

PERFORMANCE ISSUE OR FIREABLE OFFENSE?

KNOW WHEN TO SKIP THE PIP



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INTRODUCTION

Regardless of the state of the labor market, employee turnover is always costly. Because of that cost, in both time and money, employers sometimes choose to hang on to employees even if they're not meeting performance expectations. But what happens when complaints roll in from different angles? What if a lackluster supervisor is annoying employees and disappointing customers?

An employer could be hesitant to let that supervisor go, especially if there's no documentation backing up claims of misconduct. The employer must weigh the options to decide if putting the supervisor on a performance improvement plan (PIP), starting progressive discipline, or moving right to termination is the right choice.

UNDERSTANDING AT-WILL EMPLOYMENT

In most states employers may terminate an employee at-will, meaning they can fire employees for pretty much any reason if it doesn't discriminate against someone in a protected class based on sex, age, race, religion, etc. Employers also cannot terminate in retaliation for an employee making a claim of harassment, discrimination, or safety concerns.

Aside from these limits, employers can terminate employees for good cause, bad cause, or no cause at all.

A PIP AND ITS PURPOSE

While termination is an option for employers, its costs mean that firing an employee should not be the automatic choice when performance problems emerge. A better choice might be a PIP, which is a formal document that:

- Outlines areas where an employee needs to improve,
- Sets performance goals, and
- Provides a timeline for achieving these goals.



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The purpose of a PIP is to help employees understand and address areas where their performance falls short of company expectations. It is a tool designed to guide and support employees in improving performance. By clearly outlining what needs to change, how it should change, and in what timeframe, a PIP provides a structured path for employees to enhance their skills and productivity.

WHEN TO IMPLEMENT A PIP

A PIP should be implemented when an employee's performance consistently falls below the company's expectations. This could be due to factors such as low productivity, frequent mistakes, poor quality of work, or behavioral issues affecting the workplace.

It's important to note that a PIP is not the first step in addressing performance issues. It typically comes into play after initial feedback and coaching has not led to the desired improvements. By implementing a PIP, the company provides a formal, structured opportunity for the employee to understand the issues, improve performance, and meet the required standards.

MISCONCEPTIONS ABOUT PIPS

There are common misconceptions about PIPs that can lead to apprehension among employees.

One misconception is that a PIP is a precursor to termination. While it's true that failure to meet the goals set in a PIP could potentially lead to termination, the primary purpose of a PIP is to help employees improve, not to set them up for failure.

Another misconception is that a PIP is a punitive measure. A PIP is a tool designed to provide clear, structured guidance to help employees enhance their performance. It's not about punishment but about supporting employees in their professional growth and development.

HOW TO IMPLEMENT A PIP EFFECTIVELY

Implementing a PIP effectively requires clear communication, realistic goal-setting, and ongoing support.



Regular check-ins are crucial during the PIP period to discuss progress, address any issues, and adjust the plan if needed. It's essential to maintain open and constructive communication throughout the process.

Begin by clearly outlining the areas of performance that need improvement and establishing measurable goals for the employee to reach. Ensure that the timeline for achieving these goals is realistic and provide resources or support necessary for the employee's success.

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WHAT HAPPENS IF PERFORMANCE DOESN'T IMPROVE UNDER A PIP?

If an employee's performance does not improve despite the implementation of a PIP, there may be a need to consider more serious steps, such as reassignment, demotion or, in some cases, termination. However, this decision should not be taken lightly and must be based on a comprehensive review of the employee's performance during the PIP period. It's also important to document all steps taken during the PIP process and the reasons for the final decision, to provide a clear record in case of any future disputes.

THE DIFFERENCE BETWEEN PERFORMANCE ISSUES AND WORKPLACE MISCONDUCT

Performance issues and workplace misconduct, while both problematic, are distinct issues that require different approaches. Performance issues refer to an employee's inability or failure to meet job expectations. This could be due to:

- Lack of skills,
- Poor productivity, or
- Frequent errors in work.

These issues are often addressed through feedback, coaching, and in more serious or persistent cases, a PIP.

On the other hand, workplace misconduct refers to inappropriate behavior in the workplace.



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Misconduct is a more serious issue that may call for immediate disciplinary action, up to and including termination, depending on the severity and frequency of the behavior.

