

Effective Employee Discipline, Termination, and Layoff Management

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Meet Cathy...

- Catherine Lee provides employment advice and counsel and defends employment litigation matters for employers of all sizes, with an expertise in representing medical and hospital groups.
- Ms. Lee has prevailed in state and federal court litigation, agency claims, and arbitrations involving allegations of wage and hour violations, wrongful discharge, discrimination, retaliation, harassment, workplace violence, trade secrets, PAGA, and unfair competition.



Agenda

- Effective Discipline Strategies
- Effective Termination Strategies
- Effective Layoff Strategies
- Case Studies
- Best Practices

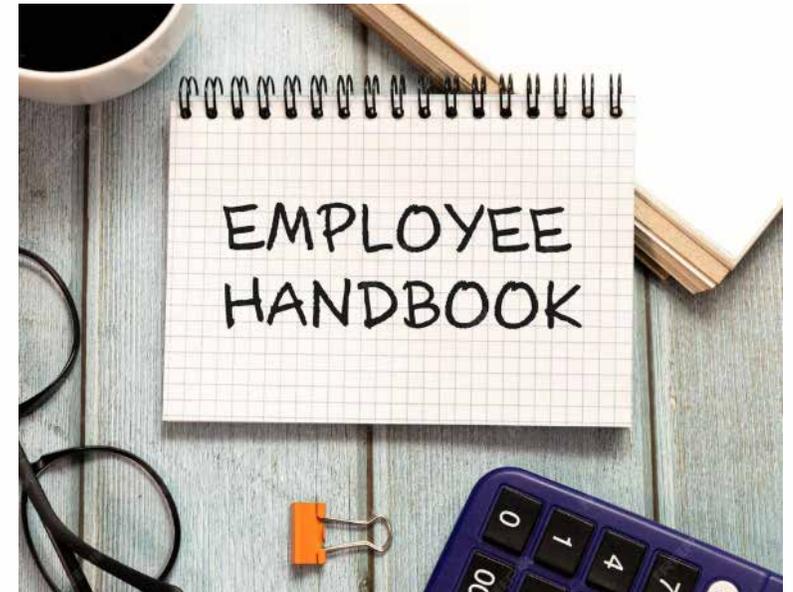
Effective Discipline Strategies



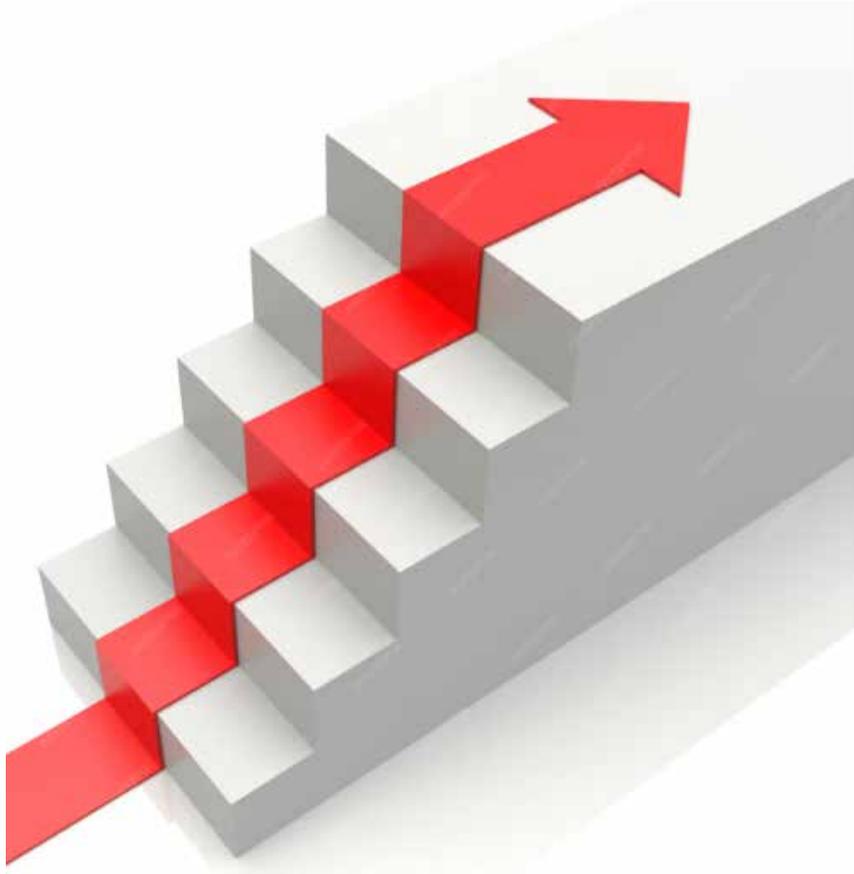
Clear, Written Expectations

Legally defensible discipline begins with:

