



## Progressive Discipline & Termination Training

**PRESENTED BY CHARLES KRUGEL**  
**HUMAN RESOURCES ATTORNEY & COUNSELOR**  
**LABOR & EMPLOYMENT LAW ON BEHALF OF MANAGEMENT**  
**&**  
**DIRECTOR OF LEGAL & COMPLIANCE SERVICES FOR THE HUMAN RESOURCE STORE**  
**&**  
**MEMBER OF THE INTEGRA SECURITY ALLIANCE**

### PRESENTATION HANDOUT

- 1) WHAT IS PROGRESSIVE DISCIPLINE?
- 2) WHAT IS WRONGFUL TERMINATION?
- 3) WHY PROGRESSIVE DISCIPLINE & WRONGFUL TERMINATION ARE IMPORTANT TO SUPERVISORS (Discussion; Also see How Much Money Does an Employment Dispute Cost & What's Your Likelihood of Getting Into an Employment Related Dispute or Being Sued? and The Costs of Unemployment Compensation (UC) Claims & Impact on Progressive Discipline & Employment at-Will; at the end of this handout)
- 4) ABC COMPANY POLICIES & PROCEDURES PERTINENT TO PROGRESSIVE DISCIPLINE & WRONGFUL DISCHARGE
- 5) THE WHAT, WHEN, WHY & HOW'S OF DOCUMENTATION & SAMPLE WARNING MEMO
- 6) EMPLOYEE DISCIPLINE MEETINGS – HELPFUL HINTS
- 7) EMPLOYEE DISCIPLINE ROLE PLAY
- 8) WRAP-UP /QUESTIONS
- 9) INFORMATION ABOUT CHARLES KRUGEL, Practice & Background Summary

***DISCLAIMER:** THE CONTENT CONTAINED IN THIS DOCUMENT IS GENERAL & INSTRUCTIVE INFORMATION ONLY; IT'S NOT INTENDED AS LEGAL ADVICE. THIS INFORMATION ISN'T INTENDED TO CREATE AND DOESN'T CREATE AN ATTORNEY-CLIENT RELATIONSHIP. READERS SHOULD NOT ACT UPON THIS INFORMATION WITHOUT FIRST CONSULTING WITH AN ATTORNEY.*

*Charles A. Krugel 312-804-3851 [www.charlesakrugel.com](http://www.charlesakrugel.com) [cak1@charlesakrugel.com](mailto:cak1@charlesakrugel.com)*

## WHAT IS PROGRESSIVE DISCIPLINE?

Simply stated progressive discipline is the concept that employee discipline is administered in an incremental and ascending manner. That is, each repeated infraction results in more serious disciplinary action leading to discharge.

Obviously, when and how progressive discipline is used depends on the nature, frequency and magnitude of the misconduct.

For example, a five-minute tardiness *MAY* result in a verbal warning on the first occurrence, a written warning on the second occurrence and a suspension on the third occurrence, *IF* each occurrence happens in a relatively compressed time period (e.g., three days in a row, or three weeks in a row). However, if each instance of tardiness is isolated or sporadic (e.g., three months in a row), then suspension for the third occurrence might be extreme.

As indicated above, the nature or magnitude of the misconduct *MIGHT* warrant progressive discipline unnecessary.

For example, beating up a coworker might warrant immediate termination (assuming there's no extenuating circumstance). The same goes for theft or being under the influence of illegal drugs or alcohol.

As stated in ABC Company policy manual, "The seriousness and frequency of the violation will determine the disciplinary procedure to be used. Please recognize that we may elect to skip or repeat disciplinary actions."

More on progressive discipline is discussed in the sections **How Much Money Does an Employment Dispute Cost & What's Your Likelihood of Getting Into an Employment Related Dispute or Being Sued?** and **The Costs of Unemployment Compensation (UC) Claims.**

## WHAT IS WRONGFUL TERMINATION

Also known as wrongful discharge this is the legal mandate that any termination which violates the law, contract or public policy is illegal.

