



FREQUENTLY ASKED QUESTIONS

Employee Relations Division

DISCLAIMER: THE FOLLOWING QUESTIONS AND ANSWERS ARE PROVIDED FOR GENERAL INFORMATION ONLY AND MAY NOT APPLY TO EVERY CIRCUMSTANCE. THESE FAQs ARE TO BE USED AS AN AID AND GUIDE. THEY ARE NOT A REPLACEMENT FOR THE ADVICE AND GUIDANCE AVAILABLE FROM EMPLOYEE RELATIONS.

PRE-DISCIPLINE

CAN I ISSUE PRE-DISCIPLINE TO MY EMPLOYEE WHO IS SERVING INITIAL PROBATION?

It is not recommended. However, if a supervisor wants to memorialize an error an employee made or the conduct an employee exhibited in a directive they can.

HOW LONG DOES INFORMAL DISCIPLINE STAY IN THE SUPERVISOR'S FILE?

The "life" of a pre-disciplinary memo is twelve (12) months from issuance, however, the pre-disciplinary memo can be preserved as part of the employee's employment record by including it in the employee's annual performance evaluation. The memo itself, once expired, should be removed from the supervisor's file and securely discarded.

DO I HAVE TO VERBALLY COUNSEL AN EMPLOYEE BEFORE ISSUING INFORMAL DISCIPLINE?

No, however, it is always best to have a conversation with the employee face to face to discuss any performance and/or misconduct issues that arise early on. You first want to ensure the employee knows what he/she is/is not doing is not acceptable. A verbal counseling session with an employee is a good time to discuss what's wrong, remind him/her of the applicable policy or performance expectation, and set clear expectations moving forward. If there is no improvement, then draft a memorandum that addresses the issue and that it was previously discussed. *Additional information related to coaching can be found on the "Manage and Lead" page; tools are also available on the "Resources" page.*

DO I HAVE TO VERBALLY COUNSEL AN EMPLOYEE BEFORE PURSUING FORMAL DISCIPLINE?

For most occurrences, in order to move forward with formal discipline (i.e. written reprimand, suspension/pay reduction, termination), the employee must have received notice about why their behavior/conduct was not appropriate, what the expectation is regarding their behavior/conduct, and what the consequences are of not complying with the expectations (i.e. that their behavior will lead to formal discipline). Egregious behavior/conduct would likely warrant formal discipline for the first occurrence. *Please refer to the Pre-discipline vs. Formal Discipline document located on the "Resources" page.*

CAN AN EMPLOYEE APPEAL A PRE-DISCIPLINARY MEMO?

No, pre-disciplinary memos are considered informal discipline and are therefore not appealable nor can they be grieved or appealed.

WHAT DO I DO IF ANY EMPLOYEE REFUSES TO ACCEPT/SIGN THE PRE-DISCIPLINARY MEMO?

An employee's signature only acknowledges their receipt of the issued document – it does not imply their agreement with the document, which is what many employees believe, causing them to refuse to sign. If an employee refuses to sign, just note on the document, "Employee refused to sign" and include your initials and the date.

HOW DO I ISSUE THE PRE-DISCIPLINARY MEMO?

Any written documentation whether pre-discipline or formal discipline should be provided to the employee in person and in private. This allows the employee the opportunity to ask any questions he/she may have. Additionally, a face to face meeting could potentially shed some light as to the causes or contributing factors for the decline in performance and/or misconduct issues (such as an illness, divorce or other personal issues, etc.). If needed another supervisor can be present.

WHAT CONSTITUTES INSUBORDINATION VS. RUDE AND DISCOURTEOUS CONDUCT?

Insubordination is a serious employment offense, justifying an increased level of discipline if proven. It normally requires a clear, lawful directive and clear refusal to follow that directive. A good example of insubordination is a violation of a directive. Rude and discourteous conduct is failure to follow acceptable standards of workplace behavior.

SHOULD A CHARGE OF INSUBORDINATION BE HANDLED IN A PRE-DISCIPLINARY MEMO?

