

# Employment Law IN Brief™

## Manager Checklist for Disciplining Employees

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### \_\_\_ Gather background information

- What happened?
- When?
- Where?
- Who was involved?
- What did each person say and do, and in what order (what was the timeline)?
- Who personally observed the incident?
- With whom was the incident discussed?
- Review participants' personnel files for prior counseling and potential bias

### \_\_\_ Continue to investigate

- Obtain the accused's side of the story
- Speak with witnesses
- Re-interview as necessary to address inconsistencies
- Try to determine why the incident occurred

### \_\_\_ Determine whether a policy applies

- Was the employee aware of the policy?
- How? How will you prove it?

### \_\_\_ Determine how you have treated others for similar conduct

- Is this situation different? How?

### \_\_\_ Discuss with Human Resources if you considered any of the following:

- Race, color, national origin, ancestry
- Age
- Sex, pregnancy
- Sexual orientation
- Gender identity
- Religion, request to accommodate religious practices
- Genetics, family medical history
- Disability, request for assistance or workplace adjustment because of medical condition
- Association with disabled person
- Use of employee benefits, exercise of rights under benefit plans
- FMLA leave
- Worker's compensation claim
- Military/military family leave
- Jury duty/complying with subpoena
- Safety complaints

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- Garnishments
- Union activity
- Discussing wages/benefits, acting with others to protest terms of employment
- Complaint of discrimination/harassment
- Reporting or threatening to report unlawful activity
- Expressing breast milk while off duty
- Off-duty use of tobacco
- Leaving firearm in locked car

## \_\_\_ Identify the reasons for your actions

- The reasons that you give to the employee generally should be the same reasons you would provide to a government agency, judge or jury
- Do your e-mails, notes, and other documents support your reasons?

## \_\_\_ Determine whether the employee has an employment agreement

- Are you complying with the agreement in your dealings with the employee?

## \_\_\_ Confront the employee

- Explain your concerns
- Communicate the discipline
- Explain your expectations for the future
- Explain the consequences of the employee's failure to meet your expectations
- Offer your assistance ("How can we help you meet our expectations?")
- Offer the employee the opportunity to comment
- Document

**This checklist does not constitute legal advice. Please see an attorney about any particular matter.**

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