

Discipline



The employee must have been very bored. He took the ear notcher and notched our family dog's ears. I fired the worker. Moments later the herd manager asked me to let the worker stay until the end of the day. Not long after that, my son argued the worker was too valuable to let go. My decision was thus reversed and the employee stayed.

Central Valley Hog Producer

A great deal has been said in previous chapters about cultivating superior worker performance. A systematic employee selection process can do much to help us hire effective employees who are capable of doing an outstanding job. Likewise, regular performance appraisal meetings, open communications, well designed pay systems and good supervision all contribute to promoting good work. But at times, workers simply do not seem to meet expectations.

As a first step, a supervisor will want to honestly consider if his own behavior is causing problems. When an employee has a supportive supervisor, he has the potential to stretch far, to feel greatly valued, and to continually grow on the job, making this a positive reinforcing cycle.

Unfortunately, the opposite can be just as true. The first instinct of most supervisors is to "tighten the reins" and increase control over those who are perceived as having failed to meet their

expectations. These apparent under-performers are quick to sense a lack of confidence in their work and in their decisions and often (1) become more *defensive*, refusing to make decisions they feel their bosses may overturn anyway, and (2) *withdraw* mentally or physically.

In discussing this defensive phenomenon, two French organizational behaviorists have called it *the-set-up-to-fail syndrome*. Jean-François Manzoni and Jean-Louis Barsoux¹ explain that employees are categorized by their supervisors as being either in or out: “Members of the in-group are considered the trusted collaborators and therefore receive more autonomy, feedback, and expressions of confidence from their bosses. The boss-subordinate relationship for this group is one of mutual trust and reciprocal influence. Members of the out-group, on the other hand, are regarded more as hired hands and are managed in a more formal, less personal way, with more emphasis on rules, policies, and authority.”

Manzoni and Barsoux explain that when employees sense they are members of the out-group they tend to shut down and simply stop giving their best. They grow tired of being overruled, and they lose the will to fight for their ideas ... [they] start devoting more energy to self-justification. Anticipating that they will be personally blamed for failures, they seek to find excuses early. Furthermore, such employees often over supervise those who report to them.

How often do employees come to organizations having inherited this *over-defensive-can't-do behavior* from somewhere in their past, and how often do we provoke it anew? Regardless of the source, keeping an open communication line between the supervisor and the employee is the only hope for dealing with such defensive traits.

Other common reasons for poor worker performance are lack of skill, knowledge, or ability. Lack of motivation or even purposeful misconduct may also be involved. Regardless of where the problems

originated, a well carried out disciplinary process is yet another avenue to deal with performance challenges. Overdependence on this tool is a likely indicator of weaknesses in other management areas. Alluding to employee discipline, a Russian farm manager astutely observed, “The cow that is beaten very often will not give very good milk.”²

Effective discipline can protect the organization, the supervisor who enforces the rules, and the subordinates subject to the same. Everyone suffers when there are mixed messages concerning misconduct and discipline.

When discipline is properly carried out, challenges are often resolved before they get out of hand. Much of the burden for improvement is placed, as it should be, back on the subordinate. Most farm employers experience discomfort when disciplining or dismissing personnel (Chapter 15).

MISCONDUCT

Misconduct can be classified according to specific behaviors, for instance:

- effort (e.g., working at a reduced speed, poor quality, tardiness, sleeping on the job, wasting time);
- co-worker relations (e.g., fighting on the job, lack of cooperation);
- subordinate-supervisor relations (e.g., insubordination, lack of follow-through);
- supervisor-subordinate relations (e.g., favoritism, withholding of key information, mistreatment, abuse of power);
- handling of tools or company property (e.g., misuse of tools, neglect);
- harassment or workplace violence (e.g., verbal or physical abuse, threats, bullying);
- dishonesty; and
- safety and other practices (e.g., not wearing safety equipment, horseplay, carrying weapons on the job, working under the influence of alcohol or drugs).

Our discussion on effective discipline is based on the principles of *just cause*. Just cause “sums up the test used by employees in judging whether management acted fairly in enforcing company rules.”³ Co-workers, judges, juries, and arbitrators may also be evaluating how fairly an employer acted. Arbitrators’ rules of fairness can be distilled into the following:

1. Develop fair rules and consequences.
2. Clearly communicate policies.
3. Conduct a fair investigation.
4. Balance consistency and flexibility.
5. Use corrective—not punitive—action.⁴

Develop fair rules and consequences

As a farmer you get to make the rules and determine the consequences for their violation, as long as these rules are fair and defensible. For almost any misbehavior, there are many shades of wrongdoing. Consider, for instance, sleeping on the job. One might assign different degrees of seriousness, for instance, in the case of a sick person

who fell asleep on the job; a tractor driver who pulled over in the middle of the night because he could not stay awake; and the person who hid in a far corner of the ranch, made himself a comfortable bed, removed his shoes, and even set an alarm clock to wake himself up before quitting time.⁵

Just as there are different degrees of fault, there are different degrees of “punishment” to deal with offenses. Tools to respond to infractions include (1) communication of the standard, (2) disapproval, (3) verbal warning, (4) written warning, (5) suspension, and (6) termination.

If a rule is particularly important to you, the consequences for its violation may be more severe than those at the neighboring ranch. A useful guide in determining the fairness of consequences for disciplinary violations is to ask, for every rule and consequence: What would I do if my *best* employee ... did not call in when he was sick? ... came to work late? ... got into a quarrel? One may then be confident the rule will not do more harm than good.

A useful guide in determining the fairness of consequences for rule violations is to ask: “What would I do if my best employee was involved?” One may then be confident the rule will not do more harm than good.





A supervisor who truly gives the accused worker an opportunity to explain first, will often find that there is no need for discipline. In the initial interview with the subordinate, the supervisor's objective is to try to see things from the worker's perspective.

A *progressive disciplinary* approach combines the concept of stiffer penalties for more serious violations with that of increasingly more severe penalties for repeat offenses. A farmer is forced to deal with less serious offenses before they become a major irritation. There will be no surprise terminations. When an employee's behavior is hideous enough to require prompt action, even then the impending termination will not be a surprise.

With time, employees may be able to clear their record. For instance, an employee who was to be terminated the next time he was involved in horseplay most likely should receive a lesser penalty after several years of a perfect record.

To be *defensible*, rules must balance business necessity against worker rights. For instance, arbitrators recognize the employer's need to set dressing and grooming standards for safety, health, and public image considerations. In relation to public image, arbitrators are more apt to accept management's right to regulate dress standards when employees deal with the public—most agricultural workers do not.

Arbitrators feel employees have a right to make personal choices regarding dress and grooming: "Unwarranted

interference by management with an employee's preference for a particular mode of dress or hair length is prohibited." Arbitrators acknowledge the need to "keep employees from being distracted by outlandish or overly revealing attire," but also feel that: "As styles change, [a] standard may have to change."⁶

Clearly communicate policies

Communication is the key link to a successful disciplinary process. Rules and consequences must be known by both those who apply them and those who are subject to them. It is not possible to conceive of every case of worker misbehavior, however. How many hog operators do you know who have had an employee notch their dog's ears?

A useful model for communicating the concept of progressive discipline (i.e., stiffer penalties for more serious violations and increasingly more serious penalties for repeat offenses), is found in Figure 14-1.

For instance, poor fruit picking quality may be considered a minor infraction at first. An example of a moderate infraction may be horseplay that almost resulted in damage to equipment. A serious offense would be dishonesty (like the milker who was

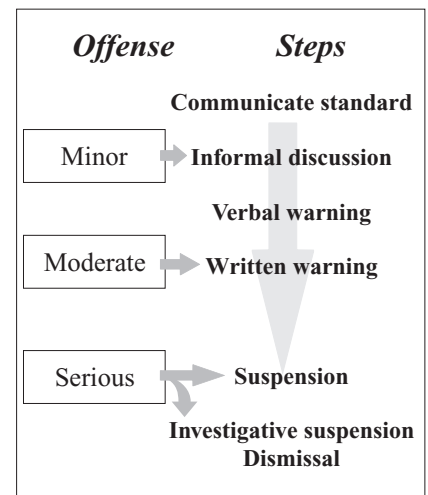


FIGURE 14-1

Discipline policy guide. Adapted from Rosenberg, H. R. et al. (2002) *Ag Help Wanted: Guidelines for Managing Agricultural Labor* (p. 202).

discarding the new in-line filters while trying to give the appearance that he was changing them on a regular basis) or threats of workplace violence. In the model each of these infractions would call for a different response. Minor violations would begin with an informal discussion. Moderate and serious violations would receive more serious consequences, such as a written warning or suspension.

When any infraction is repeated, the severity of the reprimand can progressively increase until a repeat offender is eventually terminated. I prefer to adapt the model, however, so *no specific infraction*—no matter how hideous—will result in immediate termination before an investigative suspension takes place (see section on corrective action).

Conduct a fair investigation

Listen to the accused employee's story first. A preliminary interview should be conducted with the employee before assigning penalties—from the least to the most serious infractions. This interview may be part of a more in-depth investigation. It is not uncommon to see a supervisor begin to lecture, nag, accuse, or scold an employee first, and then, almost as an afterthought, ask for the employee's perspective. By then, the damage has been done. The employee may have had a very good reason for her behavior. While some supervisors may now apologize (which, while nice, will not totally remove bad feelings nor prevent the erosion of trust and good morale), others are just as likely to continue to chastise the worker in an effort not to lose face before her.

A supervisor who truly gives the accused worker an opportunity to explain first, will often find that there is no need for discipline. The worker never has to know, indeed, some of the possibly unkind or judgmental thoughts and concerns passing through the supervisor's mind. *Permitting employees to explain their perspective first* is the most important principle in employee discipline, and more than any other, one that will save the supervisor from

destroying employee trust and prevent the supervisor from looking foolish in the eyes of employees. Permitting the employee to speak first also helps reduce tension and emotions.

