

Ron Montgomery

Ron has been a Human Resources and Labor Relations Specialist with Winnebago County since January of 2000.

Prior to that, Ron served on the Winnebago County Board of Supervisors for 12 years. He won his first election in 1988 – when he was a college senior – by one vote, defeating the 13-year incumbent. Ron served as member, Vice President and President of the Oshkosh Public Library Board of Trustees. He also served on the Executive Committee of the Winnebago County organization of one of the major political parties. His bachelor's degree is in journalism and political science. Once upon a time, he planned to be a radio or newspaper political reporter in his hometown, Chicago.

While serving on the County Board, he completed Master of Public Administration coursework, all but thesis, at the University of Wisconsin-Oshkosh, specializing in local government management.

His duties include traditional HR work – hiring, coaching and advising employees, as well as training and conducting investigations.

Ron was selected in 2007 as a co-presenter for the statewide HR/Labor Relations Association, teaching 'How to Investigate Harassment Claims'. He has created training materials, classes and sessions for employees on HIPAA as well as on Sexual Harassment and Other Discrimination.

Ron also conducts 'Supervisory Roundtables' for supervisors, managers and department heads. These informal sessions allow key staff to learn and talk informally about topics important to managing the workforce.

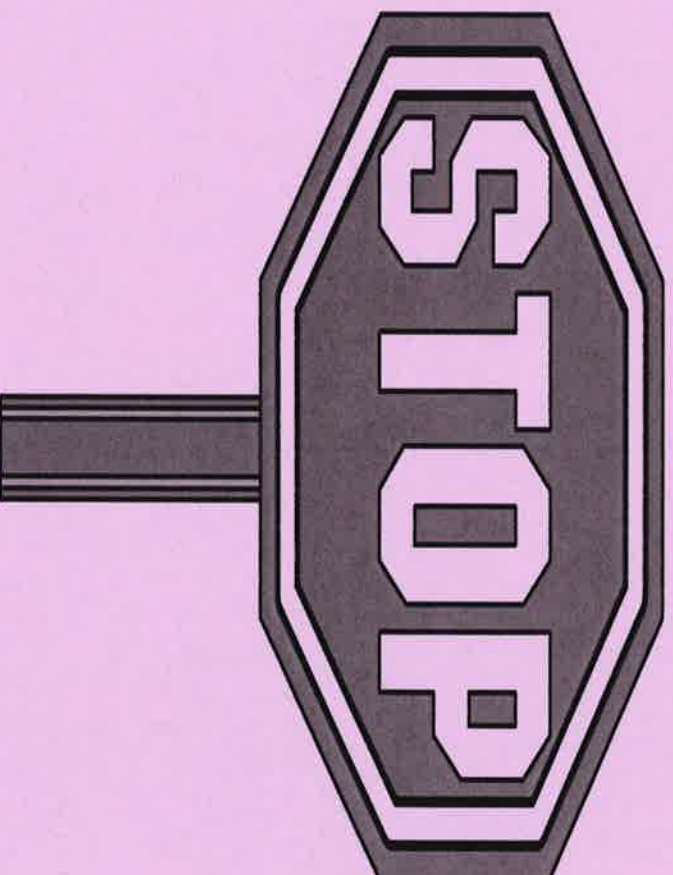
In his spare time, Ron also serves as Winnebago County's primary Public Information Officer as well as PIO for the County's Office of Emergency Management. In 2010, he was selected to join government PIOs from throughout the United States to attend a weeklong, intensive Advanced PIO Emergency Management Institute course at the National Emergency Management Training Center in Emmitsburg, Maryland.

