

# Off-Duty Conduct Disciplines

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**T**he highly publicized case of Michael Vick brought up a controversial problem for union stewards: off-duty misconduct. In case you've been on another planet, Vick is the pro football quarterback who was arrested and pleaded guilty to a felony count arising from brutal, illegal dog fights at his estate in southern Virginia.

While Vick was awaiting sentencing, a question came up in one of my classes: can his boss (the Atlanta Falcons) fire him because of the crime? If so, then what about the case of a worker who demanded that the company discipline a co-worker, with whom she had been riding to work for years, for sexual harassment after an incident that allegedly happened on the way to the job? Or how about another situation, involving a long-time firefighter in Ohio, who was suspended after being charged with the rape of a teenage girl he was babysitting?

## Many Examples, a Common Thread

Books about how to handle grievances are filled with examples of disputes that occur away from the workplace: a boss and a worker who may have had too much to drink at a local watering hole, for example, get into a dispute. The boss demands that the worker be fired "in the interest of workplace safety."

These cases, and many others like them, have a common thread: an incident took place — or *may* have taken place — away from the workplace. But, even though nothing happened directly in the workplace, the boss is punishing the employee.

In the past, this kind of thing didn't seem to be an issue: if a worker could get to work and carry out normal work functions, any situations away from the job were considered wholly separate and

unrelated to the job. As employers' sense of control increased, so did the frequency of off-duty misconduct issues, increasing the demands on a steward to represent a worker in a proceeding that began far from the job.

## Basic Steps

So, what should a steward do in such situations?

First, try to figure out what really happened. You'll find that if determining the facts of a situation at work is often difficult, then figuring out the details of an off-duty episode is even more so. A steward may have to leave work to try to interview witnesses, if any can be found, or may need to access public records — like police reports — to gather information. Unfortunately, laws that could require witnesses to testify don't apply to grievance procedures, so a steward has to be especially resourceful.

A steward should also follow the first rule of effective grievance: make the employer present the case. See what witnesses the boss can produce or what documentation may be available. Be sure you don't simply accept the boss's version of "the facts," frequently based on hearsay or prejudice.

## Is It Really Relevant?

The steward should raise the issue, as a kind of "threshold," of how the episode is related to the workplace. Even if something did happen, make the boss prove that it has relevance to the workplace.

Another question you want to answer is whether the incident might force the member to miss work, possibly due to jail time. If so, the nature of the grievance might change because the boss may simply try to discipline or terminate the worker for "excessive absenteeism."

You have to see if the off-duty misconduct might affect the member's ability

to continue doing the job. For example, if a truck driver convicted of driving under the influence loses his or her drivers license, is there other work that can be done until the license is restored? If the license suspension is short-term, could the steward try to limit the discipline to a suspension of the same duration, rather than a discharge?

## Check Past Practices

Look at past practices. How have other cases of off-duty misconduct been handled? Some employers have a practice of "forgiving" workers for off-duty misconduct, even allowing members to come back in on a work release program. Important: Look for episodes in which a member of management was involved in a situation and got a break. Demand that a union member receive the same consideration.

As a final step in your investigation, ask the question: does the punishment fit the crime? Even if you uncover evidence of some off-duty misconduct, does the misconduct affect anything, or anyone, in the workplace? This can be an area of great latitude and judgment, based on your industry. In occupations where workers have to deal directly with the public — school teachers, police officers, sales reps or, yes, professional athletes — employers may try to set a standard different from the one covering a manufacturing worker or a white collar worker buried in a cubicle in a bureaucracy. Finally, the steward should look at the usual factors, including the worker's length of service and past work history.

Ultimately, the "just cause" section of most union contracts offers protection for the worker, as it does for all workers. It is important for a steward to stress this point to other union members who may be inclined — depending on the nature of the off-duty episode and who is involved — to let the boss get rid of a co-worker without making a convincing case. When you enforce the contract for one member you are enforcing the contract for all members!

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