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Reporter

Employment Law

by Karina B. Sterman, Esq.

Don't Have Rules and Policies Unless You Are Prepared to Discipline Those Who Break Them

In the immortal words of Stephen Covey, the genius who convinced us to micro-organize our lives into fifteen minute increments, "Effective leadership is putting first things first. Effective management is discipline, carrying it out." While he likely was referring to the austerity of self-discipline, the same principle applies to discipline of employees.

In any organization that propounds rules and policies, there will be those who break them, intentionally or not. Without

disciplining those who do so, the organization is tacitly acknowledging that those, and likely other, rules and policies do not really matter. Worse, it is acknowledging that they don't matter for some people and may matter for others. The reverse, inappropriate discipline in response to a rule or policy violation is equally problematic and will likely result in depleted morale, disengagement, disloyalty and possibly claims of unlawful discrimination and disparate treatment.

Upcoming 2013 Seminars at ECJ

Thursday, August 29, 2013 - 8:30 a.m.-10:00 a.m.

Start the Countdown: Compliance with the Affordable Health Care for America Act
by Kelly O. Scott, Esq. and Karina B. Sterman, Esq.

Thursday, August 29, 2013 - 10:30 a.m.-12:00 p.m.

Effective Performance Reviews and Disciplinary Actions
by Kelly O. Scott, Esq. and Karina B. Sterman, Esq.

Beginning with the above August 2013 employment seminars, registrants may view the live presentation slides on-line and listen to the audio over the phone.

Please note: Registrants requesting CPE credit must attend in person at ECJ to receive credit.

Please contact Brandi Franzman at bfranzman@ecjlaw.com for registration information.

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So, how does an effective manager discipline effectively? Use the card below. Well, actually, the **CARD** method below.

C = Consistent

Develop Guidelines And Adhere To Them.

Written guidelines in the form of policy manuals will provide employees with notice that certain misconduct/performance problems may/will result in termination. These guidelines will help avert claims that the treatment was unfair or administered in an arbitrary manner. It is imperative, however, that the employer adheres to the written policies. For this reason the policies should be drafted in a manner that will provide the employer with flexibility to deal with individual situations and at the same time help insure consistent treatment of similar cases.

A = Alike

Similar Offenses Should Be Treated Alike. In order to avoid charges of arbitrary or discriminatory conduct, employers should strive to treat similar problems uniformly. If an employer terminates an employee for an infraction for which others were not terminated, that employee may have a valid claim for improper discrimination or retaliation, especially if the individual is a member of a protected group.

R = Reasonable

The Action Should Be Reasonable. The employer should consider, for example, whether it is fair to impose termination as a disciplinary measure based upon the misconduct or performance problem of the employee.

Therefore, if there is proof that an employee was misusing confidential information or stealing trade secrets, immediate termination is certainly warranted. On the other hand, if the employee is misusing his/her phone privileges, a series of warnings would be the appropriate course to follow before terminating the employee. If a rule violation is the first of its kind that the company has had to deal with, consider not only the reasonableness of the disciplinary action with respect to the employee involved, but also of the precedent such action will set in future similar offenses that should be treated alike.

D = Documented

Document All Disciplinary Actions, Up to the Termination. The importance of properly documenting personnel problems and disciplinary action cannot be overemphasized, particularly when a pattern of conduct is what led to the termination. Nonetheless, managers are often reluctant to properly document disciplinary actions, thinking that placing such documentation in the employee's personnel file may be detrimental to the employee or the manager's relationship with the employee. Managers, however, should be aware that if the employee later challenges greater discipline or termination, either internally or by taking legal action, proper documentation is often the most crucial evidence an employer can present in its defense to prove that the termination was not unexpected, random or based on an improper motive.

Learn more practical advice on this topic at the "Effective Performance Reviews and Disciplinary Actions" seminar at ECJ on August 29, 2013. See enclosed flyer for additional details and registration information.

Did you know...

That ECJ's Employment Law Reporter will be going digital with the October issue? If you are not already receiving electronic communications from ECJ, please make sure we have your e-mail address on file, so that you can continue to receive this publication as well as notices of upcoming seminars. If you have been receiving a printed copy of the Employment Law Reporter, you will receive in the mail an update card that you can return with any missing or updated information. If you do not receive an update card by August 15th, please contact Brandi Franzman at bfranzman@ecjlaw.com or 310.281.6328 to update your information. We look forward to staying in touch with you!

Well, now you know!

If you have any questions regarding this bulletin, please contact Karina B. Sterman, Esq. at (310) 281-6395 or ksterman@ecjlaw.com or Kelly O. Scott, Esq., Editor of this publication and Head of ECJ's Employment Law Department, at (310) 281-6348 or kscott@ecjlaw.com. If one of your colleagues would like to be a part of the Employment Law Reporter mailing list, or if you would like to receive copies electronically, please contact Brandi Franzman at (310) 281-6328 or bfranzman@ecjlaw.com.