DISCIPLINE AND FAIR TREATMENT PRACTICES

Jean Prather, PHR
Office of Human Resources
November 2008
PRIOR TO THE DISCIPLINARY PROCESS

• In our previous session we discussed coaching and counseling prior to arriving at the disciplinary process.
• At RHIT if an employee has had conduct or performance issues, it is a requirement that they be placed on a Performance Improvement Plan prior to any progressive discipline.
OVERVIEW

• Generally, no one likes to confront another person, especially a subordinate, about unacceptable performance or behavior. However, there may be serious ramifications to not addressing performance or behavior issues, including higher pay-outs for unemployment claims and litigation.
DEFINITION

Discipline is derived from Latin

*disciplina* "instruction"

*discipulus* "pupil"

*discere* "to learn"

To teach someone by instruction and practice.
DISCIPLINE

- Purpose
  - Modify behavior
  - Correct work performance deficiencies
- Disciplinary Actions Include:
  - Written Warning
  - Suspension
  - Termination
EMPLOYMENT AT WILL

• A legal doctrine that says: any hiring is presumed to be "at will"; that is, the employer is free to discharge individuals "for good cause, or bad cause, or no cause at all," and the employee is equally free to quit, strike, or otherwise cease work.

• Don’t make insinuations or promises that change the employment-at-will status.
In employment, as in the judicial process, there is a requirement of ‘due process.’ A legal theory called ‘job as property doctrine’ states that the loss of employment has such a serious impact on a person’s life that individuals should not lose their jobs without the protection of ‘due process’ as afforded under the Fourteenth Amendment to the Constitution.
DUE PROCESS

• Affording due process means recognizing the employee’s right to be informed of unsatisfactory performance and to have a chance to defend him/herself and improve before an adverse employment action (such as discharge) is taken.
WHY ARE WE HESITANT?

• Fear of the other person's reaction; people can get very defensive and emotional when confronted with feedback and many supervisors are very fearful of a confrontation.

• Supervisors may be unsure how to conduct the discipline interview, how to document the discussions and what the next step is. They simply haven’t been adequately taught.
WHY ARE WE HESITANT?

• Lack of time; supervisors may get too caught up in their own day-to-day routines to pay adequate attention to their employees, or to take the time to address discipline issues.

• Many times, supervisors see others breaking the rules without any action taken, so they choose not to address the issue either.
WHY ARE WE HESITANT?

• Concern that once they have addressed the discipline issue, they will no longer have a good working relationship with the employee. (Coaching was discussed last session and is a good starting approach to performance or behavioral issues).
BEFORE ACTING, GET THE FACTS

- Are there performance/behavior expectations relating to the employee’s position?
- Was the employee made aware of those expectations?
- Has the employee failed to meet those expectations?
BEFORE ACTING, GET THE FACTS

• Was the employee informed of the consequence if he/she failed to meet the expectations?
• Was the employee given ample time and opportunity to improve/change?
• Did the employee improve/change the behavior?
FOCUS ON BEHAVIORS

- A critical lesson for supervisors is to learn to focus on employee behaviors, not on employee personalities.
- Performance in the workplace should be based on behaviors toward goals, not on whether or not you like your employees.
- Focus not on how you feel about your employees rather on what you're observing with your own eyes.
IMPACT OF PROBLEM EMPLOYEES

• What is the impact to the organization of employees with performance issues and a supervisor who is not addressing them?

• Here are a few of the ramifications to the organization:
  – Decreased productivity
  – Loss of a good employee who may have been turned around by intervention.
IMPACT OF PROBLEM EMPLOYEES

– Alienation or reduction in morale of other employees which may result in increased turnover.
– Higher unemployment claims being paid.
– Litigation (possibility of huge financial cost to the organization – back wages, reinstatement to former position, attorney fees, etc.)
– Possibility of violence in the workplace.
ROLE OF THE SUPERVISOR

• Clearly define expectations
• On-going communication with employees
• Solicit input from employees
• Provide support, when necessary
• Provide constructive feedback regarding performance
• Make informed decisions (HR is available for guidance and support)
• Document events to support and defend decisions
DISCIPLINE PROCESS

- Corrective Action Procedure
- Personnel Action Notification Form
- Major Acts of Misconduct
- Termination of Appointment or Suspension (Faculty)
• As mentioned previously, the first documentation that an employee receives with regard to conduct or performance is the Performance Improvement Plan, in conjunction with coaching and counseling.
• Don’t over-document. Too much documentation can hurt the employer if it appears the supervisor is simply building a file so that an employee can be terminated.
If disciplinary action results in an employee’s discharge, it’s critical that the process leading up to the discharge be carefully documented. Good documentation:

- Puts the employee on notice, in writing, of the problem.
- Gives the employee a chance to correct the problem.
DOCUMNENTATION

– Shows the employee that you are working with them to improve performance.
– If the employee eventually contacts an attorney, good documentation may deter the attorney from taking the case.
– If the employee sues, good documentation is vital to the Institute.
If you go to court, good documentation is valuable for refreshing your recollection of facts and circumstances surrounding the employment action.

It will also demonstrate that you worked with the employee diligently and put forth substantial effort in turning your employee’s performance around.
**DOCUMENTATION**

- Documentation is not written up until after you have had the meeting with the employee, as the employee may provide a reasonable explanation of what has transpired and documentation will not be required.

- In the event of termination, the termination/separation letter is written up by the Director of HR, prior to the meeting.
• If the employee refuses to sign the document write on the Employee Signature line that the employee refused to sign and ask the Director of HR to witness that the document has been presented to the employee and the employee refused to sign.
• If progressive discipline has failed and documentation is in order, then there may be no other alternative other than discharge.
• Employees can be terminated for violations of policies or procedures or failing to perform at a satisfactory level.
DISCHARGE

• Employees cannot be terminated based on:
  – Discrimination by age, sex, race, disability, national origin, or religion.
  – Retaliation for safety or discrimination complaints, workers’ comp claims, union activities, time off for jury or military services or time off on protected medical leave (FMLA).
PRIOR TO DISCHARGE

- Investigate and document the situation carefully and objectively.
- Review facts and documentation supporting discharge with Human Resources.
- Proceed only if HR agrees that discharge is called for (AVP must approve).
- Follow HR’s recommendation if case is not clear cut.
DISCHARGE MEETING

• The Director of HR will schedule the meeting. You and the Director of HR will be present at the meeting.

• Explain exactly what is happening and why
  – Review prior warnings or lack of improvement and any documentation.
  – Don’t make promises you can’t keep regarding references, benefits or another job.
  – Don’t apologize. You have worked diligently to gather facts prior to making the decision.
DISCHARGE MEETING

• Present the facts clearly, in a calm, businesslike way.
  – Don’t mention the employee’s age, gender, race, religion, nationality, etc., in any manner.
  – Stay calm and firm, if the employee reacts emotionally.
  – Anger, tears, and other reactions are common and understandable.
DISCHARGE MEETING

- Allow the employee time to provide their explanations or interpretation of events.
- The Director of HR advises the employee regarding final pay, severance, benefits, etc.
- Collect Institute property.
- Be empathetic during the course of the meeting!
The Fair Treatment Practices policy is implemented by the employee as a means to assist in problem resolution with a supervisor or co-worker.

Employee may seek counsel from HR, a member of Ombudsman or Employee Relations Committee.

Fair Treatment Practices Policy is in the Staff Employee Handbook.

Copy attached.
Questions

• Don’t be afraid to ask! There are no silly questions, only silly answers. ☺