Progressive Discipline: Why the Process is Flawed and How to Improve Employee Performance

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Progressive discipline is a process that employers use to attempt to correct behaviors of employees for various violations of policies, values and codes of conduct. Another reason for an employer’s use of progressive discipline is for risk management. This allows and supports an organization’s position and decision to suspend, and possibly terminate an employee, by providing a complete and concise record of poor performance and attempts at remediation of unacceptable behaviors. According to attorney and nolo.com contributor Lisa Guerin, JD, the legal definition of progressive discipline is “an employee disciplinary system that provides a graduated range of responses to employee performance or conduct problems. Disciplinary measures range from mild to severe, depending on the nature and frequency of the problem.”1

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It has been used for several years in the workplace. Recently, many scholarly articles have begun to realize that progressive discipline is in fact an outdated and antiquated process that does not effectively improve employee performance or behaviors. Instead, it creates angry, hostile, underproductive and disengaged employees.

**What is Progressive Discipline?**

While each employer or organization may have his or her own specific progressive discipline processes, the basic understanding is that when an employee violates a policy or procedure, discipline is progressive and punitive in nature. Depending on the severity of the violation or behavior, an employee will receive a level of discipline accordingly. This could be in the way of a coaching, counseling, write up, suspension, termination or any other verbiage an individual employer may utilize.

Many progressive discipline policies in effect have verbiage that allows an employer to escalate the level of discipline based on the *suggested* seriousness of the infraction. This however, tends to be in most cases at the discretion of the employer, and most policies and procedures in place have a *“catch all”* phrase which usually reads in the likes of “management reserves the right to escalate discipline as they see fit based on the severity of the infraction or behavior” (this is just an example of many different types of language used to allow for complete discretion of management in progressive discipline use.)  For example, an employee who violates protected health information may have their discipline escalated to termination; whereas an employee who reports for work late or reaches a threshold of unexcused absences may receive a verbal counseling or a written coaching, with subsequent violations escalating to suspension or termination.

This verbiage however can become an issue for employers when management elects to escalate discipline of one employee and fails to follow precedent set by former employees. For example, an employee may post something questionable on social media in violation of an organization’s social media policy and receive the first level of the progressive discipline process for a first offense. A subsequent employee may post something questionable on social media in violation of the same social media policy, and the manager reviewing this incident may deem it serious enough to escalate to a greater level in the organizations progressive discipline policy. Failure by the organization to follow precedent can lead the organization to costly wrongful termination or discrimination lawsuits. This is a common problem with progressive discipline and the leniency given to management in its enforcement of progressive discipline within an organization.

The goal of employers using progressive discipline is to prevent the aforementioned behavior from occurring in the future. The questions we must ask ourselves however is, does this in fact work and effectively change or alter employee behavior?

In many instances of progressive discipline, the decision to discipline an employee rests on a front line supervisor.2 Frequently, the process at which the supervisor used to reach the decision on discipline is not provided to the employee, instead, the employee is informed that they violated a process or policy, issued discipline, asked to acknowledge it, and informed that future violations will result in escalated discipline. This leaves much room for debate.

**Due Process**

The law.com legal dictionary defines due process as the “fundamental principle of fairness in all legal matters, both civil and criminal, especially in the courts. All legal procedures set by statute and court practice, including notice of rights, must be followed for each individual so that no prejudicial or unequal treatment will result.”3

Progressive discipline circumvents due process in many ways. Frequently, more times than not, the fair and equal treatment of employees is absent in the progressive discipline process. Much interpretation is left up to the manager or leader who is issuing the progressive discipline to the employee. In some larger organizations, interpretation and discipline decisions are left to the expertise and discretion of human resource officers or organization attorneys and legal advisors. Many times, this is used to avoid potential wrongful termination litigation or to ensure an organization is in a position to defend itself should litigation be filed. Human resources and legal departments are often used to ensure that if a previous precedent was set as mentioned earlier, it is followed accordingly and not deviated from to ensure fair and equal treatment of all employees and avoid potential future issues in litigation.

An employer who has several frontline supervisors is at an exceptional disadvantage when it comes to due process. An employee who constantly arrives for work 10—15 minutes late may receive only an undocumented verbal “talking to” by their respective supervisor, whereas an employee in the same position who reports to a different frontline supervisor, may receive documented formal discipline by their supervisor for the same behavior, thus entering them into the formal progressive discipline process. Discussed later is the act of precedent being set by an employer in situations as such.

