

Rembolt | Ludtke

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the way®

Managing Human Resources

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Managing Human Resources

Overview

I. The Employment Relationship

II. Effectively Implementing Your Workplace Policies

III. Documentation, Discipline and Discharge

IV. Employee Review and Performance Appraisals

Pop Quiz

True or False

- P Supervisors can be sued personally for wrongfully terminating an employee.*
- P Your attendance policy allows employees to be absent from work provided they call in.*
- P Employees on workers= compensation leave need not report for work if they have a doctor=s note.*
- P You can≠t fire an employee who is on workers= comp leave.*
- P You have a Aprogressive discipline @policy.*

The Employment Relationship

The Employment Relationship

PContract Employees

PTemporary Employees

PIndependent Contractors

PLeased Employees

PEmployees at Will

Employment at Will

Absent a contractual or legal restriction, both the employer and employee are free to terminate the employment relationship at any time for any reason whatsoever without incurring liability.

Employment at Will

- P Most states recognize Aemployment at will. @*
- P Nebraska is an Aat will @employment state.*
- P Being an Aat will @employer.*

Employment at Will

Exceptions

P *Statutory*

< *Title VII*

P *Contractual*

< *Implied in Fact*

P *Tort*

< *Public policy*

B *Refusal to commit unlawful act*

B *Fulfilling public obligation*

B *Exercising right or privilege*

Employment at Will

Supervisors

PSome courts permit terminated employees to sue their employer and their supervisor for wrongful discharge.

PSupervisors can be required to hire their own attorneys and pay any damages awarded out of their own pocket.

PSupervisors have the primary responsibility for complying with state and federal employment laws.

The Employment Relationship

Recap

- P Variety of employment relationships*
- P Employment at will is most common*
- P Being an Aat will @ employer*
- P Lots of exceptions to employment at will*
- P Supervisors are the front line defense*

*Effectively Implementing
Workplace Policies*

Effectively Implementing Workplace Policies

P Being an equal opportunity employer

P Being a nonunion employer

*P Your Employee Handbook is the Supervisor's
Bible @*

*P Any questions on policies should be directed to
Your Human Resources Department*

Effectively Implementing Workplace Policies

P *Equal Employment Opportunity*

P *Attendance/Punctuality*

P *Leaves of Absence*

P *Workers = Compensation*

Policies

Equal Employment Opportunity

You will make all employment decisions without regard to a person's race, color, religion, sex, age, national origin, disability or marital status.

Policies

Equal Employment Opportunity

P Harassment is a form of discrimination.

< Not just limited to sexual harassment

P Retaliation is a form of discrimination

< Now the fastest growing type of discrimination claim

< Two forms

B Participation

B Opposition

Policies

Equal Employment Opportunity

Case Study No. 1:

Joe Camel works as a busboy for Chuck E. Cheddar, a local restaurant. Joe suffers from Down's Syndrome and has significant mental disabilities. During the regular employee break today, you witnessed several of Joe's coworkers giving Joe a hard time, calling Joe a Retard and asking Joe if he was going to compete in the Pin the Tail on the Idiot contest in the Special Olympics. What do you do?

Policies

Equal Employment Opportunity

Case Study No. 2:

During an interview with Chief, Billy Wagner reveals that the reason why he is looking for work is because he filed an age discrimination claim against his former employer. Wagner is one of 2 finalists for the job. What do you do?

Policies

Attendance/Punctuality

P All employees are expected to report for work as scheduled, on time.

P Employees unable to report for scheduled work day on time are required to contact supervisor before scheduled start time.

P Calling supervisor Excused

P Excused

< Supervisor Notified Before Shift Begins; and

< Reason legitimate and accepted by Company.

P Excessive tardiness and absences are prohibited.

