Management Sins, A Legal Perspective Jean M. Bannon Institute for Facilities Management September 2023 1 AIA Information Credit(s) earned on completion of this course will be reported to American Institute of Architects (AIA) Continuing Education Session (CES) for AIA members. Certificates of Completion for both AIA members and non-AIA members are available upon request. This course is registered with AIA CES for continuing professional education. As such, it does not include content that may be deemed or construed to be an approval or endorsement by the AlA of any material of construction or any method or manner of handling, using, distributing, or dealing in any material or product. Questions related to specific materials, methods, and services will be addressed at the conclusion of this presentation. 2 Course Description This course will help managers to avoid committing one of the seven "sins" that lead to the most serious consequences in the employment setting. An employer's best defense in avoiding employment lawsuits and minimizing costs to defend lawsuits in the competency of the employer's mangers. We will discuss ways to avoid making mistakes and decrease the chance of a lawsuit and $% \left(1\right) =\left(1\right) \left(1\right) \left$ increase your ability to defend those lawsuits that are filed

Learning Outcomes	
→ Learning Objective 1: Learn the best defense in avoiding employment lawsuits.	
 Learning Objective 2: Discuss ways to avoid making mistakes. 	
→ Learning Objective 3: Learn to decrease the chances for a lawsuit.	
 Learning Objective 4: Learn to increase your ability to defend lawsuits. 	
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4	
SIN#1 FAILING TO ADDRESS PROBLEMS	
Failure to deal honestly and fairly with difficult employees Confronting an employee about problems is uncomfortable. Many managers simply do nothing. "Failure to act" is fundamentally unfair to the employee and the employer.	
 In the courtroom, a "failure to manage" can have devastating consequences. Juries do not necessarily focus on the technicalities of the law, they care only about FAIRNESS 	
What's A Manager To Do? <u>Get Help:</u> Human Resources Department can provide assistance to managers. Have an objective person review the proposed action – act as a "juror."	
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5	
Communicate Concerns:	
Use the "3 F's" - fair, forthright and firm -	
(1) how he/she has treated other employees for similar infractions (2) whether the employee understood the manager's expectations and the consequences for failing to meet them	
(3) whether there are extenuating circumstances which might explain the behavior (4) whether the employee has any past discipline.	
Forthright — Ensure that the employee is notified of the manager's real concerns.	
Firm — Ensure that employee understands that changes <i>must</i> be made.	

	How to Deliver the Message: • Face-to-face meetings	
	E-mail Formal memorandum	
	Annual reviews:	
	Need to be accurate Follow-up evaluations	
	The Gotchya Game	
	Unfair — Tolerate an unacceptable level of performance for an extended period of time - then think "Ah ha! Now! can finally fire him," after one big mistake.	
	Pretext?	
7		
	SIN#2	
	PROMOTING EMPLOYEES WITHOUT MANAGEMENT TRAINING	
	Promoting employees with excellent technical skills into	
	management positions, sometimes with little or no management training.	
	Ensure that new managers receive appropriate management	
	training: • Training on all important company policies:	
	 Hiring, performance management, progressive discipline, sick and annual leave, grievance processes or dispute resolution, and anti- 	
	harassment. • Effective communication skills.	
8		
	SIN #3	
	ASSIGNING NEW MANAGEMENT TO "CLEAN HOUSE"	
	Assigning a new manager to a department with one or more difficult employees	
	Marching Orders - "Clean up the department." • Meet with each employee to discuss job duties • Set goals and expectations	
	 Establish a new baseline for all employees in the department Avoid taking swift action with respect to an employee who has been identified as a problem. 	
	REMEMBER: An employee who created problems for one manager can	
	sometimes succeed under a new manager.	

SIN#4 IMPROPER DOCUMENTATION	
Proper documentation can often be the difference between winning or losing an employment	
case. Difficult to recall oral warnings without documentation.	
Document Discussions	
Address just the facts	
When the discussion took place Who was present/What was said	
Use exact quotes when appropriate Include statements made by the manager that demonstrate the "fairness	
factor" Include any admissions made by the employee	
Too Much Documentation	
"Unofficial personnel file" Keeping volumes of documentation regarding only one employee Documents	
not discussed nor shown to the employee	
40	
10	
SIN #5 IGNORING INFORMAL COMPLAINTS	
Informal complaints in the workplace.	
An employee complains to her manager, but insists on confidentiality. Should the manager talk to the employee about whom the complaint has been made?	
Risk losing the trust of the complaining party?	
Does that pose retaliation risks for the complaining employee? What if the accused denies the conduct?	
What disciplinary action, if any, should be imposed?	
If managers observe inappropriate conduct, need they take action if no one complains?	
11	
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SIN #6 MISHANDLING MEDICAL INFORMATION	
Legal Landmine.	
Know UNM's leave policies. Get advice from Human Resources, Office of Equal Opportunity or University Counsel.	
Family and Medical Leave Act – strict notice requirements Workers' Compensation – notice and referral requirements	
Americans with Disabilities Act	
Maintain separate, confidential medical files for the employees.	

	SIN#7	
	RETALIATION The "Retaliation Trap" Even really good managers occasionally fall into the retaliation trap.	
	Even if the underlying charge of discrimination or mismanagement is found to be without merit, EEOC can make a finding of retaliation.	
	Employers must be able to manage all employees, even those who have filed charges or engaged in other protected activity.	
13		
	This concludes The	
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