If emotions are running high, it may be necessary to set up a later time to meet. It may be better to delegate the interview to another member of management who can keep calm, however, than to postpone it. If too much time goes by after the incident, the facts of the case may change in everyone's mind.

The purpose of the investigation is, in part, to determine if there were any mitigating circumstances that could reduce, but not necessarily eliminate, disciplinary action. Could the employee's action have some justification? Take a farmer who adheres to the correct process when a worker repeatedly comes to work late.

Explanations are followed by oral and written warnings and, eventually, by suspension. The employee understands the next time he comes late he will be terminated. An interview with the worker could show that this time the employee was justified in being tardy, as he stopped to provide first aid to children in an overturned school bus.

In the initial interview with the subordinate, the supervisor's objective is to try to see things from the worker's perspective. Privacy, and a respectful, professional climate are essential. The supervisor can control the environment by asking the worker to meet in either more neutral territory (e.g., walk out into the orchard) or in the supervisor's territory (e.g., at the supervisor's pickup).

The call for privacy needs to be balanced with the requirement to protect the supervisor's safety and reputation. For instance, when as a supervisor you seek privacy in a situation that involves someone of the opposite sex, it is not a bad idea to move away enough from other workers so that they cannot hear the conversation, yet not so far away that they cannot see both of you. Good judgment will necessitate asking a second person to be present under some circumstances.

During the investigative interview, the employee may want to ask that a co-worker be present to give him moral support. If the grower has followed the approach outlined in this chapter, there would be few reasons not to welcome such a request. However employees generally prefer *not* to be disciplined in front of a co-worker, even one that they could invite for moral support.

Employees should invite a co-worker when (1) they feel they are being falsely accused or singled out; (2) the supervisor is acting unethically; or (3) the supervisor has a tendency to be verbally abusive. An individual who had been a frequent victim of intimidation in the past confided, “I would prefer to go in alone to meet with my supervisor unless I thought I would come out like chopped liver.”

In the U.S. the opportunity to request the presence of a co-worker is based on the *Weingarten* case. The National Labor Relations Board (NLRB) has determined that an employee’s request for a co-worker to be present involves *protected concerted activity*, and thus should be extended to all employees, even those not covered by a collective bargaining agreement.⁷ While some management consultants feel it is unwise to let the employees know of this right, most managers have little to fear. It is better that employees hear about this employee entitlement directly from management, preferably before it ever becomes an issue.

This initial investigation should not be drawn out, nor involve physical or emotional imprisonment. A tape recorder may be used with the employee’s consent.⁸ Encourage a silent employee to open up, but never force a response. Disciplinary interviews may bring out feelings in the form of hostility, distress, depression, or tears—allow time for the person to gain self-control. Do not attempt to reduce the seriousness of the violation. Probe into the subordinate’s understanding of the rules. Act as an impartial judge rather than as the prosecuting attorney. At times you may have to confront the employee while trying not to put him on the defensive with such questions as,

“Could you be mistaken?” or, “I heard it somewhat differently.” Maintain objectivity at all times. Be a good listener and avoid jumping to conclusions, arguing, or talking too much. When the time comes to assign a consequence, temper justice with mercy.⁹

The closer a person is to a situation, the more difficult it is to conduct an investigation and stay unbiased. Knowing the people involved can color our thought-process and behavior so we cannot be effective.

False accusations should be avoided at all levels. The more serious the accusation, though, the greater the proof needed.¹⁰ Very serious cases may involve potential criminal activity and pose additional challenges. Consult your attorney, and if applicable, involve the police. If someone will be disciplined or terminated for dishonesty, theft, sexual harassment, assault, threats of violence, or working under the influence of drugs or alcohol, management needs to be certain of the employee’s guilt. For instance, it initially seemed that a farm equipment operator accused of sexual harassment was completely at fault and needed to be terminated. Upon further investigation, it was shown that the victim had been sending conflicting messages. The disciplinary consequence had to be appropriately adjusted.

Protecting the accused? Teresa, a new milker, accused Floyd, a long-time employee, of general harassment. She had described Floyd as a perfect gentleman while he was on the job. Despite this, and although she had no proof, Teresa had reason to believe that Floyd had been playing some mean, practical jokes on her. This wrongdoing had taken place at Teresa’s home, away from the dairy. The dairy management had solid reasons to believe that Floyd had not been involved. Should Floyd be informed that he had been blamed? Or should he be protected and spared the pain of such an accusation? This is *not* a simple question. Once a person is accused, the psychological damage has been done.

Attorney John McLachlan commented, “An employer has a duty to

promptly and thoroughly investigate allegations of harassment and to take appropriate corrective action where it concludes after a reasonable investigation that illegal harassment did occur. A careful investigation generally supposes that the investigator speaks to all involved parties.” That means Floyd, also. Such an interview could further serve to exonerate Floyd.¹¹

Indeed it is a mistake to try and “protect” the accused employee. To begin with, there is no such thing as *truly shielding an employee*. At least three different ways that the accused can find out, include: (1) being confronted directly, or through a lawsuit, by the person who felt harassed, (2) gossip, and (3) through the changed interpersonal dynamics between the individuals. In this case, Floyd went to the herd manager and asked what was going on that Teresa had stopped returning his greetings.