Policies

Attendance/Punctuality

UExcessive Tardiness and Absences Will Not Be Tolerated

USupervisors are Responsible for Ensuring that this Policy is Followed

UThorough and Accurate Documentation is the Key

UNip Problems in the ABud, @ Before They Get in AFull Bloom @

Policies

Attendance/Punctuality

Factors for Supervisors to Consider:

- iWhether employee gave proper notice.*
- iReason given for absence.*
- iWhether intermittent or extended.*
- iPast attendance record.*
- iAttendance records of coworkers.*
- iDiscipline consistent with discipline given other employees.*

Policies

Attendance/Punctuality

Case Study No. 1:

Over the past 2 years, Barry McGuire has had 15 unexcused absences. Although he has never received any type of written warning or been disciplined, McGuire's supervisor has repeatedly told McGuire that he needs to report for work when scheduled. Last week, McGuire once again failed to report for work or call in. His supervisor has called the HR Department and wants permission to fire McGuire. What would you do?

Policies

Attendance/Punctuality

Case Study No. 2:

In a final effort to get Tom Solich to change his behavior, Husker Co. sent Solich 5 A final @ written warnings over a 3-year period about his unexcused absences. Last week, Solich had yet another unexcused absence. What would you do?

Policies

Attendance/Punctuality

Case Study No. 3:

While tying down a tarp on his trailer at work, Jack Ryan injured his lower back. Ryan's doctor gave him a note releasing Ryan from all work for 4 weeks, which ended yesterday. Ryan didn't report for work today, didn't call in, and didn't give you a new doctor's note. What do you do?

Policies

Attendance/Punctuality

Case Study No. 4:

Dan Glove injured his back yesterday at work and he immediately went to see his doctor. This morning, Glove reported for work as scheduled with a note from his doctor, stating that Glove was released to work provided he was limited to lifting items 10 pounds or less on an occasional basis only. Glove's job with the Company requires him to frequently lift items that are 50 pounds or more. What do you do?

Policies

Attendance/Punctuality

Case Study No. 5:

Judy Bear and Steve Cub are both production welders in the same division. Over the past 3 months, both Judy and Steve have had 6 unexcused absences. Steve is an excellent performer (when he is there). Judy, however, received a Needs improvement @ on her welding skills in her recent performance review and recently received a written warning for insubordination. Both Judy and Steve failed to report for work this morning and did not call in. What do you do?

Policies

Attendance/Punctuality

Case Study No. 6:

Larry Queen is a production worker for the Company. Larry was recently diagnosed as having epilepsy and has begun taking a prescription medication that controls all of the symptoms of Larry's epilepsy. However, one side effect of the medication is that it can make Larry extremely drowsy. Today, Larry failed to return to his work station after the 15 minute morning rest break. Larry was later discovered to be sleeping in the employee locker room. What do you do?

Policies

Leaves of Absence

P Family and Medical Leave Act Coverage.

< 12 weeks of leave

< Job restoration

P Eligible reasons for FMLA leave:

< Birth of child or care for newborn

< Adoption

< Care for immediate family member with A serious health condition @

< Employee has A serious health condition @

Policies

Leaves of Absence

P *Not all employees are eligible for FMLA leave*

< Must have worked for at least 12 months

< Must have worked at least 1,250 hours during the past 12 months

< Must work at a location where at least 50 or more employees are employed at the location or within 75 miles of the location

Policies

Leaves of Absence

You can require employees to get their medical providers to certify that they or their immediate family member have a A serious health condition. @

<Don't contact the employee's doctor!

<Complete Certification Form and have the employee take it to their doctor to be completed

<Must give them 15 calendar days to obtain certification

<Contact Chief HR Department if this is an issue

Policies

Leaves of Absence

P Granting non-FMLA leaves of absence:

< Medical leaves not covered by FMLA

< Personal leaves not covered by FMLA

P Determined on case-by-case basis

P Unlike FMLA, no guaranteed reinstatement

P Like FMLA, involve HR Department

Policies

Leaves of Absence

Case Study:

Last week, Eric Couch injured his arm in a workplace accident that required Couch to spend 3 days in the hospital. When Couch was released from the hospital last Monday, his doctor released Couch to work, provided Couch did not lift anything over 10 pounds for a 3- month period. While this would prevent Couch from performing his regular job, the Company has light duty jobs Couch could perform. This morning, you called Couch to tell him that he should report for work next Monday for a light duty job. Couch told you that he wants to go on FMLA leave. What do you do?

