



Focus on Human Resources

PROGRESSIVE DISCIPLINE

By Paul Montoya, H R & M

“The types of discipline are management techniques. Using these effectively will improve employee productivity and reduce turnover.”

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The following types of actions are in general order of increasing formality and seriousness:

Coaching: This is future oriented. It is a partnership to plan and get the best performance possible. Employees are encouraged to contribute and participate. The supervisor sets expectations, gives guidance, training, advice, and ongoing help. Typically, something or someone is new. Continued employment is not in jeopardy.

Counseling: This focuses on what went wrong and how to improve. Consequences may be implied if performance does not improve. Specific goals are set to improve declining performance. The supervisor continues to provide additional guidance and training. Typically, coaching has been on-going, but the employee is still not understanding or abiding by the rules, instructions, or guiding principles. This action is more serious, but continued employment is still not in jeopardy.

Disciplinary Action: This is when the supervisor clearly describes what cannot continue, and specifies consequences for not improving. Coaching and counseling have typically not produced the desired results or behavior, or the behavior, performance, or violation of policy is so serious as to merit discipline immediately. Continued employment has now been jeopardized.

Written Warning: The first formal documentation of an employee's unacceptable behavior and/or performance. The documentation may include any previous coaching and counseling sessions and will include a statement indicating that further corrective disciplinary action up to and including probation or termination will result if the employee fails to meet the company's expectations.

Probation: This documentation may include any previous coaching and counseling sessions and is typically for a continuation of unacceptable behavior and the deficiency warrants a period of time in which the employee needs to significantly improve. Typically, an employee is usually placed on probation for attendance problems, not for performance deficiencies.

Termination: This documented action may include any previous coaching and counseling sessions or any previous written warning or probation and is taken when an employee has seriously violated the company's policies and practices and/or has repeatedly failed to meet company's expectations of acceptable behavior and/or performance.

-Note- The above disciplinary actions do not necessarily have to follow in this order. The violation itself by the employee will have to be taken into consideration, and as such, employees can be placed on probation, written warning, or terminated immediately following a serious violation without having been given previous coaching, counseling, or discipline.

Paul Montoya is President of H R & M, a human resources company based in San Antonio since 1988. H R & M is devoted to providing all aspects of human resources services to companies.

DRUG TESTING TYPES AND METHODS

By Ronald Rice, Diamond Corporate Services

Studies have shown that 12% of employees are abusers of illicit drugs or alcohol. OSHA has found that 65% of accidents on the job are by workers under the influence. Employees that abuse drugs are 6 times more likely to have a workers compensation claim. According to the US Department of Labor, drug users have 16 times more work absences. Drug abusers have 84% higher claims usage on health insurance, as well.

A properly administered drug testing policy can save your business thousands of dollars. To implement a policy effectively, you should understand six different types of testing policies available to you.

(1) Pre-employment testing: This type occurs prior to an employee starting work. Usually, the business notifies the applicant during the hiring process that pre-employment drug

“Understanding the common types of drug testing can help you structure the right policy for your business.”

testing will be required. Once an applicant is selected, an offer of employment is made. If accepted by the applicant, the offer is conditional on the employee's passing the required test.

(2) Post-accident: This type occurs when an employee is injured on the job. Many states laws protect the employer from paying a workers compensation claim if the post-accident test shows evidence of recent drug use.

(3) Random: This type is rarely used, compared to the types above. In random testing, the employer uses a neutral method of selecting which employees are to be tested. For example, the names of all the employees are put into a hat and 25% of the names are drawn. Only those 25% are tested. Once or twice a year the same process is repeated. Over a period of several years, the same employee could be tested every time, while another employee might never be selected for testing. The selection process is best administered by an impartial third party, in order to avoid employee complaints of unfairness.

(4) Reasonable suspicion: This type is based on probable cause. The owner or supervisor is allowed to order a test of an employee if their behavior or physical appearance changes, or if it suggests drug or alcohol use. The person ordering the test is responsible for documenting the reasoning they used. This type could also be used if drugs or drug-related items are found in the workplace, or in an employee's possession.

(5) Periodic: This type of testing occurs at regular intervals. For example, all employees are tested in March of each year. Another example would be if the owner announces that all employees will be tested three weeks from today. Another example would be if each employee is tested annually on their employment anniversary date.

(6) Rehabilitation: This type occurs only after an employee is tested positive by one of the other methods. The employee can possibly pass a subsequent test and get their old job back.

METHODS OF DRUG TESTING

There are three common methods for drug testing. Each has its own pros and cons.

(a) Urine drug screen: Although simple and fairly low cost, urinalysis has been criticized in that it is subject to alterations or masking agents. Another problem is that current drug use takes 6-8 hours before it appears in the urine.

(b) Hair drug screen: This method is very accurate and can go back 6 months or more. However it is expensive and takes longer to get results. Another problem is that recent drug use during the last 2 weeks would not be detected in this method. The method also does not detect alcohol use.

(c) Blood drug screen: This method is usually preferred by insurance companies because it can give an accurate measure of the level of intoxication at the time of an accident. If the insurance company can show that the level was sufficient for the person to be impaired, then the claim can be legally denied. This method is also expensive.

