Employee discipline is one element of an effective safety and health program. By using discipline when necessary, employers will prevent accidents and may be able to defend themselves in the event of an Occupational Safety & Health Administration (OSHA) citation.

Employee discipline is also an element of the Cal/OSHA Injury and Illness Prevention Program Standard. Employers must ensure that employees comply with safety and health work practices (title 8, §CCR 3203(a)(2)). This may be accomplished a number of ways including training, retraining, incentive programs, or discipline.

The importance of an effective disciplinary program is also demonstrated in OSHA’s “Unpreventable Employee Misconduct Defense.” In order to use this defense, the employer must prove that they:

1. Have established work rules designed to prevent safety violations
2. Have adequately communicated the rules to the employees (training)
3. Have taken steps to discover violations
4. Have effectively enforced the rules when violations are discovered

There are many ways that safe work practices can be encouraged; discipline is only one method. It is important to know your people and have other programs in place that supplement a disciplinary program.

**IMPLEMENT A PROGRAM**

A disciplinary policy should be incorporated into your company’s policies and procedures. It is important to inform all employees about this policy when they are hired. Frequent reminders about the policy and consequences of working in an unsafe manner should also be communicated. This can be achieved a number of ways including: safety orientations, employee handbooks, written procedures, tailgate meetings, etc. It is important that your program be very clear so there are no inconsistencies when the program is used.

**KEEP IT SEPARATE**

Your company may have a behavior-based safety program or similar plan in place for educating employees about unsafe acts. It is important to keep these types of programs separate from your disciplinary program. For example, a supervisor may talk with an employee who is not wearing safety glasses about the hazards involved with the unsafe act (not wearing eye protection). The goal should be to change their behavior by ensuring that the employee understands what hazards are present and the consequences of working in an unsafe manner. If the employee becomes a repeat offender or is insubordinate, it may now be appropriate to implement your company’s disciplinary program.

**PROGRESSIVE DISCIPLINE**

Many companies use a progressive disciplinary program. In these programs, discipline becomes progressively more harsh until it leads to termination. There are some “inviolable rules” which may be grounds for immediate discipline or termination based on the severity. An inviolable rule may include violations of fall protection, lock out / tag out, trench and excavation or insubordination.

A sample progressive system may include (punishment based on severity of violation):

1. Verbal warning
2. Written warning
3. Suspension – note: inviolable rules may result in immediate suspension
4. Termination

**DOCUMENT, DOCUMENT, DOCUMENT**

Documentation of employee discipline is critical. It is even recommended to document “verbal warnings” by placing a note in the employee’s personnel file. It may be useful for companies to maintain a confidential log of disciplinary actions for all employees. A log would easily allow a supervisor to determine which level of
discipline is appropriate based on previous infractions. In addition, this log could be used to help defend against an OSHA citation if discipline has been enforced in a firm, fair and consistent manner. With any disciplinary action, be sure to document what action was taken (i.e. - terminated, sent home for the day without pay, verbal warning).

CLEAR COMMUNICATION
Any time someone is disciplined (or receives a verbal warning) it is important to clearly explain the reason(s) for the disciplinary action. It is also important to let the person know what will happen with subsequent violations. It may be advisable to have a witness with you whenever discipline is applied. All people in attendance should sign the disciplinary notice.

APPLYING DISCIPLINE
Before discipline is applied, a supervisor should ask themselves the following questions:

- Did I clearly define what was expected?
- Did I perform the necessary training (possibly retraining)?
- Was the employee aware of our disciplinary program / inviolable rule?
- Would I treat others in the same manner?

If a supervisor can answer yes to these questions, it would appear that discipline is appropriate.

The goal of a disciplinary program is not to terminate people. A disciplinary program is one more way we as employers can effectively prevent injuries on our projects, change the industry for the better and send people home safely to their loved ones.

QUESTIONS
If you have questions or concerns, please contact Bo Bradley, Safety & Health Director at (916) 371-2422 or bradleyb@agc-ca.org.