Policies

Workers= Compensation

P Workers= Compensation is the Ultimate Compromise

< Employees guaranteed to recover

< Employer liability is capped

*P Employees Legitimately Injured in the Course of Work
Are Entitled to Benefits*

< Medical Benefits

< Disability Benefits

< Vocational Rehabilitation

*P Employees on Workers= Compensation Leave are
Subject to All Chief Policies*

Policies

Workers = Compensation

Case Study No. 1:

Ben Dover injured his lower back last week while at work, requiring medical treatment. Dover's doctor has released Dover to return to work, provided Dover only works 4 hours/day for the next 3 months. Dover reported for his reduced schedule job last Monday and informed you that he will need to be absent from work every Tuesday and Thursday for physical therapy. What do you do?

Policies

Workers = Compensation

Case Study No. 2:

Sam Sosa twisted his back 2 weeks ago while lifting sheet metal at work. Sosa provided the Company with a note from his doctor completely releasing him from work through last Monday. Sosa has not reported for his scheduled shift since and has not called in. What do you do?

*Documentation, Discipline and
Discharge*

Documentation, Discipline & Discharge

Documentation

PMay be the most important thing you do as a supervisor

PIIn every employment claim it's the employee's word against your's--why take a chance?

PSaves Company and supervisor time and money

PMust be:

< Accurate

< Contemporaneous

< Preserved

< Prepared knowing that one day it might end up in Court

Documentation, Discipline & Discharge

Investigate Before Disciplining or Discharging

P *Discover the problem once put on notice*

< Don't wait for formal complaint

P *Pre-investigation*

< Consider immediate steps

< Identify witnesses and gather relevant documents

P *Choose investigator*

< Depends on type of misconduct

P *Interview Complainant*

< Don't promise confidentiality

Documentation, Discipline & Discharge

Investigate Before Disciplining or Discharging (cont=d)

P Interview other witnesses

< Advise witness that no judgment has been made

P Interview alleged perpetrator

< Give employee full opportunity to respond

< Employee may have right to have representative present

P Objectively analyze results

< Assess credibility of witnesses

Documentation, Discipline & Discharge

Investigate Before Disciplining or Discharging (cont=d)

P *Implement prompt, remedial action*

< Ensure consistent with prior actions

P *Follow Up*

< Thoroughly document investigation

< Use opportunity to remind employees of policies and procedures

Documentation, Discipline & Discharge

Disciplining and Discharging Employees

Disciplinary Policy

< Discipline depends upon

B Nature of and circumstances surrounding offense

B Previous infractions

B Work Record

< May include

B Verbal warnings

B Written warnings

B Suspensions

B Probation

B Discharge

< Not a Aprogressive discipline @ policy

Documentation, Discipline & Discharge

Keys to Disciplining and Discharging Employees

P Did the employee have knowledge of the work policy at issue?

P Did the employee clearly violate the Company policy?

< Read the policy!

P Is policy being administered consistently?

P What other legitimate factors are at issue?

< Past violations of work policy

< Past work performance

P Is discipline consistent with past infractions?

P Are you implementing discipline in respectful manner?

*Employee Review
and
Performance Appraisals*

Employee Performance Appraisals

P Can serve as positive tool for improving employee performance

P Must be taken seriously by supervisor and employee

P Not the only time to provide employees with feedback

Employee Performance Appraisals

Double-Edged Sword?

Performance evaluations can serve as the basis for lawsuits against Company and supervisor

<Liability can result from positive and negative evaluations

<Liability can result from saying too much and saying too little

<Liability can result from not conducting evaluation when scheduled

Employee Performance Appraisals

Avoiding Liability

PExplain review process to employees

PBe honest!

<If attendance is poor, say so.

PEvery employee can improve his/her performance

PStick to the facts

PPrepare knowing that it may end up in Court

Pop Quiz

True or False

P *Supervisors can be sued personally for wrongfully terminating an employee.*

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