

Progressive Discipline – for OPSEU and Management and Professional Staff (MPS)

OPSEU and MPS employees at Huron University College play important roles in the smooth functioning of the College. As a result it is important that these employees perform their work with a high degree of effectiveness and energy. It is intended that supervisors have clear and realistic expectations of staff and that staff will be given consistent and timely advice on how they are performing in their job in conjunction with regular performance interviews.

Huron follows the principles of progressive discipline where employees who are demonstrating performance problems are given opportunities to improve their performance. Progressive discipline is designed to correct and improve performance.

It is the responsibility of the supervisor to:

- a) ensure that the standards of performance and duties are clearly communicated to the staff member;
- b) discuss problems/difficulties with staff members and seek constructive ways of addressing them;
- c) address performance and disciplinary problems in a consistent and timely manner and with due respect to the staff member.

Generally, discipline would only begin after various non-disciplinary attempts such as clarifying expectations and coaching have been made to address the performance issues. Only if these non-disciplinary efforts have been found to be ineffective, then disciplinary action would begin.

STEPS IN PROGRESSIVE DISCIPLINE

The four steps of progressive discipline are: informal discussion, verbal warning/ reprimand, written warning/ reprimand, suspension and termination. Supervisors are encouraged to consult with the CAO's office at each point in this process.

Prior to discipline, employees and their supervisors are encouraged to have informal discussions about job performance. Supervisors should be supportive and considerate. Supervisors have a responsibility to bring performance shortcomings to the attention of employees without delay.

If the informal discussion does not resolve the problem, the supervisor will give the employee a **verbal warning**. A verbal warning will consist of a confidential discussion between the employee and supervisor. The supervisor will advise the employee of what aspects of their performance are unsatisfactory and how the performance can be improved. If the verbal warning does not result in improved performance, the supervisor will meet with the employee in confidence and issue a **written warning**.

A written warning may also be the first step in the disciplinary process if the employee's behaviour illustrates a serious lapse in performance. The written warning will describe the performance problem and indicate the steps (Action Plan) required to improve performance. Both the employee and the supervisor will sign the written warning with copies going to the employee, the supervisor and the employee's personnel file for the time period laid out in the OPSEU contract for OPSEU member and no more than 36 months for other staff members, if there has been no repeat of the problem that gave rise to the issuance of the original letter. Continuing poor performance or a significant case of unsatisfactory performance will result in the employee receiving a **suspension**. Generally, an employee is given a suspension when previous verbal and written warnings were not successful in correcting the employee's performance. A suspension may also be issued following a serious breach of conduct. Suspensions may be of various lengths and can be with or without pay depending on the seriousness of the incident as well as any previous discipline given to the employee. If these disciplinary measures still do not result in satisfactory performance, the employee will be terminated.

Termination for just cause will occur when a program of verbal warnings, written warnings and suspension(s) has not brought about sufficient improvement in job performance.

FAQ for supervisors:

Common Questions and Answers That Apply to the Progressive Discipline Process

1. What is progressive discipline?

Progressive discipline is a process whereby increasingly more severe disciplinary measures are taken by the employer in response to some culpable misconduct. The objective is to ensure that the employee understands that his/her performance is inadequate and that the employee is being given an opportunity to modify his/her behaviour in order to meet the employer's expectations.

2. What kind of performance does progressive discipline attempt to change?

Progressive discipline attempts to rectify unacceptable actions or conduct, over which an employee has control and that adversely, affects job performance. Progressive discipline only applies to instances of culpable misconduct. In essence, progressive discipline is intended to apply to performance for which the employee is responsible and deserving of blame (i.e. employee knows, is capable but chooses otherwise).

3. What is the difference between culpable and non-culpable conduct?

Culpable conduct is performance that has the following characteristics:

- the employee knows, or could reasonably be expected to know, what is required of him/her,
- the employee is capable of carrying out what is required,

- the employee chooses to perform in a manner other than as required.

Examples include not following clear procedures or rules, inappropriate behaviours or insubordination.

Non-culpable conduct is performance or behaviour, which the employee, through no fault of his/her own, is unable to control or change. Examples include poor work performance caused by lack of aptitude or high absenteeism caused by illness, or lack of skills or knowledge due to lack of training.

Remember: Where an employee has a bona fide disability or other protected ground under the *Human Rights Code* that, but for the disability, prevents the employee from performing the responsibilities of the position, the University must make every effort up to the point of undue hardship to accommodate the employee so that she/he can perform to an acceptable standard. Similar obligations apply to other protected grounds under the *Human Rights Code*.

This does not mean that an employee is not responsible to do a job to an acceptable level of performance. It does mean that the University has an onerous standard to meet before it reaches any conclusion that the employee cannot meet the standard.

Arbitrators are placing more emphasis on the *Human Rights Code* and the employer's obligations as significant considerations in reviewing employer's decisions.

4. How do I distinguish between culpable and non-culpable conduct?

Only the employee can provide the basis for his/her acts. It is the employee's responsibility to explain and substantiate the reasons for unacceptable performance. Management will fully investigate

such explanations. Based on the results of this investigation, a decision will be made as to whether Progressive Discipline is appropriate or if some other program should be used to improve the situation. In reaching this decision, the question that must be answered is:

In the face of the explanation provided by the employee and as otherwise determined, would a reasonable person conclude that the employee has control over the unacceptable performance?