For the most part insubordination would be handled in an investigation by HR. However, in less egregious circumstances a pre-disciplinary memo can be issued. *Example: Supervisor sends out an email with clear instructions on tasks for the employee to complete with a deadline. Employee confirms reading the email but decides to not complete the tasks and instead works on something else they felt was important. A pre-disciplinary memo can be issued to the employee to make them aware of the expectations to follow directives, and that failure to follow directives could be considered insubordination and grounds for further discipline.*

MY EMPLOYEE IS NOT A MORNING PERSON AND VERY GRUMPY UNTIL AFTER LUNCH. CAN I ISSUE THEM A DM FOR DISCOURTEOUS CONDUCT?

Employees are expected to conduct themselves appropriately in the workplace. Interactions with coworkers, the public, etc. should be professional, cooperative, and respectful despite how an employee might be feeling, having a "bad day," or is not a "morning person." Have a one-on-one conversation with the employee first to advise them of their conduct and its impact to staff and customers is recommended. Be sure to include any applicable Board or Departmental policies pertaining to conduct, professionalism, etc. Make sure the employee understands what is expected going forward. Document in your supervisor's working file.

WHEN SHOULD I GET HR INVOLVED IN THE PRE-DISCIPLINE?

If after discussing with your chain of command, you are still unsure of the level of the pre-discipline or whether the conduct rises to a higher level.

ARE VERBAL COUNSELING DOCUMENTATION AND COUNSELING MEMOS REQUIRED TO BE NOTED IN THE EMPLOYEE PERFORMANCE APPRAISAL?

Yes, they should be noted in the performance evaluation and detailed in the evaluation if the employee has followed or not followed the verbal, pre-discipline, or discipline issued.

DOES PRE-DISCIPLINE NEED TO BE CONDUCTED IN A CERTAIN ORDER?

No. Pre-disciplinary memos can be progressive (i.e. Directive → Corrective → Corrective Counseling Confirmation Memorandum), however, they are not required to be progressive. Each situation should be evaluated on a case-by-case basis by considering the severity, frequency, impact, and disciplinary history. Based on the facts, either memo (DM, CM, or CCCM) can be utilized. First and foremost an employee must have *known or reasonably known* the conduct/performance is a violation of policy and could lead to discipline. A DM is typically used to inform/remind the employee of the rule, policy or procedure and that they are expected to follow it. Employees are usually put "on notice" through orientation, staff meetings, initial or regular recurring training, DMs, etc. If you can establish the employee knew or reasonably should have known, you can proceed with utilizing a CM or CCCM.

WHAT DO I DO WHEN AN EMPLOYEE SPENDS MORE TIME IN MY OFFICE COMPLAINING THAN PERFORMING THEIR WORK?

First, schedule a meeting with the employee specifically to discuss his/her complaints. Listen carefully to the employee's concerns, noting those that could affect other employees. During your discussion, encourage the employee to offer solutions. Many times, employees have ideal solutions to problems; however, for unknown reasons, some supervisors and managers are reluctant to use employee suggestions to improve department processes or the overall work environment.

Then, assess the workplace issues the employee is complaining about, assuming his/her complaints are regarding work. If so, determine whether the employee's complaints are isolated or if other employees are voicing the same sentiments. If necessary, talk with others in the office, obtaining their feedback and input to ensure you are considering all information. This can be done individually or during a staff meeting depending on nature of complaints and size of workforce affected. Consider what can be done to resolve the employee's concerns. Utilize effective leadership skills in addressing the employee's complaints in an effort to resolve the employee's complaints.

Finally, address the employees constant complaining. Explain how it can affect the motivation levels of his/her co-workers, particularly when complaining employees don't offer ideas for resolving the problems they complain about. Describe how incessant complaints can eventually alienate him/her and make it difficult to build and sustain productive working relationships. Ask the employee to consider the effects his/her complaints have on his/her ability to focus on job duties and general attitude about work. Schedule a follow-up meeting with the employee to review areas you agreed to look into and to determine if there are any changes to the employee's attitude about the work environment.

ATTENDANCE – GENERAL

HOW DO I HOLD AN EMPLOYEE ACCOUNTABLE WHEN THEY ARE NEVER AT WORK?

Tie the employee's absences to their performance, impact to the unit and the customers they serve.

IS THERE A GRACE PERIOD FOR BEING TARDY?

