

EMPLOYEE PERFORMANCE MANAGEMENT: EMPLOYEE DISCIPLINE AND PERFORMANCE IMPROVEMENT PLANS

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DRAFTING AN EFFECTIVE PERFORMANCE IMPROVEMENT PLAN



COMMON PROBLEMS

- ◉ Poor performing employees who do just enough to skate by.
- ◉ Historically great employees who start performing badly.
- ◉ Employees with drug or alcohol problems that do not seek help.
- ◉ The impact frequently absent employees have on their co-workers.
- ◉ The lack of collegiality that can make the work environment negative.

BASIC RULES IN DOCUMENTING PERFORMANCE PROBLEMS

- Document Everything
- Conduct Numerous Observations and Evaluations
- Address Previous Problems and Deficiencies
- Be Careful about Making Positive Comments
- There are No “Desk Drawer” Exceptions
- Timely Share Everything with Employee

WHEN TO ISSUE A PERFORMANCE IMPROVEMENT PLAN

- If performance evaluation notations have been unsuccessful.
- If the problem is of a nature that it cannot be addressed properly in a performance evaluation.
- If the problem is serious and needs immediate attention.
- If the problem is longstanding.

GUIDELINES FOR DRAFTING PIP

- Decide how to classify response: discipline or performance improvement
- Be extremely honest
- Give specific examples of problem behavior and why it is unacceptable
- Offer alternative behaviors
- Give clear directives.
- Do not use qualifiers... “usually”
- Do not use other employees’ names
- Warn the employee of the consequences, up to termination, for failing to comply with directives and improve performance
- Obtain employee’s signature

IDENTIFY THE BEHAVIOR

- (1) Describe what the employee does wrong.
 - Do not include private data on other people.
- (2) Explain why the employee's conduct is not acceptable. Be careful to make sure you are not holding this employee to a different standard than other employees, unless there is a clear reason why (i.e. 10 years experience versus a probationary employee).

IDENTIFICATION OF BEHAVIOR

Since the time of your annual review, the County has continued to receive internal and external complaints about your customer service. While a certain number of complaints may be natural due to the job position you occupy, the County has received at least twice as many complaints about your work performance as it has about any other employees. You have continued to “speak down” to people, despite prior directives to you and coaching following your evaluation.

DIRECTION TO CORRECT

- You must treat every vendor, co-worker, and member of the public with respect and courtesy.
- You must promptly respond to questions and concerns of members of the public in a helpful manner.

PERFORMANCE PLAN

- ◎ *Punctuality and Compliance with Work Schedule and Breaks*
- ◎ *Specific Improvements Required:*
You are required to comply with current set work schedule of 8:00 a.m. to 4:30 p.m. and 30-minute lunch period and 15-minute break periods.
You must ensure that you have no more than one (1) unexcused tardy in any two-week period, inclusive of lunch and break periods.

PERFORMANCE PLAN

- Personal Calls and Use of Cell Phone
- Specific Improvements Required:

You are not to use make or take personal phone calls, text message, or personal email on work time unless it is an emergency and supervisor is informed. Employee may make personal calls on designated breaks and lunch period. Employee will not have personal cell phone in view in the workspace.
- How Compliance Will be Measured:

Employee will notify the direct Supervisor of personal emergency calls that occur during work time. Supervisor will observe and monitor the personal phone usage/activities or will be made aware of the personal call activities by receiving reports from other supervisors.

INCLUDE AT THE END OF EVERY PIP: CONSEQUENCES

Failure to improve your performance and comply with these directives contained in this Performance Improvement Plan may result in disciplinary action, including possible termination of your employment.



WHAT'S NEXT?

- Observations and Evaluations
- Determining if deficiencies have been corrected
 - PIP may contain ongoing benchmarks of meeting with supervisor every 2 weeks/30 days to evaluate progress.
 - Employees generally will show an improvement immediately following a PIP, but may revert to old behaviors after a few months.
 - Documentation that the problem has been corrected will result in having to start from scratch with a new PIP so be careful about retracting or stating it has been completed.
- Additional action if improvement does not occur

EXAMPLE OF STATEMENT UPON PIP COMPLETION

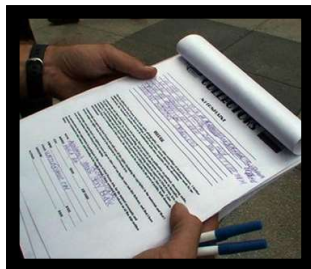
- ◉ You must continue to follow the directives contained in the PIP issued to you on [Date] other than [specific deadlines] and maintain the performance improvement that you have shown since the issuance of the PIP. The County will discontinue the [weekly/bi-weekly/monthly] meetings with your supervisor at this time.