- Up-to-date handbooks
- Employee acknowledgments
- Clearly defined performance and behavioral standards
- Consistently applied policies



Progressive Discipline



- Definition
- How does it work?
- Rationale

Performance Improvement Plan (PIP)

A well-drafted PIP includes:

- Specific deficiencies
- Measurable goals
- Timelines
- Employer support
- Scheduled check-ins

60

30

90

Investigate Misconduct



Documentation

- Factual, objective, dated
- Stranger Test
- Proofread

***Remember: document,
document, document***



Avoid Retaliation

- Exercise extreme **caution** if discipline shortly after an employee takes the following action:
 - Complains of discrimination or harassment
 - Requests a reasonable accommodation
 - Takes protected leave (medical, family, military)
 - Participates in an internal or administrative investigation

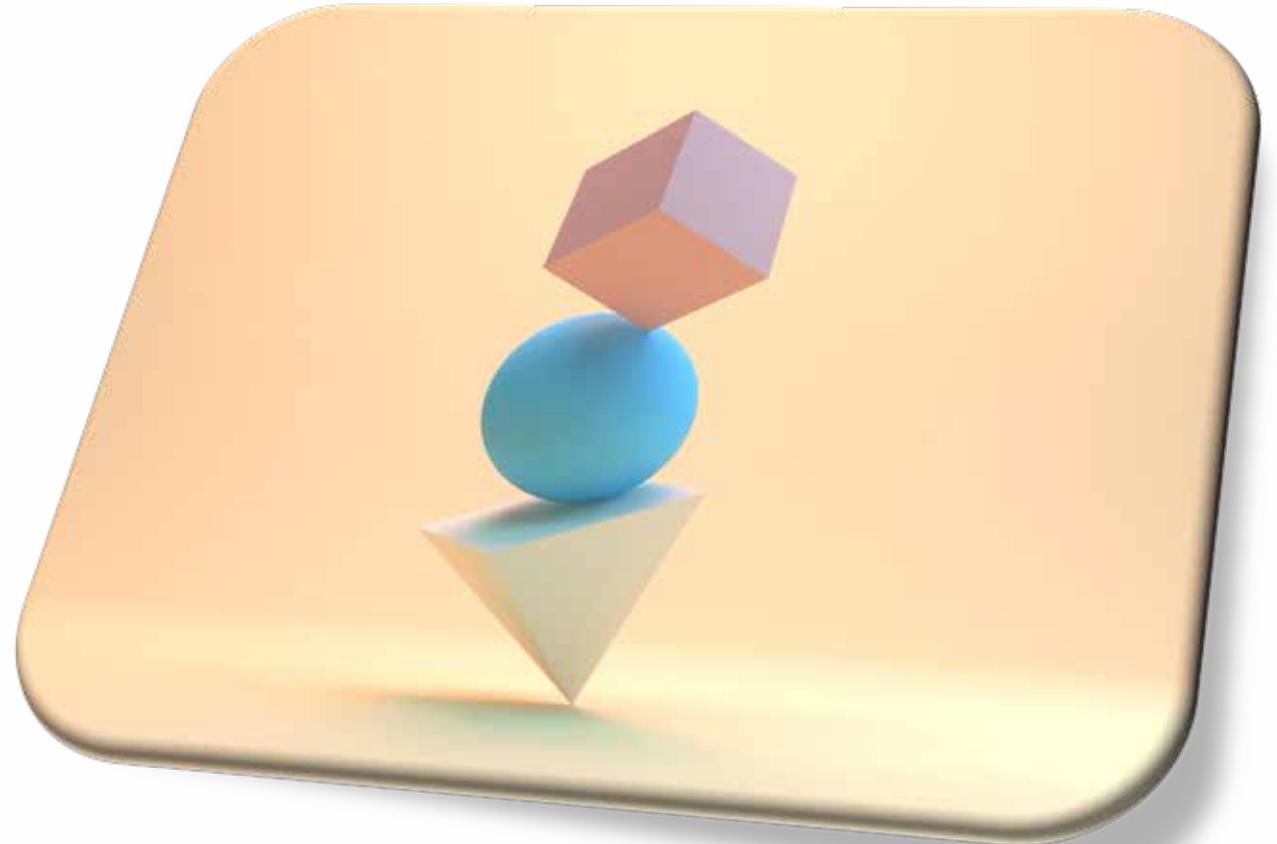


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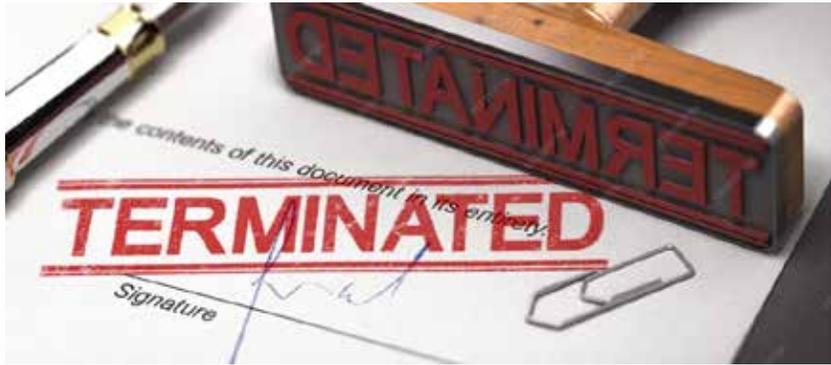


Case Study

Effective Termination Strategies



Legitimate Bases For Termination



Non-Discriminatory Reasons

- Performance deficiencies
- Policy violations
- Reduction of position / scope
- Business needs

Consistent Conduct

How did the organization respond to the same issue before?

Have we terminated other employees in similar circumstances?



Review For Protected Class Or Activity



- Check if employee is in a protected class
- Evaluate whether employee recently engaged in protected activity
- Consider whether timing could appear retaliatory

Decisionmakers

Insulate officers, directors, and managing agents from:

- Termination decision
- Grievance process



Defamation



Be mindful of the words used to describe an employee and the conduct during termination and grievance process.

Pre-Termination Audit

Before making the final decision:

- Confirm documentation supports reason for termination
- Review any comparators
- Ensure policies were followed
- Consult HR and legal to review



Termination Preparation

Prepare and determine timing for delivery of following:

- Payroll check
- Accrued vacation pay
- COBRA notice
- Other notices – pension, etc.
- Severance payment



The image shows a digital check form with a blue header. The header includes a "Bank Logo" on the left and the number "1234" on the right. The form contains several fields: "FULL NAME, COMPLETE ADDRESS, TOWN, ZIP+4" (with "123-4567" below it), "DATE:" with a date input field, "PAY:" with a dollar sign and a currency input field, "TO THE ORDER OF:" with a text input field, "BY:" with a text input field, and "PAYER'S SIGNATURE:" with a signature line. A "SECURITY MARKER" icon is located near the signature line. At the bottom left, there is a MICR line: "|:0000000000:| 00000000 0000".

Plan Script For Termination Meeting

Keep meeting:

- Brief
- Respectful
- Non-argumentative
- Fact-focused



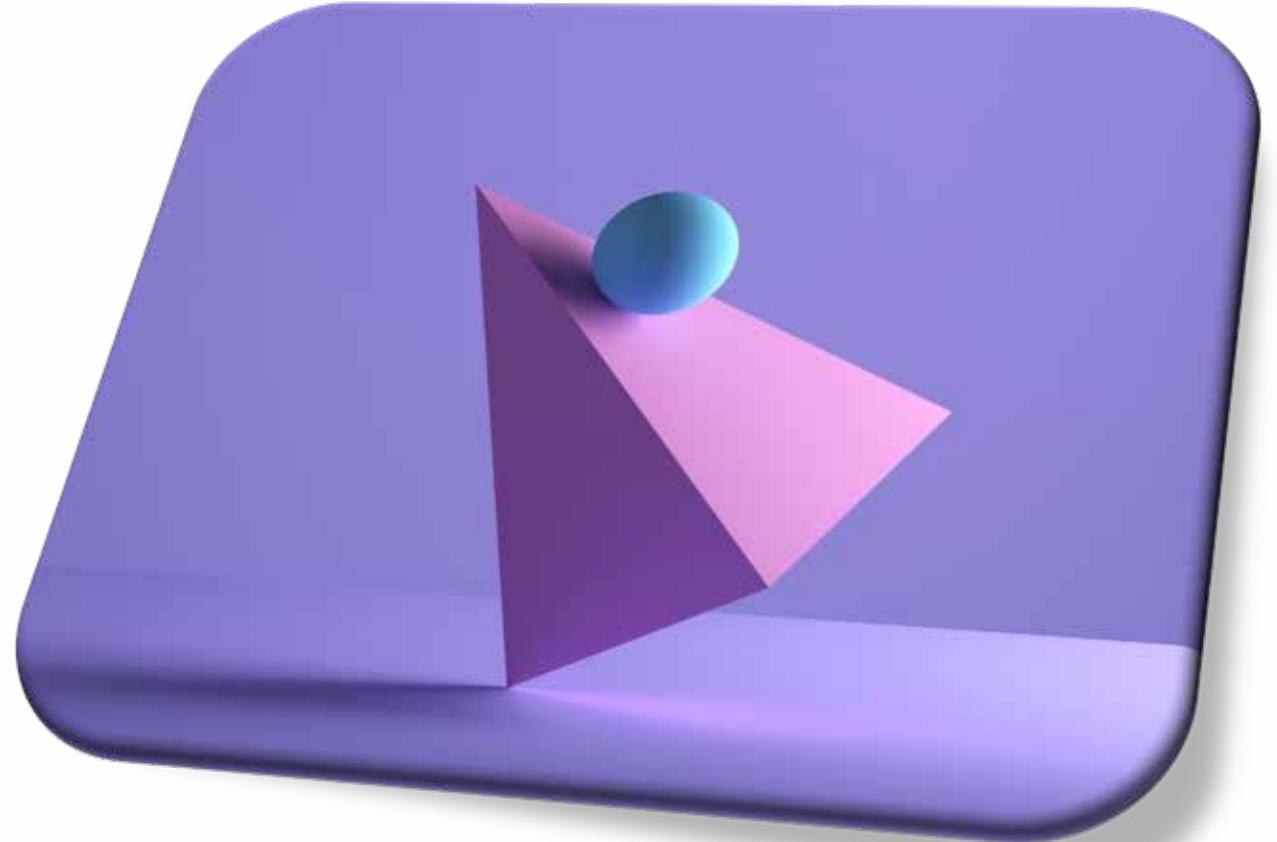
Avoid:

- Debating decision
- Discussing emotions
- Giving feedback beyond what is documented



Case Study

Effective Layoff Strategies



Reduction in Force (RIF)



- Legitimate business reason for RIF
- Document exhaustively
 - *For future reference

Selection Criteria For RIF

Objective

Job-related

Collective bargaining
agreement

Disparate Impact

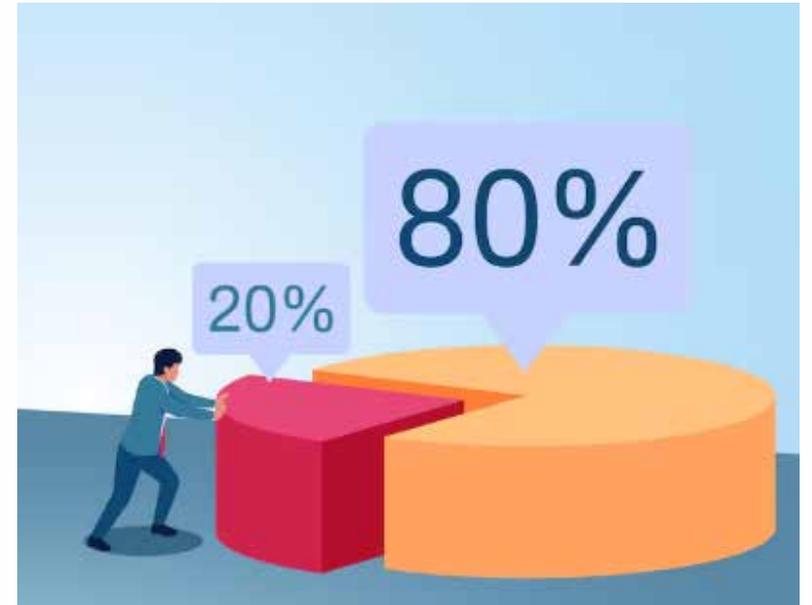
“Substantially different rate of selection in hiring, promotion or other employment decision which works to the disadvantage of members of a race, sex or ethnic group”

EEOC's 1978 Uniform Guidelines on Employee Selection Procedures

Is There Disparate Impact?

