

City of Hamilton
BUTLER COUNTY OHIO



Management Training Series: Fundamentals of Employee Discipline

Presented by:

Letitia S. Block, Esq. and Marcos Nichols

Agenda

8:30 AM - 8:45 AM - Coffee/Water/Snacks

8:45 AM - 9:15 AM - Presentation

9:15 AM - 9:20 AM - Break

9:20 AM - 9:50 AM - Presentation

9:50 AM - 9:55 AM - Break

9:55 AM - 10:30 AM – Presentation

Discipline

City of Hamilton
BUTLER COUNTY OHIO



**The
Office**



Training Objectives

1. To provide foundational information to supervisors regarding employee discipline.
2. To provide supervisors with the appropriate resources (i.e. forms, handbook) regarding employee discipline.
3. To avoid legal risks associated with employee discipline.

Introduction

- Discipline is a tool to improve employee performance.
- Discipline should be used in conjunction with an effective performance evaluation system.
- A key aspect of discipline is the creation of reasonable standards of conduct, policies, and practices, and the consistent enforcement of such standards.
- If discipline decisions are not handled properly, including appropriate documentation, discipline can lead to a claim against the City for disparate treatment before the Civil Service Commission, an arbitrator, a governmental agency like the EEOC and OCRC, or a court.

Civil Service

- The Charter of the City of Hamilton, Section 10.02, divides employees into the unclassified service and the classified service.
- The unclassified service includes elected officials, the City Manager, members of the Civil Service Commission, all Department Directors except the Director of Civil Service, Assistant Law Directors, secretaries to the City Manager and Department Directors, and the City Clerk.
- The classified service includes all positions not included in the unclassified service.

Civil Service and Collective Bargaining



- Unclassified employees are “at-will,” which means they may be terminated for any legal reason, without notice.
- Classified employees and bargaining unit employees are assured “due process” in conjunction with disciplinary actions, and are protected from summary termination under the “just cause” principle found in Ohio Revised Code Section 124.34 and many collective bargaining agreements.

Civil Service Rule X, Section 2



Hamilton Civil Service Rule X, Dismissals and Suspensions, Section 2 provides:

The head of any department shall have the right to suspend or dismiss any of the officers or employees in the classified service for incompetence, inefficiency, disorderly or immoral conduct, discourteous treatment of any citizen or of the public at large, insubordination, neglect of duty or for **any other just and reasonable cause,** or **he may be dismissed in consequence of an accumulation of consideration or acts of lesser consequence pointing to the desirability of his removal.**

Seven-Part Test

Several arbitrators, courts, and civil service boards use a seven-part test of just cause:

1. Notice. Was the employee given prior notice of the possible disciplinary consequences of his or her conduct?
2. Reasonable Rule. Was the rule or order reasonably related to the safe and efficient operations of the employer?
3. Investigation. Was there a reasonable investigation into whether the employee actually violated or disobeyed a rule or order or engaged in the conduct leading to termination?
4. Fair and impartial investigation. If there was an investigation, was it conducted objectively?
5. Proof. Was there sufficient evidence to reasonably believe that the employee actually violated a rule or engaged in misconduct?
6. Evenhanded and non-discriminatory application of rules and penalties. Has the employer applied its rules consistently?
7. Discipline related to the seriousness of the offense and to the employee's work record. Is the discipline reasonable in relationship to the seriousness of the offense and the employee's past record?

Administrative Directive

318



- All Pre-Disciplinary Hearings (Except Police and Fire) must be held:
 - Jury Room in Municipal Court (345 High Street, 2nd Floor, Hamilton, OH 45011)
Michelle.deaton@hamilton-oh.gov; 513-785-7322
- Factors to consider regarding disciplinary action
 - Nature of Offense
 - Degree of severity and cost of the offense
 - Employee's length of Service
 - Number and nature of previous offenses
 - Conferences, warnings, and other corrective actions for previous offenses
 - Employee's pattern of conduct
 - Time interval between offenses

Administrative Directive

314



- Provides for the Standards of Employee Performance
 - Job Attendance (Job Site, Tardiness, Unapproved Absences, Notification Time for Absence)
 - Personal Conduct (Buddy Punching - Time clocks, Insubordination, Drug/Alcohol Use, Theft, misrepresentation, fighting/horseplay)
- Violation of performance and conduct standards = disciplinary action up to dismissal
- Provides factors to consider that align with AD 318
 - Severity of offense
 - Cost involved
 - Time interval between violations
 - Length of service

Other Administrative Directives

- No. 313 - EEO
- No. 323 - Sexual Harassment
- No. 331 - Internet Usage
- No. 407 - Weapons Free
- No. 404 - Tobacco Use (Revision coming soon - Tobacco Free Campus)

Policies/Administrative Directives

What policies can employees be disciplined for violating?

