



# Progressive Discipline

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DUCTUS DISCIPLINAM

# Do you have concerns with an employee's work performance?

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- **act early...** before poor work becomes a habit;
- **be fair...** by clarifying the job expectations with the employee;
- **improve the employee's performance...** by providing appropriate direction;
- **try to solve the problem...** before it gets to the dismissal stage by applying the "[progressive discipline process](#)".

# Sources

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Government of Canada website –  
Progressive discipline:

<https://www.canada.ca/en/employment-social-development/services/labour-standards/reports/discipline.html>

Recent Case:

*Seykora v. RM of Lake Lenore* #399, 2019  
SKQB 225 (CanLII)

# *Seykora v. RM of Lake Lenore #399,* 2019 SKQB 225 (CanLII)

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- Employee was a mower for the RM for approximately 11 years.
- RM terminated mower's employment for cause.
- Problems RM was having with employee included:
  - Failing to grade roads he was assigned, including when he was specifically instructed;
  - Failing to implement training;
  - Refusing to follow instructions; and
  - Refusing to follow Council policies

# What kind of problems?

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## INCOMPETENCE

employee lacks the skill or ability needed for the job

The employee may be neglecting duties without realizing what is expected.

## MISCONDUCT

employee breaks rules for keeping the work place efficient and safe

The employee may be fully aware that duties are being neglected but neglects them anyway.

“There is no compendium of employment misdemeanours which alone or in combination will justify the summary dismissal of an employee. Each case stands to be decided according to its own facts. Clearly though, it is not enough that an employer is displeased by the employee's performance. There must be some serious misconduct or substantial incompetence.”

Mr. Justice Wimmer

Smith v. General Recorders Ltd. et al. (1994), 1994 CanLII 5152 (SK QB)

# General Principles applicable to dismissal for **Just Cause**

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1. Dismissal for just cause is an **exception** to the employee's usual rights.
2. There must be some **serious misconduct** or **substantial incompetence**.
3. The question of whether misconduct is serious enough to justify dismissal will be a question of fact to be assessed individually in each case.
4. Onus of proving the existence of just cause falls upon the employer, and it must be proved beyond a balance of probabilities.
5. The threshold is significantly lower where the dismissal is preceded by many warnings indicating the employee's performance was unsatisfactory (this is part of the purpose of Progressive Discipline).

# What is Progressive Discipline?

It is also well established that where an employer relies on a series of inadequacies or inappropriate conduct short of dishonesty as grounds for summarily dismissing the employee, the employer must have previously informed the employee of his or her inappropriate conduct or inadequate performance and have warned the employee that she or he must correct the noted problems within a reasonable specified time or face dismissal.

The essential elements of the requisite warning are set out in Wrongful Dismissal Practice Manual....They essentially provide for the following:

- (a) the employer must provide reasonable objective standards of performance for the employee in a clear and understandable manner;
- (b) the employee must have failed to meet the employer's reasonable standard of performance;
- (c) the employer must give the employee a clear and unequivocal warning that she or he has failed to meet the requisite standard, including particulars of the specific deficiency relied on by the employer;
- (d) the warning must clearly indicate that the employee will be dismissed if he or she fails to meet the requisite standard within a reasonable time.



