

NEW DEVELOPMENTS IN LAW, ETHICS, AND MANAGEMENT

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The Conference Center at Mercer County Community College

“PREPARING FOR DISMISSAL”

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Note the paradox from the previous sessions. **The paradox of firing:**

- Ethics versus law
- Personal values versus the legal process
- The fear of a lawsuit versus the fear of losing self-respect

Can these competing interests be reconciled? If so, which side wins, is it the organizational or the humanistic?

Some realities:

1. You can be sued under any scenario. The suit is not personal, but economic in today's payout environment. There is almost no reason why not to sue.
2. If you treat a person with respect and humanity and try to explain your organization's actions, then you may say something that may come back to hurt you on appeal. However, if you do not try to reach out to a person in need, then your personal ethics may create internal conflicts for you.
3. It can be said that if you are going to terminate an employee and he or she is surprised, then this is an admission of management failure in lack of communication of what is expected and evaluating if that employee is performing or not.

4. Very often, reality is an issue of perception and perspective. In formal hearings, it is common for unknown or unexpected information to be presented, often counter to the employer's interest.

There are two issues:

They are **how to avoid employee conflict** and **if conflict occurs, then how to resolve it**. First, know how to avoid conflict. The other two other programs lay out the methods, which are:

- a. a good personnel manual that is known and followed;
- b. hiring employees who fit in and have a defined role; and
- c. treating employees with dignity, open communications, and good supervisors

The second issue, how to resolve employee conflict, starts with obtaining detailed and in depth knowledge of the people involved and the issues, and following the detailed processes. When a complaint is received, there are two separate issues to be addressed: *(Note you should keep these issues separate.)*

1. Investigative, and
2. Formal hearing

Do not try to mix the two if possible. Every organization needs a Human Resources' person or someone to serve the first issue, *Investigative*. If the administrator or manager then uses someone else as a hearing officer, or if the case is controversial or complex, use a hearing officer so management is free to contest the case.

Investigative is to develop the facts and do it as an advocate for the employee so that the issues are fully discovered and discussed. The formal hearing process begins after the conclusion of investigative issues.

Complaint Investigation:

1. Do a detailed and in depth the background investigation independent of the supervisor, who is pressing the charges. Talk to all witnesses, review all files (both official in the HR office as well as the “private ones” kept by the supervisor or department head especially in the uniform agencies).
2. Serve as a devil’s advocate on behalf of the employee.
3. Interview, critically, everyone involved in doing your fact-finding.
4. Meet with the employee in an exploratory fact-finding setting. Do not meet with the employee alone. Rather, have a witness, but not an antagonist. Do not include the supervisor, or your lawyer. The employee may want the union representative or even an attorney and, this is their right. However, explain that you are doing a fact-finding process and need to know what really happened. Practice active listening, take no positions, or express any judgments.
5. If necessary, meet again with the supervisor to see how he or she reacts from some of the information obtained. Caution him or her, not to discuss anything with the employee. **LOOK OUT FOR RETALIATION – A MAJOR ISSUE!**
6. Meet with your attorney and review in detail everything you have learned. Evaluate possible scenarios, and play the employees’ devil’s advocate.
7. Meet again with the employee (again with your witness). Can you resolve the conflict? Now, take a conciliatory attitude to see if you can show the employee how the supervisor and the organization view his or her actions. Look for a compromise that both sides can save face or avoid embarrassment. Treat the person with dignity and respect, but try to show them the other side of the coin.

Do not involve your lawyer yet, because two lawyers in the room tend to complicate the issues.

8. If a compromise is possible, have a similar discussion with the supervisor.

If the above fails, then you can honestly say that you tried to “do the right thing,” in terms of your need to treat people fairly and reasonably. You may find your problem is as much the supervisor, as the employee; but do what you can and make top management aware of the issues and possible alternates.

The Hearing Process:

9. This is lawyer driven, but do not let the lawyer take total control and cause more labor unrest than necessary in his or her zeal to win the case. The overall organization’s wellbeing must constantly take precedence over a single issue.
10. Follow the established procedures and processes to the “T.”
11. Prepare the witness and lay out all the facts. Try to avoid any “surprises’ that develop from witness. Assume nothing and be prepared for everything.
12. Have your attorney try to get a compromise with the other attorney if there is an organization exposure.
13. Use a third party hearing officer so that everyone feels there is a fair chance. If the administrator or manager is the hearing officer, he or she must maintain impartiality as much as possible in his or her actions and comments.

Why municipalities lose:

- The dollars “\$\$” of the other attorney if there is the possibility for legal fees being awarded. The other attorney may be reluctant to compromise.
- A fact failure – new information presented at the hearing that overshadows the city’s position or questions credibility.
- Attacking the dignity of the individual or the supervisor, this makes it too personal to resolve.
- There is a failure of due process or procedure.
- There is a fact dispute, with no commonality over what really happened, or conflicting testimony, etc.

In summary, throughout the issue, remember what is important, the long-term wellbeing of the organization, and the individuals employed therein. Try to avoid personal bitterness, which will only fester in the future and cause future grief. Also, remember that if the organization has a major shortcoming, this must be addressed either thru the hearing, or at the first opportune moment afterward. #