We must then ask ourselves, *is this fair*? The process of progressive discipline is often overly broad and allows for significant interpretation by individual supervisors. A behavior that one supervisor may view as minor may be viewed by another supervisor as detrimental and warranting of formal discipline. This completely circumvents due process on all levels. Employers must create policies that leave little to no room for individual interpretation and fair and equal treatment of all employees for similar behaviors in order for the process to be effective and fair across the board. Additionally, employers should allow for affected employees to have full access and disclosure of any investigation into an incident warranting discipline as well as being afforded access to complaints rendered. This dovetails into due process to afford the employee the opportunity to ensure the process was completed fairly and unbiased with all relevant facts.

**Why Progressive Discipline is Outdated and Ineffective**

In today’s modern world, employers need employees who are capable of performing their job on a daily basis, with limited supervision and the flexibility to make decisions freely. While there are policies and procedures in place to guide employees in their daily decision-making, all too often these policies and procedures do not cover and guide every possible situation that may arise.

When employers use progressive discipline as a threat, they create a work environment where employees are fearful to make decisions and may stifle their progress. Employees must “walk on eggshells” for fear of being disciplined which will slow productivity of the organization and its individual employees. Many times, employees who make a mistake made it as a result of a flaw in a policy or procedure. All too often, employers fail to implement a “just culture” and instead of recognizing the policy or procedure as the result of the employee behavior or mistake, employers place the blame on the employee and institute discipline. The employee is now put into a difficult situation; continue to attempt to be productive knowing that the policy in place prevents it, or fail to be productive for fear of violating a flawed policy or procedure? Was the progressive discipline of the employee effective? Is the progressive discipline issued to the employee now a direct result of a decrease in production in which the employee may then face a poor evaluation due to lack of productivity and an employer who fails to realize that their own process is flawed?

While there are times when progressive discipline is warranted — such as pattern absenteeism, lateness, clear cut policy violation, etc. — it must be looked at from a “big picture” standpoint by the employer, and evaluated on a case by case basis. Leaders must ask themselves: will disciplining this employee increase production and change behaviors, or will disciplining this employee cause the employee to become angry, defensive and disengaged?

Another pivotal downfall of progressive discipline is the potential for managers and leaders to use it unfairly and biased to fast-track toward termination of an employee. Perhaps an employee may be vocal in expressing ideas that go against the status quo, participates in protected activity such as whistleblowing, or participates in union organization, to name a few. All of that is viewed as detrimental by corporate and senior leadership of an organization. Frontline managers may be directed by senior leaders or take it upon themselves to monitor these specific employees more closely than others and document any and all behaviors into the progressive discipline process, despite a past precedent of behavior that was never disciplined before. Employers may use age-old policies to unfairly and exponentially enter an employee into the progressive discipline process to reach an end goal of termination. The employer will have documented a history of progressive discipline for the employee, and in the absence of a union or right to work state, the employee stands helpless. This is even more prevalent in states where employees are “at-will” and can be terminated for any or no reason whatsoever.

Additionally, many progressive discipline programs allow for a “strike” or “incident” to fall off of an employee’s record after a predetermined amount of time.4 This is counterproductive and an ineffective way to improve employee behaviors. For example, an agency may allow for an employee to reach a threshold of five unexcused absences in a rolling year before entering the progressive discipline process. When the employee reaches their sixth absence, they are issued the first step in the progressive discipline process for attendance. Employees will then know that they can continue to have unexcused absences up to five, and know that an absence will essentially “fall off” after a year and can continue to maintain five unexcused absences without ever entering the progressive discipline process. What behavior has this process corrected? The employer now has an employee who can continue to be absent five times per year, and never once enter into the progressive discipline process. Additionally, an employee can know that when they were issued the first step in the progressive discipline process for their sixth absence, they will eventually have absences “fall off” and can now be absent again without entering into the progressive discipline process.

Instead of “ruling with an iron fist” and continually disciplining employees for being absent, employers should recognize that an employee is reaching the threshold of absences, reach out to the employee and attempt to offer a solution. Hypothetically speaking, perhaps the employee has an ill family member at home, or the employee is a single parent caring for a child who must be absent from school, causing the unexcused absence. The employer can show they value their employee and attempt to offer a solution to prevent the absences in the future. The employer can offer the employee Family Medical Leave (FMLA) or offer to adjust the schedule of the employee to prevent absence.