# Checklist for progressive discipline

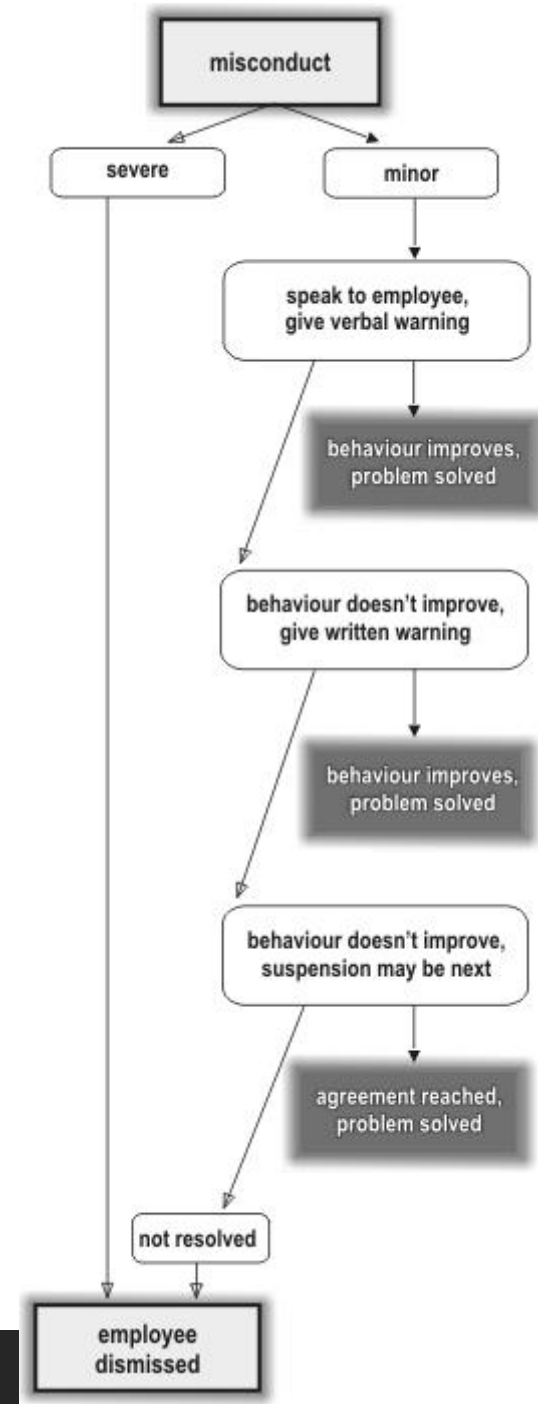
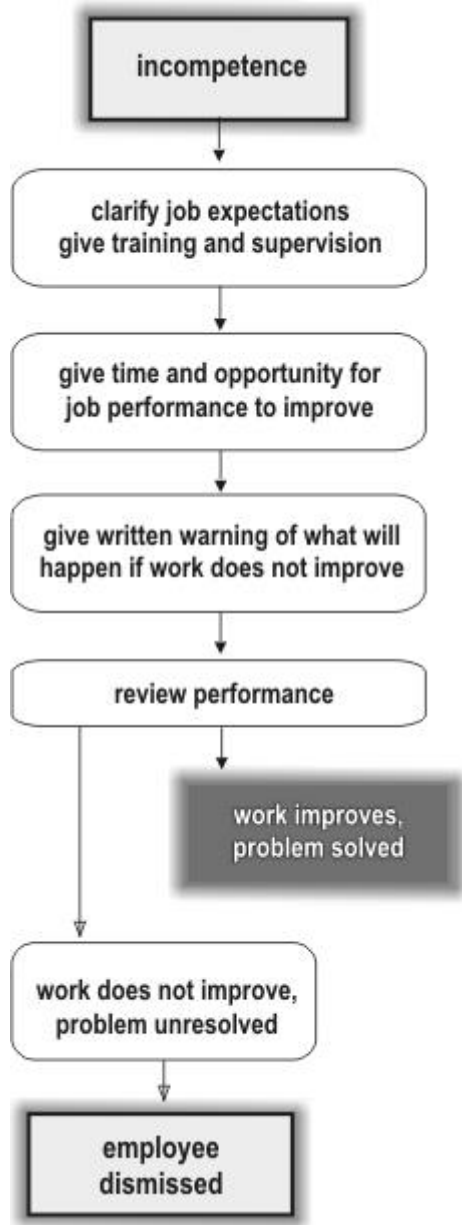
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## INCOMPETENCE

- Set out clear, reasonable job expectations in company policy.
- Communicate clearly job expectations to all employees.
- Bring unacceptable work to the attention of the employee promptly.
- Provide reasonable supervision, training and instruction.
- Give reasonable warning that failure to meet these expectations could result in dismissal.
- Allow for time and opportunity to meet the job expectations.
- As a final step in the process, if no improvement, dismiss the employee.
- **Keep complete written records.**

## MISCONDUCT

- Give the employee the opportunity to tell his/her story about the misconduct.
- Collect all the relevant facts surrounding the misconduct.
- Give a verbal warning.
- Give a written warning.
- Suspend the employee.
- As a final step in the process, dismiss the employee.
- **Keep complete written records.**



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