Document facts, discussions, and decisions made. Who was involved? What rules were violated? When did the problem occur (dates and times)? Were there any witnesses?¹² John Steines,¹³ a security consultant, likes to have each individual who was interviewed write up a summary of the discussion. If any important elements are left out, then the interviewee can be reminded of this, and asked to complete the missing information. The interviewee is also asked to initial the investigator’s notes for correctness and completeness.

Steines also suggests that it is important to keep the details of the case obscure, so that the identity of the individuals can be kept confidential. “Witnesses have more credibility if they’ve noticed sexual harassment independent of being told that a complaint has been filed by a specific person.” The interviewer could ask something like, “Have you seen any untoward or inappropriate behavior that could possibly constitute sexual harassment between workers during any of your shifts?”

Is there such a thing as a confidential sexual harassment complaint? “The manager has an obligation to the organization and its

employees to investigate such claims, whether that’s the desire of the reporting employee or not,” says Dan Thompson of Edge Training Systems. “Never make promises of confidentiality that cannot be kept. When employees ask ‘Can I tell you something and you promise it won’t go any farther?’ you must tell them, ‘That depends on what you tell me. You have to trust that I will do what is necessary and appropriate with the information you give me.’”¹⁴ Steines reminds us that the accused will need to know what the charges are.¹⁵

Confidentiality is absolutely critical and was paramount in any of my investigations,” says Howie Wright, former ombudsman specializing in

“Make [employees] feel that you are there to serve them. When you start to demand that people make appointments, when you start giving them copies of rules, and telling them what the grievance procedures are, you’ve already blown it.”
—Peter Mlynek



Jack Kelly Clark

resolution of human rights complaints. “I used to start out my interviews during an investigation by telling the interviewee that what we discussed was to be kept in confidence. They were not told who else was being interviewed or details that they did not need to know. I also coached them to say, if they were asked by others, that the situation was being looked after and there was no need to discuss it. In most cases, my manager was not aware of who I was working with and would only be

informed of the most severe complaints. All files were confidential. Others were informed on a need-to-know basis only, and not with details.”¹⁶

Sometimes it is not enough to tell employees not to talk about a situation, or to assume they will keep the conversation confidential. At one dairy, a milker had the opportunity to discuss his investigative interview with a co-worker who was also being investigated. Unfortunately, this allowed the milkers to come to an agreement on some of the

SIDEBAR 14-1

The Mlynek¹⁷ Approach: Put People Above Procedure

Often, people will come in and want to talk about something (such as racial or sexual harassment), test the waters a bit, and look for a listening ear, such as when a woman comes in and says something to the effect, ‘I kinda felt uncomfortable being around this guy; I guess it could be considered harassment, or maybe it isn’t, I just don’t know...’

What we’ve done in such cases is to talk to her, get her to tell us what happened as much as she is comfortable with, but don’t really pry into it. We don’t make judgments whether she is right, or wrong, if she is too sensitive or not. Then we ask what she wants us to do about it, and 90 percent of the time she just wants us to talk to the guy(s), and have them knock it off. And we basically do just that.

After [following through] we just inform her that it has been taken care of as we promised her, and ask her if that was OK, and tell her to keep in touch. And we keep in touch with her even if she doesn’t initiate it, as she still may [harbor] some anger towards him—or us—in which case we’ll again do what we can to help her.

What we’ve found is this:

Take care of these problems when they are still little. Do not pull out your big guns (have hearings, keep notes, etc.) with these small but potentially devastating problems. Do not alienate either side by blowing this out of

proportion. When you start having meetings, demanding that things get put into writing (either file a complaint or shut up), this turns people into angry monsters, and someone is bound to lose, and the organization will definitely be worse off.

We view others in the organization as our customers, and it is our duty to take care of such problems. It is essential that both parties be happy, that this was just a misunderstanding, and that neither has to go through a big painful procedure of having hearings, filing paperwork, etc.

Communication with all workers is very essential. Make sure that you are open at all times to others. Make them feel that you are there to serve them. When you start to demand that people make appointments (a friend always has time for a friend), when you start giving them copies of rules, and telling them what the grievance procedures are, you’ve already blown it. Give them your home phone number to have them call you at 3:00 am if they wish to talk. You are there to serve the company by making sure that these kind of things get taken care off.

We are very well prepared to take care of the really big problems when we actually have to use the big guns, and have used them in the past, and we tell both parties that these big guns are available if they wish (however, this approach is very expensive financially, timewise, and especially morale-wise). Very few people ever want to do this; they just want to have the problems taken care of.

facts being investigated. With just a little effort, this could have been avoided. For instance, one member of management could have stayed with the first milker until the interview with the second had begun.

Peter Mlynek suggests investigators are sometimes in too much of a rush to focus on the mechanics of investigation, such as documentation, to do what is really important—focusing on listening and caring. Mlynek argues that where minor cases have not gotten out of hand, all individuals should be helped to save face. Peter Mlynek’s approach to problem solving is one that puts *people above procedures* (Sidebar 14-1), which is something we need to do much more frequently. All too often there is very little *humanity* in human resource (HR) departments and the attorneys they employ. In an effort to protect the employer, HR is too quick to resort to discipline, rules and decrees. Instead, a lot of listening and a little talking often does more good.

