

HR QUESTION ? of the month



Remove a disciplinary write up from personnel files? When and how?

Question: An employee was written up for calling out sick but the employee had a doctor's note excusing them from work. What is the legal way to withdraw a write-up from an employee's file?

Response: Absent an employment contract, including a collective bargaining agreement, that addresses this issue, there is no federal or state law that governs here. If the employer has determined that it issued a disciplinary action in error, it has discretion to determine whether/how to handle such situation and should adhere to its policy and past practice in this situation. If this is the first situation of its kind, the employer can determine how to approach the issue but should be cognizant of the precedent being set so that it follows suit in any subsequent similar scenarios.

If the employer seeks to expunge the disciplinary action so that there is no record of it, such that the employee's file appears as though it was never issued, we are not aware of any reason why the employer cannot simply remove it from the file and dispose of it. If the employer wants to maintain a record of the write-up but does not want it to have any impact on the employee or the employment relationship, it can leave the write-up in the employee's personnel file and attach a note to it explaining that it has been effectively (though perhaps not physically) removed. The latter approach may be desirable if, for example, the employee did not provide proper notice in advance of the absence when he or she should have done so. In this situation, while the disciplinary action remains on file as evidence that the employee failed to adhere to company policy by providing proper notification of an excused absence, once he or she did so the employer can note that the write-up was effectively "removed" even though it physically remains in the file (again with an attached document to indicate the "withdrawal").

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