

# ICA's Sample Policies for Democratic Corporations



Sample Termination  
& Discipline Policy

# MODEL TERMINATION POLICY

## TERMINATING OR DISCIPLINING A MEMBER FOR INADEQUATE PERFORMANCE OR HARMFUL BEHAVIOR

### Background: Just Cause

The underlying principal behind a democratic corporation's policy around discipline and termination should follow the principle of 'just cause.' Just cause means that the employer has to have a rationale (a 'cause') for imposing discipline, and that the rationale must be reasonable or 'just'. There are seven accepted tests to determine whether there was 'just cause' for any discipline:

1. Was the employee forewarned of the consequences of his or her actions?
2. Are the employer's rules reasonably related to business efficiency and performance the employer might reasonably expect from the employee?
3. Was an effort made before discipline or discharge to determine whether the employee was guilty as charged?
4. Was the investigation conducted fairly and objectively?
5. Did the employer obtain substantial evidence of the employee's guilt?
6. Were the rules applied fairly and without discrimination?
7. Was the degree of discipline reasonably related to the seriousness of the employee's offense and the employee's past record?

The test surrounding 'just cause' discipline was established in 1966, and has been the foundation of a just termination ever since. In most union contracts (and for all worker in the state of Montana) termination must be proven to have passed the seven tests outline above. In many union contracts, the determination of whether a discipline or termination passes the tests outlined above is determined by a third party arbitrator jointly selected by management and union. In most cases, the cost of this arbitration is borne equally by the union and the company.

# A Model Termination & Discipline Policy

## *Section 1: Definitions*

### Inadequate Performance

"Inadequate Performance" shall mean a member's poor performance, as reflected in their performance evaluations or the presence of an employee's chronic behavior problems at work. Such behavior problems may include, but are not limited to, the following:

- Failure to attend meetings.
- Alcohol and drug abuse.
- Absenteeism.
- Discriminatory attitudes or behavior.
- Inability to work with others.

These behavior problems are difficult to define more precisely and will by necessity be subject to the interpretation of the Personnel Committee. Until further definition, it is intended that company practice be the basis for determining whether a member has such behavior problems.

### Harmful Behavior

"Harmful Behavior" shall mean behavior that seriously impairs an employee's ability to represent the organization, or threatens the well-being of the organization, and where a recurrence could not be tolerated by the co-op. Such action may include, but is not limited to, the following:

- Theft of property from the co-op, the co-op's clients or other business relations, or other employee.
- Assault on client, or other employee.
- Physical fighting or attempting to provoke a fight on the co-op's premises.
- Gross misrepresentation of co-op to outsiders.
- Intentionally giving away confidential information.
- Possession of illegal weapons or firearms on the co-op's premises.
- Intentionally damaging the co-op's property or the property of another employee.

- Threatening or intimidating other employees.
- Sexual harassment: any sexual attention physical, verbal or otherwise that is unwanted.

### Warning Period

"Warning Period" shall mean a period ranging from two weeks to six months during which the Member is on probation. This period may be divided into two sub-periods: one period during which performance and behavior must be improved, and one period during which adequate performance and behavior must be maintained. Each sub-period may not exceed three months, and the total warning period shall not exceed six months. During a warning period, the Member continues to work, trying to improve performance and improper behavior to the Supervisor's satisfaction.

#### D. Optional Personnel Committee Consultations (optional)

These meetings are designed to give the Supervisor feedback on the warning, its terms and the nature of the performance problem.

#### E. Grievances

A member (including the General Manager) may grieve a warning, the terms of a warning period, a suspension, actions necessary for re-instatement, the decision to terminate, etc. through the normal grievance process.

### ***Section 2: Termination Procedure for Permanent Members Excluding the General Manager***

Depending on the seriousness of the misconduct or the inadequacy of an employee's performance, one or more of the "optional" steps below may be properly omitted. In cases of Harmful Behavior, a worker may be terminated immediately.

#### **Step One: Verbal Warning**

(Optional for both Inadequate Performance and Harmful Behavior.)

Where an employee is in need of improvement in job performance or has demonstrated behavioral problems, a Supervisor will give a verbal warning describing the areas in need of improvement. The Supervisor shall privately express to the employee his/her serious reservations about the member's performance or behavior. A structured attempt to correct the performance

shall be undertaken. The member shall be informed that failure to improve or recurrence of problematic behavior may result in the beginning of a formal Warning Period. The verbal warning shall be a warning, not a Warning Period.

### **Step Two: Formal Written Warning**

(Required for Inadequate Performance, optional for Harmful Behavior.)

The Supervisor must get the approval of the General Manager for a formal, written warning. In addition, the Supervisor may consult with the Personnel Committee before issuing the warning to get feedback on the proposed warning and the terms of the Warning Period.

The warning must be given in writing and must indicate the problem in the member's work or behavior which must be corrected, the period of time set for the member to show improvement, and the type of improvement which would be satisfactory. If the Warning Period was originally fewer than six (6) months, the Warning Period may be extended by the Supervisor as long as the total Warning Period does not exceed six months. Failure to improve sufficiently will result in reassignment or termination. The member may also waive rights to the warning Period and be terminated immediately.

### **Step Three: Suspension**

(Optional for Inadequate Performance; required for Harmful Behavior.)

The General Manager may suspend a member immediately, with pay. Before doing so, and to the extent time allows, the General Manager must make reasonable attempts to speak directly with the member. The General Manager must also specify in writing: the reason for suspension, the corrective actions, if any, which must be taken to reinstate the member and the length of the suspension. The suspension will remain confidential (i.e., is not announced to the membership) for 72 hours. If the General Manager is absent from the office, the Vice-President may act under this policy.

After speaking with the member to hear his/her explanation, the General Manager must meet with the Personnel Committee. As soon as possible, but in any case no longer than 72 hours, the Personnel Committee shall convene in person or by conference call to advise the General Manager. The General

Manager may revise the terms of the suspension after this discussion. Any changes will be communicated to the suspended member. The suspension will be announced to the membership at large after the 72 hour confidential period has elapsed. The suspension shall not be made public outside of the [ABC] Cooperative unless the member violates the terms of the suspension or jeopardizes the reputation of the [ABC] Cooperative. The Board of Directors or Personnel Committee may waive the announcement to the membership at large if deemed appropriate.

A suspended member may not work during the suspension period, may not present him/herself as a representative of the [ABC] Cooperative and may not come on the [ABC] Cooperative premises except for prearranged meetings with the General Manager or visits to develop and present his/her grievance. A member does receive pay during suspension.

#### **Step Four:** Termination or Reinstatement

(Required for both Inadequate Performance and Harmful Behavior.)

If performance improves sufficiently during the Warning Period, the Supervisor shall end the Warning Period and the member will be re-instated. If performance does not improve sufficiently, the Supervisor and General Manager will give written notice of termination. The Supervisor and General Manager may choose to consult with the Personnel Committee before making the decision.

If a member is suspended and no corrective actions are specified, or the actions are not taken to the General Manager's satisfaction, the individual will be terminated at the end of the suspension period. If the General Manager is satisfied by the individual's actions during the suspension, the General Manager may either reinstate the person or, if appropriate, indicate a period of probation during which a recurrence of the behavior would result in immediate termination.

### ***3. Termination Procedure for General Manager***

The procedures applicable to the General Manager are the same as for members except for the following changes:

- A. The Board acts as the Supervisor and the Chairperson as the General Manager.

- B. The verbal warning is public.
- C. The suspension is reviewed by the Board rather than by the Personnel Committee.