A general comparison of the three methods is below:

| Substance | Urine | Hair | Blood |
|-----------------------|---------------|---------------|--------------|
| Alcohol | 24 hours | N/A | 12 hours |
| Amphetamines | 2 to 3 days | Up to 90 days | 12 hours |
| Methamphetamine | 2 to 5 days | Up to 90 days | 24 hours |
| Barbiturates | 2 to 3 days | Up to 90 days | 1 to 2 days |
| Phenobarbital | 7 to 14 days | Up to 90 days | 4 to 7 days |
| Cannabis (single use) | 1 to 3 days | Up to 90 days | 24 hours |
| Cannabis (habitual) | Up to 84 days | Up to 90 days | 2 days |
| Cocaine | 1 to 3 days | Up to 90 days | 24 hours |
| Codeine | 2 to 3 days | Up to 90 days | 12 hours |
| Morphine | 2 to 3 days | Up to 90 days | 6 hours |
| Heroin | 2 to 3 days | Up to 90 days | 6 hours |
| LSD | 2 to 24 hrs | Unknown | 0-3 hours |
| PCP | 5 to 7 days | Up to 90 days | 24 hours |

One drug testing companies' results from urine testing showed the following:

| Type of Drug | Most Positive Results |
|---------------------|----------------------------------|
| Marijuana | 60% of positive results |
| Cocaine | 16% |
| Opiates | 9.4% (Codeine, Morphine, Heroin) |
| Amphetamines | 4.9% (Speed) |
| Total | 90.3% of positive results |

Conclusion: Employers wanting to implement a substance testing policy should review the types above. Using an outside consultant or testing service, the employer can structure a policy tailored for its needs. An outside testing vendor should be used to implement the policy. When done correctly, the employer can achieve cost savings from a drug free workplace.

EEOC ISSUES POLICY GUIDANCE SPECIFIC TO RACE AND COLOR DISCRIMINATION

(from the U.S. EEOC website at www.eeoc.gov)

“The EEOC’s new guidelines and clarifications are more specific. This article includes a few excerpts and examples for your review.”

In April 2006, the U.S. Equal Employment Opportunity Commission (EEOC) issued a new Compliance Manual section updating guidance on how Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of race and color. The EEOC also issued a companion question-and-answer fact sheet. These resources, available on the Commission’s Web page <http://www.eeoc.gov> under *Race/Color Discrimination* are designed to assist in identifying and responding to instances of discrimination, and to help prevent discrimination in the first place. “This comprehensive guidance will assist employers, employees and EEOC staff in understanding how Title VII applies to a wide range of contemporary discrimination issues,” said EEOC Chair Carl M. Dominguez.

The following are a few excerpts from the web site:

What employment actions are prohibited by Title VII?

Title VII prohibits race and color discrimination in every aspect of employment, including recruitment, hiring, promotion, wages, benefits, work assignments, performance evaluations, training, transfer, leave, discipline, layoffs, discharge, and any other term, condition, or privilege of employment. Title VII prohibits not only intentional discrimination, but also practices that appear to be neutral, but that limit employment opportunities for some racial groups and are not based on business need.

How can employers avoid racial discrimination when recruiting?

- Job advertisements – Generally, employers should not express a racial preference in job advertisements. Employers can indicate that they are “equal opportunity employers.”
- Word-of-mouth employee referrals – Word-of-mouth recruitment is the practice of using current employees to spread information concerning job vacancies to their family, friends, and acquaintances. Unless the workforce is racially and ethnically diverse, exclusive reliance on word-of-mouth should be avoided because it is likely to create a barrier to equal employment opportunity for racial or ethnic groups that are not already represented in the employer’s workforce.

“It may surprise you how the EEOC views employer hiring practices and training. The employer can be held liable for its procedures and the actions of its managers.”

- **Arrest & Conviction Records** – Using arrest or conviction records as an absolute bar to employment disproportionately excludes certain racial groups. Therefore, such records should not be used in this manner unless there is a business need for their use. Whether there is a business need to exclude persons with conviction records from particular jobs depends on the nature of the job, the nature and seriousness of the offense, and the length of time since the conviction and/or incarceration. Unlike a conviction, an arrest is not reliable evidence that an applicant has committed a crime. Thus, an exclusion based on an arrest record is only justified if it appears not only that the conduct is job-related and relatively recent but also that the applicant or employee actually engaged in the conduct for which (s)he was arrested.

Can employers base hiring or promotion decisions on employment tests?

Yes, professionally developed tests may be used to make employment decisions if they do not discriminate on the basis of race. Employment tests that disproportionately exclude applicants/employees of a certain race must be validated. For example, if an employer uses a personality test to assess which employees are “management material” and the test disproportionately excludes people of a certain race, the employer must have the test professionally validated to ensure that the test accurately predicts or correlates with successful job performance. Employers should also consider whether there is an alternative to the test that serves the employer’s needs with less discriminatory impact.

How can employers avoid racial discrimination on the job?

Example: An employer terminates a new Asian employee on the ground that she performs her work too slowly and makes too many mistakes. The investigation reveals that although White employees who perform at a substandard level are coached toward increasingly good performance, new employees of color get less constructive feedback and training. Therefore, they tend to repeat mistakes and make new ones that could have been avoided. A finding of discrimination would be warranted.

How can employers prevent racial harassment?

The most important step for an employer in preventing harassment is clearly communicating to employees that harassment based on race will not be tolerated and that employees who violate the prohibition against harassment will be disciplined. Other important steps include adopting effective and clearly communicated policies and procedures for

addressing complaints of racial harassment, and training managers on how to identify and respond effectively to harassment. By encouraging employees and managers to report harassing conduct at an early stage, employers generally will be able to prevent the conduct from escalating to the point that it violates Title VII.

An employer is liable for harassment by a supervisor if the employer failed to take reasonable care to prevent and promptly correct the harassment or if the harassment resulted in a tangible job action (termination, demotion, less pay, etc.) For more information, see EEOC's *Questions & Answers for Small Employers on Employer Liability for Harassment by Supervisors*. An employer is liable for harassment by co-workers or non-employees if it knew or should have known of the harassment and failed to take prompt corrective action.

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