

Employment Policies

How to Avoid Getting In Trouble for Discipline

Clear communication of workplace rules, consistency, and complete documentation can reduce potential legal liability employers could face when disciplining workers, attorneys told Bloomberg BNA.

Employers can help employees overcome problems with their work, often by imposing a written performance improvement plan, Lawrence Peikes, a partner at Wiggin and Dana LLP in Stamford, Conn., told Bloomberg BNA in a June 16 email. Peikes represents employers and is a contributor to Bloomberg BNA books on workplace law.

Such plans “should include understandable and attainable goals,” he said, and they “should be formulated with input from HR to ensure objectivity.”

“The same basic rules apply to misconduct-based discipline: action should be swift, decisive, documented, and undertaken with HR input and oversight,” he said. “Again, the documentation should identify the problem and the corrective measures required.”

Get all the facts first and “document with specificity the reasons for imposing discipline,” plaintiffs’ attorney

Mike Pospis of Pospis Law PLLC in New York City told Bloomberg BNA in a June 16 email. Also good to provide in writing is an employee handbook or manual, or a company intranet page, that lays out “the offenses warranting discipline and the disciplinary process,” he said. The employer should then follow its own process, Pospis said.

He also suggested using progressive discipline and applying disciplinary rules “consistently to all employees,” especially with regard to protected characteristics such as gender, race, and national origin. The employer should “be especially wary of disciplining an employee who has complained about unlawful discrimination,” Pospis said. At least two company representatives should be present at any disciplinary meeting, he added.

“The simplest advice we provide clients is to maintain open communication,” Peikes said. “Managers should be forthright and timely in communicating performance-related concerns so that employees understand precisely what is expected of them.”

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