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Building confidence for discipline and termination decisions

By Michael J. McCall, J.D.

Making a decision to discipline or terminate an employee could cause anxiety for emergency services organization (ESO) leaders. Personnel litigation, lowered employee and volunteer morale and high costs associated with turnover are a few of the serious concerns associated with disciplining and terminating ESO members.

This article explores many of the complex questions surrounding discipline and termination. Common myths are explored and best practices recommendations are offered for making equitable and legally defensible discipline and termination decisions. The objective is to build confidence for those responsible for making difficult but fair decisions that may impact workers' careers and livelihoods.

Discipline and Termination Myths

ESO leaders may be anxious when faced with determining discipline or termination because

of many misconceptions surrounding these decisions. Myths about disciplining or terminating workers can cause ESO leaders to misapply human resources or employment law principles, which can land your ESO in the courtroom. Likewise, fears of making the wrong decision could paralyze an organization where no tough decisions are made and problem personnel are allowed to continue their disruptions or wrongdoing.

Myth #1 – There must be a written ESO policy directly applicable to the misconduct or action that warrants discipline.

If there is an understandable and detailed policy published and widely disseminated to your ESO's members that is later violated, the course of action may be clearer. Discipline is almost always easier to defend when an ESO member has been given the opportunity to read a policy and ask questions and later clearly violates the policy. However, it is near impossible to implement a



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E-mail: epupdate.opinion@vfis.com



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written policy manual that addresses every possible operational or behavioral problem, mistake or misdeed.

It is not uncommon for an ESO member who commits a questionable or wrongful act to say, "But there isn't a written policy on that issue."

It is not easy to foresee all of the disciplinable events that can take place within the context of working in any environment. Sometimes life is stranger than fiction and an ESO has the reasonable discretion to discipline and terminate its members based upon common sense judgment. If a member's actions are contrary to the expectations for running a safe, productive and respectful work environment, your ESO has the legal discretion to take necessary disciplinary action, up to and including termination.

Myth #2 – Your ESO must demonstrate that progressive discipline was used before termination is viewed as equitable and legal.

Attorneys and human resources professionals continually reinforce the need to build a defensible employment / personnel file that supports the need to discipline or terminate. While it demonstrates fairness and reasonableness if an ESO can show documentation of unsatisfactory conduct or operational abilities, it is not mandatory under certain circumstances. Depending upon the nature and severity of the workplace incident, a member may be terminated for a first offense.

Certain safety violations, for example, need only to occur once or on a couple of occasions to warrant termination. The question must be asked, "Due to the incident, what harm resulted or possible harm nearly occurred?" Likewise, it isn't required that someone be given coaching, counseling, a verbal warning, written reprimand and suspension before a termination for harassment or discrimination is warranted.

Beware of written policies within your

ESO's policy manual that suggest a "three strikes and you're out" rule for operational or behavioral violations. Certain policies may be written in a manner that limit an ESO's discretion in deciding to discipline or terminate for a first or second offense or violation.

Myth #3 – For two ESO members that commit the same offense or violate the same policy, the ESO is legally required to administer the exact level of discipline for both.

It's easy to follow the premise that in order to be fair and lawful, ESO leaders must hand out the exact same level of discipline to two members for the same offense or policy violation. While it's crucial that the ESO use consistent analysis in determining what level of discipline is most appropriate, it's possible varying discipline can be determined for two different ESO members.

Consider the following example: While at work ESO members John and Frank engage in an inappropriate conversation that is sexual in nature. The sexual jokes, comments and innuendoes are equally expressed by both John and Frank. A female coworker who was present reports the incident to her superiors. Should the ESO levy the exact same degree of discipline for John and Frank?

A number of different factors should be considered when determining what level of discipline is appropriate for any personnel relations matter. The situation should be assessed according to the totality of the circumstances - discipline for each person should be analyzed consistently but may have varying outcomes. The following are sample questions that should be analyzed for both John and Frank. Different answers could lead to varying discipline:

- ***Was it the employee's first offense or policy violation of this nature?***
- ***What is the employee's position within the organization? Does the employee have supervisory authority? Did the employee have supervisory authority over the offended employee?***

- ***Has the employee had sufficient time and opportunity to correct the behavior or conduct that may lead to the disciplinary action?***
- ***Does the employee have a record of behavioral problems at work other than the harassment incident?***
- ***Does the employee generally get along well with coworkers?***
- ***Does the employee have a work record of causing problems or solving problems?***
- ***Did the employee cooperate with investigative efforts?***
- ***Does the employee attempt to defend his actions or show remorse?***
- ***Did the employee breach confidentiality with respect to the investigation?***
- ***Did the employee attempt to coerce witnesses or coworkers' testimony in the investigation? Did he retaliate against the complainant or witnesses?***

It is important to acknowledge that discipline may reasonably vary with different responses to the above questions. As long as the discipline administered is not outside the zone or parameters of reasonableness, it may be fair and legally defensible. ESO leaders should confidently and fully explain discrepancies for discipline administered. Wide and unexplainable variances in discipline raise red flags for possible unlawful discrimination.

Conclusion

ESOs are required to take appropriate action to stop workplace wrongdoing and prevent future occurrences. This legal premise sounds straightforward, but each member is different and has a different work history. Therefore, determining and administering discipline must be looked upon individually for the offending member but also collectively for how all members of your ESO are treated. Trust that all eyes are on ESO leaders when making difficult disciplinary decisions.