Managers are encouraged to discuss such cases with the CAO.

5. What if culpability is unclear?

It is not always possible to determine whether an employee's behaviour falls under the heading of culpable or non-culpable conduct. Culpable and non-culpable elements may be mixed together and it may not be possible to separate them. In some cases, while an employer may suspect the employee's behaviour is blameworthy, there may be no proof of that suspicion. Where it is unclear whether or not the conduct is culpable or non-culpable, it is prudent to err on the side of caution and respond to the conduct as if it were non-culpable. These circumstances have been considered by arbitrators and you should consult with the CAO if you have such a case.

6. If the employee's conduct is non-culpable, how should I proceed?

If a behavioral or performance problem is non-culpable, discipline is not appropriate. Addressing such a problem requires a methodical approach to resolution, which includes continued observation of the employee and performance improvement over time. Your performance improvement efforts should include:

- Communication with the employee that identifies the

behavioral or performance problem and the standard expected. Review the employee's job description and any other applicable rules, policies and procedures.

- Providing supervisory direction to the employee to assist the employee in meeting the standards, including what follow-up procedures you will be taking to ensure the employee's compliance with the standards.
- Communication with the employee intended to ensure his/her understanding that the behavior or performance is unsatisfactory and the consequences of continued failure or inability to meet the required standard.
- Discussion with the employee of strategies the employee might use to correct deficiencies in his/her work performance or behavior
- Discussion after a period of time to review the employee's progress to meet the required standards.

Remember to document your efforts. In addition, consideration should be given to warning the employee in writing that his/her employment is in jeopardy due to unsatisfactory performance. The letter must be carefully drafted so that it will not be interpreted as being disciplinary in nature. The letter must indicate the employee is being given time and counselling/coaching to get to the required standard. Please consult with the CAO before taking this step.

7. When might progressive discipline not apply to unacceptable performance?

Unacceptable performance can take many forms and the means used to correct each will vary. To illustrate, consider the following examples:

- an employee, while endeavoring, cannot fulfill work requirements;
- an employee fails to meet requirements due to

inadequate direction; and,

- an employee does not meet standards because she or he chooses to follow other than accepted procedures.

In all cases unacceptable performance results in deficient performance. However, the employee who endeavors but does not succeed is not dealt with via the employer's discipline policy; she or he may know what is required but is not capable. This employee requires non-culpable performance correction. The employee who is inadequately directed may be capable and willing but she or he does not know what is required; discipline would not be appropriate - it is the supervisor who must correct their approach to work direction or rules. It is only in the last example where the employee knows and is capable but chooses to disregard that progressive discipline would apply.

3. What are some common situations where progressive discipline would not apply?

Non-competence: non-competent performance occurs when the employee does not have sufficient personal (i.e. physical, mental or emotional capability to perform at the acceptable standard). The employee endeavors to perform but does not succeed. In this situation a variety of work performance improvement techniques should be applied while assessing the employee's capability, for example:

- the setting of work standards and measurable objectives for a specified period;
- altering job content;
- more effective supervision;
- counselling/training; and,
- measuring work outputs against objectives and determining/ removing obstacles to progress.

Failure of the employee to improve may result in a reasonable accommodation: i.e. non-disciplinary demotion and/or transfer to a job level commensurate with ability. As a last resort and after all reasonable avenues have been exhausted, the employee may be terminated.

Disability or Incapacity: This situation is characterized by the employee having a condition, illness, disability: physical or emotional, that prevents him/her from performing at the accepted standard. By way of example, the employee may have a degenerative illness/disability that results in diminished performance.

In this situation, the employer is prepared to assist the employee in a number of ways:

- referring the employee to the appropriate medical authorities;
- voluntarily through the EFAP (Employee and Family Assistance Program);
- where practicable, altering work requirements during rehabilitation;
- long-term accommodation in his/her own or another job; or
- referring the employee to the CAO to determine entitlement under the Long Term Disability Program.

Failure of the employee to respond may result in a reasonable accommodation (i.e. non-disciplinary demotion and/or transfer to a job level commensurate with ability). The employer will take all reasonable steps to assist the employee and termination will only be undertaken as a last resort.

9. **What about when an employee is experiencing personal problems?**

Situations may arise where personal problems, on or off the job, could result in unacceptable performance or deficient job performance. The employee may be encountering marital, financial or interpersonal problems of a private nature. A supervisor should consider such "mitigating circumstances". The EFAP is available to employees to help them deal with such problems. It is the employee's responsibility to take action to deal with personal problems, communicate with his/her manager and make every effort to meet job requirements. Communication and understanding between the manager and employee will usually help see the employee through the temporary problem period and avoid the necessity for formal progressive discipline.

10. After having disciplined the employee, what should I do?

It is important that you monitor and follow-up with the employee after any counsel or discipline. You should ensure that there is follow-up on objectives set with the employee at regularly scheduled intervals. If a further incident occurs, follow the same progressive discipline steps to determine the appropriate response. Implementing and following a regular performance review process is an important and effective tool for dealing with performance matters.