

# Worker ignores doctor's orders: Can we discipline?

**Q. One of our employees who is out on workers' comp isn't following the treatment prescribed by the workers' comp doctor. She fails to attend physical therapy as prescribed. She says she's still in pain and can't return. Our conduct policy sets progressive discipline based on different offenses. Can the failure to abide by the doctor's orders be included as a violation? - Sallie, Pennsylvania**

**A.** Disciplining employees with medical issues is always complicated. As an initial matter, an employer cannot retaliate against an employee for filing a workers' compensation claim, so I would avoid putting "workers' compensation" and "rules of conduct" in the same category. In some cases, a worker's failure to comply with the physician's instructions may not constitute misconduct, particularly if the employee believes the physician has made an error.

However, concerns about retaliation or disability discrimination don't mean you must continue to employ someone whose condition does not improve. If the employee doesn't seem to be improving, work with your workers' comp insurer to see if the employee has reached maximum medical improvement or is, in fact, failing to comply with instructions. Even if the employee is complying, if he can't perform the essential functions of the job after rehabilitation, you may have the right to reassign him or even terminate him.

I suggest you keep your conduct policy flexible, because you can't possibly list every type of conduct that might lead to discipline, and moreover keep medical issues out of it. For this worker, consult with a local attorney regarding your obligation to accommodate his slow recovery.