

HR QUESTION ? of the month



Preparing documentation for a termination?

Question: One of my staff went almost 7 whole days without clocking in or out on our web-based time card system. She said it was her computer but it mysteriously started working the day after my accounting person pointed it out to her. We've been unhappy with her work performance and reliability (late almost every day). I want to start documenting for when we do let her go so there is no recourse for her to file. Her supervisor wants to try to avoid paying unemployment, if that is even possible. I have one item in her file already from last October that we had her sign regarding her tardiness. Do you have advice on what I should do to document to her file? She is not in any of the protected classes as far as I am aware. Does she have to sign the warning for it to be official or can I just tell her I put a note her in file?

Answer: We are delighted to offer general guidance in terms of how the employer should go about documenting an employee's performance and/or conduct issues. Generally, when documenting disciplinary action, the employer should (a) identify the performance or conduct that is unsatisfactory or deficient; (b) notify the employee of what needs to improve (and if there is a timetable, what that is -- although the employer should avoid any language that is or could be construed as contractual); and (c) what the consequences will be if the employee does not make and sustain the requisite improvement needed. Ultimately, a write-up or written warning should make clear that although it is intended to bring about necessary improvement so that the employee can remain a productive member of the organization, it should not deteriorate the at-will nature of the employment relationship (assuming it is already at-will and that there is not any other progressive disciplinary policy governing the situation), and that the employer can still terminate employment at-will (just as the employee can quit at-will, too).

The important thing to keep in mind is that when disciplinary action is issued, whether it is verbal or written, it should be clear and consistent with how the employer has addressed performance deficiencies or conduct issues in the past in similar situations, to avoid discrimination claims. The employee can and should be asked to sign written disciplinary documents and can receive a copy of it, with the original being placed in his or her personnel file. Employees who refuse to sign it can be disciplined or discharged if that is consistent with policy/practice; either way the employer can note "refused to sign" on the form or document if that is the case.

When it comes to eligibility for unemployment compensation benefits, generally, employees who are terminated for performance issues or simple policy violations may be awarded benefits. Determinations for an award of benefits, however, are made on a case-by-case basis by the hearing court officer.

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