Illinois doesn't recognize wrongful termination in the public policy context, but does recognize it in the context of any law or breach of contract.

Public policy is a commonly known policy against termination for reasons other than documented performance or misconduct. It could mean laying off outside of seniority, firing a falsely accused employee, or some other unjustified firing.

An increasing majority of states don't recognize public policy as being grounds for employer liability and our increasingly strengthening and enforcing the employment at-will doctrine.

Consequently, wrongful discharge is commonly known to be any discharge that occurs in violation of any of our civil rights statutes or ordinances (race, sex, national origin, sexual orientation, age, disability, military status, etc.), or any termination which violates a provision in a legally binding contract.

## ABC COMPANY'S POLICIES PERTINENT TO PROGRESSIVE DISCIPLINE & WRONGFUL DISCHARGE

### Guidelines for Appropriate Conduct

As an integral member of the ABC Company team, you are expected to accept personal responsibility for your actions, adhere to accepted business principles, and exhibit a level of personal integrity at all times. This not only involves sincere respect for the rights and feelings of others, but also demands that you refrain from any behavior that might be viewed unfavorably by current or potential clients, funders, vendors or by the public at large.

In reality, your personal conduct in every setting reflects on ABC Company. You are expected to observe the highest standard of professionalism at all times.

Following are examples of the types of behavior and conduct that ABC Company considers inappropriate. Please understand that this list is not exhaustive and is intended only to provide examples of inappropriate conduct.

- *Falsification of Records/Information:* falsifying records, intentionally providing false information, or knowingly omitting pertinent information.
- *Harassment:* unsolicited and unwelcome behavior of a sexual nature, either verbal or physical; graphic or degrading comments about an individual; display of sexually suggestive objects or pictures; or any offensive or abusive physical contact. In addition to sexual harassment, any other type of harassment, for example, based on race, religion, ethnic background, is prohibited.
- *Illegal Substance/Alcohol:* being under the influence, or possession, distribution, sale or transfer of alcohol or illegal drugs while on organizational property or engaged in organizational business (except where alcohol is authorized).
- *Abuse:* fighting, personal assault, threatening violence, or creating an intimidating work climate; using abusive, obscene, threatening language or derogatory comments about age, sex, race, disability, sexual orientation, or national origin.
- *Theft:* unauthorized removal of ABC Company property from co-workers, vendors, funders, or clients.
- *Insubordination:* refusing to follow reasonable instructions of a supervisor relating to work or work-related conduct.

- *Unacceptable Conduct:* conduct that is illegal and/or unacceptable, including behavior that violates ABC Company policies. Some examples include:
  - soliciting or accepting gratuities
  - excessive unauthorized absenteeism or tardiness
  - unauthorized use of ABC Company supplies or resources for a personal purpose
  - disregard of ABC Company safety and security regulations
  - use of ABC Company telephones for personal toll calls
  - inappropriate communication by electronic means (see section on Electronic Communication)

If your performance, work habits, overall attitude, conduct, or demeanor become unsatisfactory in the judgment of ABC Company, based on violations of the above or of any other ABC Company policies, rules, or regulations; or based on violations of federal, state, or local laws, you will be subject to disciplinary action, up to and including termination.

### Disciplinary Process

ABC Company is committed to ensuring that we effectively communicate our performance expectations and deal with problems promptly in a constructive and equitable way. Any disciplinary action taken is designed to improve the effectiveness of an employee's performance of their assigned responsibilities and/or to prevent the reoccurrence of future problems. When an employee's work does not meet performance or conduct standards or is in violation of personnel policies contained in this Handbook as well as other organizational policies and standards of conduct, supervisors may employ any of the following actions: counseling, verbal warning, written reprimand, suspension without pay, probation, or termination. The seriousness and frequency of the violation will determine the disciplinary procedure to be used. Please recognize that we may elect to skip or repeat disciplinary actions.

### Conflict Resolution

ABC Company is committed to providing a work environment that encourages open and honest communication. We do, however, recognize that work-related problems or misunderstandings may occur from time to time. It is important that such matters be resolved before serious problems develop.