WORKPLACE HARASSMENT QUIZ

1. T F I don't like her. I'll be polite to her but you can't make me talk to her.
2. T F I was on my break, and I was talking with a customer. *She's* the one who made the supposedly offensive comment. You can't file a harassment complaint against *me*.
3. T F It's not harassment if the harasser is only teasing, trying to be funny and doesn't really mean it.
4. T F I simply repeated what he said last night when we were at the bars. You can't report me for harassment this morning for using the same words.
5. T F If I become aware of someone harassing another employee, I should report it to Human Resources even if that employee tells me s/he was OK with what happened and doesn't want anyone else to know about it.
6. T F I just wanted to know what she thought about the court ruling on same-sex marriage. That's been all over the news and I was just curious. That can't be harassment.
7. T F I was just kidding. How was I supposed to know that she'd be offended? That can't be considered harassment.
8. T F No, I didn't harass you. I wasn't even talking to you. If you didn't like what you heard, you should have ignored it.
9. T F Your friend talks that way all the time and you've never complained about *her* comments. So you can't suddenly say *my* comments offend you.
10. T F He never said he was offended by that joke. Now he's filled a harassment complaint against me. He can't do that!

Ron's Rule of Everything...

If you don't know – or aren't **certain** that you **do** know...



- 1. Ask your Supervisor/Manager/Director**
- 2. Ask Human Resources/Personnel/Designated Person**
- 3. Ask your Corporation Counsel/City Attorney/Designated Person**



LEGALLY PROTECTED STATUS
(Real or perceived)

Race

Ancestry

Military Reserve/History

Age (40+)

National Origin

Disability

Creed (Religion)

Sex

Arrest/Conviction

Marital Status

Sexual Preference/Orientation

Skin Color

Filing/helping with discrimination complaint

Genetic testing

Unfair honesty testing

Use or non-use of legal products

1. Progressive Discipline

'Disciplinary actions include Written Reprimands, Unpaid Suspensions, Demotions and Termination of Employment. Other actions – which might or might not be considered disciplinary by your jurisdiction – include counseling ('Hey, Dude!'), documented counseling (common in Law Enforcement and Military), assignment changes and schedule changes.' Your organization might have additional options it uses.

****Formal disciplinary actions *must* be in writing and given to the employee (or representative if required).**

In determining the most appropriate level of action, Management should consider

- The employee's work record, length of service and disciplinary history (if any)
- The employee's knowledge that the conduct/performance/etc. was wrong or otherwise unacceptable: How did your organization communicate this to the Employee before it happened? Can you prove that?
- How similarly situated employees have been treated for similar conduct/performance issue, etc.
- Any other *aggravating* or *mitigating* factors

2. 'Notes' vs. Personnel Files

- a. Custodian of Record/Manner Kept/Access
- b. Rules for requesting own file
- c. Rules for requesting someone else's file
- d. **What's in a Personnel File?**
 1. **Original job application and resume**
 2. **'Directory information' and Emergency Contacts**
 3. **Records of leave, medical issues, etc.**
 4. **Possibly disciplinary records/documents.** (If you give employees the right to have certain items removed after a certain period or after completion of a certain milestone, you must remember to comply.)
- e. There's a presumption that others may see what you (and others) put into a Personnel File. **Consult your policy, HR/Personnel or Counsel for specific advice and your organization's practices.**
- f. Notes generally are not 'records' and usually don't have to be disclosed to an employee, representative or other outside requestor. They're simply management tools to help you keep track of your subordinates' progress and needs. **Consult your policy, HR/Personnel or Counsel for specific advice and your organization's practices.**
- g. *Be sure to keep good notes. (Notes may – or may not; oh, well – imply something happened sometime in the past somewhere involving someone. **Good notes will refresh your memory well into the future and make clear what happened in the past to someone who wasn't there or who doesn't know any of the parties involved.**)*

Employee Discipline—Using a Progressive Discipline System

Virtually all collective bargaining agreements between unions and employers require some form of progressive discipline. A well designed progressive discipline program is intended to help employees correct any shortcomings with the goal of becoming a valuable, contributing member of the workforce. Non-union employers will generally find a progressive discipline system a positive tool as well.

Although 49 of the 50 states fully embrace the employment at will doctrine, which in theory allows an employer to discharge an employee with impunity, the judicially recognized exceptions to the at will doctrine and the federal and state statutes governing the workplace, make discipline and discharge a matter that requires careful consideration. Generally no discharge should be initiated without consultation with employment counsel.

The following are guidelines to consider in implementing a progressive discipline policy.

