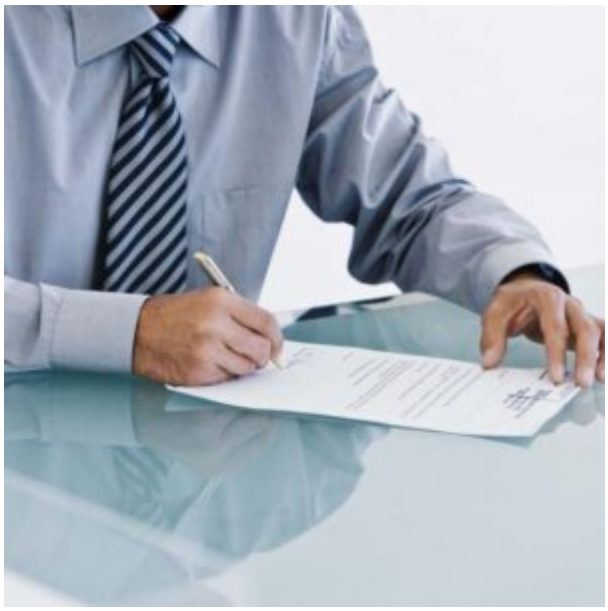
DOS & DON'TS: [û] Document Discipline Imposed on Workers



When you discipline a worker for violating a safety rule or for any other infraction, make sure to document it. You should note the circumstances of the infraction, when and where it occurred, the results of any investigation, the nature of the discipline imposed, and the possible consequences for future infractions. These records can prove valuable in several situations.

First, you may need documentation to justify your disciplinary decisions, especially if you terminate a worker. For example, over the course of 28 months, a company disciplined a worker for nine different incidents, including three safety infractions. It finally fired him. So the worker sued for wrongful dismissal. The court upheld the firing, ruling that these incidents weren't minor or 'trifling transgressions.' Each one was documented. And nearly all of the documentation regarding the company's concerns referenced prior warnings and indicated what the next steps might be if problems persisted. Specifically noting the company's documentation, the court concluded that the series of infractions 'do amount to enough bricks to constitute a just cause wall' [*Daley v. Depco International Inc.*, [2004] CanLII 11310 (ON SC), June 18, 2004].

Second, you may also need disciplinary records to prove due diligence. A key element of due diligence is not only having written safety rules, but also enforcing those rules, such as by disciplining workers who violate them. If you can't show that you disciplined workers for safety infractions, a court may find your OHS program lacking. For example, an Ontario company was charged with safety violations after a worker was crushed between a vehicle and a loading dock. The court convicted the company, rejecting its due diligence defence. The court said, 'The atmosphere was very laissez-faire' as to disciplining workers for violating safety rules. 'Admonitions, if any, were verbal,' it noted. And the supervisor admitted that there were no written warnings, dismissals or suspensions for breaches of safety procedures [*R. v. Wilson's Truck Lines Ltd.*, [1998] O.J. No. 3219, May 22, 1998].