

HR QUESTION ? of the month



Employees late? Steps to take.

Question: What is the best way to handle employees who are constantly or continually late to work?

Response: The best way to manage employees who are consistently tardy to work is through the use and enforcement of the employer's disciplinary action policy or other similar progressive disciplinary approach. An employer should keep in mind the importance of issuing consistent disciplinary action for similarly situated employees who exhibit similar policy infractions.

Typically for an attendance-type policy violation, an employer will seek to verbally warn tardy employees on the first offense and remind them of their schedule and of when they are expected to report to work. Verbal disciplinary action should be documented and placed in the respective employees' personnel files. Ideally once an employee is counseled that he or she is not meeting expectations regarding punctuality, he or she will improve and that will be the end of it. If the policy supports written disciplinary action for a first offense, of course the employer can and should adhere to its policy.

If, however, the tardiness continues, the employer may need to progress to more forceful disciplinary action, which can include a written disciplinary document or perhaps a suspension (which can be unpaid for non-exempt employees), again taking care to ensure that any disciplinary action issued is consistent with employer policy and past practice. This means that if more than one employee is routinely late to work, the employer's approach to issuing discipline should be the same for each of those employees. At the time of issuance, an offending employee should be advised of the importance of reporting to work on time, and what the consequences will be if he or she does not make, and sustain, improvement.

Finally, if any employee is unable to meet scheduling expectations and continues to arrive late, the employer may need to terminate the employment relationship and look to hire someone who can more reliably report to work. Regardless, the employer must take care to ensure that whatever disciplinary action is used for unsatisfactory attendance and punctuality, it stops short of failing or refusing to pay wages that have been earned, or imposing any fine as a penalty. Monetary punitive measures of this nature often run afoul of applicable law and are ill-advised.

As noted, the employer should ensure that if tardiness is an issue for multiple employees, they are all treated in a consistent manner when it comes to disciplinary action. Keep in mind that this assumes that none of the tardiness is attributable to something for which there is statutory protection. For example, if any employees are late to work due to a sincerely held religious belief or a disabling condition, the employer may have a duty to excuse the attendance infraction as a form of reasonable accommodation

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(see <https://www.eeoc.gov/policy/docs/accommodation.html#modified> as to disability accommodation, and https://www.eeoc.gov/eeoc/newsroom/wysk/workplace_religious_accommodation.cfm as to religious accommodation). Of course, instances of unsatisfactory attendance that are frequent, unpredictable and unreliable typically do not have to be tolerated if they visit an undue hardship upon the employer (see question 20 at <https://www.eeoc.gov/facts/performance-conduct.html#issues> which specifically addresses this issue, for example). Employees who are eligible under the federal Family and Medical Leave Act (FMLA) and who have been certified for intermittent leave may also need to be excused from attendance violations in some cases.

If you do not have an attendance and punctuality policy, we recommend adopting one. Any new or revised policy should be clearly communicated to employees in advance of its implementation. If the employer does have a policy in place but has been remiss in enforcing it, we recommend reviewing the policy with employees to remind them of what it contains and what is expected of them, and letting them know that the employer will begin enforcing it, taking disciplinary action when and as necessary to ensure compliance from all employees.

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