STEP 1: Establish a Workplace Code of Conduct

Employees must have fair and reasonable notice of what is expected of them. They need to know the parameters of permissible and prohibited conduct in the workplace. Rules should be:

- Clearly communicated to all employees in writing
- Compliant with state and federal laws
- Consistently and fairly enforced

There are as many variables in workplace rules of conduct as there are employers. Employer rules generally fall into one of the following categories, however:

1. Rules governing attendance and tardiness; dress; and the like (the kind of matters that an employee must consider daily).
2. Rules defining what is permissible within the culture of the company, e.g., whether employees may use company phones or computers for personal calls or email; whether an employee may use a photocopy machine for personal use.
3. Rules governing more serious conduct such as drug or alcohol abuse; workplace safety; or sleeping on the job.
4. Rules that may lead to immediate suspension and/or discharge, e.g., violence in the workplace, sale of illegal drugs, or carrying a firearm to the workplace.

STEP 2: Discipline with Fairness

If employees believe they are being treated fairly, they are much more likely to accept the consequences of their actions. Consistent and fair discipline will also help to avoid successful claims of discrimination or other unlawful conduct.

Critical to fair and just discipline are:

Thorough investigation of the circumstances, including interviewing of witnesses, etc.

Providing notice of the misconduct to the employee. Too often employers fail to clearly communicate to the employee the nature of his or her infraction.

Allowing the employee an opportunity to respond to the allegation.

Making the “punishment fit the crime.” Draconian discipline for a minor infraction is counterproductive, and modest discipline for a serious infraction is not helpful.

An employee should have some right to appeal a disciplinary decision to some person above the rank of the one issuing the discipline who was not involved in the initial decision.

Employers must keep a careful paper trail to document each infraction and the discipline administered.

Some infractions are so serious that the employer must take immediate action for the well-being of the workplace and/or other employees, for example, if an employee is involved in violence in the workplace. Under such circumstances, the employer may wish to suspend the employee “subject to discharge.” The employee is suspended without pay pending an investigation, which should be done expeditiously. If the investigation exonerates the employee, the lost pay is restored. If the investigation supports discharge or similar severe discipline, the employer may then proceed to initiate that discipline.

STEP 3: Elements of Progressive Discipline

Although there are a variety of progressive discipline programs, the following is a sample of the steps in a progressive disciplinary program:

Counseling: For a first offense and a minor infraction, an oral discussion characterized as “counseling” is appropriate. The employee’s supervisor should inform the employee of the infraction and clearly advise the employee of the conduct expected. It may be appropriate to warn the employee that future infractions could result in more severe discipline.

Verbal Warning/Reprimand: A verbal warning or reprimand is appropriate for a more serious offense where counseling is inadequate. It could also be a step following counseling. When issuing an oral warning the employer should clearly advise the employee regarding what is needed to improve the employee’s conduct and advise the employee that more severe disciplinary consequences will follow repetition of the infraction. The supervisor should definitely memorialize the verbal warning or reprimand. At the option of the employer, the memorialization will go into the employee’s personnel file.

Written Warning(s)/Reprimand: The next step is the written warning or reprimand. This document should clearly state the infraction and clearly state the consequences for a repeat offense. The written warning or reprimand should be placed in the employee's personnel file.

Second Written Warning(s): An employer may wish to include a second written warning as part of its progressive program, or the employer may move directly from the first written warning to suspension. The determination of how many steps should be in the policy and the details of each step will be informed in large part by the nature of the business and the nature of the disciplinary issues that generally arise in that environment.

Possible Courses of Action:

Transfer. Sometimes an employee who performs poorly in one position will perform well in another. Employers may consider a transfer in lieu of termination or other severe discipline.

Withhold compensation increases. Employees should not be rewarded for poor performance. An employee who has a pattern of misconduct may be denied a compensation increase.

Demotion. It may be appropriate to demote an employee, perhaps to a level where the employee may better perform.

Suspension: Another possible course of action would be a suspension without pay. The length of the suspension may vary from a day or two to a week or more, depending upon the seriousness of the infraction. An employer may use progressively longer suspension. However, generally if an employee has reached the level of a suspension, discharge may be the next most appropriate step.

Termination: The decision to terminate an employee should be one made as a result of consultation by the employee's supervisor with one or more upper level managers. The decision should never be made by a single person. Consistency is important. An employer opens itself to various legal claims if one employee is discharged for an infraction while another employee is merely suspended for a few days.