To accomplish this, a conflict resolution process has been established. The following guidelines are designed to assist in conflict resolution.

### Step One

As soon as you are aware there is a conflict, discuss the situation with your immediate supervisor as a first step. If following this discussion, you believe the situation is still not resolved or if you feel a meeting with your supervisor would not be appropriate or possible, you may proceed directly to Step Two.

### Step Two

If the situation is not resolved after Step One, prepare a written summary of your concerns and request a meeting with the next supervisory level up. You will receive a written response within five working days of your meeting. If you are still dissatisfied with the decision, you may proceed to Step 3.

### Step Three

If you still feel your problem has not been adequately addressed and wish to pursue the situation further, you may prepare a written summary of your concerns and request that the Director of Human Resources review the matter. You will receive a written response regarding the situation within five (5) working days of receipt.

### Step Four

If you are not satisfied with the Director of Human Resources' response and wish to pursue the situation

further, you may prepare a written summary of your concerns and request that the matter be reviewed by the Executive Director in conjunction with the Director of Human Resources, the head of your department/office, and potentially members outside of your department.

After a full review of the facts (which may include a review of the written summary of your statement, discussions with all individuals concerned, and a further investigation if necessary), you will be advised in writing of the organization's position on the matter, typically within 10 business days. This decision shall be final.

ABC does not tolerate any form of retaliation against employees availing themselves of this procedure. The procedure should not be construed, however, as preventing, limiting, or delaying ABC company from taking disciplinary action against any individual, up to and including termination, in circumstances (such as those involving problems of overall performance, conduct, attitude, or demeanor) where ABC company deems disciplinary action appropriate. Nor may it be utilized to appeal a discharge action following an employee's termination.

# Memo

To: Roger Rocket  
From: Sam Silver  
Date: February 1, 2003  
Re: Job Performance

---

As communicated in numerous conversations we have had over the past year, your job performance as a Case Manager for XYZ Agency as been unsatisfactory, and despite my remedial guidance and instruction, it continues to substandard. It is, therefore, necessary for me to issue this written warning to reiterate those areas in which your work behavior is deficient and to detail my expectations so you may correct the shortcomings and perform your job at an acceptable level.

## **Client Service**

We have had several conversations about your displayed unprofessional behavior and/or a lack of commitment to your clients. For example, often times when clients come in to see you and the receptionist informs you that your clients are waiting for you, you will first ask, "Did you tell them I was here?" If the receptionist says "yes", you then see the clients. If, however, the receptionist responds "no", it appears you seek a way to avoid seeing the clients instead of offering them services to meet their needs. Also, it has been noted that when the Intake Specialist wants to introduce you to a new client while you're alone at your desk, you prefer not to meet the client at that time, but tell the Intake Specialist to give the new client your card tell them to call to make an appointment with you. While I certainly understand and appreciate your need to practice good time management and to schedule your time so as to maximize your productivity, this should not come at the expense of quality client service. You could easily avail yourself to just to say a brief hello to new clients rather than giving them the impression of being too busy and/or disinterested.

## **Quality of Work**

We have previously discussed deficiencies in the quality of your work; particular with respect to accuracy, timeliness and your failure to follow instructions. Most recently, this week we discussed your client Francine Flowers. We talked about why she has two open applications in the system

Apparently, she is registered under two different social security numbers. Upon further discussion, you commented how you read the social security card incorrectly and registered her under the wrong number. If the correct number would have been entered, the system would not have allowed the entry. Additionally, your client Jane Jones was also registered twice. The exact same scenario took place months earlier.

Also, this week on January 30<sup>th</sup>, I spoke with you about the enrollment of your client Juan Rivera. Repeatedly, you have been instructed on our enrollment procedures that require the attainment of all proper documentation before a client is enrolled. You were reminded of this again with Mr. Rivera yet you enrolled him into the system without his signature or assessment notes. When asked why, you apologized and said you forgot. This error may pose questions during an audit if it is not corrected soon.