Employees are expected to adhere to their work schedule. If you begin to see a pattern where an employee is arriving late, meet with the employee regarding their recurring tardiness and its impact to staff and customers. Be clear on what is expected moving forward and be sure to reference any applicable departmental policies or procedures. Document in your supervisor's working file.

HOW DO I HANDLE GIVING OUT VACATION TIME DURING THE SUMMER TIME AND HOLIDAYS WHEN EVERYONE REQUESTS THE SAME TIME OFF?

As the manager you have the authority to grant or deny time off based on department needs and denial of time off requests are NOT subject to the grievance process. There will be times when you cannot accommodate an employee's request and it's perfectly normal. Be upfront with staff and let them know some requests may be denied from time to time depending on coverage.

Things to consider:

- How has the department/unit/previous manager handled time off requests in the past and do you believe the process should change?
- Is the current practice equitable to all employees?
- For major Holidays (such as Christmas, Thanksgiving etc.), one suggestion is to rotate staff each year so everyone can have time off equitably.
- Encourage employees to provide you with alternate dates if you cannot accommodate their first choice.
- If a request must be denied, speak with the employee in person and let them know the reason

- The manager can involve the staff in vetting out a process for time off requests and be a part of the solution; this empowers employees and helps build support of the process from the onset

WHAT DO I DO IF MY EMPLOYEE WORKS OVERTIME WITHOUT AUTHORIZATION DESPITE BEING TOLD THAT THEY CAN'T WORK IT WITHOUT AUTHORIZATION?

The employee is required to be paid but can receive a verbal directive or a pre-disciplinary memo regarding their conduct of not following directions.

CAN I DENY MY EMPLOYEE'S REQUEST FOR NON-SICK (I.E. VACATION, COMP TIME, ETC.) LEAVE?

Yes, the employee's request can be denied if they do not have sufficient hours to cover the request.

ATTENDANCE – AWP/NCNS

CAN I AWOP MY EMPLOYEE FOR BEING LATE?

Yes. If an employee arrives late or calls to let you know he/she will be late, let them know their time will be carried as absent without pay (AWOP). Be consistent and treat everyone the same. If the tardiness continues, begin the AWOL Progressive Discipline Process (*refer to the Job Aid – Guidance Regarding Absence Without Leave AWOL on the "Resources" page*), issue him/her the applicable pre-discipline memorandum (*refer to the Pre-disciplinary Templates on the "Resources" page*).

WHAT DO I DO IF MY EMPLOYEE IS A NO-CALL/NO-SHOW?

This should be evaluated on a case by case basis. Emergencies such as a death in the family or accident could have prevented an employee from thinking about calling work and the time can ultimately be approved.

However, barring any emergency situation, extenuating circumstances, or department policy to the contrary, attempt to contact the employee to inquire about their status in order to better assess staffing. If you reach the employee, direct them to report to work. If they are unable to report to work, or do not report to work, tell them that their time away from work is unapproved, they are considered absent without leave (AWOL) and their time will be carried as absent without pay (AWOP). When they return to work the following day, issue them a Corrective. **If the employee has been NCNS for more than 5 days, contact HR to inquire about Job Abandonment.*

ATTENDANCE – SICK LEAVE ABUSE

CAN I REQUEST MEDICAL DOCUMENTATION OF A SICK ABSENCE?

Yes, but only under certain circumstances:

- When an employee is under a Medical Certification Directive
- Depending on the applicable MOU, when an employee misses or anticipates missing a specified number of days or more due to illness. * For example:
 - Current MOU with SEIU: 5 days or more
 - Current MOU with LIUNA: 2 weeks or more

**Refer to the applicable MOU for exact language.*

YES, THERE IS A MEDICAL CERTIFICATION CONTINUANCE LETTER. HOWEVER, THE CONTINUANCE DOES NOT FIX ISSUES WITH EMPLOYEES THAT HAVE CHRONIC ATTENDANCE ISSUES.

If an employee is regularly missing work, outside of a protected leave of absence, then at some point their absenteeism could have an effect on their performance, and Performance Management can then become an appropriate course of action.

WHAT DOES A MEDICAL CERTIFICATION DIRECTIVE (“MED CERT”) DO?

