

DISCIPLINE FOR POOR PRODUCTIVITY OR BELOW-QUALITY JOB PERFORMANCE

The supervisor should consider the following before conducting job performance counseling or before administering disciplinary action for POOR PRODUCTIVITY/ PERFORMANCE:

- Can specific examples/incidents be documented and was the employee made aware of the deficiency at the time? (Do not "make book" and then surprise the employee.)
- Was the steward or union official present for all fact-finding interviews or disciplinary sessions?
- Was there a standard? Is it fair and achievable?
- Has the standard been communicated informally (reaffirmation), or formally?
- Has the standard been achieved by other qualified employees working under normal conditions? (Don't compare employee to employee when discussing productivity concerns.)
- Is there a system utilized to establish the standard? Upon what was the standard based?
- Is there a joint standard-establishing body (union-management) such as an apprenticeship committee, and does that body also have jurisdiction regarding sanctions for failure to meet standards? If so, such sanctions should be followed before disciplining or demoting the employee.
- Is there a "time period" requirement connected with the achievement of the standard or with normal employee progression (such as apprenticeship program)? What portion of that time period was satisfied by this employee?
- Is there an incentive system or bonus system in effect? If so, what effect will the corrective action have on the incentive/bonus payments?
- Have employees met the standard in the past (with same training)? (Don't compare employee to employee in the discussions with employees regarding productivity problems.)
- Has this employee met the standard in the past? If so, attempt to determine what has changed.
- What were the conditions of work during the current standards period (past periods)?
- Were the conditions of work during the period for which the employee was disciplined consistent with the standard-establishing conditions?
- Have standards recently been changed? Have conditions of work changed recently? (If so, what was the reason for the changes?)
- Can it be established specifically that the standards were not met?
- Have standards been uniformly administered/enforced?
- The supervisor should consider whether or not the employee being dealt with is the "worst offender." If not, the supervisor should take steps to insure that the same or similar efforts toward improvement are being extended to other employees with the same or similar problems.
- Were alternatives considered (lateral transfer, reassignment, regression, demotion)? (Don't use transfer to solve problems which should be corrected through training or disciplinary action.)
- Beware:** Does the Agreement/company policy provide for or restrict alternatives?
- Beware:** If using innovative alternatives, do so only with language that explicitly avoids establishing a precedent.
- Have all avenues of training and job performance counseling been exhausted?
- Be extremely careful to avoid going directly from a job performance review session or performance appraisal session to discipline without intermediate job performance counseling and warning sessions or without recurrence of the problem.
- Has the employee received job performance counseling or disciplinary action for misconduct/violations during the period preceding his/her poor productivity?
- Did the employee offer any other reasons for his/her performance? (Did the supervisor ask?)
- Were the causes of the below-standard performance out of the employee's control? (This is an extremely mitigating circumstance, if it is so.)
- Was the below-standard performance a willful effort on the part of the employee? (Withholding of productive effort is an extremely aggravating circumstance but is difficult to prove.)
- Is there evidence of "secondary job" (moonlighting) interference? (If so, had the employee made the company aware of the secondary job, if required by the company policy.)
- Is there peer pressure from fellow employees which may in any way have contributed to the poor productivity?
- Did the employee have anything at all to gain personally from withholding performance or from failure to properly perform (such as desire to remain on a non-rotating shift or other preferential schedule)?

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- ___ What has been the experience of other supervisors with this employee? The supervisor should review past records and visit personally with the employee's previous supervisors, especially if the present supervisor's experience with the employee has been short term or recent.
- ___ Has there been adequate direct observation of this employee's performance by the immediate supervisor?
- ___ How much of the disciplinary justification has been obtained from the bargaining-unit personnel or co-workers rather than from the immediate supervisor? (Supervisory observations are preferable to bargaining-unit employees or co-worker observations as the basis for productivity improvement action.)
- ___ What is the employee's "disciplinary track status" for other violations or misconduct? Is there a possible "double jeopardy" appeal for the employee? (It is advisable for the supervisor to address the totality" of the employee's performance.)
- ___ Is the employee a union officer or steward? Is there a possible "union animus" appeal for the employee?
- ___ What course of action is the supervisor prepared to take should the employee offer to "quit" if termination of employment is the action planned? Has this been discussed with top-level managers and labor relations/personnel department? (Don't wait until the session to consider this. Plan ahead and be ready if the problem arises.)

Be absolutely certain to review:

- 1) CHECKLIST FOR DISCIPLINARY ACTION DECISION MAKING,
- 2) CHECKLIST FOR PREPARING THE DISCIPLINARY LETTER, and
- 3) CHECKLIST OF CONSIDERATIONS FOR TERMINATION OF EMPLOYMENT.

CHECKLIST FOR HANDLING THE "BORDERLINE" PERFORMER/MALINGERER

The purpose of this checklist is to enable a supervisor to correct the performance of a long-term employee whose performance history has been below standard or, at best, only borderline acceptable. Such an employee may be termed a "borderline performer" or possibly for severely deficient performance, a "malingerer."

