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Practical Information for Managers & Supervisors
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Applying Company Policies

Managers and supervisors seem to be on the receiving end of all accusations regarding any employee action issued such as, "you did not treat me the same as others, you singled me out." Disgruntled employees cry, "You wait until my lawyer gets through with you."

We hope you do not hear those accusations every day, but because of the litigious nature of our society these battle cries are becoming more frequent and pervasive. Because of this, managers and supervisors are called upon to defend the actions they've taken. They must interpret and apply company policies and practices when complaints are filed with Human Rights agencies or when responding to attorney's subpoenas and discovery requests. Below are some common factors to consider when applying company policies and practices. Before you as the manager or supervisor act, put yourself in the employee's shoes and see if all of the following factors have been considered.

The first complaint an employee seems to make is that you are not being fair. Fairness is simply an impression in the mind of the employee that infers being treated justly. Is the action issued against the employee fair? Is the discipline administered, or employee action taken, commensurate with the offense committed?

Is the action taken consistent with similar offenses or actions taken in the past? All government agencies, attorneys and judges try to compare past actions to determine if there was discriminatory intent in the action taken by the supervisor. Government agencies and courts will look at the consistent application of policies and practices on an operation wide basis. Or simply stated, does one supervisor interpret rules and policies differently than another. If there is a discrepancy in application or interpretation, the benefit of the doubt will be given to the employee and not the company.

Like consistency, is there uniformity in the application of company policies and practices? If there is no uniformity, the agencies and courts may not only find in favor of the employee but may adjudge the policy or practice to be invalid. Do all supervisors uniformly apply and interpret company policies and practices?

Are the employees aware and knowledgeable of what is expected of them? Communication and uniform education of what is expected of all employees is an important element of defending any action a supervisor may take against an employee. Can it be shown the employee was aware of what was expected and was aware of how to perform? Make sure all policies and practices that are in writing are given to the employees and employees are given proper instruction as to what is expected of them.

In applying policies and practices when dealing with employees, is the action taken documented to prove the employee was aware of what was expected of him? Documentation, however formal or informal, is important to stress that the employee had knowledge, had a "fair chance" and was given a chance to improve. Documentation is also proof and the edge needed to persuade a government agency or court that you did what you said and said what you did.

These five factors are the common threads that always appear in court cases and agency findings in determining if a supervisor's action taken against an employee was proper.

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Here are some tips that managers and supervisors may want to review in their staff meetings.

1. Review all reprimands in the past year. Discuss them amongst management staff and see if there is consistency and uniformity in application of company policies and practices.
2. Take your employee handbook and dissect its contents as a group so all the management teams understand the intent and purpose behind each section. It's a great tool for supervisory consistency!
3. Take the company work rules and safety rules and go through each one and form a consensus on its intent and purpose as well as how it should be applied, thus enhancing supervisory uniformity.
4. If there is inconsistent interpretation of a policy practice or rule, develop a consistent interpretation and application with all supervisors.
5. If in your discussions you find exceptions to a rule or a policy that seem to be more prevalent than compliance, discuss how the rule should be changed or modified. Once a rule is changed or modified, communicate it to the employees and now past practice becomes current policy. Rules that are violated frequently may need changing.
6. Have a crew meeting with your employees at least once a year to review the handbook, the work rules, the safety rules, and get input from the employees. They may give new insight as to how policies and practices are perceived by the crew.

FAIRNESS, CONSISTENCY, UNIFORMITY, KNOWLEDGE and DOCUMENTATION are factors that when followed, will help you be more productive, pleasant, and profitable.

LEGAL BRIEFING

OSHA to Pay $120,000 to Settle Employer Data FOIA Cases

The following is provided for informational purpose only. It is not tailored to address specific facts, or to provide specific recommendation for implementation of policy, or to comply with applicable local rules or law within every state. Please call TPM's In-House Counsel to discuss how the law is specified in your state.

On October 1, 2020 a stipulation filed by Department of Labor and the Center for Investigative Reporting says the government has agreed to pay a nonprofit news organization $120,000 to cover litigation costs for two lawsuits against OSHA. Neither settlement has received court approval. Both Freedom of Information Act (FOIA) lawsuits, filed in the U.S. District Court for the Northern District of California, asked federal judges to overturn OSHA's refusal to release Form 300A injury and illness data from more than 230,000 employers, starting with information for 2016. OSHA tried to withhold the data by claiming it was actually the employers' private information and thus exempt from release.

This comes as OSHA moves to hold back the detailed descriptions that formerly accompanied its public announcements of cited workplace hazards and penalties imposed. Those underlying documents are now available only upon the filing of a FOIA request. The agency has offered no explanation for the change in policy. The agency requires most employers to track injuries or illnesses that lead workers to miss at least one day on the job or require more care than first-aid treatment. The Form 300A summarizes how many cases there were for each work site, plus how many workers were employed during the year and the total number of hours worked. OSHA required companies to electronically file the data with the agency, beginning in 2016.

In both cases, judges said OSHA couldn't withhold the data. OSHA then released the information for years 2016-18 and posted the spreadsheets on its website. The agency has not posted the data for 2019, but worker advocates expect the agency to release the information. The judges hearing the cases, Magistrate Sallie Kim and Magistrate Donna Ryu, have not said whether they will agree to the settlement terms. The Public Citizen Foundation in Washington filed a similar FOIA lawsuit in the U.S. District Court for the District of Columbia against OSHA seeking the Form 300A information, and also prevailed. A stipulation on costs in that case has not been filed.