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Workers' Compensation & Workplace Law Update

June 19, 2002

Policies

Workers' Compensation

- Workers' Compensation is the Ultimate Compromise
 - ▶ Employees guaranteed to recover
 - ▶ Employer liability is capped
- Employees Legitimately Injured in the Course of Work Are Entitled to Benefits
 - ▶ Medical Benefits
 - ▶ Disability Benefits
 - ▶ Vocational Rehabilitation
- Employees on Workers' Compensation Leave are Subject to All Policies

Workers' Compensation

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 & Discharge

Documentation

- May be the most important thing you do as a supervisor
- In every employment claim it's the employee's word against your's--why take a chance?
- Saves Company and supervisor time and money
- Must be:
 - ▶ Accurate
 - ▶ Contemporaneous
 - ▶ Preserved
 - ▶ Prepared knowing that one day it might end up in Court

Documentation, Discipline & Discharge

Investigate Before Disciplining or Discharging

- Discover the problem once put on notice
 - Don't wait for formal complaint
- Pre-investigation
 - Consider immediate steps
 - Identify witnesses and gather relevant documents
- Choose investigator
 - Depends on type of misconduct
- Interview Complainant
 - Don't promise confidentiality

Documentation, Discipline & Discharge

Investigate Before Disciplining or Discharging (cont'd)

- Interview other witnesses
 - Advise witness that no judgment has been made
- Interview alleged perpetrator
 - Give employee full opportunity to respond
 - Employee may have right to have representative present
- Objectively analyze results
 - Assess credibility of witnesses

Documentation, Discipline & Discharge

Investigate Before Disciplining or Discharging (cont'd)

- Implement prompt, remedial action
 - ▶ Ensure consistent with prior actions
- Follow Up
 - ▶ Thoroughly document investigation
 - ▶ Use opportunity to remind employees of policies and procedures

Workplace Law Update

Americans with Disabilities Act

- ADA prohibits discrimination in employment against qualified individuals with a disabilities
 - ▶ Who is a “qualified individual”?
 - ▶ What is a disability?
- Requires employers to provide ”reasonable accommodations” to qualified individuals with disabilities
- Remedies for violations include:
 - ▶ Reinstatement
 - ▶ Backpay
 - ▶ Equitable relief
 - ▶ Compensatory damages
 - ▶ Punitive damages

Workplace Law Update

Americans with Disabilities Act

- What is a “disability”?
 - ▶ A physical or mental impairment that *substantially* limits a major life activity
 - ▶ A record of such an impairment
 - ▶ Being regarded as having such an impairment.

Workplace Law Update

Americans with Disabilities Act

- “Disability”
 - ▶ “Substantially” limits one or more major life activities
 - ▶ Life activities = caring for oneself, walking, seeing, hearing, speaking, breathing, learning, reproduction, working
 - ▶ “Substantially limits” depends on
 - Nature and severity of impairment
 - Duration of impairment
 - Permanency/Long-term impact of impairment
 - ▶ Major life activity of working
 - Geographical area
 - Types of jobs individual is disqualified from

Workplace Law Update

Americans with Disabilities Act

- “Disability”
 - ▶ A “record” of a “disability”
 - History of “disability”
 - Misclassified as having a “disability”

Workplace Law Update

Americans with Disabilities Act

- “Disability”
 - ▶ Being “regarded as” having a “disability”
 - Have impairments that are not substantially limiting, but are erroneously regarded as have such
 - Have impairments that are substantially limiting only because of the attitudes of others
 - Have no impairment, but are erroneously regarded as having a substantially limiting impairment

Workplace Law Update

Americans with Disabilities Act

- “Qualified individual with a disability”
 - ▶ ADA prohibits discrimination against a “qualified” individual with a “disability”
 - ▶ Qualified”
 - An individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the job.

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