

5 Common Questions About Tricky Progressive Discipline Issues

By Paul Falcone
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This article is excerpted from Chapter 5 of **101 Sample Write-Ups for Documenting Employee Performance Problems: A Guide to Progressive Discipline & Termination, Third Edition** (<https://store.shrm.org/101-sample-write-ups-for-documenting-employee-perf-1.html>) (Amacom/SHRM, 2017), written by Paul Falcone.

When managers are using progressive discipline, they often have a lot of questions. Here are some responses to help HR professionals answer common questions and coach managers in handling progressive disciplinary or discharge meetings. Tomorrow, we will feature Part 2 (www.shrm.org/ResourcesAndTools/hr-topics/behavioral-competencies/communication/Pages/Progressive-Discipline-Answers-to-More-of-Your-Common-Questions.aspx), more tips to improve HR/manager communications on progressive discipline.

1. Is there a way to communicate my dissatisfaction with an employee's performance or conduct without resorting to formal discipline?

Of course! Formal discipline is only one method of proactively rehabilitating workers by focusing their efforts on changed behaviors or heightened performance. It's often the case that an informal "counseling session"—typically the first natural step in the communication process—will work wonders and fix the problem right from the start.

On the other hand, if the initial verbal counseling session doesn't bring about the desired results, a letter of clarification may be just what the doctor ordered. Let's say, for example, that several weeks after verbally notifying a hospital orderly, who's responsible for pulling patients' charts and transporting patients in wheelchairs, that you're not satisfied with the level of commitment and patient focus that she appears to be exercising. You notice the same apathetic behaviors setting in again: Janet's not returning medical files, she's not using the department's magnetic scoreboard to show when she's out of the office, and then a patient complains about Janet sitting her in a wheelchair wet from the rain.

Is it time for a formal written warning, or are you afraid that might be too harsh since the infractions are fairly minor? Well, fear not. You no longer have only the two modes available of verbal counseling or formal progressive discipline. A letter of clarification might be just the right tool to impress upon Janet the seriousness of her infractions. Letters of clarification are presented to the employee in written format and require the employee's signature. Logically, when things are written down, they are perceived to be more serious.

In addition, when employees sign their names to documents related to their performance or conduct, they develop a healthy sense of paranoia that those documents may be used later down the line to establish some pattern of past history in their actions. That's what progressive discipline is all about:

- Showing employees what is wrong with their performance or conduct
- Telling them what they need to do to fix the problem at hand
- Giving them a reasonable amount of time to fix the problem

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Could this document be used to justify formal disciplinary action if the employee doesn't clean up her act? Absolutely! Indeed, a written warning will make more sense after this informal written clarification letter is given to the employee. Consequently, this letter could help strengthen a future case since you would have provided the employee with ample notification—both informally and formally—that her performance was substandard. As such, it would be much harder for a plaintiff attorney to successfully argue that you've denied the employee workplace due process.

2. If an employee goes out on leave of absence after receiving a progressive disciplinary document, will the active windows of discipline be frozen for the period of time that the employee remains out?

Yes. The "stop the clock rule" says that an employee who goes out on extended leave after receiving discipline will have his active window suspended until he returns. In other words, if the employee is placed on a thirty-day warning but then goes out sick for thirty days, he will return to work with the original thirty-day warning still in place. The clock, in essence, stops ticking until the employee returns.

3. How do I determine what level of discipline is appropriate for a given offense?

Remember that while you are responsible for treating like cases alike, this doesn't mean that you will necessarily treat everyone the same way. For example, an employee caught sleeping at his desk may receive a verbal warning if he's a long-term worker with an excellent track record. A new hire in his probationary period might be given a written or even a final written warning for that same offense.

In addition, an accountant sleeping at his desk may be disciplined via a written warning. A nurse on the night shift who is responsible for ensuring patient care and safety may be placed on final written warning for the same offense. And an anesthesiologist sleeping in the operating room may be summarily discharged. Sleeping is not the only issue—the circumstances surrounding the act of sleeping also play a crucial role when determining how to ensure that the behavior isn't repeated.

Therefore, the four criteria that will help you determine the most appropriate level of discipline to employ in any particular instance will be:

- The severity of the offense
- The employee's past performance record
- The employee's length of service with your organization
- Your past practice in dealing with similar infractions

4. If an employee writes a rebuttal to a progressive disciplinary document, should I, as a supervisor, rebut the employee's rebuttal?

Typically not unless there is new information that has surfaced since the original disciplinary notice was constructed. The employee may have the last word in the write-up, since the disciplinary notice can have serious negative effects on her future with the company. What you don't want is a continuous "grudge match" in which both parties continue to challenge the other's allegations. Simply stated, supervisors are responsible for stopping any merry-go-rounds of rebuttals that might ensue. Therefore, generally speaking, allow the employee to have the last word.

5. Is it acceptable to incorporate progressive disciplinary language into an employee's annual performance evaluation?

Sure. Rather than handing an employee a performance evaluation plus a separate written warning, it's better to incorporate the information

into one combined document. There's no rule that states that discipline must occur on a Performance Correction Notice letterhead. Besides, displaying advertising for products and services we believe may be of interest to you. By closing the message or continuing to browse this page, you agree to our use of cookies. [View our Cookie Policy](#)



To do this, simply add an addendum to the end of the performance appraisal. Be sure to include the key elements of our write-up paradigm in your narrative text. Figure 5–1 shows how it looks.

Note, however, that it isn't acceptable to document discipline on an annual evaluation if the incident in question is old. In other words, you can't state, "Because of your inability to provide acceptable customer service to John Doe six months ago, this performance evaluation also serves as a disciplinary write-up." That simply wouldn't be fair. Just as you can't discipline an employee for something that's old and long forgotten using a Performance Correction Notice, you shouldn't include disciplinary measures for stale issues in an annual performance appraisal.

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