1. Administrative Directives
2. Departmental/Division Policies
3. None
4. Both 1 and 2

Performance vs. Conduct

What is considered Performance?

- Performance relates to the employee's classification. Performance includes the quantity, quality, accuracy, and timeliness of work products.

What is considered Conduct?

- Conduct relates to work rules that are impacted by the employee's behavior. Conduct includes tardiness/absenteeism, honesty, interactions with co-workers/public/supervisor.

At times, conduct issues may overlap performance issues.

Performance vs. Conduct

Sam Sleepy is responsible for unlocking the Customer Service lobby door. He has been late to work four (4) days for the last two weeks.

Is this a performance or conduct issue?

1. Performance
2. Conduct
3. Both
4. Neither

Common Behaviors Leading to Discipline

- What performance and conduct issues should result in discipline?
- Create a scenario for one of these issues and explain how you would handle the issue using disciplinary action.

BREAK

Documentation

- What is documentation?
 - Any record regarding an employee's performance or conduct
- Document both positive and negative issues.
 - Documenting both positive and negative issues provides for a more holistic view of an employee.
- How is this important?
 - Proper documentation leads to more accurate performance evaluations/disciplinary decisions

SUPERVISORY FILES/NOTES ARE CONSIDERED A PUBLIC RECORD

The Golden Rules for Documentation in the Disciplinary Process



Rule # 1: Do it

Rule # 2: Know your audience

Rule # 3: Follow the rules

Rule # 4: Tell the story

Tell the Story

- Learn and state the facts
- Get and state the employee's side of the story
- Document past actions or discipline that are relevant
- Be fair
- Be factual and avoid conclusions
- Explain the consequences and potential consequences

Administrative Investigation

- An **Investigation** is designed to establish facts and circumstances concerning possible unsatisfactory conduct/performance in order to determine whether unsatisfactory conduct/performance has occurred and, if so, the person or persons responsible.
- When should I conduct an investigation?
 - An investigation should be conducted when you are considering any disciplinary action.

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- [illegible]

[illegible]

Documentation/Administrative Investigation Information



- Weingarten Rights – NLRB v. J. Weingarten, Inc.
 - U.S. Supreme Court case that have allows a bargaining unit employee to request union representation during an investigatory interview if the employee has a reasonable belief that discipline or adverse consequences may result from management’s questions.
- Garrity – Garrity v. New Jersey
 - U.S. Supreme Court case that held it is a violation of the 5th and 14th Amendments to compel incriminating employee statements under threat of termination. If an employee has a concern about self-incrimination, the employer can order an employee to provide a statement and guarantee that the information in the statement will not be used against the employee in a criminal proceeding.

Garrity Notice

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**EMPLOYEE NOTICE OF INVESTIGATION
PURSUANT TO HAMILTON CHARTER SECTION 5.11**

This statement is to advise you that you are a subject of an investigation conducted pursuant to Section 5.11 of the Charter of the City of Hamilton, Ohio. Charter Section 5.11 provides:

5.11 INVESTIGATIONS BY COUNCIL OR MANAGER

The Council, the Manager or any person or committee authorized by either of them, shall have power to inquire into the conduct of any department, office or officer of the City and to make investigations as to municipal affairs, and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers and other evidence.

As part of this investigation, you will be asked specific questions which will relate directly to the performance of your official duties of employment, and you will be required to truthfully answer questions narrowly related to those official duties as an employee of the City of Hamilton, Ohio. The purpose of this interview of you is to determine the facts of the issue now being investigated. Answers given by you shall not be used in any criminal investigation pertaining to you.

Because this is an administrative and NOT a criminal investigation, the City of Hamilton will NOT use any of the answers or information gained from this interview in any criminal proceeding against you.

You are hereby directly ORDERED and REQUIRED by your supervisor and/or appointing authority to fully and truthfully answer ALL questions asked of you in this interview. Your failure to comply with this ORDER will be considered to be insubordination, which is a disciplinary infraction for which you may receive discipline, up to and including your dismissal from employment with the City of Hamilton.

