

TWO (RELATIVELY) SIMPLE WAYS TO REDUCE RISK

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Scope of Presentation



- Typically two clusters of focus
 - Organizational mission
 - Legal compliance
- Composition and resolution of cases
 - Law as rooted in historic principles
 - Modified by facts and social values



- A different, critical, undervalued approach
 - Focus *systematically*
 - On facts and social values *preclaim*

Problem Scenarios



Telecommuter assigned to new supervisor

- Then and now: unchanged standards
- But now: performance deficiencies



Poor performer goes on F.M.L.A.

- Fewer opportunities for supervision
- Modified quantitative standards



Employee no-call no-show

- Physician's assistant faxes vague note
- Employee requests open-ended leave of absence

Principles



Magna Carta

- "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by *the lawful judgment of his equals or by the law of the land.*"



7 Tests of Just Cause

- Reasonability of rule
- Sufficiency of notice
- Sufficiency of investigation
- Fairness of investigation (impartiality; thoroughness)
- Proof
- Equal (or equitable?) treatment
- Appropriate disciplinary response



Fairness

- Outcome of decisions (“distributive fairness”)
- How subject is treated (“interactional fairness”)
 - Information
 - Respect
- Consistency, neutrality of process; voice (“procedural fairness”)



Predictability

- “Vertical” consistency
- “Horizontal” consistency

Problems Revisited

Telecommuter assigned to new supervisor

- Then and now: unchanged standards
 - (Re)Notice
 - Opportunities for success (fairness of treatment)
- But now: performance deficiencies
 - Same standards?
 - Same scrutiny?
 - Vertical consistency
 - Supervisory training



Poor performer goes on F.M.L.A.

- Fewer opportunities for supervision
 - What conduct/performance is being managed
 - Notice and comment
- Modified quantitative standards
 - Management process
 - Employee voice



Employee no-call no-show

- Vague note from physician's assistant
 - Request job-related information
- Requests open-ended leave of absence
 - Seek provider's information
- Employee's perspective *with control*
 - Deadlines

Dwight Eisenhower

- “[P]lans are useless, but planning is indispensable.”

Practice Tips

- Platinum rule
 - Fairness and predictability often viewed as to group
 - Unfairness and unpredictability often viewed as to self
- Elements of fairness
 - Notice
 - Comment
 - Process
- Predictability
 - Consistency

Q & A

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