- ___ The best time to facilitate improvement in such an employee is, very often, after the appointment of a new supervisor (new to the department or new to the employee) who comes into the department with new standards and criteria which need to be identified and clarified for all employees.
- ___ In effect, even though the borderline performer has been tolerated by other supervisors, the new supervisor can take the position that he or she is not judging the employee's performance by the past, but by the present performance of that employee, and in line with the present requirements and standards of performance of the new supervisor.
- ___ In the event an incumbent supervisor (who may have tolerated the employee's performance) desires to take steps to improve a borderline performer's productivity, the same basic considerations above apply. However, the incumbent supervisor will likely be most successful if the desire for improvement can be tied to some major significant event, such as a major company "austerity program," changes in the industry competitive environment, or major changes or new emphasis as a result of the employer's business plans.
- ___ In improvement efforts directed by an incumbent supervisor, it may be necessary to utilize more extensive reaffirmation procedures or formal past practice voiding procedures with formal notices to the union, and reasons should be explained for the supervisor's new emphasis or changed standards or requirements.
- ___ At the start of any new supervisor's experience with a new group of employees, the supervisor should at the onset meet with the employees and discuss the fact that the new supervisor may have standards and criteria for acceptable performance that will be slightly different from supervisors for whom they have worked in the past. The supervisor should state, "I won't hold the past against you, and I don't want you to hold the past against me." The new supervisor should begin to identify with the employees the specific standards, rules, policies, etc., which the new supervisor will emphasize and enforce. (MARC Reaffirmation Technique.)
- ___ The supervisor should visit with previous supervisors of the problem employee and should review the files of all employees, including the problem employee's file. It may be advisable for the new supervisor to perform the first formal evaluation of the borderline performer in conjunction with the previous supervisor.
- ___ Once such a review has been completed, and once the supervisor has defined those standards and becomes acquainted with the problem employee during a brief get-acquainted period, then the supervisor should, on a formal basis, identify the major disappointments and if there are several such disappointments, certainly the supervisor should use the phrase "totality of performance" in identifying the major problems with the employee. The supervisor should discuss the get-acquainted period with the employee.
- ___ The short get-acquainted period where the new supervisor becomes more familiar with the employee and where the new supervisor takes time to point out specific areas of concern and disappointment is highly advisable in such situations. (One to two months should be adequate, before the supervisor utilizes any formal "deprivation" disciplinary action.)
- ___ The supervisor should realize that the problems of a borderline employee did not arise overnight. Similarly, such problems are not likely going to disappear overnight. The supervisor should establish reasonable goals with the employee for steady positive improvement toward the ultimate achievement of fully satisfactory performance. Follow up checkpoint meetings should be used. A supervisor should be patient and should refrain from taking disciplinary action or other deprivation types of corrective measures so long as the problem employee is showing a steady increase in performance.
- ___ In situations where the improvement emphasis may ultimately involve multiple employees or where efforts will involve changes of long-established practices affecting multiple employees, formal written reaffirmation notification to the union may be necessary. Such formal written reaffirmation or past practice voiding notification to the union should be accompanied by tailgate reaffirmation procedures by supervisors. This is especially true if, in the past, clear Agreement language has been ignored and management now intends to enforce that language.

