



# Liability & Property Pool Workers' Compensation Fund

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## RISK CONTROL SOLUTIONS

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A Service of the Michigan Municipal League Liability and Property Pool and  
the Michigan Municipal League Workers' Compensation Fund



### DISCIPLINING AND DISCHARGING LEGALLY

Handling the “problem” employee is commonly one of the most difficult situations a manager faces. Managers usually fear confrontation, liability, and violence and dislike having to seriously affect an employee’s life. For these reasons, many managers shy away from handling the problem employee. Doing so, however, only results in additional performance or liability problems in the future. Managers not only need to know how to correct employee behavior, but also how to do so effectively and in a manner that does not create a liability for the municipality. Claims stemming from discipline and discharge of employees contribute significantly to the losses of the Michigan Municipal Liability and Property Pool. Consequently, members will benefit by reducing this exposure for the Pool and themselves.

### THE CHECKLIST

Managers can use the following checklist to determine if they are using effective and lawful discipline and discharge practices.

- ✓ **Inform all employees of the standards to which the employer holds them accountable.** Employee handbooks, civil service rules and regulations, training programs, or the organization’s policies and procedures are common for outlining standards. Employees should receive a copy of the relevant information.
- ✓ **Train all supervisors and managers who apply discipline.** The training should include the organization’s discipline and discharge policy, anti-discrimination policy, record keeping requirements and information on effectively providing employees with feedback.
- ✓ **Investigate all alleged infractions of the standards before taking action.** Review all pertinent material, talk to witnesses, review the employee’s personnel file, and consider how the employer has disciplined other employees charged with the same or a similar offense.
- ✓ **Apply discipline uniformly and consistently.** Similar violations should receive similar treatment. Sex, race, religion, union affiliation or other discriminatory factors must not influence an employer’s decision to discipline.
- ✓ **Administer discipline according to the organization’s policies and procedures, union contracts or civil service rules and regulations.**

- ✓ **Conduct performance appraisals that clearly and accurately evaluate employees' performance.** In a termination case, an improperly conducted evaluation may become a weapon against the employer.
- ✓ **Establish "Just Cause" when applying discipline.** Establish reasonable rules, provide employees with adequate warnings about the consequences of their behavior, and apply progressive discipline.
- ✓ **Provide employees with hearings and due process when discharging them for just cause.** Always follow your own procedures or those of established by contracts and discuss hearing rights with your attorney.
- ✓ **Discuss disciplinary actions with your labor attorney before you apply them.** This is particularly important for major infractions, repeated violations, or cases that will result in discharge. Be especially cautious with cases that involve employees in protected classes such as minorities, individuals with disabilities, or women.
- ✓ **Communicate in writing with employees who violate rules and regulations.** The documentation should be nondiscriminatory, objective and specific. The employer's Human Resource professional should properly file any such communications.
- ✓ **Consider accommodation for some cases.** Consider, if practicable, giving employees with substance abuse or other non job-related problems a second chance by using an Employee Assistance Plan (EAP). The effort to assist the employee demonstrates the employer's good faith
- ✓ **Conduct documented exit interviews for all terminated employees or those who voluntarily resign their position.**

No manager or supervisor enjoys disciplining or discharging an employee. However, it is sometimes necessary to maintain an effective and efficient work force. Following generally accepted employment practices as well as the employer's policies and procedures reduces the risk of wrongful discharge claims. It also makes a difficult task somewhat easier.

As with any employment-related decision, employers should discuss discipline and discharge issues with their attorney.

If you need more help with discharge or discipline practices or other employment related areas, contact MML Risk Management Services or the League's Loss Control Services.



**Important Phone Numbers:**

MML Risk Management Services	800/653-2483
MML Loss Control Services	800/482-2726 or <a href="mailto:losscontrol@mml.org">losscontrol@mml.org</a>
Michigan Department of Civil Rights	313/456-3700 or <a href="http://michigan.gov/mdcr">michigan.gov/mdcr</a>
Equal Employment Opportunity Commission	800/669-4000

**Note:** This document is not intended to be legal advice. It does not identify all the issues surrounding the particular topic. Public agencies are encouraged to review their procedures with an expert or a competent attorney who is knowledgeable about the topic.



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## Discipline & Discharge Self-Assessment

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Inappropriately disciplining or discharging an employee is one of the most common mistakes that managers and supervisors make. It is important for employers to apply constructive discipline and to discharge when necessary. It is more critical to do so in a way that reduces your exposure to claims of discrimination, harassment or improper discharge. To assess your practices, ask yourself the following basic questions.

#### Does your organization:

#### 1. Have a written disciplinary policy?

Yes

No



#### *The policy statement should:*

- Be written;
- Be communicated to all employees and supervisors;
- Identify accountability standards;
- Identify possible disciplinary actions; and
- Not conflict with employer's rights regarding

#### 2. Train its supervisors and managers?

Yes

No



#### *Training should include:*

- How supervisors should handle the "problem" employee;
- How employee performance should be documented;
- How not to discriminate when disciplining;
- How to apply discipline in a consistent and fair manner;
- How to properly investigate a work rule violation; and
- How to apply commonly accepted disciplinary principles.

#### 3. Take proper actions to assure that discipline and discharge are handled legally

Yes

No



#### *When disciplining or discharging employees:*

- Always follow your own rules, regulations and labor agreements;
- Establish "just cause" when possible;
- Communicate honestly with employees who violate work rules. Document the discussion in writing;
- Before applying serious discipline, especially termination, discuss the action with your attorney; and
- Conduct documented exit interviews if discharge is necessary.

4. Review other areas of employment regularly?

Yes

No



***The review should include:***

- Evaluating the employee manual to make sure it is up to date and distributed to all employees?
- Checking employee personnel files reviewed to ensure they contain only that information allowed by state and federal law?
- Checking that performance appraisals are conducted accurately and fairly?
- Evaluating written policies and procedures to make sure they are current and checking that they are followed as written.

**Conclusions**



If you were able to honestly answer “yes” to all four questions and your organization follows most or all of the suggested practices, then your organization has reduced its exposure to future claims. You should congratulate yourself.



If you were unable to answer “yes” to one or more of the four critical questions, your organization may have a greater exposure to employment practices related claims. Missing components of one or more of the recommended practices may also indicate a deficiency in your current program. You should take one of the following actions:

- Correct any deficiency that may exist.
- Contact your attorney for advice.
- Contact MML Risk Management Services at 800/653-2348; or
- Contact Loss Control Services at 800/482-2726.

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