“Disparate impact” analysis

- 4/5ths Rule
- Result shows disproportionate impact – what now?



Communications About RIF



Messaging

- Format
 - Oral or written
- Substance
 - Business rationale for RIF
 - Effective date and final pay
 - Benefits – COBRA, worker retraining

Notifications

Federal
WARN Act



CA WARN
Act



Risk Management

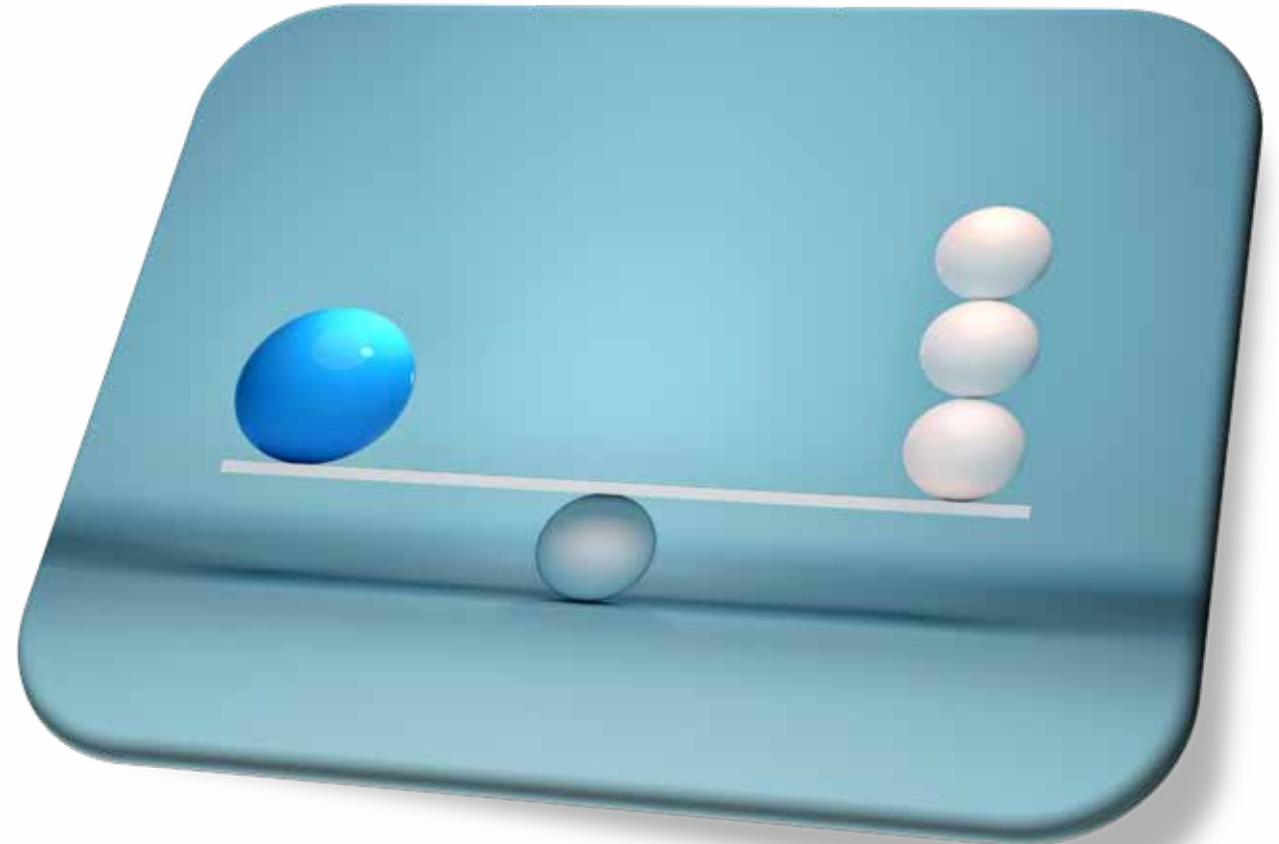
- Severance agreement
- Older Worker Benefit Protection Act





Case Study

Best Practices



Questions?

Thank You

For questions or comments, please contact:

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