LIFE IN 3D: DUE PROCESS, DISCIPLINE AND DISCHARGE



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COMPLAINTS



- Investigate promptly
- Get employee's response
- Take appropriate action promptly
- Do not wait until evaluations to take action



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DUE PROCESS IN EMPLOYEE CONDUCT ISSUES

- Notice of Rules, Policies & Expectations
 - Do employees know what can get them in trouble?
- Investigation
 - Investigate before taking action.
- Tennessean Warning
- Garrity Warning (only sometimes - check with attorney)
- Representation
- Substantive and Procedural Due Process
 - Fairness



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NOTICE

Document notice to employees regarding expectations and specific areas of misconduct which could lead to discipline, including:

- Sexual Harassment
- Misuse of the Internet or E-mail
- Drug or Alcohol Use
- Theft
- Threats
- Insubordination

NOTICE

Generally, for incompetence, you will need documentation of performance evaluations and PIPs unless the conduct adversely impacts the rights of others, or violates clearly established laws, rules, policies or clear directives.



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INVESTIGATION

- Meet with employee and give opportunity to respond to the complaint or concerns.
- Interview other witnesses as appropriate.
- Review appropriate documentation.
- Review materials provided by employee.
- Employers should choose their words very carefully when directing employees not to discuss confidential information.

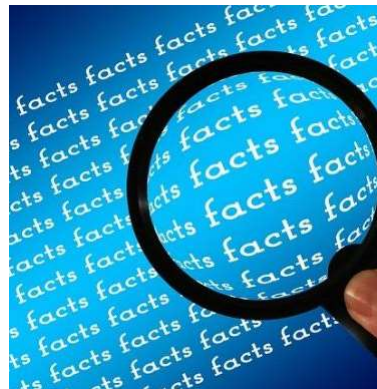
BEFORE THE INVESTIGATION

Is an investigation necessary?

- Does the behavior violate the law or County policy?
- Is an investigation required by County policy?
- Does the conduct involve a pattern of prohibited behavior?
- Could the conduct result in liability to the County?
- Did the alleged wrongdoer admit to the conduct?

BEFORE THE INVESTIGATION

Choosing an Investigator:
Should the investigation be conducted internally or by a third-party investigator?



INTERNAL INVESTIGATION

- ◉ How well trained is the person who will be conducting the investigation on techniques?
- ◉ Does the investigator know the subject matter?
- ◉ Could the complainant(s) or subject(s) allege bias?
- ◉ Can one person do the investigation, or will the supervisor or Department Head need to assist?
- ◉ Is the matter to be investigated likely to end up in arbitration or litigation?
- ◉ How will the investigator handle being a witness in the case?
- ◉ Availability to conduct the investigation, complete it in a timely manner and report results.
- ◉ Future Working Relationship with Subject, Complainant and Witnesses depending upon nature of the matter being investigated

EXTERNAL INVESTIGATION/NOTICE

- ◉ Data Compromise: Report to MCIT
- ◉ Embezzlement
- ◉ Matters Involving Elected Officials as Subjects or Key Witnesses
- ◉ Complex Investigations with Multiple Subjects or Complaints
- ◉ Possible Litigation
- ◉ Conflict of interest of Human Resources or other Decision Makers.
- ◉ Beyond the Comfort Level of Internal Investigator.

DATA PRACTICES

ATTENTION

Administer Tennessen or Garrity
Warnings As Appropriate

Consult with Attorney Before
Issuing Garrity Notice

TIPS FOR INTERVIEWING COMPLAINANTS AND WITNESSES

- ✓ Ask Short, Open-Ended Questions
- ✓ Cover Who, What, When, Where, Why, How Questions
- ✓ Assume Need to Defend Questions in Court
- ✓ Observe Witness Demeanor
- ✓ Follow Up
- ✓ Ask for Visual Representations, If Applicable
- ✓ Disclose As Little As Possible
- ✓ Be Thorough
- ✓ Do Not Make Promises



PROCEDURAL AND SUBSTANTIVE DUE PROCESS

PROCEDURAL VS. SUBSTANTIVE



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REASONS FOR DISCIPLINE

- Misconduct
 - Can discipline immediately
 - Some misconduct can result in immediate discharge
 - Harassment, discrimination or safety-sensitive issues must be documented
- Incompetence
 - Generally, start with performance evaluation
 - Give warnings before discipline
 - Make clear the standards expected
 - Give detailed directives to improve

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EXAMPLE: INAPPROPRIATE CONDUCT

You spent a significant portion of two work days at locations other than where you were supposed to be working and where you advised the office you would be working. You did not notify your supervisor of your change in plans. You did not answer when the office attempted to reach you.