If one reads Mlynek’s suggestions literally, it might seem that employers should not bother documenting disciplinary issues. I suspect that this is not what he intended. Documenting does not have to be mutually exclusive to caring and showing empathy. Most individuals expect us to take notes on what they are saying. Not taking notes may actually come across as if we are dismissing an individual’s concerns. And yes, we may well need those notes down the road.

When we can listen with empathy, the documentation process will fall into place naturally. If we come across as only trying to protect the organization from a future lawsuit, but do not care for the people involved, we are likely to fail at all levels.

Should mediation be offered in cases of sexual or racial harassment? This is another challenging question. Most people would probably say it is not such a good idea to have the accuser and victim meet face-to-face. Why submit a victim of harassment to feel doubly victimized? Yet, there may be situations where such a meeting would be mutually beneficial. The very act of

offering, even if it is not accepted, helps the person who has been victimized to feel a return of some degree of control over her life.

“I have been the victim of sexual harassment,” explains Rebecca Lopez, a training manager. “Had an attempt to mediate been made in the very beginning—at the first sign of trouble—I think that there *may* have been a chance that it could have worked and the department could have been salvaged. Many women do not like that I did not want the guy to have to “pay” for what he did. My personal opinion is that we as a society have become way too willing to let the legal system handle things that we can sometimes handle on our own. All I wanted was for it to stop, and I think, at least on my behalf, successful mediation would have done the trick.”¹⁸

“Dependent upon the length of time, the severity of the harassment and what the complainant wants as resolution, mediation will work,” says Howie

Unlike a regular suspension, the purpose of a cooling-off or investigative suspension is to prepare for a possible termination rather than to give the employee yet another chance to improve. During this suspension time, you can conduct needed follow-up interviews and touch bases with your attorney and labor management specialist.



Wright. “I had great success in mediating complaints that had not traumatized the complainant. If the complainant agrees with mediation that was always my first choice. I would coach the complainant on what to say (e.g. how they felt when the incident(s) occurred), what they are looking for (e.g., probably wanting the behavior to stop). We would frequently role play so the individual would gain a comfort level.

“I would also coach the accused and conduct a role play so that they would have some idea of what was going to take place,” Wright explained. “At this point I would bring the two parties together. I would sometimes start the discussion but usually the complainant would lead off the conversation. I have found that the accused did not always realize that what had happened was upsetting to the complainant. If I believed that was true I would coach them to say that to the complainant. Helping someone gain the courage to have a face-to-face discussion is very rewarding for all involved as it usually always reduces the tensions and brings back more control to the complainant.”¹⁹

At times, sexual or racial harassment can be complicated and not so straight forward, as in the case we already mentioned where the victim had been unknowingly flirting with the harasser. Furthermore, intercultural issues complicated the situation. It is possible, then, that there is more to the mediation process than a one-way apology.

Mediation could potentially be very therapeutic for all the individuals involved, if handled properly. I would add a caution, however. Do not place the burden on the harassment victim to decide what the organizational response should be to the perpetrator, if found guilty. In one case the victim may simply desire an apology and a stop to the negative behavior. While the perpetrator may be given the opportunity to apologize, the organization may take additional steps such as a written warning, suspension, or even employee termination if the situation was serious enough.

In a different case, the victim may strongly call for termination of the

offending employee. If the nature of the harassment was serious enough, and if the organizational options are limited (such that both individuals would be forced into frequent interaction), I would strongly weigh the victim’s desires in this case. In a case of similar magnitude, but in an organization with multiple locations, serious consideration to transferring the perpetrator along with an appropriate disciplinary response (e.g., suspension, written notice) may be a better option. Certainly, vengeance should not play a role.

My inclination would be to offer the opportunity for mediation *before* making a disciplinary disposition regarding the guilty party(ies). Obviously, early intervention is the key, in terms of preventive workshops and catching problems before they fester.

Balance consistency and flexibility

A disciplinary program seeks to treat workers in a consistent manner. Few infractions are exactly the same, however. Factors to consider include the severity of the incident, the employee’s attitude and his previous history, and mitigating circumstances. An excessive number of exceptions, though, can diminish efforts to achieve fairness and improve morale. Exceptions should be clearly defensible. Once again, it helps to make rules with the best employee in mind.

If you find yourself having to apologize for applying a rule, the rule should not be applied in this instance. A few years ago I learned this lesson the hard way. I was refereeing a soccer match between two young women’s teams. There was a new FIFA rule requiring the expulsion (red card) of a player who fouled another when the fouled player had a clear chance at scoring a goal. One girl tripped another, more out of clumsiness than meanness. Instead of awarding a direct kick to the opposite team or giving the offending player a yellow card (which would have been the appropriate consequence under the circumstances), I found myself apologizing to the young woman while I gave her a red card. I felt so bad about it that I later asked her back into the game

(no rule in soccer allows for such a thing, however, and I took deserved flack for my poor refereeing).

