

The Dentons logo is a white arrow pointing to the right, containing the word "DENTONS" in a bold, black, sans-serif font. The background of the slide is a purple gradient with a blurred image of pink cherry blossoms on the right side.

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How to effectively manage the progressive discipline process

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June 5, 2024

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Agenda

1. Understanding the difference between performance management and progressive discipline
2. Policies and documentation
3. Managing the discipline process
4. Distinctions between managing discipline for unionized and non-unionized employees

Performance management versus Progressive discipline

Performance issues

- A performance issue is a competence issue: the employee is not meeting the essential expectations for their role;
- Generally related to the requirements of the role;
- Arises from a lack of skill, knowledge, ability or a misunderstanding of expectations;
- Typically addressed with a Performance Improvement Plan (PIP).

Disciplinary issues

- A disciplinary issue is a behaviour issue: the employee acts contrary to the terms of employment or breaches a company's policies and procedures;
- The breach is the result of an intentional or negligent conduct on the part of the employee;
- Typically addressed through progressive discipline (except in the case of serious misconduct warranting immediate termination).

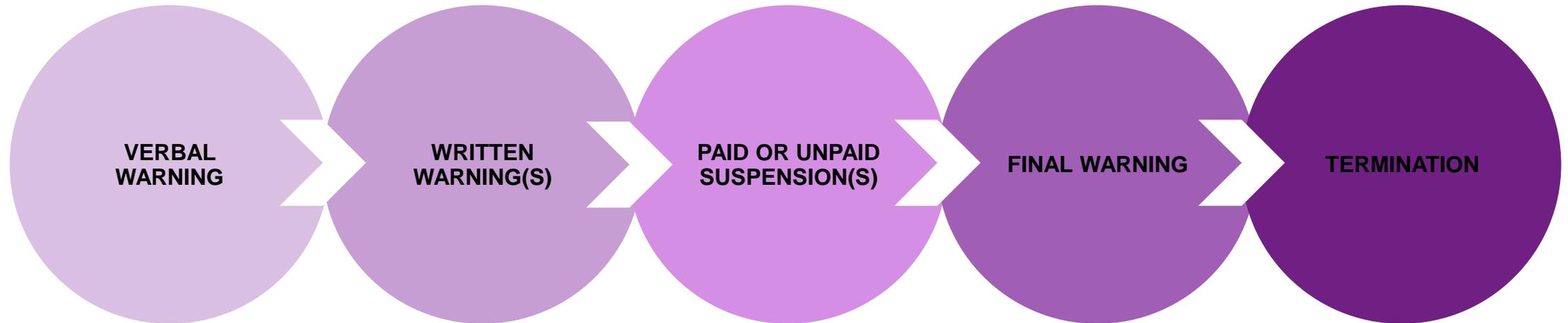
Can't VS Won't

The breach is the result of an intentional or negligent conduct on the part of the employee.

Progressive discipline policies

- Important to have a policy in writing:
 - Makes employees aware of the consequences of misconduct.
 - Provides managers with guidance to follow .
- Key components of a progressive discipline policy:
 - Outlines the steps of progressive discipline.
 - Retains the employer's right to skip steps or repeat steps depending on the severity of the conduct.
 - Puts employees on notice that misconduct may result in the termination of their employment, including for just cause.
- So, what are the progressive discipline steps?

Progressive discipline steps



Tips for managing progressive discipline

Does the conduct warrant discipline?

- If yes, where on the scale does it fall?
- Consider:
 - Is there a clear and reasonable policy in place related to the behaviour? Is the employee aware of that policy?
 - Has the employee been subject to previous warnings or discipline related to similar conduct?
 - What is the effect of the misconduct on the workplace as a whole, rather than just on the offender?

Tips for managing progressive discipline

Conduct warranting more serious discipline or immediate termination

- When is it appropriate to skip steps in your progressive discipline process?
 - Behaviour that has jeopardized the safety of the workplace and the people in it – think intentional or reckless disregard for safety;
 - Sexual harassment with a physical component (example: *Render v. ThyssenKrupp Elevator (Canada) Limited*);
 - Serious criminal offences (caution handling charges versus convictions);
 - Human rights breaches.
- Can employers rely on “zero tolerance” policies?
 - Use with caution – cannot have a zero-tolerance policy for all conduct.
 - Be aware that even with a zero-tolerance policy in writing, a court may not agree that the employer had just cause to terminate.
 - Apply the policy consistently.

Tips for managing progressive discipline

Mitigating factors

- In deciding the level of appropriate discipline/when you've reached the point of termination, consider whether there are mitigating factors that might lead you to reconsider the level of discipline or termination.
- Some mitigating factors an employer might consider:
 - The employee is undergoing a period of unusual stress (at work or personal).
 - The behaviour is impacted by a medical disability requiring accommodation.
 - The employee has a lengthy and otherwise unblemished performance records.
- Also consider: has the employee been given a final warning?
 - Final warning should inform the employee that this is their final warning, and any further misconduct of a similar nature **will** result in the termination of their employment.
 - Not a requirement but it is very strong support for the termination decision.

Discipline in unionized and non-unionized workplaces

- Pay close attention to what your collective agreement permits and restricts:
 - Use of unpaid suspensions;
 - Sunset clauses;
 - Requirement for final warning.
- In a non-unionized context, even after following a progressive discipline process, you may decide to terminate without cause, for just cause and/or for willful misconduct.
- Added importance of considering mitigating factors for unionized employees:
 - Risk of reinstatement.