

Skipping disciplinary step? Document why



If you have a progressive discipline system that gives poor performers or rule breakers a chance to reform, be sure your policy includes an escape hatch that lets you skip steps when necessary. It should require you to document exactly why you decided to take any disciplinary shortcuts.

Recent case: Steven worked as a state prison warden in Minnesota. The state had a progressive discipline policy that generally called for several steps to take place before an employee could be terminated.

When someone accused Steven of harassment, he met with HR to discuss the incident. He allegedly snapped during the meeting, called the person who accused him "****ing worthless." He tore up the complaint, stating that it wasn't "worth the paper it is written on."

An extensive investigation followed, revealing that Steven had sent numerous sexually charged emails to various employees. He was fired.

Steven filed an internal appeal. He was ordered reinstated after an arbitrator concluded the state had skipped several steps in its progressive discipline process.

The state appealed. After considering all the evidence including the emails, the court reversed the arbitrator's decision. It said the state had enough information to justify skipping disciplinary steps. The termination stood. (*Minnesota v. Hammer*, Court of Appeals of Minnesota 2018)

Final note: If you offer progressive discipline, you should always be ready to explain why you fired someone without going through the plan's prescribed steps.

Having that documentation makes it far easier to defend against accusations that you imposed discipline in a discriminatory way.