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- ___ It may be appropriate, when reaffirming a policy or an Agreement clause to allow a brief adjustment period or an "amnesty period" during which employees are allowed to adjust to or adapt to the requirements or standards of the supervisor before formal disciplinary action is administered for future violations. If such is allowed, the reaffirmation notices or letters should be very specific to define the duration of the amnesty period and to emphasize that following the period there will be rigid enforcement and that any reference to the amnesty period or to the period preceding it will not be considered as mitigation for future possible disciplinary action.
- ___ The supervisor should discuss with top-level managers any steps that he/she is taking which may be different compared to action taken by previous supervisors of the problem employee. Such discussions will build support for the supervisor's efforts.
- ___ Such discussions should include careful coordination with human resources, personnel, and labor relations in order to ensure fairness of treatment of the employee, especially if previous supervisors were negligent in taking corrective action with the employee.
- ___ The supervisor should inform the employee that the supervisor is concerned with the totality of the employee's performance.
- ___ Positive improvement should be recognized both verbally and in writing with the employee in such a way as to reinforce the improved performance and in order to document that the supervisor is not building a case against the employee, but is sincerely interested in assisting the employee to improve.
- ___ If the employee does not improve, the supervisor should be very careful to progress through all of the steps of corrective action, including multiple verbal job performance counseling and warning steps and multiple written and suspension steps before termination of employment. Termination of employment which occurs two months or less into a corrective action program or which occurs eight months or more after a corrective action program begins is likely to be overturned in an arbitration proceeding.
- ___ The supervisor should recognize that the underlying principle of "most employees will do a good job for their supervisor, so long as they understand what their supervisor considers a good job to be" is, even with borderline performers, likely to be applicable. Because past supervisors' standards have not been sufficiently high, or because previous supervisors have, for whatever reason, failed to take corrective action should not deter a newly appointed supervisor from insisting upon acceptable performance by all employees.
- ___ Even though the primary thrust of a supervisor's action is likely to be directed toward "the worst offender," or the employee who has several apparent job performance deficiencies, the supervisor should similarly direct attention to and document steps taken with other employees who also have similar job performance deficiencies. As such, the supervisor will be able to avoid the accusation of "I'm the only one that's been singled out as an example." As such, the supervisor will be able to show that he/she was working with all employees to correct their individual problems. Proper attention to all employees' problems will enable the supervisor to upgrade the performance of the entire department without being found guilty of singling out any one employee. The supervisor should not discuss corrective action steps toward any employee with any other employee.
- ___ Note: See MARC Case Study "Cruiser" to observe application of these techniques in an actual case, and to learn specific language/comments which a supervisor should use in dealing with a borderline ("cruiser") performer.
- ___ Whenever action is taken which requires the presence of a union steward, the supervisor should attempt to schedule such action so that the steward present for the action toward the borderline performer has also been present when similar action was taken for other employees. This will reduce the likelihood of discrimination accusations.
- ___ If the supervisor observes a "withdrawal" by the employee at any time during the improvement emphasis period, the supervisor should reassure the employee that all that the supervisor expects is satisfactory performance and that the supervisor is attempting to be fair and patient in achieving the improvement. It is important that any improvement observed be recognized and acknowledged in a positive manner during such a withdrawal period.
- ___ If co-workers begin to "shun" a borderline performer, the supervisor should take steps to prevent abusive or unfair treatment of the employee. To allow co-workers to harass or shun the borderline performer may create liabilities for the supervisor or the employer, as the employee may claim he or she was the victim of intentional infliction of emotional distress or that co-workers were trying to "make him or her look bad" or to "run him or her away."

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- ___ If multiple co-workers choose to make their objections to a borderline performer known to the supervisor through a work slow-down or through a general laxness of their attention to their duties, the supervisor should recognize such work action as a "concerted" effort. Steps should be taken to address specific observed performance slow-downs by individuals and, where it can be proven, the supervisor should address the serious consequences of group withholding of effort or group slow-down of work.
- ___ In many instances a borderline performer's record will indicate repetitive borderline patterns of abuse of policies such as attendance policies. In such cases, the employee appears to know the limits of the policy and "stretches" or "milks" the policy limits to the full extent permissible. In such cases the supervisor should tell the employee that borderline repetitive patterns, although they are not clear-cut violations, do constitute abuse if it is apparent the employee is indeed trying to "stretch" or "milk" the policy to the fullest intent. It is very helpful if attendance policies and other similar policies which may have time periods associated with cleansing of employee records contain language such as:

An employee may also be disciplined, including termination of employment, for unacceptable patterns of absence or tardiness or for repetitious borderline patterns which may be deemed to constitute abuse of this policy.

- ___ Often in borderline performer or malingerer situations there may exist a perception that the employee is being protected by some top-level manager, and that because of that the employee may be immune from any corrective action by his or her own supervisor. In such cases the supervisor should inform the supervisor's own immediate supervisor or manager, in detail, of the plans to improve the borderline performer and of the alleged perception of "protected status" of the employee. The supervisor and the manager should jointly decide if it is advisable (and if so, how) to approach the alleged protector. In most cases, the perception is not accurate, and most often the top-level manager "protector" clearly states his or her support for the supervisor's efforts. If the supervisor approaches the alleged "protector" it should only be after the supervisor receives the approval of the supervisor's supervisor or manager to do so.
- ___ In order to determine if there is a trend or an improvement or deterioration in attendance performance, the supervisor should compare, in two-month increments or three-month intervals, the fraction of days missed divided by days scheduled. The results can be graphically displayed to determine if there is any improvement in the employee's attendance once improvement emphasis begins.
- ___ Supervisors should insist that all prerequisites be satisfied before allowing a borderline performer to transfer or "bid out" of the employee's present position, once the improvement phase has begun. Similarly, supervisors should be open and straightforward with each other when a prospective supervisor inquires about the employee's performance, in the event the prospective supervisor is considering the employee for job bid or transfer award.
- ___ In many instances the borderline performer, due to his or her length of service and experience, may have been or may still be in a union leadership position, or he/she may have been involved in union grievance or union business activity. Such conditions should not deter the supervisor from attempting to improve the employee's performance, but it may add additional reason for the supervisor to be especially thorough and patient and to be able to document specific instances of actual job performance deficiencies based upon supervisor sensory fact observation.
- ___ Following the initial two-to three month "get acquainted" period, the supervisor should carefully continue to attempt to work with the employee; but the supervisor should not be reluctant to proceed through the steps of the corrective action process. The supervisor should not accelerate or bypass any of the steps of corrective action, except in cases where there exists appreciable aggravating circumstances.
- ___ At some point during the initial few weeks or months it may become evident that the employee's problem may be more closely akin to negligence rather than "incompetence." If such is the case,