


**COACHING FOR PERFORMANCE**

THE MONSTER UNDER THE BED




**PRESENTER**

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  - Senior Human Resources Advisor
    - St. Louis County Human Resources
      - Assigned to : St. Louis County Public Health and Human Services (PHHS)

**GOALS FOR TRAINING**

- Fill in the gaps you may have in the continuum of employee performance
- Clarify Employee/Supervisor roles
- Identify Supervisory Expectations
- Documentation (why, what and how)
- Investigating before disciplining
- Discipline
- Avoiding Liability
- Supervisory Tools



**ST. LOUIS COUNTY SUPERVISORY TRAINING PROGRAM**

- 4 Modules – What have you done to prepare yourself to be a supervisor?
  - 1) New Supervisor
    - You're in Charge Now
    - Peer to Supervisor
    - Optimal Job Performance
  - 2) Relational Leadership
    - How to Handle Difficult Conversations
    - Conflict Management
    - Diversity and Customer Service

**NEW SUPERVISORY TRAINING, CONTINUED**

- 3) Integrating Best Practices
  - Supervisor's Toolkit (Strategic vision/mission, business plan, performance measures, etc.)
  - SLC Budget Process Overview
- 4) Encouraging Success
  - HR Dept: What does it do for you
  - Hire Hard Supervise Easy
  - Coaching for Performance (Monster UB)

**THAT'S WHAT SLC DOES, BUT HOW WILL THIS TRAINING WORK FOR ME?**


- This training has been modified for you
- