture was made, there is a case where a predatory gesture was made.

Violation of any house rule or regulation. This can take many forms. In addition to those you can readily identify, there was a case where regular dinner waiters were on the banquet rolls of a large hotel. When a particularly lucrative banquet came along, they would call in sick on their regular jobs. Careful attention to records and procedures is necessary to prevent such incidents. The problem here

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occurred, the bartender put the check aside until he could serve a
matching item. He thus violated a rule, but escaped the wrath of the
auditor.

Insolence or lack of courtesy. Courtesy cannot be put on every
morning like a clean shirt. It should be a full-time reflection of top
management's attitude, and enforced between employees, supervisors,
and, of course, guests. Where a guest is concerned, which is determined by the
attitude and behavior of the employee, the employee failure to perform activities may
discredit the employer to the public.

This list is not all inclusive, and an employee may be subject to
discipline for conduct which is detrimental to the welfare and business
interests of the employer. One case involved a waitress who was arrested for shoplifting in a
department store. The newspaper article clearly described her as an
employee, and it is unusual for an employer to rehire an employee who has
been arrested. The union successfully fought the discharge through two arbitrations. It took an
order from the county health officer to effect a discharge.

Possession and/or use of a controlled substance. The propriety
of this practice is self-explanatory. However, it could be excessive.

Poor personal appearance, sanitation, and cleanliness. This
employee may be subjected to discharge as well. In some cases, however,
under certain circumstances, shoplifting is considered an employee's fault. The employee may
be asked to perform the required services. There is a line element
between these two cases. It is clear that employees in these cases
are subject to discharge if the circumstances are severe. In other
cases, the employee may be asked to perform the required services.

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Failure to perform required services. The propriety of this
practice is self-explanatory. However, it could be excessive.
employee of a named hotel, and management discharged her. The union objected, and it was agreed to let the law take its course. The day of the trial the store detective did not show up and the case was dismissed for lack of prosecution. What happened? The trial date had been changed; the department store did not follow through with its paperwork, and there went the case. The hotel settled for the waitress’s back pay. So much for having your decision depend on the workings of the law.

Employment at will and its corollary, discharge at will, is an idea which is losing ground. Obviously, a union contract defeats it, but there are an increasing number of court cases where no union is involved, yet a court finds that a discharge was not for just cause or contrary to an employee handbook or against public policy. This can open a Pandora’s box of legal problems. It is increasingly good personnel policy to act as if a union and/or the government is looking over your shoulder. Is this necessarily bad? It can open a Pandora’s box of legal problems. If it is necessary, it is necessary. Personnel policy can open a Pandora’s box of legal problems. It is increasingly good personnel policy to act as if a union and/or the government is looking over your shoulder.