Wrongful Termination lawsuits are expensive. An average out of court settlement is about $40,000.

- 10 percent result in a $1 million dollar settlement
- 67 percent are ruled in the plaintiffs favor when taken to litigation

This can include compensation for –
- Lost pay
- Lost Benefits
- Emotional distress
- Punitive Damages
- Legal Fees
Class Over View

- Disciplinary Policies
- Grievance Policies
- Types of Discipline
  - Verbal warnings
  - Written warnings
  - Suspensions / Reduction in Pay
  - Terminations
A company is required to follow all of their policies.

Suggested Recommendations for Discipline Policy

- Guidelines for supervisors.
- Company retains all right to employment At Will.
- State the At – Will guidelines in the policy.
Employment At - Will

- Colorado follows the basic premise that employees are At-Will employees.
  - Meaning Employers can fire employees (and they can quit) for any reason or no reason, as long as it’s not illegal.

- What is a “Illegal”
  - Sexual Orientation – Heterosexuality, Homosexuality, Bisexuality or transgender
  - Off Duty – Off Premises Activities
  - Discussion of Wages

- Exception is a written or Implied Contract
A company grievance policy gives employees the ability to bring a problem up the chain of command of the company.

**Colorado has no state grievance policy law.**

Always hand out your grievance policy when you terminate a employee.
American with Disability Act - ADA

- Prohibits discrimination against qualified employees with a qualified disability.

- Qualified Disability – physical or mental impairment that substantially limits a major life activities.

- Example of major life activities –
  - Lifting, bending, seeing, hearing
  - Concentrating, communicating
American with Disability Act - ADA

- Not considered a disability –
  - Illegal Drug Use
  - Untreated Alcoholism
  - Sexual behavior disorders
  - Temporary problems such as common cold

- Request for accommodation does not need to be specific.

- Can not cause a Undue Hardship on the Company.
American with Disability Act - ADA

Used to be for only long term or permanent disabilities Now Short Term Included.
Family Medical Leave Act

Employer has 50 or more employees with in a 75 miles radius.

Employee worked 1250 hours within a 12 month period.
Family Medical Leave Act

Allow employees twelve work weeks of time off without pay for –

• to care for a new child, whether for the birth, the adoption, or placement of a child in foster care

• to care for a seriously ill family member (spouse, son, daughter, or parent)

• to recover from an employee’s own serious illness;

• to care for an injured service member in the family.
Progressive Discipline

Dealing with Job – Related Behavior that DOES NOT Meet Expected and Communicated Performance Standards

Goal is to let the employee know that no correction will lead to Termination.

Consistency and Follow Through
Progressive Discipline

Stages of Progressive Discipline

- Verbal Warning
- Written Warning
- Suspension / Reduction in Pay
- Termination
Progressive Discipline

Verbal Warning

- In Passing
- In Private – Greater impact
- Note in File – Date, Time, About
Progressive Discipline

Verbal Warning

- Describe the problem and how the employee's action or behavior differs from standards.

- Is the employee aware of standards?
Progressive Discipline

Verbal Warning

Example

- You are to be at your work station exactly at your start time. Going to the bathroom or getting coffee at your start time is not considered being on time for work.
Progressive Discipline

Since your return to work on 06/23/2014, we have had many common work practices violations.

*06/24/14- Verbal warning on being 20 minutes late to work.

*07/07/14- Verbal warning on being late for work and unprepared to work at start time.

*07/07/14- Written warning on dereliction of duty, not supervising new tile apprentice with task.

*07/08/14- Written warning on acceptable means of “calling in to work”, also unexcused absence from work for not seeing your doctor immediately about your injury, according to your modified duty letter.

Any more work practice violations will result in immediate termination of your employment with the Company. If you have any questions regarding what constitutes a work place violation come to us for answers.
Progressive Discipline

Colorado & Employees Files

- Employees can inspect and obtain copies once per year.
- Companies can charge for copies.
- Can inspect personal files at a reasonable time, reasonable place and with reasonable notice.
- Employees can make one inspection of their file after termination.
## Employee Discipline Form

<table>
<thead>
<tr>
<th>Employee Name:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violation Description, Date and Time:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Corrective Action Plan:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Next Action Step if Problem Continues:</th>
</tr>
</thead>
</table>

I acknowledge receipt of this disciplinary action and that its contents have been discussed with me. Employee comments:

Further misconduct or violation(s) will result in disciplinary action, up to and including immediate termination.

