



Mineral



Question of the Week

DECEMBER 14, 2022

QUESTION

While covering shifts for an employee on a leave of absence, we discovered errors in their work. How do we address their performance without seeming retaliatory for taking leave?

ANSWER

Taking disciplinary or corrective action following a leave of absence is going to come with some additional risk, but there are a few steps you can take to help show that the actions you're taking are due to the performance issue and not the leave. As is true any time you discipline an employee, the more severe the discipline, the higher the risk. For instance, a coaching conversation is likely to be the best first step because it doesn't have an adverse impact on their job.

First, document the errors. Be sure that this is the kind of thing you would discuss with *any* employee. For instance, if this employee's work was only checked because you were training the temp, but other employees never have their work checked and may make the same number of undetected mistakes, consider whether this calls for corrective action at all or whether you should conduct additional training and/or implement audit procedures for all employees in this type of position.

Second, when you have a conversation with the employee, focus on the performance issues in relation to your expectations. Don't propose reasons why the employee made the errors. Simply identify the error and, if it's not obvious, explain why it's a problem. If the employee says

that the error resulted from a disability, engage in the interactive process to see if there are ways you can help prevent similar errors in the future. Additional information about the interactive process is available on the platform.

Third, if possible and appropriate, give the employee a chance to improve rather than jump to termination. Making a good faith effort to help the employee get back on track helps to demonstrate that the corrective action you took was not retaliatory.

Fourth, document your conversation with the employee, noting any opportunities you are offering them to improve and the timeline for improvement. You can find information on performance improvement plans on the platform.

Nothing you do can absolutely prevent an employee from claiming the corrective action was retaliatory, but these steps may help the employee see that your actions were legitimate rather than retaliatory.

This Q&A does not constitute legal advice and does not address state or local law.