Perhaps a solution to allow the employee to work from home on days when they may be absent is an option. While this may not always be feasible, offering options and solutions allows for the employee to continue to be productive, shows the employee they are valued by their employer for the work they perform, and prevents the employee from having a tainted record and fear of consequences from the disciplinary process. It also will make the employee feel more valued by the organization. This same employee in the future may think twice about being absent for work for a minor issue, knowing that he or she is truly valued and cared for by their leadership.

**What is the Solution to Progressive Discipline?**

While there are behaviors that warrant severe and harsh discipline and those must be dealt with on an individual basis, there are many other solutions that offer a better outcome than progressive discipline.

Employers must allow managers flexibility when disciplining employees. Perhaps an employee who has a ten-year record of poor performance and continued policy violations should be treated differently than a ten-year employee with a perfect record who makes a single mistake. While the mistake made by each employee may be the same, it is obvious that the employee who made their first mistake in ten years does not warrant the same level of discipline, if any, that the employee with a track record of poor performance. This becomes a slippery slope for employers, as they must be cautious not to set an unwanted precedent.

Many employers also use progressive discipline as a record to terminate an employee. Termination of an employee is costly and opens up the door for possible costly litigation and poor public relations. Additionally, if an employee is terminated, the employer must now hire, train, and attempt to find a new employee to fill the gap caused by the termination. While there are absolutely reasons an employee should be terminated from employment, progressive discipline does not give employers leeway when it comes to termination decisions. A high performing employee who was entered into the progressive discipline process may find themselves terminated, because there is little leeway for management to deviate from the process. For example, an employee who has been with an organization for fifteen years who’s yearly evaluations have been stellar, is issued a write up for being late to work. They then receive the next level of discipline when they submit a project one day late due to an unforeseen circumstance and a progressive discipline policy that allows for little to no deviation. Six months later, the same employee forgets to lock their computer and is now terminated due to the previous progressive discipline they received. While none of these infractions or behaviors are detrimental whatsoever, due to the employee being in a rigid progressive discipline process, they find themselves terminated. The organization has now lost a high performing, tenured employee due to the progressive discipline process.

There also is the fact that all too much is left up to the discretion of management when it comes to escalating progressive discipline. Managers can escalate progressive discipline and attempt to justify behaviors to warrant termination, without going through the progressive process. This type of escalation frequently leads to costly and lengthy wrongful termination litigation. When an employee feels they may be biased or retaliated against by a leader and a minor behavior is escalated to termination, the process of progressive discipline is defeated and there is a complete lack of due process.

A solution to the progressive discipline problem is a type of behavior modification being used known as *performance coaching*.4 When an employee’s behavior is unwarranted or a policy or procedure is violated, instead of immediately issuing a level of progressive discipline, employers should meet with the employee and have a formal conversation as to why the behavior occurred or the policy was violated. Perhaps the employee was under extreme stress, ill, did not have the resources necessary available to them to perform effectively, or the policy was flawed. The system works more effectively by having a formal conversation with the employee, discussing the behavior and coming up with an action plan for improvement in the future. This is a pillar in an organization that implements *just culture*. Once again, have an employee who feels they are valued and the odds of them making the same mistake in the future are lessened.

Performance coaching is a non-punitive process which sets expectations between manager and employee for improved behavior in the future. Punitive discipline can be equated to the age old parenting adage. If you tell your child not to do something and provide no reason as to why they shouldn’t do it, the odds of them doing it are very high. The same goes for employees. When an employer punishes an employee for doing something and tells them not to do it again because they will be in for harsher punishment, but provides no reasoning or solution for the behavior, the odds of the employee making the same mistake again are increased.

The performance coaching process also allows for the manager to delve into the reason for the mistake and evaluate if it was in fact a process flaw that needs to be changed or adjusted. It also allows managers to recognize that perhaps more resources are needed, or an employee needs more support to complete their tasks and avoid unwanted behaviors. Together, the manager and the employee can find a mutual solution for the situation and improve not only productivity for that individual employee, the working relationship between employee and manager, but also potentially identify ways to improve performance of other employees who may face the same situation in the future.4

Employees who receive discipline may in fact find ways to work around and avoid getting caught in policy or procedure violation in the future. These employees become difficult to manage and quickly learn the “ins and outs” of avoiding discipline and doing “just enough” to be effective yet steer clear of discipline. These employees are counterproductive and disengaged and detrimental to the organization.