Page 2 of 2

Thank you for your expected cooperation.

EMPLOYEE:

CITY OF HAMILTON, OHIO:

Signature of Employee

Signature of Supervisor and/or
Appointing Authority

Date

Date

Signature of Witness

Date

Disciplinary Steps

- Verbal warning
- Written warning
- Suspension
- Demotion
- Dismissal

Advantages of Progressive Discipline



- Helps the employee improve his or her performance or conduct
- Provides an opportunity to focus on the issues that need to be corrected
- Identifies a standard that is expected going forward and provides fair warning of the consequences for failing to improve
- Provides a sense of fairness
- Provides evidence that adverse action was taken for legitimate, non-discriminatory reasons

Verbal and Written Warning Form



- For organization-wide standardization use this form for any verbal/written warnings.

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Verbal/Written Warning Form

Today's Date

Employee Name Position
Department Division
Supervisor

Level of corrective action: ☐ Verbal ☐ Written
Is this the Employee's first counseling session? ☐ Yes ☐ No
If "no", what date(s) did other counseling occur?

Please provide a specific examples of the unsatisfactory performance/behavior:

Steps agreed on for change (if applicable):

Supervisor Signature Date

Employee Comments:

☐ I acknowledge that the above unsatisfactory performance/behavior has been discussed with me. I understand that either failure to improve my performance/behavior or additional incidence(s) of any unsatisfactory performance may result in further corrective action up to and including recommendation for termination. I also understand that this documentation is to be considered during my evaluation period. My signature below does not imply that I agree with the actions taken.

Employee Signature Date

Guidelines for Verbal and Written Warnings

- If appropriate, have another manager or HR representative present
- Get to the point
- Talk to the employee; don't read to him or her
- State the problem clearly and explain how you want the employee's performance or conduct to change
- Explain the disciplinary process and clarify what may happen if the problem continues
- Provide an opportunity for the employee's input, and listen to it
- Document the verbal or written warning and anything noteworthy that happened at the meeting
- Follow up

Pre-Disciplinary Hearing Notice Form



- When drafting a Pre-D Hearing Notice, you can find the attached word template available on the Supervisor Resource webpage.



[Date]

Delivered Via: [Mail, Hand Delivery, E-mail]

[Employee Name]
[Employee Classification]
[Home Street Address]
[City, State ZIP]

RE: Notice of Pre-Disciplinary Hearing

Dear [Name]:

On [Date (Month, Date, and Year)], [background information].

Your actions are in violation of Section [Section #], Paragraph [Paragraph #] of Administrative Directive [Administrative Directive #], [Title of Directive]. [Reference all applicable Administrative Directives that were violated and the specific sections, subsections or paragraphs. You can also quote the specific policy language]. A copy of the Administrative Directive is attached or can be found at: <http://www.hamilton-city.org/750/Administrative-Directives>.

This letter will serve as notice that a pre-disciplinary hearing will be held on [Day], [Month], [Date], [Year] at [Time] A.M. / P.M. in the jury room in Municipal Court on the 2nd floor of the Hamilton Municipal Building at 345 High Street, Hamilton, Ohio 45011. The hearing is to provide you the opportunity to respond to the above charges.

1. You have the right to: (a) appear at the hearing to present oral or written statements in your defense; (b) appear at the hearing and have your chosen representative present an oral or written statement in your defense; or (c) elect in writing to waive your opportunity to have a pre-disciplinary hearing.
2. At the hearing, you may present testimony, witnesses, and documents that explain whether or not the conduct occurred. Any person you choose may represent you at this hearing. You shall provide a list of witnesses to this office not later than twenty-four (24) hours prior to the pre-disciplinary hearing. It is your responsibility to notify witnesses that their attendance is required.
3. You and your representatives will be permitted to confront and cross-examine any witnesses that may be present.
4. If the charges are proven, or if you fail to respond, or if you fail to respond truthfully, you will be subject to disciplinary action, which includes the possibility of your being discharged from employment with the City of Hamilton.
5. Written findings of fact and a disciplinary decision will be issued by your appointing authority within [insert number of days required per either applicable collective bargaining agreement or Administrative Directive # 318. Administrative Directive # 318 requires written findings within five (5) working days of the hearing] working days of the hearing.