*****Public Employee Extras:**

--Loudermill Hearing:

--Employee must be given a substantive opportunity [one that can really rectify a wrong committed by the employer] to appeal the Employer's decision.

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Outcome

Increased meeting assertiveness

Reason

Shyness undermines managerial authority

Improvement goal/steps

Lead a 5-minute discussion @ staff mtgs.

1. Get straight to the point. Say, "The purpose of this meeting is to ____" or, "I want to spend some time discussing with you the situation around this issue."
2. State why you are having this conversation. Say, "I have a concern about ____" or, "A problem has occurred in this area." Or, "Here's an opportunity." Depending on the nature of the change.
3. Describe the behavior causing the problem. Or the opportunity for change. Say, "I noticed that you ____" Or, "I've seen ____" (Provide evidence, if necessary. Never, ever try to coach or discipline on hearsay. Also, during the discussion, make sure you focus on behavior, and never on personalities.)
4. Explain the consequences of this behavior or the desirable outcome. (Discipline or a pleasant improvement.)
5. Ask for your employee's opinion. "That's how I see it; what's your view?"
6. Make sure that you and the employee both understand the expectations.
7. If there is a problem, ask if there is a concern that is interfering with work. Even if he doesn't tell you, it may be a signal to the employee to change or get some type of help. If appropriate, mention EAP as a possibility.
8. Regardless of whether it's for coaching or correction, get the employee's commitment to the change plan in his or her own words.
9. Summarize your agreements.
10. Finish with a statement that you believe this will work – and really mean it. Be convincing and be convinced. Otherwise, it won't work.

****NOTICE THAT THE FOCUS IS ON OUTCOMES, RATHER THAN 'FIXING' A PROBLEM.** The outcome should enhance the organization. Know the difference between:

1. Discipline/pre-discipline/'making a case'/gathering proof for an inevitable discipline
2. Improvement over time vs. a STOP IT!
3. Coaching – truly a problem-free opportunity i.e. for changing or restructuring a department. Usual with groups/classes of employees.
4. Grooming a specific employee for promotion or change

Follow-up

- A. Formal: Regular intervals such as 10, 30, 60, 90 days, etc. Set definite time goals for each desired outcome. Make sure the employee actually makes progress on the plan.
- B. Informal: Regular, ongoing developmental coaching.



Investigating a Sexual Harassment Complaint

Equal Rights Publication ERD-10448-P

PDF versions of this publication. Follow this link to obtain the Free PDF Reader.

- In English

Once a complaint of harassment has been made to an employer or the employer is otherwise aware that a problem exists, an internal investigation should be promptly conducted by a person familiar with harassment issues and company policy. Delay in investigating the charge can demoralize affected staff and may adversely affect witness credibility. Try to obtain a written complaint to serve as the basis of an investigation.

Note:

The links (bookmarks) in the **Table of Contents** take you to that section in this Publication. The links in the **Text** take you to either a page in our website, a section in the Wisconsin Statutes or a section in the Wisconsin Administrative Code.

Table of Contents

- Initial Steps
 - General
 - Interviewing the Complainant
 - Interviewing the Accused
 - Interview the Accused Supervisor
 - Interviewing Witnesses
- Resolving the Complaint
 - Hard to Resolve Situations
 - For more information

Initial Steps

1. Listen attentively and take the complaint seriously, even if the complaint initially appears questionable. Treat it as valid until the facts have been established otherwise. If the employee quits because she or he felt her complaint wasn't being taken seriously, liability may be compounded. Avoid comments like "Maybe you're overreacting," or "I'm sure he didn't mean anything by it."
2. Set a professional tone for the interview and try to put the complainant at ease. Bringing a harassment complaint is often difficult and stressful for the employee. Acknowledge that fact and try to help the employee understand this is normal. Keep a neutral perspective however, and maintain a professional demeanor.
3. Gather facts, don't make judgments. At this stage, you are not determining the complaint's validity. The job at hand is to gather the facts. Stay away from comments such as, "Most people would be complimented by that" or "Maybe you shouldn't dress that way for work." Speak in a matter-of-fact, but supportive way, not one in which you appear to be "cross examining" the complainant. This may ease the tension that is often present.
4. Get answers to: "who, what, when, where, why and how." Encourage the complainant to be as specific as possible. Find out who did what to whom, when did events happen, why and how did they occur, and were there any witnesses? At this stage it would also be wise to ask the employee if he or she is concerned about retaliation, which is often a concern of harassment victims.
5. Try to avoid leading questions, such as: "Did he tell offensive jokes?" Instead, ask open-ended questions, such as: "What did he say?" or "Where did he touch you?"
6. Getting a sense of what the employee feels would be an acceptable outcome may be important at this stage. What does the employee want to see happen to resolve the problem?