Employers must also recognize that in using performance coaching, they must avoid the *“if this happens in the future”¦”* phrases and verbiage. This is threatening to the employee and defeats the purpose. Instead, the employee and employer should agree on what they both want the future outcome to be, and what the employer expects of the employee. Setting standards and informing the employee in a polite and non-threatening way that future behaviors in violation of the agreed upon solution can lead to unwanted employment outcomes. This can be accomplished by reminding the employee they are valued or by acknowledging their hard word — and through your understanding of human nature and the natural possibility of mistakes — while also emphasizing the need to improve upon the behavior in question.

**The Importance of Employee Handbooks**

Regardless of the type of discipline or behavior modifications an employer uses, the importance of an employee handbook is utmost. The employee handbook is quite possibly the most important aspect of an effective organization. Employees must be fully aware of what is expected of them by their employer. Employee handbooks are a resource where employers can put into clear and understandable verbiage what their policies, procedures, values, goals and codes of conduct are.5 These all must be clearly defined and communicated to employees. Annual refresher training on company policies, any applicable laws, and any new or altered policies must be provided and documented by an organization. An in-depth, detailed employee handbook gives employers leverage when instituting behavior modification to an employee. Without a clear and concise handbook, employers leave much room for interpretation of what is a poor or unacceptable behavior. This gives employees room to circumvent the system and find various flaws and loopholes to avoid unwanted outcomes when mistakes are made.

By having an employee handbook that clearly details the expectations of an employer, it gives leverage to the employer when instituting discipline, whether it be progressive or performance modification. An employee handbook must also detail the types of discipline the employer uses and a detailed process for grievance of such. It is inevitable that employers will make mistakes and issue unwarranted discipline. Employees must have an unbiased and fair avenue to grieve discipline when they feel that the behavior did not actually occur, the behavior did not warrant the level of discipline issued, and when an unfair process and/or lack of due process was the result of the discipline issued. All too often, grievance processes instituted by employers involve the first level of grievance to directly involve the supervisor who issued the discipline. It is very rare than a supervisor will overturn or alter discipline issues. Second steps in grievance usually involve a senior leader of the department and many times support of the frontline supervisor is provided and offers an unfair grievance process.

A proper grievance process would involve employees from outside departments who are absent of any bias toward the employee in question or issuer of the discipline process. Many organizations use their human resources department as a vehicle to provide employees with an option to appeal any discipline or employment action. Additionally, a strong corporate compliance program must be initiated, commonly through a third-party organization, to ensure compliance with all policies and procedures. This allows for an outside view of the behavior, an adequate, fair and unbiased evaluation of the situation at hand. It ultimately leads to a much fairer grievance process.

One issue that is common when it comes to grievance, or the lack of a formal grievance process, are organizations where employees are represented by a collective bargaining agreement or union. Often times in a nonunion organization, the grievance or appeals process is internal and is thought to be unfair by many employees. Union representation affords employees a third-party representative to act in their favor on all grievance or appeal issues. Many times, this process leads to an agreement between employer and employee to rectify the issue at hand.

Employers must also follow the guidelines of their employee handbook when investigation and issuing discipline to avoid setting undue precedent in discipline. If one employee was given a verbal coaching for a behavior and another employee suspended for the same behavior, the employer has set precedent for all future instances of that behavior. Following the detailed guidelines of the employee handbook by an employer is imperative if the employer wants to have an effective progressive discipline or behavior modification program. History has shown that when an employer has set precedent and litigation is brought by an employee, the courts will almost always rule in favor of the employee. This can be costly to an organization in many ways.

**Conclusion**

Employers must evaluate their discipline processes to determine if they are in fact changing the behaviors of employees or causing employees to become angry and disengaged. Employers must remember to value their employees and view each situation individually. Employers must be fair, consistent and incorporate due process when implementing discipline and avoid bias or unfair practices when it comes to behavior modification of employees and/or employee discipline grievances. Employers must avoid setting precedent in discipline and maintain an up to date and detailed employee handbook as a reference for both what is expected of employees and expected by leadership.

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