Consistency of application may be improved when supervisors discuss among each other critical incidents representing worker misconduct. When possible, incidents should be modified to preserve the anonymity of those involved. Incidents may be presented to supervisors who can discuss possible ways of handling them. After evaluation, rules may need to be added, clarified, changed or dropped.

Use corrective—not punitive—action

After the investigation, *if the incident is worth documenting*, it is serious enough to take official disciplinary action. A consequence must be formulated keeping in mind the purpose of the disciplinary process. To obtain both maximum management and legal benefits from discipline, the response ought not be punitive in nature. The supervisor must act as if truly interested in helping the worker with the problem. To do so effectively, a friendly tone ought to be maintained throughout. It is a good idea, *after* listening to the employee and determining that the employee *will be receiving formal discipline* (see below), to point out some of the qualities of the employee *before* getting into the disciplinary formalities. This will help set the right tone for a positive, non-confrontational discussion. Just as important, after the process is completed, is to once again focus on some positive aspects of the employee.

The employee needs to feel the supervisor's concern for her. These positive comments may be needed over the next few days, also. Large differences in status between supervisor and employee may cause workers to accept chastisement now, but resent the supervisor later. Most important, the supervisor who makes it clear that this is not something personal against the employee, but just against a specific behavior, is more likely to succeed as a coach and mentor. While the supervisor will want to be firm, there is no need to create an enemy in the process.

One of the most valuable lessons I have learned in this respect is to trust my feelings. If I feel uncomfortable jumping in to point out a fault, or discipline an employee, it is for a reason. It is critical to communicate and connect with the employee as a person before talking about behaviors that need correcting. If we skip this step now, we are likely to pay the price later in terms of increased stress and reduced interpersonal effectiveness and trust.

Clear communication that leaves little room for misunderstanding is vital, and even more so when dealing with a faltering worker. People can, and regularly do, give wholly different meanings to vague statements. At one ranch, an employee told her co-workers she had no idea why she had been terminated, despite an earlier two page letter from management detailing her poor performance record. In an effort not to offend, supervisors tone down their messages to a point where workers would have to read between the lines to get the point. For instance, telling an employee what needs to be done does not mean that the worker has done it incorrectly. Nor does telling a person that something needs to be done at his "earliest convenience" signify that you mean for the task to be done by tomorrow, today, or before lunch break. Instead, if timeliness is important, let someone know exactly by when it is needed, and ask him to contact you ahead of time if at any time it seems that your assignment will not be completed on time. Explaining why something is urgent also helps.

A related communication issue is that of maintaining control throughout the process. The supervisor needs to remember who is in charge of making management decisions. One dairy manager explained that after he had disciplined an employee, that this employee tried to push him into a corner. The employee had tried to get the manager to fire him. The dairyman was well prepared and kept an even temper throughout the conversation, and pointed out that this discussion revolved around helping the employee improve his performance rather than on dismissal.

A formal disciplinary episode needs to include the following four elements (it helps if the employee can be involved in explaining what went wrong and contributing ideas towards improvement²⁰):

- Be specific about what the employee did wrong—without getting bogged down in minutiae. Explaining the reasons for the needed change may be appropriate at this time.
- Be clear about what the employee must do to improve (this is not always obvious).
- Advise the employee of the official nature of the discipline (that it will be documented and a copy will go to the employee and the other in his file).
- Inform the employee about future consequence(s) if there is no improvement. (Option: *after* telling the employee about the next consequence for non-improvement, explain that if the problem continues, eventually it may lead to termination.)

If this is an oral warning, summarize the four elements and place them in the employee’s personnel file, and share a copy of the documentation with the employee. Specific dates and times, as well as other important information (e.g. witnesses), should be included *if pertinent*. Do not include other matters not discussed in the interview.

Just a side note, personnel files can sometimes be a source of *unnecessary stress* to employees. Both favorable and unfavorable critical incident reports, as well as disciplinary notices should be given to employees before being added to their files. Farm employers should regularly purge outdated materials in such folders. Employees should be encouraged to review their personnel files any time they wish, without fear of retaliation. Perhaps a certain time of the year should be one where employees are invited to go through their files, as most will probably never ask, even if they wish to do so.

Although written warnings or suspensions are more serious, you need to include essentially the same four basic elements discussed. The tone of what you say is just as essential as in the oral warning. A written document should be clear to someone who knows nothing about the situation. Do not finalize a written expression until someone you trust can read it over and give you constructive suggestions. This person should check for the following:

- Does the tone and substance of the warning show that you care about the worker?
- Are positive, sincere comments made about the employee? (These comments should be sincere and specific: “we really value your excellent welding skills” is better than “you are such a great worker.”)
- Is the language so clear that anyone would understand it?
- Are all four of the basic disciplinary warning elements included?

Have the employee sign or initial in acknowledgment that he has *received* (not necessarily agreed with) the notice.

