

Managing Human Resources

November 15, 2001

Managing Human Resources

Overview

I.The Employment Relationship

II.Documentation, Discipline and Discharge

III.Employee Review and Performance Appraisals

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

PMost states recognize Aemployment at will. @

PNebraska is an Aat 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

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

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

Supervisors 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*

Documentation, Discipline and Discharge

Documentation, Discipline & Discharge

Documentation

P May be the most important thing you do as a supervisor

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

P Saves Company and you time and money

P Must 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 Company policies and procedures*

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

P Explain review process to employees

P Be honest!

< If attendance is poor, say so.

P Every employee can improve his/her performance

P Stick to the facts

P Prepare knowing that it may end up in Court

Mark A. Fahleson

Rembolt Ludtke & Berger LLP
Lincoln, NE

www.remlud.com