

Rembolt | Ludtke

We *find*
the way®

Leave Policies & Practices

October 23, 2001

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 A employment at will. @

P Nebraska is an A at will @ employment state.

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 Lots of exceptions to employment at will*
- P Supervisors are the front line defense*

Effectively Implementing Your Workplace Policies

Standard 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 the Company.

P Excessive tardiness and absences are prohibited.

Effective 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 @

Effective 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.*

Effective 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?

Effective 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?

Effective 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?

Effective 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?

Effective 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?

Effective 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?

FMLA

Leaves of Absence

Company can require employees to get their medical providers to certify that they or their immediate family member have 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

FMLA

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?

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 Company 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?

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?

Mark Fahleson

Rembolt Ludtke & Berger LLP

www.remlud.com

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