<i>Official Disciplinary Notice</i>	
To: _____ Date ____/____/____	
Re: _____ _____ _____	
Incident: (<i>Less serious</i>) 1 - 2 - 3 - 4 - 5 (<i>Extremely serious</i>)	
Expected improvement: _____ _____ _____	
Oral warning Written warning Suspension: report back ____ Investigative suspension: report back _____ Termination	
<i>If this conduct persists it may lead to termination.</i> Next incident of this sort is likely to result in: [] Written warning [] Suspension [] Termination	
Management initials:	Employee initials: (or <i>Witness</i> _____) [] Agree [] Disagree

FIGURE 14-2
Official Disciplinary Notice.

Alternatively, you may want to send a certified letter, or ask for others to witness its delivery. If the employee does not want to sign the disciplinary note, it is best not to force the issue.

Because all of this can be overwhelming to remember, Figure 14-2 will remind you of most of the elements we have discussed. This form does not make up, however, for the importance of communicating with the employee. We still need to listen and talk. The form is simply a record and reminder of that conversation. Thus, the supervisor should not initially approach the employee with the form in hand or, worse, already filled out. After the discussion is mostly finished, the form can be filled out and used as a review of the key points. At this point, the employee can be asked to initial it. The employee keeps a copy and the other goes to the employee's personnel file.

Supervisors may find that employees seem more cooperative after receiving an initial disciplinary note. An important caution, however, is not to use these as a way to obtain employee compliance. When overused, disciplinary notices lose their power. Employers should not wait for employees to make a mistake so a disciplinary notice can be given to them. Instead, whenever possible, such difficulties are best discussed informally before they become a problem.

Management action may be considered punitive if it is intimidating, aggressive, provocative, unprofessional, applied hastily, or seems out of line with the offense. An injustice may also be done when guilty employees are permitted to get away without any consequences. If rules have not been enforced, credibility may be an issue. One manager repeatedly warned an employee of the need to either improve or else be fired. The worker was eventually terminated but sued because he did not really believe the employer would carry out the threat.

Abrupt increases in rule enforcement often take place after (1) a serious or costly problem occurs; (2) increased commitment towards enforcement; or (3) the selection of a new supervisor. If discipline has been lax in the past,

personnel need to be alerted to the intended change in enforcement. Rules that no longer make sense need to be dropped.

Investigative suspension. If an incident appears to call for termination, first suspend the employee for a few days. If the worker's safety is involved, have someone drive him home. To repeat, no matter how hideous a specific infraction may be, a worker ought not be terminated on the spot. However, when the termination is not triggered by a specific event or incident, but rather, over time it has become clear that the employee is not a match for the job (e.g., simply does not seem to have the motivation, job skills, or ability to work without constant supervision), then an investigative suspension may just add unnecessary dramatics to the situation.

If you find yourself having to apologize for applying a rule, the rule should not be applied in this instance. Discipline should never be a surprise.



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Termination without the suspension is preferable under these circumstances, but this in no way reduces the obligation of the employer to carefully investigate, document, and coach the employee.

Unlike a regular suspension, the purpose of this cooling-off or investigative suspension is to prepare for a possible termination rather than to give the employee yet another chance to improve. The employee must understand that when he returns to work he will be informed as to whether or not he has a job—a sobering thought in either case.

The suspension can be for a few days, but is rarely justifiable if it is longer than a week, unless it is a suspension with pay. Workers usually know when they deserve to be terminated. During this suspension time, you can conduct needed follow-up interviews, touch bases with your attorney and labor management specialist, make a careful decision, and if needed, prepare for the termination interview (Chapter 15).

EXAMPLE OF A DISCIPLINARY INTERVIEW

Perhaps an illustration of a positive handling of a tardy crew worker, Rogelio, by his crew boss, Eduardo, would be instructive.

Eduardo: Rogelio, good morning!

Rogelio: Good morning. I am sorry I am late.

Eduardo: What happened?

Rogelio: I just came from the hospital. My son has been there most of the night.

Eduardo: Oh, I am so sorry to hear about that! How is your son now? What happened?

Rogelio: Well, actually I am really relieved. He is doing much better right now. [They continue to talk about Rogelio's son for a while.]

Eduardo: It sounds as if you did not get any sleep last night!

Rogelio: Well, I didn't get much.

Eduardo: Why don't you take some time off and get some rest.

Rogelio: Right now I feel really fine, don't worry.

Eduardo: That may be so, but I think it would make a lot of sense for you to get some sleep. You will probably have another long night at the hospital, too. Will you take the time off?

Rogelio: You are right. I had not thought about that. And I am really tired.

Had Eduardo jumped right in on Rogelio when he arrived late, he would have missed a wonderful opportunity to show consideration for the employee, and would have also made a fool of himself when he would eventually find out about Rogelio's tragedy.

Now, let us assume, for the sake of this example, that a few weeks later Rogelio has come in late again a couple of times, for several unrelated issues. Any one of them on their own would have been a good excuse, but when put together within such a short period of time, Rogelio's tardiness has begun to disturb some of the farm operations. In talking to Rogelio it is clear that there has not been a major issue involved here, but nevertheless, the problem has increased. Today, Rogelio arrived in late again.

Eduardo: Good morning Rogelio.

