



# Safety Discipline: OSHA Says Be Tough; But How Tough?



## Safety discipline: OSHA says be tough; but how tough?

OSHA says employers should have “balanced” safety disciplinary policies for employees.

*What does that mean?*

Good question.

Because in OSHA’s eyes, safety discipline programs can go too far.

A manufacturer in Wisconsin had a progressive disciplinary policy with a point system. When employees accumulated 24 points, they were automatically fired.

An employee told a supervisor that he “tweaked” his shoulder, but he felt he was “OK.”

The next day, the employee told his supervisor his shoulder was sore, so the supervisor reported it to the safety manager. The manager, upset the injury was reported a day late, assessed eight disciplinary points to the supervisor.

## Best practices

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After looking into the employee's sore shoulder, the safety manager assessed four more points to the supervisor because the worker had committed an "unsafe act."

The supervisor racked up 12 points in two days, which put him at 24. He was fired because he reached the maximum.

The supervisor filed a whistleblower complaint with OSHA, arguing his employer retaliated against him for reporting workplace injuries.

A court agreed and ordered the company to pay the supervisor \$100,000 to settle the complaint.

This company's disciplinary program was pretty drastic. Nonetheless, the message from OSHA is clear: Discipline can't be retaliatory in nature. A company shouldn't discipline an employee just because of an injury.

What does OSHA recommend when it comes to safety disciplinary programs?

- Develop the policy with the goal of reducing injuries, not purely for punishing unsafe acts.
- Put the policy in writing and hold meetings with employees to



explain it. When a new employee starts, explaining the safety disciplinary policy should be part of onboarding.

- Train supervisors and managers on how to enforce the policy. Key: They need to know when discipline is appropriate, and when it isn't. Let them know that HR and management are there to help them decide whether discipline is required.
- Be consistent in enforcing the policy.
- Reserve the most serious discipline for repeat offenders or clear insubordination.
- List which rules are inviolable. In other words, spell out what types of safety mistakes could result in serious discipline, up to and including termination. Examples are violations of fall protection, lockout/tagout and excavation protection rules – errors that could lead to serious injury or death. Being under the influence of alcohol or drugs while on the job may also fall into this category, depending on whether the job is safety-sensitive.
- Don't just punish; also make changes in procedures to ensure a similar error doesn't happen again. This includes an internal

## Fear of being sued

investigation, if warranted, to find root causes of a safety error.

- Document, document, document. Supervisors should be reminded that if they provide verbal coaching to an employee, they should put a note in the worker's file noting when it took place and what was discussed.

Some companies believe it's become more difficult to discipline, and especially terminate, unsafe workers, due to lawsuits and action taken by OSHA, as described above.

No one wants to get sued. Claiming retaliation for a safety incident is just one reason workers can use to claim they were fired unfairly.

But just because an employee files a lawsuit doesn't mean a court will see it that way.

Here's a case in which a court ruled it wasn't retaliation when a company fired an employee for a safety infraction.

A conductor for a major freight railroad was injured on the job.

The conductor and an engineer were operating a train. Before it reached its destination, the employees received instructions to



stop the train at a particular location. The conductor was told to separate the train cars so vehicles on an intersecting road could pass.

After separating the cars, the conductor walked toward the locomotive. There was a pile of debris blocking his way. Rather than backtracking, he went around by walking on top of a wooden culvert which had large gaps between the planks of wood.

When the conductor stepped onto the culvert, his foot slipped through a gap and he fell on his right knee and twisted his back. He was taken to a hospital for treatment.

At the hospital, two supervisors met the conductor to interview him about the incident. The two supervisors told the conductor to keep them updated on any changes in his condition, but the conductor never did.

The company's investigation found the conductor violated the employer's safety rules when he chose to walk across the culvert rather than taking the safe course – backtracking.

The company held a hearing in which the conductor was allowed to present his own evidence to dispute the findings.



After the hearing, three company managers reviewed the findings. All three agreed the conductor violated two serious infractions of the company's safety rules. The company's policy said two serious rule violations in a three-year period were grounds for dismissal.

The Federal Railroad Safety Act prohibits firings due to reporting an injury. However, an employer won't be found liable if it proves it would have made the same personnel decision even if there were no injuries.

A federal district court found the railroad made its case that it would have fired the conductor anyway even if he hadn't been injured.

What did the railroad do right? The court took note of the employer's thorough, multi-stage investigation into the matter.

The employer also had developed a clear safety discipline policy which it communicated to employees. It listed what types of violations would be considered serious and what the consequences would be. Supervisors and managers followed protocol after the conductor was injured.

Following this company's example can help other employers enforce safety discipline policies without running into trouble with OSHA or the courts.

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