Pre - Disciplinary Hearing Notice to [Name]
[Date]

1



A copy of Administrative Directive #318, "Pre-Disciplinary Hearing Procedure" is also attached for your review. All written materials, reports and documents which this violation is based are available to you for your review by contacting me. Please call me at [Direct Line Number] if you have any questions about the proceeding.

If the employee is to be off because of an issue of safety or security or other issues, you can state the following depending on the facts and any applicable collective bargaining agreement language: "You are hereby placed on administrative leave effective immediately [with] [without] pay pending the results of the above-referenced hearing."

If safety and/or security are an issue, you can state the following: "UNTIL FURTHER NOTICE YOU ARE PROHIBITED FROM ENTERING ANY CITY FACILITY, INCLUDING THE MUNICIPAL BUILDING AT 345 HIGH STREET, HAMILTON, WITH THE NOTED EXCEPTION BEING YOUR PRE-DISCIPLINARY HEARING ON [Date of Hearing]. YOU MAY BE SUBJECT TO ARREST IF YOU ENTER ANY CITY FACILITY OTHER THAN AS DIRECTED IN THIS NOTICE." PLEASE CONSULT WITH THE HUMAN RESOURCES DEPARTMENT PRIOR TO INCLUDING SUCH LANGUAGE.

If you use the above paragraph, you MUST notify building security (cbasouth@ci.hamilton.oh.us) and LMT (largement@ci.hamilton.oh.us) to ensure that it is clearly communicated that the employee is prohibited from entering any City facility.

Respectfully,

[Department Director]
[Title]

CC: [Civil Service and Personnel Director]
[Director of Human Resources]
[City Manager]
[Assistant Law Director - Labor and Employment]
[Division Supervisor]

Pre - Disciplinary Hearing Notice to [Name]
[Date]

2

Discipline Decision Form



- Reason through AD 318 Factors when coming to a decision.
 - Specifically cite those reasons in the letter.



[Date]

Delivered Via: [Mail, Hand Delivery, E-mail]

[Employee Name]

[Employee Classification]

[Home Street Address]

[City, State ZIP]

RE: **Disciplinary Action Response regarding [Incident] on [Date of Incident]**

Dear [Name]:

On [Date (Day, Month, Date, and Year)] at approximately [Time] [and on Date (Day, Month, Date, and Year)] at approximately [Time] - if there was more than one Pre-D Hearing], I conducted (a) pre-disciplinary hearing(s) as outlined in [insert specific article per either applicable collective bargaining agreement or Administrative Directive # 318]. Attendees at [both] [the] hearing(s) included you, [insert the name of every attendee]. ***If more than one hearing, state the following:** "[Attendee names] attended the hearing on [Date] and [Attendee names] attended the hearing on [Date]". *

At the hearing(s), [Union representatives of (UNION)] and you were provided an opportunity to describe the circumstances of [Incident] and your actions on [Date of Incident].

At the Pre-Disciplinary Hearing on [Date of Hearing], I asked you a number of questions related to the events of [Date of Incident]. Your responses to my questions [did] [did not] provide me with a reasonable explanation for your actions on [date of incident].

[Specifically state why the responses did not provide a reasonable explanation or how the responses did provide a reasonable explanation].

Based on the foregoing, I find that your actions constituted a violation of [City Ordinance if applicable] and a violation of [Administrative Directive #, Title, Specific Section/ Paragraph/ Subparagraph]. Copies of [City Ordinance and Administrative Directive] are attached.

Disciplinary Action Response Notice to [Name]
[Date]

1



In preparing a disciplinary response to this matter, I took into consideration the following factors.

1. The nature of the offense
2. The degree of severity and cost of the offense
3. Your length of service
4. The number, nature, and time interval between previous offenses
5. Conferences, warnings, and other corrective actions for previous offenses
6. Your pattern of conduct and work history
7. Your statements during [both] [the] pre-disciplinary hearing(s)
8. Statements by Union Representatives at [both] [the] pre-disciplinary hearing(s)
9. Written/Verbal statements by [Name] and [Name]

Upon review of all the facts involved in this matter, I conclude that your actions warrant [Disciplinary Action - Suspension, Demotion, and Termination].