EXAMPLES OF WORKPLACE MISCONDUCT

Workplace misconduct refers to behavior that violates company rules, policies, or ethical standards. It can range from minor infractions, such as frequent tardiness, to serious offenses like theft. It could be anything from a one-off poor joke to pervasive harassment.

Yelling at customers or coworkers is an example of a conduct issue. An employer could issue a warning or move right to termination if the behavior becomes threatening.

OTHER FORMS OF MISCONDUCT INCLUDE:

- Misuse of company resources,
- Violation of safety protocols,
- Insubordination, or
- Spreading false information about colleagues.

These behaviors not only affect the individual involved but can also have a significant impact on team morale, productivity, and the overall workplace environment.

The response to workplace misconduct is not just a PIP, but rather discipline, as it is not usually performance related.

WHAT IS PROGRESSIVE DISCIPLINE?

Progressive discipline is a process that increases in severity with repeated misconduct, starting with warnings and culminating in termination. Consequences for violations can range from warnings (oral or written) to short suspensions (generally 14 calendar days or less), long suspensions (usually more than 14 calendar days), demotion, or termination. A PIP could be part of the process, although other steps are also involved. When determining



an appropriate disciplinary action, several factors come into play. These include the nature and severity of the offense, the employee's previous discipline record, the employee's potential for improvement, the consequences imposed on other employees in similar situations, and the disciplinary guidelines or policy.

HERE'S A TYPICAL PROGRESSION:



1. **VERBAL WARNING:** The employee is clearly told what infractions have occurred and is given expectations on how to resolve the performance issue. The supervisor must document the discussion and have the employee sign it to show that the terms are understood.
2. **WRITTEN WARNING:** If the issues with the employee have not been resolved with a verbal warning, the supervisor should escalate the issue with more formal documentation of the problem. A PIP could be provided to the employee if there are performance issues involved, along with notification that if the behavior continues, additional corrective action will be taken. The employee should sign the written warning and be provided with a copy of the document.



3. **SUSPENSION AND FINAL WARNING:** Some instances require an in-depth investigation, and the employee may need to be placed on suspension while this is taking place. As with any corrective action, employers need detailed documentation of the events leading up to the suspension.



4. **TERMINATION:** As a last resort and after all other corrective actions have failed, you may need to part ways with the employee. Depending on the seriousness of the offense, steps might be skipped, and the employer may need to let the employee go due to safety or security reasons.

A progressive discipline policy provides a structured corrective action process to improve employee behavior.



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It's crucial to ensure that the decision to terminate is consistent with company policy and legal regulations and, as much as possible, that the misconduct is documented.

WHEN IT'S WISE TO SKIP THE PIP, AND PROGRESSIVE DISCIPLINE, MOVING DIRECTLY TO TERMINATION

There are situations when it may be appropriate to bypass a PIP and/or progressive discipline and move directly to termination. This typically involves cases of severe misconduct, such as theft, violence, or serious breaches of company policy. In these instances, the behavior is so egregious that immediate termination is warranted. However, it's crucial to ensure that the decision to terminate is consistent with company policy and legal regulations and, as much as possible, that the misconduct is documented.

TIPS FOR TERMINATING SAFELY AND RESPECTFULLY

Whether the decision to fire an employee is made due to lack of improvement despite a PIP, or because of escalating levels of discipline yielding no change in behavior, terminating an employee is a difficult process. It requires tact and professionalism. It's important to treat the employee with respect and dignity throughout the process. Here are some tips to implement when terminating an employee:

- Be clear and honest about the reasons for termination but avoid unnecessary detail or blame.
- Conduct the termination meeting in a private setting and have a witness present.
- Offer support where possible, such as providing information about job placement services or severance packages.
- Ensure the employee's final paycheck is ready, including compensation for unused vacation or sick days, if applicable.
- If there is a chance the employee might become violent when terminated, get security or even law enforcement involved.



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IMPORTANCE OF CLEAR COMMUNICATION AND DOCUMENTATION DURING A TERMINATION

Clear communication and thorough documentation are essential during the termination process. The employee should understand the reasons for their termination, and all discussions and actions leading up to the termination should be well-documented. This includes performance reviews, disciplinary actions, and any attempts at improvement. Documentation serves as a record of the process and can be crucial in case of any legal disputes. It's also important to communicate the termination decision respectfully and professionally, focusing on the facts and avoiding personal blame.