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ADMONITION

- Failing to notify your supervisor of your location during business hours is a violation of County policy. It is also a safety issue as the County would not be able to locate you in case of an emergency.

WRITTEN REPRIMAND

- This is a [formal written reprimand] for the conduct described above.



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DIRECTIVES

- You are directed to notify the office of where you are working and to update the office of any change in schedule. You must keep your cell turned on and check for messages



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CONSEQUENCES

- ◉ Failure to comply with these directives will result in further disciplinary action.



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WHAT TO DO ABOUT THE LACK OF COLLEGIALLY?

- Rudeness.
- Disrespect.
- Passive-Aggressive Conduct.
 - Difficult to prove
 - Employee denies it
- Do not ignore it.
- Address it directly, both with colleagues and subordinates.
- Set expectations.



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EXAMPLE: LACK OF COLLEGIALLY

- You raised your voice when speaking to your co-worker and refused to offer assistance when it was requested. When I spoke to you about this you were hostile and disrespectful to me, stating that it was not your responsibility to help your co-worker do her job.



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- ◉ On at least five occasions over the last six months you have attended staff meetings where you have failed to participate in any meaningful way, have spent your time sending or receiving messages on your cell phone in an obvious and obtrusive manner, and have made rude snickering sounds, rolled your eyes or made other sounds or gestures of disapproval when people were speaking.



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ADMONITION

- Your conduct is unacceptable. You must conduct yourself in a professional and respectful manner at all times.



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DIRECTIVES

- You are directed to refrain from raising your voice to any County employee or other individual you encounter in the course and scope of your employment, unless it is necessary such as in the case of an emergency.
- You are directed to promptly and politely respond to questions posed to you by co-workers if you are able to do so. Under no circumstances are you to be impolite or sarcastic to anyone asking for your help or communicating with you at work.

DIRECTIVES

- You must attend and participate in meetings in a professional manner. You shall not make sarcastic remarks, sounds or gestures. You are not to bring your cell phone into any meeting unless specifically authorized by me and if so, you may only use it to schedule other appointments.

CONSEQUENCES

Failure to comply with these directives may result in disciplinary action, including possible termination of your employment.



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WHAT IS JUST CAUSE?

- ◉ Sufficient cause to take disciplinary action based upon the circumstances
- ◉ Considers progressive discipline but does not have to be lock step
- ◉ Notice
- ◉ Investigation
- ◉ Reasonable Rule
- ◉ Fairness
- ◉ Proof
- ◉ Equal Treatment
- ◉ Appropriate to the Circumstances



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“DAUGHTERY FACTORS” FOR JUST CAUSE

- ◉ Notice. Did the employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's disciplinary conduct?
- ◉ Reasonable rule or order. Were the employer's rules reasonably related to (a) the orderly efficient and safe operation of the employer's business; and (b) the performance that the employer might properly expect of the employee?
- ◉ Investigation. Did the employer before administering the discipline to an employee make an effort to discover whether the employee did, in fact, violate or disobey a rule or order of management?
- ◉ Fair investigation. Was the employer's investigation conducted fairly and objectively?

“DAUGHTERY FACTORS” CONTINUED

- ⦿ Proof of the investigation to the decision maker. Did the person making the determination have substantial evidence or proof that the employee was guilty as charged?
- ⦿ Equal treatment. Has the employer applied its rules, orders and penalties even handedly and without discrimination to all employees?
- ⦿ Penalty. Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee’s proven offense; and (b) the record of the employee in his/her service with the employer?



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IMPOSING DISCIPLINE

- ⦿ **Before disciplining, conduct investigation and get the employee’s side of the story.**
- ⦿ **Don’t discipline when you are angry.**
- ⦿ **Impose discipline privately.**
- ⦿ **Consider having a supervisory witness present.**
- ⦿ **Follow up discipline in writing.**



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DISCHARGE OF EMPLOYEES

- Different Rules for Veterans
- Pre-Termination Hearing Rights
- Post-Termination Hearing Rights
- Keep Trying
- Unemployment



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THE END

THANK YOU FOR
ATTENDING!



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