

## SINGLE TRACK vs. MULTIPLE TRACK DISCIPLINE/RELATED vs. UNRELATED MISCONDUCT

Whenever repeated misconduct or poor performance incidents are deemed to be as a result of incompetence rather than negligence, many companies choose to, in effect, begin a separate disciplinary track for each unrelated instance. In such cases the actions taken are generally of the verbal or training or reinstruction nature.

Whenever repeated incidents are of the same or similar nature of misconduct or poor performance or where repeated acts of negligence occur involving dissimilar types of misconduct, many companies choose to implement a single-track corrective approach with increased severity of corrective action for each new instance of misconduct.

In order for action that could lead to termination of employment to be taken for the total performance of an employee or the unacceptable overall job performance of an employee that results in multiple disciplinary tracks resulting from dissimilar problems, several considerations are in order; otherwise the employee may claim, upon appeal, that he/she has been the victim of double jeopardy or of harassment by management. The supervisor should make absolutely certain that there is, indeed, no harassment or discrimination toward such an employee, and that all employees with comparable records are being similarly treated.

Several major considerations should be taken into account in order for supervisory action to be upheld if the employee is going to be identified as being INCOMPATIBLE or INCORRIGIBLE and if his/her employment is ultimately terminated:

- 1) If the employee is on at least three to four separate disciplinary tracks.
- 2) All of the tracks should be active or "alive," that is, less than one year should have elapsed since the last action on the majority of the tracks.
- 3) Somewhere on the disciplinary tracks the following actions should each have been utilized at least once, and possibly twice: job performance counseling, warnings, reprimands, and disciplinary suspensions/disciplinary probations. Each form of action need not appear on each track.
- 4) The likelihood of reversal will be considerably reduced if stepwise discipline has been followed on each track, that is, if multiple techniques have been used on each disciplinary track, each of them failing to produce improvement.
- 5) The likelihood of reversal will be considerably reduced if safety violations and/or insubordination are involved in the disciplinary tracks, or if injury has been involved when the safety violation occurred. The presence of the safety and insubordination violations create a condition where accidents may occur which may have irreversible consequences. In order to present such, termination of employment is more likely to be upheld.
- 6) The employee should at some point be informed that the supervisor is concerned regarding the unacceptability of the totality of his/her job performance and that any single violation or misconduct of any nature may result in termination of employment.
- 7) There should have been multilevel supervisory review of the overall performance before the ultimate action.

An employee terminated as an incompatible or incorrigible employee who meets the above considerations will indeed be an employee who has had numerous opportunities to improve in numerous areas and to whom the company can say, "We feel that your neglect of and failure to fulfill job performance responsibilities have been so excessive that you create a danger to yourself, to the operation, and to those about you. We as a company cannot be obligated to take the responsibility for any problems caused by your continued inability to safely satisfy job performance requirements." It is a very rare employee, indeed, who is incompatible or incorrigible, and the technique cited here should be used sparingly and with caution. It should be used only when all avenues of improvement have been exhausted, and only with very careful coordination assistance from the Personnel and/or Labor Relations Department. (See the Checklist for Dealing with the Borderline Performer.)