## **Timeliness of Case Notes**

We have had numerous discussions regarding the high percentage of your case notes being overdue by more than 30 days. The last two tracking reports I shared with you showed that more than 20% of your case notes were past due by greater than 30 days. As all of the case managers have been repeatedly informed, we expects our

case managers to keep their case notes up to date at all times so 0% are 30 days past due. Because we are aware, however, that extenuating circumstances may occasionally preclude this, anything above 10% overdue is considered unacceptable for a case manager. You must, therefore, better manage your time to allow sufficient time to prepare adequate case note documentation on the services provided to clients as well as your daily activities and appointments.

**Punctuality**

As discussed this morning, February 1, 2003, you cannot change your schedule without prior authorization. In October 2002, you were initially hired to work the hours of 9 a.m. to 5 p.m. Several months later you requested a schedule change from your previous supervisor, Ben Brown, who approved your work hours be changed to 8:30 a.m. to 4:30 p.m. Some time later, you changed your schedule without asking for approval to 8 a.m. to 4 p.m. Today, you stated you recently changed your schedule again back to 8:30 a.m. to 4:30 p.m. for personal reasons. I have always tried to be as accommodating as possible with staff and their work schedules; however, you cannot change your schedule on your own. You must first discuss and receive my approval to a schedule change and the need to make sure it is clearly communicated to your clients and to your coworkers so they are aware when you will be in the office.

Effective immediately, I expect you to closely proof all of your work and ensure the data is correct and complete. I also expect that given deadlines for regular reports and special assignments will be met. If extenuating circumstances arise that prevent you from doing so, you should notify me as soon as you are aware of anything that may impede you from completing any given task on time.

The severity and continuation of the above deficiencies despite my earlier warnings have prompted me to inform you at this point, Roger, that you must demonstrate immediate and ongoing improvement in you job performance. Failure to meet the expectations set forth or the occurrence of additional shortcomings will result in immediate disciplinary action up to and including termination of your employment with XYZ agency. As I have mentioned to you several times, as your supervisor I am willing to work with you should you require additional training or guidance, but ultimately, your job performance and future with the company is up to you.

I have read and understand this memorandum.

\_\_\_\_\_  
Roger Rocket, Case Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sam Silver, Program Manager

\_\_\_\_\_  
Date

## How Much Money Does an Employment Dispute Cost & What's Your Likelihood of Getting Into an Employment Related Dispute or Being Sued?

### **The Cost**

One approach to determining cost is past experience. I've settled employment cases at the administrative level for \$1,000. At the circuit court level, I've settled cases for as much as \$125,000. However, past performance is neither a reliable predictor nor guarantee of future performance.

Here's another way to compute the cost of a dispute: If a complaint is filed with an administrative agency such as the Equal Employment Opportunity Commission (EEOC), a business should expect to pay a minimum of 5 hours for attorney's fees to just negotiate a quick settlement. Thus, if attorney's fees are \$250/hour, miscellaneous costs are \$50, and the settlement reached is \$1,000, that's \$2,300 spent. This doesn't even include the cost of employees spending time away from work to deal with this matter, and any other transportation, gas or lost sales, profits, etc. If the case isn't quickly settled or if it proceeds to court, then we're looking at substantially more money.

Another cost is the employee's damages. Damages may include back pay and benefits, front pay, punitive or exemplary damages, reinstatement or promotion. Furthermore, a court or agency may order training (e.g., diversity and harassment), affirmative action and monitoring. This is an additional and substantial cost that the business may bear.

According to Jury Verdict Research ([www.juryverdictresearch.com](http://www.juryverdictresearch.com)), which compiles samples of employment discrimination verdicts for analysis, the median compensatory award for employment related cases, among all economic sectors:

- rose 18% in 2003 to \$250,000;
- fell to \$210,308 in 2004;
- from 1998-2004, the award was \$581,000; and
- from 1998-2004, 42% of all jury awards to plaintiffs in cases concerning age, disability, gender, race, pregnancy or religious discrimination or retaliation were between \$249,000 to \$499,000;
- 10% of all jury verdicts, for these same employee categories, was \$1,000,000 and up;

From "Working Up a Suit" by Barbara Bowers, *Best's Review*, Jan. 2005, Vol. 105, Issue 9, pp. 74-77; and Horner & Bagnell, LLC, *Employment & Labor Law Update*, August 2006.

