What to do when employee refuses to sign a written warning

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Every manager knows the importance of disciplinary documentation. Ideally, the information is accurate and descriptive, with all the *i*'s dotted and *t*'s crossed. But what happens if an employee refuses to sign a written warning?

This type of disciplinary insubordination sometimes happens when a worker disagrees with the discipline you're delivering. It's tempting to fire the worker for his refusal to at least acknowledge he's being disciplined. After all, you aren't asking him to agree to discipline – just sign off on having received a copy. That's disciplinary insubordination since he's refusing a direct order. That may technically be true. But you should avoid that knee-jerk reaction. There are smarter ways to handle the employee's refusal to sign the disciplinary letter.

Don't focus on the insubordinate act of refusing to sign the disciplinary notice. Instead, shift your attention to the reason you're disciplining him in the first place. By the time you are having a disciplinary meeting, you've already decided what the discipline will be. Document his refusal to sign and follow through on the discipline itself.
Here's how the entire process should play out, starting with a look at your overall disciplinary process.

Your disciplinary program

Employers have disciplinary programs for several reasons. The primary one is to make managing employees easier. Clear rules help employees understand what their employer expects in performance and workplace behavior. Outlining what's acceptable and what's not is crucial. And a disciplinary process allows managers to evaluate performance and behavior. When employees fall short, a good disciplinary process lets them know and tells them how to improve. That's a win for everyone.

Progressive discipline

The best approach is a progressive one in which minor performance problems or behavior net a warning. That's followed by more serious sanctions, up to termination. Some employers combine progressive discipline with a point system. Reaching a specified number of points sets the discipline. These systems work best if you build in point forgiveness triggered by time or measurable improvement. Otherwise, an employee who has made progress but experiences a minor lapse may have to go.

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There’s another crucial reason to have a good progressive disciplinary program, with or without a point system. The system forces managers and supervisors to document performance issues. If the company is accused of discrimination, harassment or other employment law breaches, you can show legitimate job-related reasons for discipline. Plus, you can readily show you treated two similarly situated workers the same. That’s helpful if one alleges someone outside his protected class (sex, age, race, national origin, etc.) was treated more favorably. Simply put, a good disciplinary program forces managers and supervisors to document their decisions. And documentation wins lawsuits.

Educate employees

Employees need to understand your disciplinary process and see it as fundamentally fair. Most workers who do won’t object to signing off on discipline. While perhaps not eager to admit poor performance or behavior, they’re at least likely to take something positive away. They may embrace an opportunity to improve.

Every new employee should be briefed on the process. Doing so before discipline sets employees up for success. Knowing what to expect and when to expect it may even prevent problems in the first place. Your onboarding training should explain that the company uses discipline to instruct and to encourage improvement – not to punish. Tell new employees that the company will share performance and behavior problems before taking action. Be sure to include your expectation that employees listen to the concerns being raised and acknowledge those concerns.

How to handle the discipline discussion

Employees confronted with criticism sometimes don’t react positively. Perhaps they weren’t aware they weren’t meeting expectations or are struggling for unrevealed personal reasons. Whatever the case, your job in delivering discipline is to make the process as productive as possible. Unless this is a termination meeting, you want the employee to improve and become the employee you hoped you hired.

Hold the meeting in a private place, away from curious eyes and ears. Make sure that at least one other management employee attends the meeting. That may be the employee’s supervisor if the HR department is taking the lead role. The addition of a second management representative serves as backup should what transpired at the meeting become an issue.

What if the employee wants to bring someone of his choosing to the meeting? Unless your disciplinary rules (or a collective bargaining agreement) allows them to do so, you can refuse. Some employees think that bringing an attorney will help their cause and intimidate management. Don’t play into that belief. You have nothing to gain by allowing it.

Give the employee a copy of the disciplinary letter. Let her read it without interruption. Then ask if she has any questions about the content, the process or what will happen next. Finally, ask her to sign the document, acknowledging that she had received and read it. Make sure the employee understands what signing the document means. Explain that his signature simply acknowledges that he received and reviewed the disciplinary document. Say that it does not indicate an admission of guilt or his agreement with the contents.

What to include in your employee discipline letter

• Include a clear and concise statement explaining why the employee is being disciplined. It need not be exhaustive in detail.
• Explain the discipline being implemented and what step in the disciplinary process it represents.
• Explain what happens next in the disciplinary process. That is, if this is a written warning, explain what the next disciplinary step will be, if any.
• Include a statement above the employee signature line explaining that signature merely acknowledges having

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received and read the disciplinary letter.

Refusal to sign written warning

Sometimes, despite your best efforts, an employee will become upset, argumentative or angry. And occasionally, there may be good reason. For example, the employee may suddenly raise discrimination or harassment. He may even accuse the supervisor in the meeting of wrongdoing. If that happens, explain that this isn't the place to discuss those concerns. However, let him know that once the meeting is over, you will immediately start the complaint process. Then once the meeting is over, follow up.

If the employee doesn't raise any potential legal claims, but still won't sign, you have several options. Make sure the employee understands what not signing the document means. Explain that his refusal to sign does not in any way change your ability to enforce the disciplinary measure. Nor does refusal to sign change any expectations you have set for continued employment.

You can add a handwritten "refused to sign" line. You don't want to add one to the initial letter as standard practice. Presented with the option, more employees likely would choose it. A simple sentence declaring the employee refused to sign the memo is fine. Make sure you and another manager (or HR) initial it.

Rebuttal to discipline letter

Allow the employee to include a rebuttal, if he asks. The rebuttal gives the employee a chance to be heard. Employees who feel they have no voice in the workplace are more likely to want to be heard in court. And it serves as proof that the employee reviewed the document. Just be sure to reiterate that the employee's disagreement doesn't change the content or the discipline.
Don't allow the employee to mark up the original document. By doing so, you'd make it easy for him to claim in court that you were in full agreement with all the changes he had made. Have him write his rebuttal on a separate sheet. If the rebuttal reveals a legitimate issue, investigate the matter and re-evaluate the disciplinary decision if necessary.

Follow-up on the refusal to sign

It's crucial to follow up on any legal claims the employee raised. Handle the complaint as you would for any employee. Then, if the complaint has merit, fix the problem. For example, if the employee claims her supervisor sought sexual favors and threatened her with discipline, revisit that discipline. If she claimed others breaking the same rules were treated more favorably, investigate that, too.

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