

Progressive Discipline and
Termination: Building
Defensible Processes

EP 58

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Meet Your Presenters

Jeffrey Adams

Employment, Labour & Contracts Lawyer

&

Jessica Paglia

Employment, Labour & Contracts Lawyer



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Presentation Roadmap

- What is Progressive Discipline?
- Legal Foundations
- Steps of Progressive Discipline
- Considerations, Limits and Warnings
- Takeaways & Best Practices

What is Progressive Discipline?



What is Progressive Discipline?

- A structured, step-by-step approach to addressing performance and behaviour issues
- The purpose is to provide employees with opportunities to improve while documenting to protect the employer

What is NOT Progressive Discipline?

- **Performance Improvement Plans (PIPs):** Used for long-term performance concerns rather than immediate disciplinary action
- **Accommodation Reports:** Designed to assess and implement workplace accommodations under human rights law
- **Harassment Investigations:** Focus on investigating complaints rather than disciplinary steps
- **Coaching and Mentorship:** A developmental tool rather than a disciplinary measure
- **Retaliation or Punishment:** Discipline should be corrective, not punitive

Legal Foundations



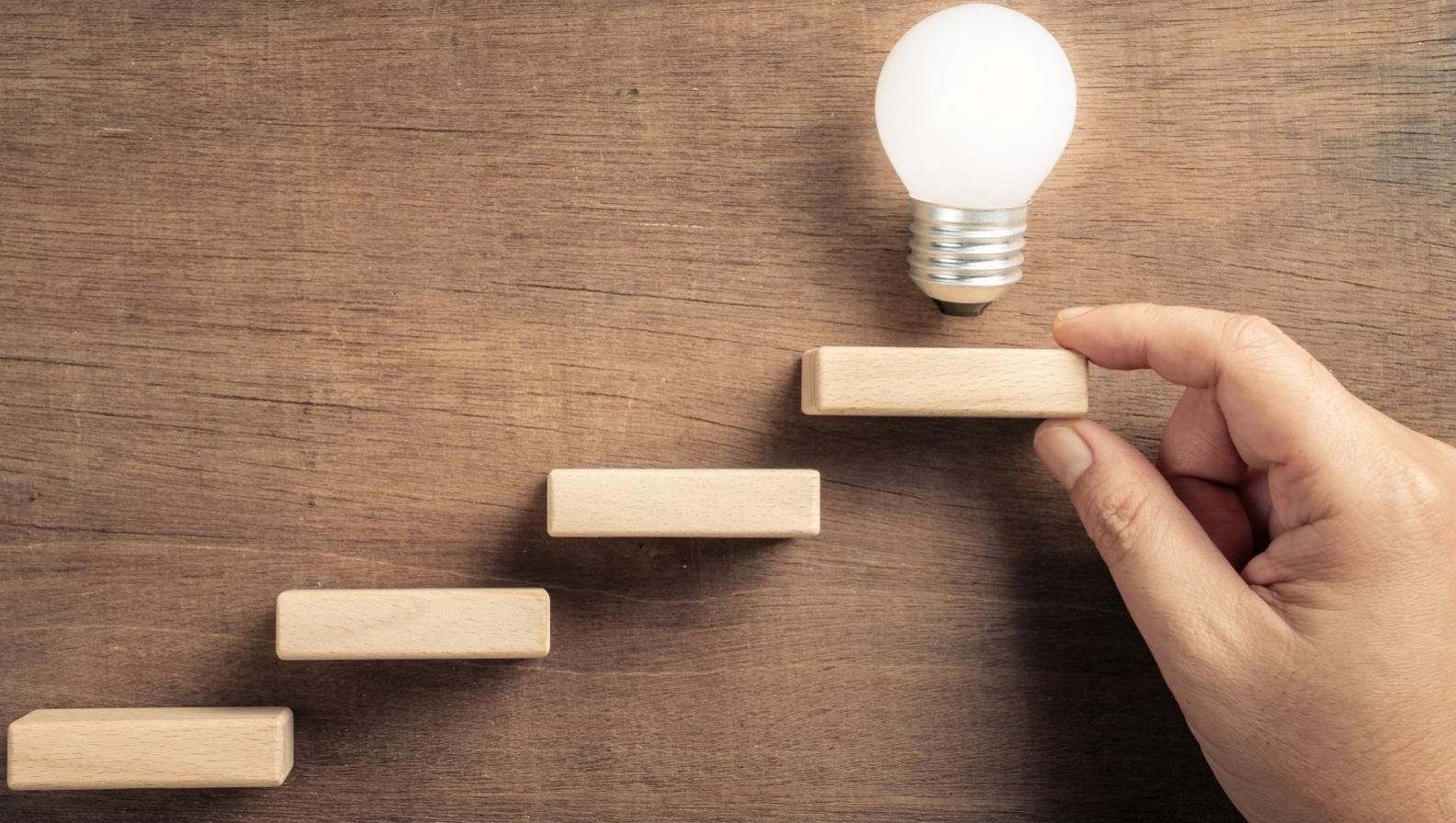
Legal Foundations of Progressive Discipline

- Employment Standards Act (ESA) and common law considerations
- Human rights legislation impact (Ontario Human Rights Code, AODA)