I have read this Warning Notice and understand it

<table>
<thead>
<tr>
<th>Employee Signature</th>
<th>Date</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Manager/Supervisor Signature</th>
<th>Date</th>
</tr>
</thead>
</table>
Written Warning

Violation Description, Date and Time:

The employee was found sleeping at their desk.

Better - “On May 23 1995 at 3:15 pm, B. Smith, supervisor, walked in the employee’s office and the employees head was down on the desk. B. Smith stood at the door to the employees office for five minutes while the employee snored and then finally woke up when B. Smith announced himself.
Progressive Discipline

Written Warning

Corrective Action Plan:

The employee will not sleep at work.

Next Action Step If Problem Continues:

If the employees is found asleep at work the employee will be suspended for three days without pay.
I acknowledge receipt of this disciplinary action and that its contents have been discussed with me. Employee comments:

|                                                               |
|                                                               |

Further misconduct or violation(s) will result in disciplinary action, up to and including immediate termination.

I have read this Warning Notice and understand it

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</thead>
</table>
Discipline Meeting

• Hold meeting in Private Office

• 2 People in Meeting
  • One Takes Notes other Conducts
  • If employees ask to meet alone, meet alone.

• Listen To Employees Comments
  • Respectfully * Terminate if Escalates
Discipline Meeting

• Corrective Action and Next Step Actions
  • MUST Follow Through with Actions or Return to Start

• Do Not Sugar Coat the Problem
Next Steps in Discipline

- **Suspension**
  Might have to pay unemployment.

- **Reduction in Pay**
  Colorado does not require you to give advance notice of Reduction in Pay. But it is EES.com recommends that you do.
Reduction In Pay

Salary Reduction for Call Backs
Employees called back to a job because of inadequate work performance will be paid at a reduced wage. That wage will be determined by Management. The employee may request that this reduced wage be reviewed at any time.

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Terminations

- Remain Calm During Terminations - Present the facts in a calm businesslike way.

- Terminate the employee in Private.

- Have a Second Supervisor in the Office.

- Offer the employee a reasonable explanation of why they are being terminated.

- Do not debate the termination.
Terminations

• Don’t try to make the situation sound better than it is.
• You can always add to why you terminated the employee but you can not take back what you say.
• You can Escort the employee out of the office.
• Saying less is more to the other employees about the termination.
Last Check

- Terminated employees – Immediately
  
  Unless

- At termination if the department responsible for payroll checks is NORMALLY closed then
  - Six Hours after the start of regular business hours.

- Off Premises Payroll Processing
  - Twenty Four hours of the next regular business day.

- Resignation – Next regular scheduled payday.
Sample Write Up

The following employee's understand that at this point all conflict need's to stop. You understand you are not required to be friends but are required to work together.

Starting immediately all employee's are to work together in a polite, cooperative, friendly, pleasant and overly helpful manner to each other. You understood that any action perceived, by the Company, as hostile, aggravating, disrespectful, short, mean or harassing to another employee, your employment will be terminated.
Sample Write Up

You are to follow ALL company practices and policies completely and thoroughly. If you are to do ANYTHING that is not common company practice and/or policy you are to contact your supervisor and get approval FIRST.

You are to follow all directions given within the time frame you are given. If for any reason you cannot meet the time line you are to discuss this with your supervisor as soon as you know you are not going to meet the time line and/or before the end of your time frame provided.
Workers Compensation and Discipline

Should you experience any difficulties while performing your duties, you are to report them to your supervisor immediately. If you find that you cannot work or have to leave work because of difficulties, you MUST report to your supervisor and then immediately see your attending physician. You must provide a written note from your physician, indicating the reason for being off work, if you are unable to work due to the industrial injury. Please also note that physical therapy and doctor appointments should be scheduled around work hours, if possible.
Employee Handbook Review
Submit your current employee handbook for a review of current federal, state/local law compliance as well as industry standards and practices.