According to Jury Verdict Research, the average award:

- was \$990,000 from 1998-2004, within the manufacturing, industrial and high tech sectors, the average jury verdict award for employment discrimination cases;
- from 98-04, within the service and retail sectors it was \$486,000; and
- From 98-04, within the transportation sectors—\$445,000.

From "Risk Management—Why Train?" 2006, [http://www.emtrain.com/risk\\_manage\\_why\\_train.shtml](http://www.emtrain.com/risk_manage_why_train.shtml), citing Jury Verdict Research's "Employment Practice Liability: Jury Award Trends and Statistics," 2005 Edition.

According to insurance industry research:

- The general cost to settle a "frivolous employment case is \$30,000-\$40,000 (per a March 2005 statement from a Senior Director of London American General Agency; and
- 550 employment related lawsuits are filed every day (per a March 2005 statement from a Director of the National Union Fire Insurance Company).

From: "Heads Up! Employees at Large," in <http://www.insurancejournal.com/magazines/southeast/2005/03/07/coverstory/52769.htm>.

### **The Likelihood of Getting Into a Dispute**

Some statistics compiled by government and private industry might help to determine the probability of an employment related complaint or suit being filed in addition to the cost to settle or litigate these complaints.

According to a 2004 Chubb Insurance ([www.chubb.com](http://www.chubb.com)) survey, during the previous few years, 1 in 4 or 25% of privately held companies have been sued by an employee or former employee. However, it's estimated that 75% of these claims are groundless. Nevertheless, these claims still cost money to handle and resolve. From "Working Up a Suit" by Barbara Bowers, *Best's Review*, Jan. 2005, Vol. 105, Issue 9, pp. 74-77.

According to the EEOC, they filed:

- 328 lawsuits in fiscal year 2000,
- 430 lawsuits in FY 2001,
- 364 lawsuits in FY 2002,
- 393 lawsuits in FY 2003,
- 415 lawsuits in FY 2004 and
- 417 in FY 2005.

The monetary benefits paid over all of these suits averaged \$51.3 million from 2000-2002. However, in 2003, the amount awarded jumped to \$148.7 million, and in 2004 it increased to \$168.1 million. In 2005, it fell to \$107.7 million. From <http://www.eeoc.gov/stats/litigation.html>; this depicts complete litigation statistics from FY 1992 – FY 2005).

Regarding money paid on all complaints, *not including lawsuits*, from fiscal years 2000-2005 an average of \$251.8 million was paid by businesses. From [www.eeoc.gov/stats/all.html](http://www.eeoc.gov/stats/all.html).

The above numbers just relate to the EEOC. This leaves out the courts, the Illinois Department of Human Rights, the Cook County Commission on Human Rights, the federal and state labor departments, labor boards, Homeland Security, etc. There's a lot of money at stake here.

As I said before, it's much cheaper to prevent these problems from arising via proactive or preventive human resources. For example, according to Jury Verdict Research:

- It costs \$5,000 to train 200 employees at \$25 each on employment issues such as harassment and discrimination.
- If that same company is sued, the cost to litigate the case is approximately \$155,000, and the cost to settle is about \$85,000.
- Yet, the cost to litigate or settle an individual case, *when no training occurs*, is \$960,750 to litigate and \$304,000 to settle.

From "Risk Management—Why Train?" 2006, [http://www.emtrain.com/risk\\_manage\\_why\\_train.shtml](http://www.emtrain.com/risk_manage_why_train.shtml), citing Jury Verdict Research's "Employment Practice Liability: Jury Award Trends and Statistics," 2005 Edition.