Just Cause Terminations

- The “Capital Punishment” of Employment
- Definition varies
- Examples of misconduct that may warrant just cause termination
- Legal thresholds and high burden of proof
- High risk of wrongful dismissal claims
- Importance of procedural fairness and due diligence

Steps of Progressive Discipline



Key Principles

- Fairness and consistency
- Documentation
- Clear communication
- Employee awareness of expectations and consequences

The Progressive Discipline Process

Step 1: Verbal warning

- When to issue a verbal warning
- How to document a verbal warning
- Communicating expectations and consequences

The Progressive Discipline Process

Step 2: The Written Warning

- Elements of an effective written warning
- Addressing repeated issues
- How to frame corrective action

The Progressive Discipline Process

Step 3: Suspension

- When is a suspension appropriate?
- Paid vs. unpaid suspensions
- How to communicate a suspension?

The Progressive Discipline Process

Step 4: Termination

- When to move to termination
- Ensuring procedural fairness
- Avoiding wrongful dismissal claims

Just Cause versus Without Cause – How to Terminate

- Reminder of definition and legal thresholds of just cause
- Risks of getting it wrong
- Severance considerations in without-cause terminations

Considerations, Limits, and Warnings



Performance Management vs. Discipline

- Key differences between performance improvement plans (PIPs) and discipline
- When to use each approach

Investigating Misconduct before Discipline

- When is an investigation appropriate?
- Importance of a fair investigation
- Steps to conducting an internal investigation
- Handling employee responses and rebuttals

Human Rights and Accommodation Considerations

- Recognizing protected grounds (disability, family status, etc.)
- Duty to accommodate vs. discipline
- Legal risks of failing to accommodate

Constructive Dismissal Risks

- What is constructive dismissal?
- Employer actions that could trigger a claim
- How to mitigate risks

Takeaways & Best Practices



Common Pitfalls

- Inconsistency in application
- Poor documentation
- Rushing to termination
- Retaliation risks

The Role of an Enforceable Employment Agreement

- Importance of well-drafted contracts
- Enforceability of termination clauses
- Recent case law trends

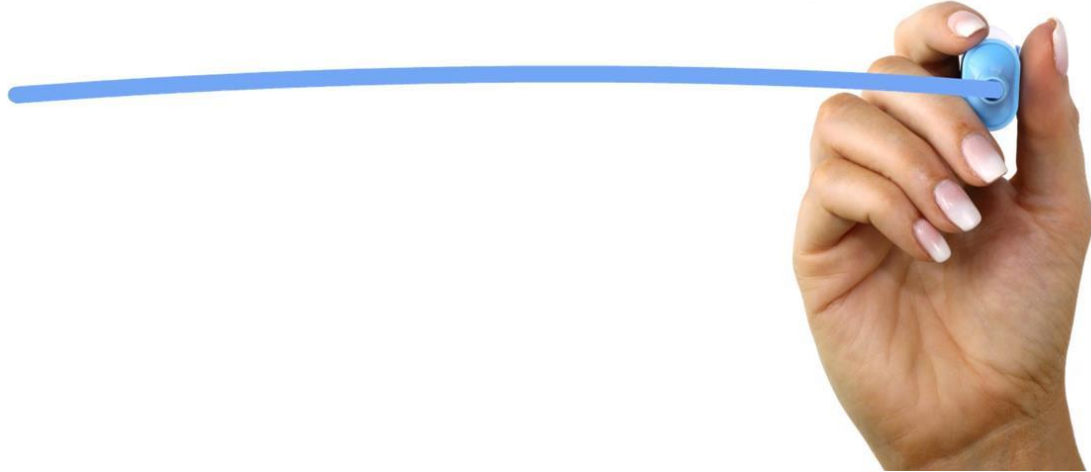
Document.. Document Document Document!!

- Importance of thorough documentation
- What should be included in disciplinary records?
- Creating legally defensible documentation

Best Practices

- Preparing for the conversation
- Delivering the message professionally
- Managing emotions and mitigating conflict
- Handling final pay, benefits, and references (if termination)

QUESTIONS



Thank you!

To learn more about our team:

<https://springlaw.ca/our-team/>

To connect with our legal team:

- Lisa Stam - lstam@springlaw.ca
- Marnie Baizley - mbaizley@springlaw.ca
- Heather Power - hpower@springlaw.ca
- Tiffany Thomas - tthomas@spring.ca
- Lexa Cutler - lcutler@springlaw.ca
- Filip Szadurski - fszadurski@springlaw.ca
- Jessica Paglia - jpaglia@springlaw.ca
- Jeffrey Adams - jadams@springlaw.ca
- Gaya Murti - gmurti@springlaw.ca
- Maureen Cruz - macruz@springlaw.ca

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Lisa Stam
Lawyer, Managing
Partner



Marnie Baizley
Partner, Lawyer



Heather Power
Lawyer



Tiffany Thomas
Lawyer



Lexa Cutler
Lawyer



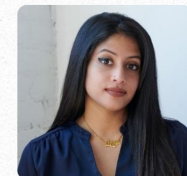
Filip Szadurski
Lawyer



Jessica Paglia
Lawyer



Jeffrey Adams
Lawyer



Gaya Murti
Paralegal



Maureen Cruz
Legal Assistant