

APPARENT SLEEPING CHECKLIST/NEGLECT OF DUTY

The supervisor should consider the items on this list prior to disciplining an employee for neglect of duty or for apparent sleeping on the job.

- List SENSORY FACTS to illustrate
 - job performance neglect effects
 - safety problems
 - unfit physical condition
- Determine if neglect of job can be shown with SENSORY FACTS (Is there something wrong on the job? Check assignment sheets, log books, etc., and make personal inspection of work area and note status.)
- Review logs and reports and note any mechanical or operating problems reported by the employee or others.
- Obtain additional supervisory witnesses and promptly list their SENSORY FACTS observations including time and facts chronologically documented.
- Obtain a union representative if the employee is to be questioned.
- Is there any evidence that alcohol or drugs were involved?
- Previous disciplinary action, warning, counseling, etc.
- Ask, "Why are you doing this?" Admission and reasons should be documented.
- Ask, "Are there any other factors or conditions that prevent you from doing your job?" or "Are there any other reasons for your behavior?"
- Ask, "Are you aware of company policy?" Verify "excuses" immediately.
- If excuse is "ill," "injured," "medication," ask, "Did you notify or attempt to notify supervisor or anyone?" "When did you first become ill?" "Have you seen a doctor for this illness?" (If yes, ask "when?")
- Draw a diagram of the location involved showing proximity or remoteness to actual assigned work area, location of dangerous passage ways, hazards, etc.
- Is the employee in or out of normal work area?
- If break or lunch period is involved, did incident occur in regular lunch/break area or at regular lunch/break time? Did employee obtain permission for different area or different time?
- What was the employee doing (smoking, eating, drinking, etc.)?
- What was the employee supposed to be doing?
- Which shift is it? What was previous shift/day's work schedule (short change, double back, etc., for supervisor's convenience)?
- Had employee complained of fatigue, tiredness, or illness?
- Employee's actions and work performance during earlier part of shift should be noted, including all known previous contacts with the supervisor during that work period.
- For neglect of duty instances involving "apparent sleeping," in addition to the items listed above, the primary concerns with which the supervisor must deal are:
 - 1) if the employee was "apparently" asleep, describe the observable supervisory sensory facts that would lead a reasonable person to conclude the employee was asleep,
 - 2) if there was neglect of assigned jobs or duties as a result of the conditions observed,
 - 3) consider the location of the employee compared to the location required in order for the employee to be engaged in meaningful work,
 - 4) if there was any danger (to the employee or to other employees or to the facility) involved as a result of the conditions observed or the location of the employee.
 - 5) Also consider the items below.
- Was a "bed" made (shoes off, hat off, pillow, etc.) and were there attempts or efforts by the employee or others to thwart detection by the supervisor? Was there a lookout?

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- ___ Actions necessary for supervisor to awaken or attract attention, and immediate response or statement of employee upon awakening should all be documented. (The unsolicited immediate statement is likely to be considered "spontaneous testimony" and will likely be "discoverable" or useful in making a disciplinary decision, even though a union representative may not have been present.)
- ___ Was employee's condition called to supervisor's attention by someone else? By whom?
- ___ Could the situation have been caused by any other circumstances which may have been beyond the employee's control? (for instance, exhaust fumes, chemical fumes, temperature.)
- ___ Availability of telephone, radio, etc. should be noted, and check to see if telephone was operable.
- ___ Time of arrival at work (known outside activity prior to work: moonlighting, family illness.)
- ___ Do not ask another bargaining unit employee or steward to intervene.
- ___ Before deciding upon disciplinary action, examine record to determine if employee had reported to supervisors any information regarding the employee's use of medication, any other facts such as illness, personal problems, etc.
- ___ Arbitrators are likely to draw a distinction between "nodding off" and sleeping on the job. As such, they may conclude that the condition (experienced at one time or another by nearly every person) of nodding off with eyes closed and head repeatedly drooping or nodding progressively downward in short jerky motions was just as likely to have been an attempt by a tired employee to avoid fully unconscious sleep.
- ___ Do not characterize the employee's misconduct as theft in disciplinary action for "apparent sleeping". Such characterization unjustly and unnecessarily impugns the employee's reputation by attaching the stigma of "thief" and may create liabilities for the supervisor and the employer in the area of defamation of character.
- ___ In disciplining for apparent sleeping, simply describe the misconduct as "neglect of duty," and in the disciplinary letter list all known and verifiable supervisory sensory facts which describe apparent sleeping.