In short, it pays for almost any business of any size, to have a basic understanding of human resources and employment law, and to have access to a great labor and employment attorney.

## The Costs of Unemployment Compensation (UC) Claims & Impact on Progressive Discipline & Employment at-Will

*Co-Authored by David Prosnitz & Charles Krugel*

Generally, a company's unemployment tax rate is experience rated: it goes up or down over time depending on a company's history with awarded unemployment claims.

In Illinois, for example, rates vary between 1.0% and 8.2%. The first \$12,000 of each employee's wages will be taxed in 2008. So, a million dollar taxable payroll can have unemployment taxes between \$10,000 and \$82,000. Obviously, lower tax rates make a difference to the bottom line.

The actual cost of a claim may vary, since claimants may collect just 2 weeks or 26. The average claim costs an employer \$4,200 but claims can cost a company in excess of \$10,000.

Each claim can affect 3 years of unemployment tax rates since state formulas used to assign rates ordinarily use a 3 year moving period to assign a tax rate. This is one reason why employers don't realize the expense involved in a single claim. The expense is spread over a 3 or 4 year period.

Smaller employers are hit harder by single claims than larger ones, though the different impact of a claim on a tax rate does not change the actual cost to the employer significantly. The average cost, big firm or small, of an unemployment claim is \$4,200.

Employers can contest the cost of these claims by fighting unwarranted applications for benefits. Employees terminated for misconduct or employees who quit for reasons not attributable to the employer are legally not entitled to unemployment benefits.

If employers do not fight unemployment claims, they are meekly acquiescing to their costs. This permits claimants who behaved badly at work to collect a reward for their bad behavior and it insures that the employer pays an unreasonable tax expense.

### **Eligibility for UC**

Because UC is a government administered bureaucracy, like much of government, it's not administered in a cost effective, logical or exacting manner. Many factors play a role as to whether and how an employee will be eligible or ineligible for UC.

Usually, if an employee is fired due to intentional wrongdoing, refuses reasonable employment and then becomes separated, quits for reasons not attributable to the employer, or is not able and available for work, they're not eligible for UC. If the employee is separated from employment through no fault of their own, whether for lay off, furlough, reduced hours, or there appears to be mixed or uncertain causes for separation (e.g., poor performance, undocumented problems, constructive discharge), then they'll be eligible for UC. Since an employee must do something

discernibly wrong to be denied benefits under the misconduct standard, vague reasons for firing an employee often lead to unemployment benefits. More specifically, a former employee will be disqualified from receiving unemployment benefits if they were terminated for misconduct or they quit for reasons not attributable to the employer.

While many factors are beyond the employer's control, the main reason for a company's unemployment tax rate increase or decrease is the eligibility or ineligibility of former employees who file for UC. If fewer people collect against a company, over time, the company will have a lower tax rate. If more people collect against a company, the rate will go higher. If an employer successfully contests its unemployment claims, it can gain control of its unemployment tax rate.

### **Terminating for Misconduct (Including Conduct, Excessive Absenteeism & Tardiness)**

Employers should have a UC cost control program and it should consist of three parts.

First, the employer should discipline and terminate employees in light of the misconduct standard used by many UC agencies. Basically, misconduct is an intentional or willful act of wrongdoing that does harm or potential harm to the employer and that violates a known or reasonable rule. Additionally, it's something for which the person had been warned, or the action is of such magnitude that no warning is necessary (e.g., theft or violence).

Second, the employer should warn appropriately because prior warnings help to prove the willful nature of the last wrongdoing. The UC administration ordinarily wants one warning in the year prior to discharge. Generally, it's best if the employer has a progressive warning system though, depending on the nature of an offense, the employer may warn, suspend or terminate at any time. The life of a disciplinary action, from the standpoint of the UC system, is a year. So, if after a suspension, the employee has no related incidents for a year, on the next occurrence, progressive discipline starts over at the warning level.

