

# CHAPTER THREE

## FORMAL AND INFORMAL DISCIPLINARY MEASURES

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*He who does not punish evil, commands it to be done.*

—Leonardo da Vinci

In the Introduction, we spoke of discipline as a medium for teaching and building ethical and moral values. In the [previous chapter](#), we looked at the first decision you must make in a disciplinary case: Do you have a cause for any discipline? Having decided that, presumably in the affirmative, we now turn to the next decision which is whether we will take a formal or informal action. Let's look at what formal and informal measures are available, and then turn to deciding between the two.

### INFORMAL MEASURES

We have no official list of specific informal measures. Different agencies and different supervisors use different media. You can even make up your own. This is why they are called informal measures. An informal disciplinary step is an oral or written warning that communicates or emphasizes a rule to an employee. It tells him or her that the conduct is misconduct and that you will not allow it. Informal measures in the federal government fall into two categories—oral and written.

#### ORAL MEASURES

As Tony Soprano's mother said to Junior Soprano when Christopher Moltisanti hijacked one of her brother-in-law's trucks, "I think he needs a little talking to." An oral measure is anything that is not reduced to writing.

Oral measures need not be menacing and could be nothing more than a friendly reminder to come back from lunch on time. It could also be a direct threat that the next time the employee is late, you will take formal disciplinary action. The distinction between an oral measure and the written measures is that you maintain no record of the oral warning. You say what you have to say and it's done.

#### WRITTEN MEASURES

Different agencies use different terms for them: the Navy calls them "Discussion Letters"; OPM and the Air Force use a "Letter of Admonishment"; and other agencies use a "Letter of Warning" or "Letter of Counseling." Some agencies have letters of requirement or letters of instruction, but regardless of the title, their purpose is to communicate rules and put the employee on notice that you will not tolerate further similar acts. They are all informal actions, as opposed to a letter of reprimand which, as we will discuss later, is indeed a formal disciplinary action.

Informal disciplinary measures can be gentle, casual, non-threatening, relaxed, unceremonious, and undocumented. On the other hand, they maybe threatening, pompous, coercive, bellicose, nasty, and fully documented.

Informal measures, no matter how official-looking, are not technically disciplinary actions. They do not constitute a *disciplinary* record that may be used to justify a future

more severe penalty as we shall discuss in [Chapter Four](#). The point may seem trivial now but will inflate to major importance when you try to use past acts to establish a record of discipline. A person who has received 20 letters of warning for tardiness has technically not yet been disciplined, only warned. Since they are not considered disciplinary actions, an employee may not file a grievance or an appeal over an informal disciplinary measure. Guidance on how to write informal letters is in [Chapter Fifteen](#).

## FORMAL DISCIPLINARY ACTIONS

A formal disciplinary action is an official sanction taken by the United States against one of its employees for an act of misconduct. In ascending degree of severity, they are letters of reprimand, suspensions, demotions, and removals.

### LETTER OF REPRIMAND

Although the mildest form of disciplinary sanction, a letter of reprimand is nonetheless a formal action. Again, the essential distinction between a “stress letter” and a letter of reprimand is that the latter is a formal disciplinary action while the former is but a warning. You may use the letter of reprimand in future actions to show a record of disciplinary offenses. Stress letters, however, are only warnings and not elements of a disciplinary record. Keep in mind, though, that all agencies have a “reckoning period” for letters of reprimand, which means that after a certain period of clean time, usually one to two years, the reprimand may not be used as evidence of past discipline.

### SUSPENSION

A suspension is a disciplinary action that places the employee in a non-duty, non-pay status for a specified length of time. Do not confuse suspensions with LWOP or AWOL. The latter two are merely timekeeping charges. A suspension is called by no other name (except in jest; the Navy calls it “time on the beach” and the California Highway Patrol calls it “days in the rain”).

The minimum length of a suspension is one day, but regulations place no limit on the maximum. Agencies sometimes use an indefinite suspension (agencies commonly use them to suspend an employee pending the outcome of serious criminal charges that involve potentially job-related misconduct, but over the past few years the courts and appeals authorities have severely curtailed the use of indefinite suspensions). Most agencies, however, use a range between three and 30 days. Although one or two day suspensions are not rare, most agencies start at three days since lesser amounts have little impact. If you have an employee who is constantly AWOL on Mondays and Fridays, a one-day suspension on a Friday (effectively giving the person a three-day weekend) will do little to help correct the behavior. Most agencies that do use one or two day suspensions regularly are careful to place the date when the employee serves the suspension in the middle of the week.

An important consideration in deciding between a suspension and a letter of reprimand is that letters of reprimand have “reckoning periods” while suspensions usually do not. If you’re torn between a letter of reprimand and a short suspension, you might opt for the suspension since it has no reckoning period. Check your union contract, though, as many have reckoning periods for suspensions as well.

Suspensions of over 30 days are uncommon for two reasons. First, most organizations cannot spare employees for extended periods. Second, and more important, if the offense is serious enough to warrant considering a penalty of longer than a 30-day suspension, it is probably serious enough to consider removal.

## DEMOTIONS

Demotions, which are reductions in grade or pay, are rare. The next step after suspension is usually removal. Demotions are typically used in performance cases and only occasionally in misconduct cases. Agencies most commonly use demotions with supervisors who have committed an offense that might not warrant removal but shows that the person is not suited to be a supervisor, e.g. minor acts of sexual harassment or failure to properly supervise subordinate employees.

## REMOVAL

Termination, separation, firing, and removal all mean the same thing—a one-way ticket to Palookaville. Although this book deals exclusively with discipline and employee misconduct, removals may either be disciplinary or non-disciplinary. The law makes no distinction and many removals are, in fact, non-prejudicial: for example, physical disability, expiration of sick leave, abolishment of position, or failure to accept reassignment. The mere act of removal itself is not necessarily stigmatizing.

## PROGRESSIVE DISCIPLINE

A supervisor should only take the minimum action necessary to correct the behavior. If the behavior does not improve, then actions should increase in severity. This is what we call “progressive discipline”—starting with minor actions and working your way up. Remember our discussion in the [Introduction](#) about corrective, not retributive, justice. We shall discuss penalties in detail in [Chapter Four](#).

The principle of progressive discipline means, for example, that one would not fire an employee for the first offense of being 15 minutes AWOL. The supervisor would start by laying out the rules, then warn, then threaten, then counsel, then issue a letter of reprimand, and so on until either the employee corrects the behavior or the agency takes the final step.

Progressive discipline is used only for minor infractions, but nothing requires you to proceed through the entire range in sequence for all offenses. You can start anywhere you feel is justified as long as you follow the guidance discussed in [Chapter Four](#). If an employee comes in waving a shotgun at his coworkers, you are not compelled to issue a letter of counseling and warn him that further such conduct will result in a letter of reprimand. You fire him immediately—after you take the gun away—regardless of his disciplinary record or lack thereof.

A major myth about discipline is that one must travel along the continuum, and many people, who should know better, insist that you cannot take a formal disciplinary action for any reason until the employee has had three letters of warning or X number of counseling sessions.

## HOW TO CHOOSE BETWEEN FORMAL OR INFORMAL ACTION?

You need not start with informal disciplinary steps and then proceed through all the disciplinary steps in sequence. You have the choice of either taking a formal or an informal action at any level. How does a supervisor know when to take a formal action versus an informal action? Where do you draw the line between letting the person off with a warning or counseling and taking formal action such as a letter of reprimand? How do you decide the tough calls?

You decide by asking yourself this: *Should* the employee have known that the conduct