POTENTIAL LEGAL IMPLICATIONS OF WRONGFUL TERMINATION

Wrongful termination refers to a situation where an employee is fired for illegal reasons, such as discrimination, retaliation, or the violation of an employment contract. The legal implications of wrongful termination can be severe, including potential lawsuits, financial penalties, and damage to the company's reputation. It's crucial for employers to understand their legal obligations and to ensure that all terminations are conducted fairly and within the bounds of the law. Proper documentation and adherence to company policies can help protect against claims of wrongful termination.

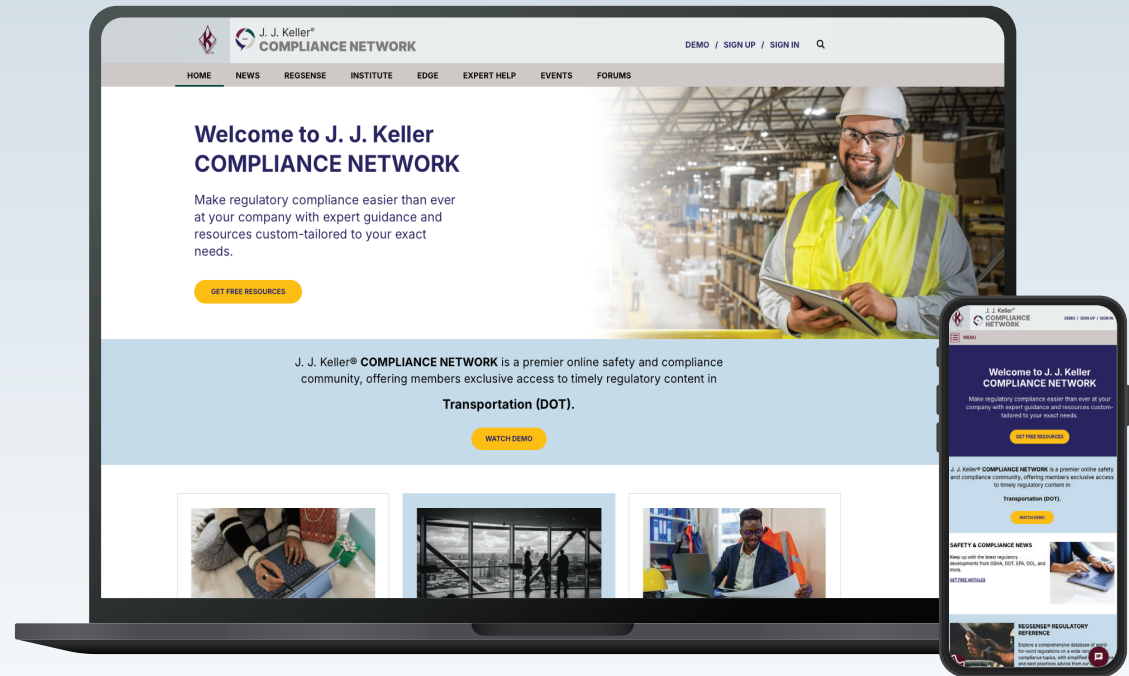
CONCLUSION

It's important to know which solution is likely to provide the best outcome in the case of a troublesome employee. If the problem is a performance issue, a PIP might be the key. For minor conduct issues, starting the progressive discipline process could yield positive results. In the case of a serious infraction, however, it might be necessary to move immediately to termination.



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Judy Kneiszel joined J. J. Keller & Associates, Inc., in May 2018. As an Editor, she has become an expert on a wide array of HR topics, including employee relations, discrimination, terminations, policies and sexual harassment prevention, as well as hiring, onboarding, and background checks. Judy is responsible for the content of the Employment Law Regulatory Alert newsletter and Essentials of Employee Relations manual. She also specializes in employment law posters.

In addition to J.J. Keller publications, Judy's work has appeared in *forwardHR* (Wisconsin SHRM) and *Insight on Technology* (Insight Publications). With two decades of entrepreneurial experience, encompassing freelance writing, editing, and advertising copywriting, Judy's insights reflect real-world business acumen. In addition to holding degrees in journalism and political science, she is a member of the national Society for Human Resource Management (SHRM). Judy excels in translating complex topics into understandable language and crafting engaging content while applying a comprehensive perspective to problem-solving.

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