It helps if the employer behaves as a reasonable person might. That is, employees should be terminated only when there is proof of wrongdoing. The infraction should be serious in the sense that there was harm or potential harm to the employer, the infraction should violate a known or reasonable rule, and the employee should have had an appropriate warning. A reasonable person will discuss the wrongdoing with the employee. This is a check on the employer's reasonableness; and should the employee admit to wrongdoing, this also is good evidence for the employer.

Third, employers should document all infractions, especially ones that lead to termination. This shows that the employer fired the employee for what occurred at that time, since the form should have been completed when the wrongdoing happened. Recording disciplinary actions in writing may also help the employer remember details they would otherwise forget. And the proof of a wrongdoing is often in the details. Documentation is further discussed in the next section.

Also, remember that if an employer discharges an employee within the first 30 days of employment, Illinois doesn't find that business chargeable for UC.

However, employers need to understand that problems such as employee incompetence or performance issues do not usually constitute misconduct. Moreover, personality issues or failure to fit into the workplace aren't sufficient reasons to negate the awarding of UC. Attitude, personality, incompetence and performance issues have to be tied to some sort of willful misconduct by the employee in order for the employee to be denied UC.

### **The What, When, Why and How of Documentation**

Documentation is a key to winning UC claims because government bureaucrats are looking for the most efficient and professional way to decide claims. The quality and quantity of information available makes the government official's job easier. If an employer makes the bureaucrat's job easier, the employer's effort will be rewarded. Here's what the UC administration typically looks for:

- Easy to read and understand
- Consistent—using the same forms, filled out in the same way, consistent language
- Details: Date, time of day, names/signatures, job titles
- Indicate the level of discipline; i.e., 1<sup>st</sup> warning, final warning, probation, etc.
- Quotations or paraphrasing/summarizing of employee statements are useful
- Indicating whether the employee signed or received any documentation; or if employee refused to sign or receive the same
- Employment policies/practices that are easy to read and understand
  - Documentation should be created contemporaneously with or ASAP after the event to be documented occurs; doing so increases the credibility of the documentation
- Impressions are okay; personal judgments about the employee aren't
  - Indicating that the employee is lying, nervous, upset, angry is okay
  - Calling the employee a “scumbag,” “piece of \*&\$@” or any other profanity or name isn't okay

- Any of the documenters personal opinions or observations referencing any protected class isn't proper, unless to document what the employee or a witness indicated and if it's relevant to the incident being documented

### **When to Contest or Not Contest an UC Claim**

All unwarranted UC claims should be contested, and they should be contested as soon as the claim is received (not after it advances to the appellate levels) and within the mandated time period. It's always cheaper and easier to contest a claim at the lowest administrative level of the claims process.

### **When or If to Appeal a Claim**

Whenever it's either cost effective, the employer didn't properly represent itself or wasn't properly represented at the lower level of claims processing.

### **Following UC Guidelines in Making Terminations Relates to Labor and Employment Laws**

The fact is that in almost all circumstances employers can't take *any* employment action on the basis of race, sex, national origin, ethnicity, religion, socio economic status, military status, disability, age (40 and older), marital status, family status, union activity, and in an increasing number of jurisdictions—sexual orientation, and any other legally protected class or category. These prohibitions equally apply to unemployment compensation.

However, if an employer utilizes the concepts of equal employment opportunity and the misconduct standard, and creates a workplace free from legally prohibited harassment and discrimination, it's much easier to maintain a legally compliant workplace. Moreover, the employer will be able to minimize their unemployment compensation expenses.

Employers need to remember that when documenting incidents or when reporting to a state's UC agency they should not make any references to the protected classes unless for the purposes of quoting or summarizing what another employee said, and for clarifying the record. An employer's failure to do so may not just result in the awarding of unemployment compensation, but may also result in an agency complaint or a lawsuit.

Just remember to act without regard to the protected classes, train the entire workforce and follow company employment policies.