Rogelio: Good morning!

Eduardo: Hey, did you watch the game between México and Uruguay?

Rogelio: I did, that was some goal in the last five minutes of the game!

Eduardo: It sure was. Hey, is everything OK? I noticed you were late.

Rogelio: I am sorry I came in late, I had another problem with the alarm clock. I don't think I heard it go off.

Eduardo: Sorry to hear about that. We talked last time about the importance of punctuality, Rogelio. Do you have any ideas of what you might do to deal with this problem?

Rogelio: I think I am just going to have to be more careful.

Eduardo: Any specific ideas?

Rogelio: Well, I tried putting the alarm closer so I would hear it better, but I don't remember it going off.

Eduardo: So what do you plan to do?

Rogelio: Maybe I'll just have to go to bed earlier.

Eduardo: Sounds like a good idea. Let me tell you what I do. I set two

alarms when I have something really important. I put one right close to me and try to get up with that one. And then I put a back up alarm in the bathroom. That forces me to get out of bed.

Rogelio: Sounds like a good plan. I'll try that. I really don't like letting you down and coming in late.

Eduardo: Rogelio, I wanted to let you know how much I appreciate your work. You are one of our best pruners—and not just because you are fast, but also because of your care for quality. I also appreciate your willingness to help others who don't have as much experience. Thanks.

Rogelio: Thank you. I'll really try and make sure I don't come in late again.

Eduardo: Thanks, Rogelio. It is important for you to be on time because once I give everyone their pruning assignments, I have several other matters to attend to. It also makes it more difficult to calculate your pruning speed per hour for our daily records. I will write down that we had this conversation and that we discussed the importance of being on time and have you initial it, if you would. This will serve as an oral warning, and next time, if you come in late, I will need to give you a written warning.

Rogelio: I understand, it won't happen again.

Eduardo: I know. And thanks again for the effort you put into your work. It is always a pleasure to look at the quality of your pruning. See you a little later, Rogelio.

Eduardo has managed to cover each of the key points in a formal disciplinary process and do it without getting angry or using any harsh language or negative tone of voice. Eduardo had rightly forgiven previous tardiness where Rogelio had an excuse, and did not take these against him as they talked. He was firm and fair. First he talked to Rogelio until he felt that Rogelio would be ready to discuss the problem, rather than come right to the point. He then gave Rogelio a chance to explain, once again, the reason for the tardiness. Only after Eduardo found the excuse unacceptable did he go on to a disciplinary

consequence. But before doing that Eduardo gave Rogelio the opportunity to offer his own suggestions rather than jumping to give possibly unwanted advice. Also, before assigning a consequence, Eduardo lifted Rogelio up and made it clear that he was not acting against the person of Rogelio, but acting against the unacceptable behavior. Eduardo made it clear that the incident was documented, and what the consequence would be if Rogelio comes in late again. When parting with Rogelio, Eduardo makes sure once again, to do so in a positive note.

SUMMARY

Effective discipline can protect the agricultural enterprise, the supervisor who enforces the rules, and the subordinates subject to the regulations. Everyone benefits when rules and consequences for violations are carefully formulated, clearly communicated, and consistently carried out. Many potential challenges are often resolved before they get out of hand.

Confronting employees during a disciplinary (or termination, Chapter 15) interview takes much interpersonal skill and preparation. Throughout, it is important to distinguish between the employee as a person and any unwanted behavior to avoid building artificial walls between the supervisor and worker. If the employee needs to be disciplined or terminated, this is best done while permitting the employee to preserve as much dignity as possible.

Management can help coach and mentor an employee into improving his performance or behavior, but at the end it is the worker who must decide if the job is worth the effort. The responsibility to improve must remain with the employee.

CHAPTER 14 REFERENCES

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7. The extension of this privilege has quite an interesting story, beginning with the U.S. Supreme Court decision in *NLRB v. J. Weingarten*, 420 U.S. 251, 88 LRRM 2689 (1975), giving union employees the right to have a representative in attendance when subjected to a disciplinary interview. In *Materials Research Corp.*, 262 NLRB 1010, 110 LRRM 1401 (1982), this privilege was extended to non-union settings, only to be reversed a few years later in *E.I. Du Pont & Co.*, 289 NLRB 627, 128 LRRM 1233 (1988). Most recently, the privilege was re-extended by the NLRB in *Epilepsy Foundation of Northeast Ohio* (331 N.L.R.B. No. 92, 164 LRRM 1233; 134 DLR AA-1, E-1, 7/12/2000). The question now remains as to whether the ruling will be upheld. The Weingarten privilege is limited. For instance, in non-union settings employees are limited to a co-worker. Such a co-worker is allowed to likewise play a limited role, unless the employer allows a more extended one. Because laws change frequently, and are affected by current cases, farm employers who have concerns about their rights, as well as the rights of their employees, should contact a qualified labor attorney.
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20. Although we often speak about involving employees, I had the opportunity to observe how Guadalupe Sandoval put this into practice in a workshop for farm foremen, in his presentation on employee discipline, in San Diego, California (November 20, 2002).