

Avoiding Critical & Costly Management Errors - A Human Resource Attorney's Perspective

Aaron Zandy, Esquire,
SPHR, Esquire

Ford & Harrison LLP

407.418.2300

azandy@fordharrison.com

www.fordharrison.com

Critical Management Errors

- Failure to Train Management Properly
- Failure to Document Properly
- Failure to Manage in Person
- Failure to Complete Accurate Performance Evaluations
- Failure to Address Work Conflicts
- Failure to Apply Policies Consistently
- Failure to Treat Employees with Dignity & Respect

Failure To Train Management Properly

- Managers must be aware of:
 - effective management & communication techniques
 - interviewing, reference-checking, discipline & discharge
 - employee recognition & award techniques

Failure to Train Management Properly

- FMLA, ADA, Workers' Compensation inquires & documentation
- Where to maintain medical documents?
- Employees are not being protected if their information is not provided to HR
- Managers must know what an “open door” really means
- Managers must know the company's equal employment opportunity & harassment policies
- Managers must know what constitutes harassment in the workplace

Individual Liability

- Managers/supervisors being sued in record numbers
- Actions impute direct liability to company
- Company may or may not defend manager / supervisor (“fall guy/gal”)
- Personal relationships gone bad - no managerial /subordinate relationships
- Failure to handle complaint properly

Promoting Dignity & Respect

- Be a role model of good behavior (“squeaky clean” - don’t be vulnerable to trumped up complaints)
- Language (watch cursing, nicknames, jokes, offensive conversations, e-mails, posters, etc.)
- Physical actions (innocent conduct can be misunderstood)
- Ask yourself, does it pass mom or kids test?

Failure To Document Properly

- **Employers Must:**
 - understand that progressive discipline is a fairness analysis
 - establish & implement progressive discipline by all managers
 - use progressive discipline as a way to cure performance or behavior, not just as a means of discipline

Failure to Document Properly

Employers must:

- ensure that all managers are utilizing progressive discipline consistently throughout organization
- document each & every step of progressive discipline
- Understand where to maintain documents & how to write documents (personnel files v. incident or manager files)
- only skip steps in progressive discipline if facts warrant the skip & if approved by HR

Failure To Manage In Person

- **Managers Must:**
 - communicate in-person
 - demonstrate to employees they are important enough to meet with them face-to-face
- E-mail, text messages, & IMs are informal communications & can be misperceived by recipient
- Short-hand abbreviations can mean different things to different people

Failure to Manage in Person

- Electronic communications have become critical to litigation
- Electronic communications do not go away & will be evidence at trial
- Employees are less likely to be angry, upset, or misinformed if management is done in-person as opposed to by e-mail (i.e., tone, purpose, etc.)

Failure To Complete Accurate Performance Evaluations

- An inaccurate performance evaluation is worse than not completing it in the first place
- The performance evaluation process should be timely & accurate to affect performance
- Not all employees can “exceed expectations.”
- Employees want & need timely & accurate performance evaluations

Failure to Complete Accurate Performance Appraisals

- Use performance evaluations to re-iterate and summarize performance & conduct deficiencies
- Use performance evaluations to set goals & expectations for the future
- Difficult to defend a decision to terminate an employee for performance when their performance reviews indicate they are the best thing since “sliced bread”
- There should be no surprises
- Avoid cutting & pasting from year to year

Failure To Address Work Conflicts

- Do not turn a blind eye toward internal employee conflict between employees or between management & employees
- Failure to address internal conflict leads to discontent, lack of trust, & a loss of loyalty
- Identify conflict, timely address conflict, & follow-up to ensure that conflict is no longer occurring

Failure to Address Work Conflicts

- Employees tend to sue employers because of a conflict (perceived or actual) with a “new” manager or because manager is an “equal opportunity offender”
- Monitor interaction between new managers & employees for a few months
- Must avoid negligent supervision claims & workplace violence, as well as other types of employment claims

Failure To Apply Policies Consistently

- Consistent application of policies & procedures provides wonderful defense to employment claims
- Failure to do so demonstrates favoritism, & also provides credible evidence of discrimination &/or retaliation
- Employment claims are won & lost on circumstantial evidence - this is a key component of that analysis

Failure to Apply Policies Consistently

- Audit employment decisions for consistency
- Republish policies & procedures so that everyone knows what they are
- Employers must review policies & procedures to be sure they are still applicable & so that they can speak with confidence about them
- Employers expect managers to know & understand policies

Failure To Follow-Up After Complaints

- If employees complain, they want to know that the employer cares enough to look into their complaints
- Even if the answer is not what the employee wants to hear, they will appreciate the effort
- Follow-up is AS important as the investigation itself
- Take time to sit down with the employee & communicate findings & results

Failure to Follow-Up After Complaints

- Follow-up periodically for at least six months, possibly longer
- No complaint is too little
- Involve HR with serious complaints
- Follow-up = Dignity & Respect

Failure To Treat Employees With Dignity & Respect

- Employees Want To Be Loved
- Ways to Demonstrate Love: open & honest two-way communications, honest performance evaluations, employee involvement in all facets of organization, open doors, individual (team & company) awards & appreciation for work, opportunities for career advancement (promotions from within), training, understanding policies & procedures, etc.

Failure To Treat Employees With Dignity & Respect

- Every employee that sues testifies: “they didn’t care about me,” “they did not respect me,” “they did not reward or appreciate me,” “they did not treat me fairly, like they do others,” “they never told me that was the policy or procedure,” “they didn’t even consider me for that job,” and/or “they didn’t love me”
- This is exactly what an employee & a juror is looking for in every employment decision

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