General

- While complete confidentiality may not be possible, keep the investigation and the facts under a strict "need to know" basis. Emphasize to all those involved in the investigation, including the complainant, the accused and witnesses, that it is your policy to keep discussions strictly confidential and that disciplinary consequences may result from a breach of this confidence.
- Limit the number of persons who have access to information. Avoid needless disclosure of information to witnesses. For example, instead of asking "Did you see Joe touching Joan?" ask "Have you seen anyone at work touch Joan in an offensive way?" The investigation is done to gather facts, not disseminate allegations.
- If there is more than one allegation, treat each incident separately.
- To avoid liability for defamation, never broadcast the facts of a given situation or the results of your investigation to others or as part of a training exercise.

Interviewing the Complainant

- Explain to the complainant that the charges are serious and that you need to complete a thorough investigation before reaching any conclusions. Restate your policy against taking any adverse action against the employee for bringing the charge and ask the complainant to notify you promptly if any such actions occur.
- Elicit specific details regarding the alleged harassment. Include questions on the type and frequency of conduct and what was said or done. Also where it occurred, where the complainant was touched, the dates that the conduct occurred, the time period over which the conduct occurred, whether there was a pattern of previous episodes and whether the complainant is aware of similar behavior by the accused toward other employees. (Keep in mind that a complainant may have difficulty remembering exact events and dates. The investigator must persist in helping the complainant be as specific as possible.)
- Get the specific context in which the conduct occurred, including the nature and general description of the work area and location. Did the conduct occur at a work-related function, during working time, or after hours?
- Determine the effect of the conduct on the complainant. Try to identify the types of effect (e.g. economic, non-economic and/or psychological). Was the conduct received as a joke, was it really unwelcome, did it embarrass, frighten or humiliate the complainant? (Often, complainants contend that, while they may have given in to the demands made of them, they did so out of fear or because they felt threatened. It is important to remember that the real issue is whether the behavior was unwelcome.)
- Determine the time relationship between the occurrence of the alleged conduct, its effect on the complainant, and the time when the complainant made the report. If there was a time lag, find out why the complainant waited so long before reporting the situation. A plausible reason might be fear of retaliation. Prepare a chronology of events. Analyze if certain events may have triggered the complaint, for example, a denial of promotion, pay raise or transfer.
- Find out what the complainant wants and how the situation might be resolved. Can the complainant continue to work for or with the accused? Will productivity be adversely affected? Will it be embarrassing or awkward? Ask the complainant if they might need counseling?
- Make no statements about the Accused character, job performance or family life. This may result in liability for defamation.

Interviewing the Accused

- Repeat the initial statement made to the complainant about the seriousness of the charge and your concern that no adverse action be taken against the complainant for bringing the complaint. Then, obtain a position statement from the accused.
- Identify the relationship of the accused to the complainant. Was the accused an agent of the company, a supervisory employee, a co-worker or a non-employee?
- Was there any prior consensual relationship between the parties? How long have the parties known each other? Is there a history of group or individual socializing?
- Determine whether the accused directed, or had responsibility for, the work of other employees or the complainant, had authority to recommend employment decisions affecting others (for example, hiring, firing, promoting), or was responsible for the records of others.
- You can expect the accused to deny the charges. Observe the reaction. Note whether or not there is surprise, anger or disbelief. Describe the details of the allegation and note the areas of disagreement between the testimony of both parties. If the accused denies the allegations, probe further to determine with the accused the background, reasons, and motivation that could possibly have triggered the complaint.

Interview the Accused's Supervisor

- Talk with the supervisor to learn about any discipline problems and behavior patterns of either party and to determine if the supervisor knows anything about the relationship between the parties.
- Did the complainant report the conduct to the supervisor? Was the supervisor in a position to observe the conduct? Should the supervisor have been alerted to the conduct? For example, was the conduct discussed in the presence of the supervisor or were there any rumors circulating?
- Determine if there is any documentation available such as letters, memos, reports or statements supporting the conclusion that the supervisor knew or had reason to know of the conduct.

Interviewing Witnesses

- Obtain statements, from any witnesses that support or deny any of the complainant's allegations. This evidence is very critical to the investigation. Be aware that witnesses are often reluctant to come forward out of fear of reprisal.
- Assure witnesses that their cooperation is important and that their testimony will be kept as confidential as possible. Reaffirm your policy and the law's protection against retaliation against a person who assists in an investigation.

Resolving the Complaint

- Prepare a written report of your findings. Determine steps to be taken based on this report.
- When trying to remedy the conduct, don't "punish the complainant" by moving her or him to less desirable hours or to a less desirable location. If you offer to transfer the complainant, make it voluntary and make sure the position transferred to is equal to or better than the prior position.
- Consider the severity, frequency and pervasiveness of the conduct when imposing discipline on the harasser. There are several options available, including oral and written warnings, reprimands, suspension without pay, probation and, depending upon the severity, transfer, demotion or discharge.
- Any form of discipline short of discharge should be accompanied with a warning that similar misconduct in the future might result in immediate discharge.
- Conduct follow-up interviews with the parties to inform them of your actions.

Hard to Resolve Situations

1. No witnesses-Harassment often happens in private with no witnesses. In such cases resolution often centers on the credibility of the parties. If the complainant's account of the conduct is sufficiently detailed and internally consistent it may be believable. An investigation should look for other evidence to support or disprove a claim. Do co-workers have any knowledge of the conduct? Did anyone observe the employee's behavior shortly after the alleged incident occurred? Did the employee discuss the matter with another person such as a counselor, doctor or close friend? Did anyone notice any change in behavior of the employee at work or in the way the accused treated the complainant? Were other employees treated in a similar manner by the accused?
2. Reluctant Complainant-If a victim tells a supervisor about lewd or sexually harassing behavior, but doesn't want to make a formal complaint, what obligation does the employer have? Even if the victim is reluctant to pursue a complaint, the employer may be held liable for harassment if it fails to investigate and take any appropriate corrective action. The supervisor should explain the company's duty to act and assure the employee that the matter will be handled as discreetly as possible. The investigation will obviously be reaffirm its harassment policy and its insistence on a harassment free workplace.

This is one in a series of guides for fair employment practices. It is not legal advice. If legal advice or other expert assistance is required, a competent professional should be sought.

For more information:

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Equal Rights Division Web Site

The Department of Workforce Development is an equal opportunity service provider. If you need assistance to access services or need material in an alternate format, please contact us.

Beginning immediately, all paperwork being submitted to _____ will be reviewed by your supervisor, __, or __ before filing. This included request for _____, _____, memos to _____ and any documentation being filed with _____ that includes a narrative.

2. You will follow all statutory mandates without exception and within accepted timelines.

3. You will record all _____ in _____ within five working days and submit them to your supervisor for approval.

4. You will maintain a case-note system on all open cases.

5. You will submit case _____ forms two weeks prior to expiration of the _____ file.

6. You will submit all expired _____ by the end of January 31, 2006.

7. All supervisory reviews and _____ studies will be done within the designated timeframes. Your supervisor will indicate the due dates on the documents.

8. Case files will be organized sufficiently for coverage by the _____ or other coworkers as may prove necessary. The file organization will be coordinated and approved by your supervisor.

9. Improvement will be monitored through a weekly meeting with your supervisor or Lead Supervisor to discuss progress in the _____ areas. This will commence the week of January 3rd, 2006.

10. The Performance Improvement Plan will be reviewed every 60 days with a Union representative present.

11. The Performance Improvement Plan will continue until June 30, 2006. It may be terminated earlier with the agreement of all parties.