



4. Subtle pressure for sexual activity
5. A pattern of conduct that discomforts or humiliates the person at whom the conduct is directed and that includes one or more of the following:
  - a. Comments of a sexual nature
  - b. Sexually explicit statements, questions, jokes or anecdotes
  - c. Unnecessary touching, patting, hugging, kissing, or brushing against a person's body
  - d. Remarks of a sexual nature about a person's clothing or body
  - e. Remarks about sexual activity or speculations about previous sexual experience
6. Persistent, unwanted attempts to change a professional relationship to an amorous one

### **Appeals and Tests for Justice**

An appeals process is critical to a good discipline system for employees who feel unjustly treated. A separation of key roles, as in the civil justice system, may not prevail at the workplace. The operator or a supervisor is often a policeman, judge, and trial jury all wrapped into one.

Issuance of formal warnings and penalties can be risky. They may trigger questions, informal complaints, formal grievances, or litigation. Most managers try hard to be fair, and in most cases the combination of roles works fine. But there is always a chance of a bad decision, and it is important for employees to have a way of calling for a less-involved person—a personnel officer, general manager, other supervisor, or outsider—to review any disciplinary action.

While all employees have appeal rights in courts of law, internal processes can both reduce an employer's exposure to legal action and help in correcting misapplications of policy. Means for challenging disciplinary action can be incorporated in the discipline policy or created as a separate grievance procedure. Two major variables differentiating appeals procedures are (1) level of ultimate appeal (e.g., to personnel manager, general manager, employee-management committee, outside arbitration), and (2) time limits for appeal submittal and management response. Where an equitable review procedure is provided and followed by the employer, courts are reluctant to even consider employee charges of wrongful discipline or discharge.

Arbitrators and judges, as well as employees, assess whether managers acted fairly in taking disciplinary action. They consider not only whether a disciplined worker has in fact committed an offense, but also whether management followed fair procedures in administering a penalty and the appropriateness of the penalty to the offense. Typical tests used for determining the justice of discipline include the following questions:

1. Was the employee adequately warned of the consequences of his or her conduct? Did he or she know what would happen?

2. Was the company's rule or order reasonably related to efficient, safe operations? Did it have a rational link to a business purpose?
3. Was a fair, objective investigation of facts conducted before the discipline was administered? Did the employer make an effort to factually describe the event for which the employee was sanctioned?
4. Did the investigation produce substantial (not necessarily conclusive) evidence of fault?
5. Have the rules, orders, and penalties been applied consistently and without discrimination, or has enforcement begun suddenly after years of laxity?
6. Was the penalty reasonably related to the seriousness of the offense and the employee's record?

In sum, a discipline policy is a helpful management tool, but it cannot fully substitute for judgment in responding to problems. For most performance and conduct problems, discharge ought to be held as a last-ditch measure. Discussion, verbal warning, and suspension, applied progressively, may be used to correct employees before losing or giving up on them. Hastily applied disciplinary actions may make waste of employee talent, supervisory time and reputation, and other business assets.

### Discharge from Employment

Firing is the "capital punishment" of employee relations, with operational and possibly legal ramifications. As the ultimate corrective action or punishment a company can impose on an employee, it is to be approached with heightened awareness and care. The first line of defense against later legal complaints is (1) meeting final wage payment obligations—required immediately in some states—and (2) having clear documentation of incidents leading to the dismissal. Before dismissing an employee in the first place, however, it is a good idea to reflect on the following questions:



**Considerations before Dismissing for Cause**

- Has corrective action been attempted?
- Is the reason for dismissal work-related?
- Is there a policy or management order that sets standards of performance and behavior?
- Does dismissal correspond to the seriousness of the offense or other cause?
- Did the employee have knowledge of the policy and consequences?
- Was an investigation of the rule infraction fairly conducted?
- Is there evidence or proof of the employee's wrongdoing?
- Has the business applied its policies uniformly to all employees?