Respectfully,

[Department Director's Name]
[Title]

CC: [Civil Service and Personnel Director]
[Director of Human Resources]
[City Manager]
[Assistant Law Director - Labor and Employment]
[Union Business Manager, Union]
[Union President, Union]

Disciplinary Action Response Notice to [Name]
[Date]

2

Ten Disciplinary Pitfalls/Legal Risks

1. Not taking disciplinary action until an employee pushes you to your limit.
2. Not documenting employee performance or behavioral issues and not documenting correctly.
3. Not utilizing progressive discipline where appropriate.
4. Giving ineffective performance evaluations.
5. Terminating an employee who is on or has just returned from a leave of absence.

Ten Disciplinary Pitfalls/Legal Risks

-
6. Terminating an employee for absenteeism without considering FMLA implications.
 7. Terminating an employee who has recently filed an internal or external complaint.
 8. Treating employees inconsistently.
 9. Breaking established rules or practices.
 10. Inappropriately delivering a termination decision.

Question No. 1

Yesterday, Nate Nasty had a disagreement with Chad Citizen after Chad told Nate that he did not want to acknowledge his receipt of a check in the amount of \$500. Mick Manager is Nate's supervisor. After Nate's interaction with Chad he became upset, came into Mick's office, slammed the door, and told Mick "I don't respect anyone in the City of Hamilton, and I'm not working the front desk anymore." Mick has counseled Nate several times about reacting angrily in the workplace. Mick issues Nate a written warning that states:

This serves as a written warning to you for your failure to be a team player and for having a bad attitude. You are being placed on probation for 60 days. You will be terminated for any further incidents.

Question No. 1

True or False

Mick Manager's written warning to Nate Nasty is appropriate.

1. True, Nate needed to be disciplined for his bad attitude.
2. False, Mick's warning was not factual.
3. True, The warning put Nate on notice that he would be terminated for further incidents.
4. False, Nate should not have received a written warning.

Question No. 2

Sue Secretary is an administrative secretary working in the Underground Utilities Department. Her job responsibilities include greeting utilities customers who come to the administrative office of the Department, and processing payroll for several divisions in the Department. Sue has been employed by the City for approximately 75 days and has been more than 30 minutes late 6 times. Four of those times other staff members had to work at Sue's station until she arrived and could not perform their normal job duties while they waited. Sue has also made several payroll errors.

Inez Impatient is Sue's supervisor. After Sue was late 3 times in the first 30 days and had a few payroll errors, Inez put Sue on a performance improvement plan and sent her to a training session on payroll processing. Today, Sue did not report to work and did not call Inez until 2:00 pm at which time Sue told Inez that she overslept because she stayed up too late and she cannot come in today because she needs to take her mother to the doctor. Sue reports to work the next day 45 minutes late and she did not call Inez before she arrived.

Question No. 2

What should Inez Inpatient do regarding Sue Secretary's employment?

1. Verbally terminate Sue when she reports to work.
2. Let Sue work 90 days until the end of her probationary period and then make a decision regarding her employment.
3. Tell Sue to contact Civil Service and Personnel to obtain an FMLA packet regarding the care of her mother.
4. Terminate Sue in writing and present a termination letter to her for her performance and conduct issues during her probationary period. ■

Question No. 3

George Gross is an employee working as a supervisor in the Income Tax Division. Two months ago, several employees filed an internal complaint regarding a few inappropriate comments that George made. The complaint was promptly investigated and during the course of the investigation, George admitted to making the comments. Since the comments did not raise concerns under civil rights laws or other laws, George's supervisor, Bill Bivens issued George a written warning and sent George to management training. Today, one of George's older subordinates, John Jenkins, came to Bill's office claiming that the last few weeks since he started, George has routinely referred to him as "Gramps" and "Old Man."

Question No. 3

If John Jenkins' allegation is true, what should Bill Bivens do regarding George Gross' employment?

BREAK

Role Play Scenario

Craig Cold and Tim Tower are employees in the Fleet Maintenance Division. They were hired by the City around the same time, around 20 years ago. They are both very vocal about not liking one another and through the years rumors have circulated that they have had some heated arguments at the Garage. Yesterday, Craig accused Tim of stealing/taking home a tool that should not be removed from the Garage. Today, Craig made the same accusation, but got in Tim's face and told him "I always knew you were a thief." In response, Tim pulled a knife out of his pocket and pointed it two inches away from Craig's throat. Bob Bystander was working near Craig and Tim when this happened. After seeing Tim, Bob ran to his manager Belinda Boss' office to report the incident.

What should Belinda do?

Questions?



Final Thoughts