How to set up an effective employee disciplinary program

Roofing contractors should develop a plan for how to address the most common disciplinary infractions. Indeed, nowhere is the nature of the relationship between an employer and an employee so dependent upon clear understandings than in matters having to do with discipline. Moreover, without a written disciplinary policy, roofing contractors will have a difficult time establishing the unforeseeable employee misconduct defense in response to an Occupational Safety and Health Administration (OSHA) violation (the defense requires roofing contractors to show employees are disciplined when safety violations are discovered).

It is through a written disciplinary policy that employers forcefully establish the parameters of expectations and reactions to what they believe are failures of employees to conduct themselves in accordance with expectations. Where a written statement of expectations in the form of a handbook or contract does not exist, a contractor’s and his or her employees’ expectations may differ, and the resulting confusion may breed a nonproductive and antagonistic work force.

Employers clearly have the right to discipline and discharge employees to achieve employee cooperation in the performance of their responsibilities. To be sure, that right is limited by laws protecting employees in various protected classes from discipline, including discharge, because of concerted activities, race, religion, national origin, sex or nonjob-related handicaps. When a collective-bargaining agreement is in force, that right may be further limited by a clause permitting discipline or discharge only where just cause exists. Generally, the law – more –
The purpose of a disciplinary policy is to state a company’s position on administering equitable and consistent discipline for unsatisfactory conduct at the workplace. A company’s best interests lie in ensuring fair treatment of all employees and in making certain disciplinary actions are prompt, uniform and impartial. The major purpose of any disciplinary action is to correct the problem, prevent recurrence and prepare the employee for satisfactory service in the future.

An effective disciplinary policy provides the following progressive steps to be followed: A first offense may call for a verbal warning; a next offense may be followed by a written warning; another offense may lead to a suspension; and still another offense may then lead to termination of employment. A disciplinary policy should also recognize that there are certain types of employee problems that are serious enough to justify either a suspension or, in extreme situations, termination of employment without going through the usual progressive discipline steps. Although it is impossible to list every type of behavior that may be deemed a serious offense, an effective disciplinary program should include examples of problems that may result in immediate suspension or termination of employment.

An effective disciplinary program will also include a disclaimer advising employees that the policy or program does not create a contract of employment nor does it guarantee employment for any period of time. The program should expressly state it does not in any way change the at-will nature of the employee’s employment. The policy should be clear it is not
binding but its use is at the discretion of management.

After an employer has prepared a policy in writing, the next step is to effectively implement the policy. Above all, effective implementation of a disciplinary policy has the employees in the company readily perceiving the employer is dispensing discipline according to some defined policy and that all employees are treated the same according to their individual circumstances. Consistency in discipline requires that obviously similar employees be treated in obviously the same manner. Predictability in discipline requires an employer always react in the same fashion when presented with the same stimulus. However, employees should be advised that the discipline to be imposed will be based on the employee’s entire record.

For instance, an employer may be consistent in its disciplinary measures even though a junior employee with a record of disruptive behavior may be given a suspension for insubordination while a senior employee with an unblemished record is merely warned. However, when two junior employees with similar records are given different types of discipline for the same offense, an employer will be viewed as erratic and possibly vindictive.

An effective progressive disciplinary program must also provide due process to employees. Due process is often found to exist where an employee is made aware of the nature of his or her violation of company rules or standards; the employee is not punished unless the violation is shown by the weight of credible evidence; the employee is allowed to know all the facts supporting a finding of a violation; and the employee is given an opportunity to defend himself or herself.

For adequate notice to have been made to employees, two things must exist: a publication of standards of conduct and a publication of the discipline system itself. To sustain discipline
that will cause an employee to suffer some economic loss, employers are frequently required to
document or otherwise prove by the weight of the credible evidence that the employee received
specific publication of the rule and that his or her act was in violation of that rule.

Another requisite of due process is that the charge be factually accurate. This will often
depend on documentation. In this regard, a common misconception, which appears to lead many
employers astray, is that verbal warnings need not be recorded or written. When a verbal
warning is not recorded, a supervisor must depend exclusively on memory, a notoriously
defective disciplinary device. For this reason, many roofing contractors have found it advisable
to abandon the traditional rubric of initiating disciplinary action with a verbal warning, replacing
it with a procedure involving a first and second written warning. Whatever the system’s formal
requirement may be, the first warning must at all times be recorded in some fashion to ensure the
event is documented and becomes a part of the employee’s record.

Any written warning must be sure to include certain information. An effective written
warning includes any other verbal or written warnings that might have preceded it, including the
dates of the incidents and the actions that prompted the earlier warnings. The disciplinary
document should, of course, include the purpose of the current warning and a recitation of the
work rule that was violated or the problem being addressed. A thorough written warning
explains to the employee how his or her actions harmed the company. Unwarranted and
unsupported statements, as well as personal attacks, should be avoided.

A statement should be included within the written warning that explains to the employee
the consequences if the situation does not improve. Lastly, the warning should include the date,
the names of everyone present when the warning was issued (these are potential witnesses in the
event a lawsuit is filed by the employee), a space for the employee’s signature (the employee should be told his or her signature does not mean he or she agrees with the warning only that he or she acknowledges receiving it), and a space for any comments the employee wants to add to the warning. If the employee refuses to sign the warning, make a note on the form that the employee refused to sign it.

Employees should avoid using a disciplinary policy that calls for expunging an employee’s disciplinary record after a period of time if no additional disciplinary problems have occurred. This type of policy could cause particular problems in cases of severe misconduct or when the supervisor who imposed the original discipline is no longer with the company.