Med cert is a tool used as a deterrent to help to reduce the frequency of employee absences and/or abuse of sick leave. When good reason exists for believing an employee may be *abusing* sick leave, the employee should be placed on notice in writing. A medical certification is a directive issued to the employee that requires a doctor’s certification for any sick related absences for a period of one year from date of issuance. *Please refer to the **Pre-disciplinary Templates, Medical Certification Directive** located on the “Resources” page for an example.*

IS MED CERT RIGHT FOR YOUR SITUATION?

First, have a conversation with your employee and document it. Discuss how their poor attendance negatively impacts the department and their performance, provide clear expectations, and schedule a future follow-up meeting. Be sure to offer FMLA and/or EAS if your employee discloses a medical or personal problem.

A Medical Certification Directive is a tool used as a deterrent when abuse of sick leave is suspected. The best way to determine if your employee is abusing sick leave is to track their time away from work using an *Attendance Profile* (refer to the **Job Aid – How Do I Generate an Attendance Profile** on the “Resources” page).

Poor attendance indicators include:

- Approximately ½ of their annual sick leave (52 hours) has been used (not including any protected leave time)
- Frequent absences
- Absences before/after weekends and holidays
- Low leave balances despite no long-term illness/injury
- Absences on days previously denied as a vacation request
- Absences on days when performance evaluation, administrative interviews, etc.

If you’ve met with your employee regarding their poor attendance, which included the review of an Attendance Profile, yet they still call out sick, you have good reason to believe your employee is abusing their sick leave and you’re ready to place the employee on the Medical Certification Program.

CAN EMPLOYEES GRIEVE PLACEMENT ON MEDICAL CERTIFICATION?

Yes.

HOW LONG DOES MED CERT LAST?

A Medical Certification Directive expires after one year from issuance. HR recommends that the employee’s attendance be reviewed at the halfway point (6 months), and then again prior to the expiration. Before the Med Cert expires, management must determine whether the Med Cert should be continued, or if the employee should be removed from Med Cert.

HOW DO I CONTINUE MED CERT?

After carefully evaluating their attendance and it appears they are still abusing their sick leave usage for the year then a Medical Certification Continuance (*please refer to the **Pre-disciplinary Templates, Notice of Continuation of Medical Certification** located on the “Resources” page for an example*) can be issued.

MY EMPLOYEE VIOLATED THEIR MED CERT, WHAT DO I DO?

Contact County Human Resources.

CAN I DENY MY EMPLOYEE’S REQUEST FOR SICK LEAVE?

No. An employee cannot be required to report to or stay at work if they are sick. However, employees are required to follow department call-in procedures and/or adhere to a medical certification directive, if applicable. If call-in procedures or a medical certification directive are not followed, the time off should be recorded as unapproved AWOP and considered an absence without leave (AWOL); which could lead to disciplinary action. For more information about AWOL *refer to the Job Aid – Guidance Regarding Absence Without Leave AWOL on the “Resources” page.*

MED CERT DOES NOT SEEM TO BE HELPING, WHAT OTHER OPTIONS ARE THERE?

Counseling/mentoring sessions with the employee once they return to work. Try to find out the underlying reason they are out sick. Are they bored, need a challenge, maybe an accommodation or FMLA?

WHAT EXACTLY CONSTITUTES SICK LEAVE ABUSE?

The exact definition varies depending on the department and should be evaluated on a case-by-case basis. However, in general, the following are possible indicators for sick leave abuse:

- Frequent absences due to illness
- Calling out sick before/after weekends and holidays
- Low leave balances despite no long-term illness/injury (i.e. FMLA/PDL/CFRA)
- Calling out sick on days previously denied as a vacation request
- Absences on days when performance evaluation, administrative interviews, etc.

CONDUCT

CAN I DO ANYTHING WHEN MY EMPLOYEE POSTS SOMETHING WORK-RELATED ON SOCIAL MEDIA?

Yes, unless they are a PIO or Department designee authorized to speak on behalf of the County/Department.

CAN I DO ANYTHING IF MY EMPLOYEE POSTS ON SOCIAL MEDIA DURING BREAK OR WORK HOURS?

This would have to be evaluated on the content posted.