*David Prosnitz is the founder and president of Personnel Planners, [www.unemploymentclaims.com](http://www.unemploymentclaims.com), a Chicago based unemployment compensation cost control company that services more than 800 businesses.*

A PERSONAL STATEMENT FROM CHARLES KRUGEL ABOUT CHARLES KRUGEL

Practice & Background Summary);  
[www.charlesakrugel.com](http://www.charlesakrugel.com);

---

As a management side labor & employment attorney & human resources (HR) consultant, I have 14 years of experience in the field & have been running my own practice for nearly 7 years; [www.charlesakrugel.com](http://www.charlesakrugel.com). Furthermore, I'm aligned with The Human Resource Store (HR Store); [www.hrstore.com](http://www.hrstore.com), as its Director of Legal & Compliance related services; i.e., I provide labor &



employment law counsel & representation to our clients. The HR Store specializes in the delivery of "A-Z" human resources services to clients.

In my own practice, my clients are small to medium sized companies in a variety of industries. In addition to

providing traditional labor & employment law services, I represent companies desiring to institute preventive & proactive HR functions. These functions include policies & procedures, which help to efficiently and discreetly resolve issues in-house & prevent lawsuits & complaints; they also help to reduce costs & act as catalysts for increasing productivity & profits.

Relative to results, I have negotiated more than 100 labor & employment agreements & contracts, including noncompete & severance/separation agreements, collective bargaining & related labor agreements. Also, I have argued more than 11 arbitrations, 13 mediations & 39 agency cases/complaints & have resolved 100-plus labor grievances & similar in-house complaints & completed over 100 in-house investigations. Moreover, I'm a published author in my field & am frequently the subject labor & employment law related TV, radio & newspaper interviews. My website contains 5 radio interviews & one 30-minute TV interview with me, as well as additional newspaper interviews/articles with & about me.

My career choice is the result of a long running fascination with workplace behavior, management styles, & how & why people pursue particular vocations. While in college, I advanced my interest by majoring in psychology. After college, I pursued graduate study in industrial/organizational (I/O) psychology with the thought of being an I/O consultant. During my first year of graduate

school, I realized that the practice of I/O psychology was too "touchy feely" for me. Consequently, I decided that once I earned my masters degree in I/O psychology, I would attend law school.

I earned my law degree (Juris Doctorate) from Ohio Northern University. My MA degree in I/O psychology is from the University of North Carolina at Charlotte. My BS degree in psychology is from Bradley University. During law & graduate schools, I was a graduate student representative for each school's university senate. During college, I was a rush chairman & executive board member for my fraternity.

Relative to civic & association involvement, I'm on the following boards of directors: Time Dollar Tutoring ([www.timedollartutoring.org](http://www.timedollartutoring.org)), & I'm the Board's Director; Board of Directors for the YMCA Alliance ([www.traininginc.org/chicago.htm](http://www.traininginc.org/chicago.htm)), & I am Board Treasurer & Chair of the Finance Committee; member of the Board of Directors for Youth Communication ([www.newexpression.org](http://www.newexpression.org)), the publisher of New Expression a media source for Chicago teens; member of the Junior Board for Urban Gateways ([www.urbangateways.org](http://www.urbangateways.org)), an arts education organization; and Advisory Board member for the Law & Policy Institutions Guide. Also, I have been legal counsel for the Chicago chapter of Bikers Against Child Abuse (BACA); & I'm a volunteer "big brother"/mentor via the Jewish Children's Bureau. Also I'm an active member of the Chicago chapter of the Labor & Employment Relations Association, the Chicagoland Chamber of Commerce, the Greater O'Hare Association (a regional chamber of commerce) & the World Trade Center Chicago.

Finally, some personal background information. I'm a native Chicagoan. Born & raised in West Rogers Park. I graduated from Rogers Public School. For high school, I graduated from Niles North in Skokie. It was during childhood that I was indoctrinated into the ways of business, self-employment & entrepreneurship. My father owned & ran his own chain of pharmacies in Chicago for 35 years. My grandfather was an immigrant businessman who owned his own grocery stores in Chicago. Family taught me the value of hard work & how to compete & succeed in business.