

Management Sins, A Legal Perspective Jean M. Bannon

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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 managers. We will discuss ways to avoid making mistakes and decrease the chance of a lawsuit and 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.

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?

Get Help:

Human Resources Department can provide assistance to managers.
Have an objective person review the proposed action -- act as a “juror.”

Communicate Concerns:

Use the “3 F’s” - *fair, forthright and firm* -

Fair -

- (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 *must* 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 I can finally fire him,” after one big mistake.
- Pretext?

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.

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

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?

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.

This concludes The
American Institute of
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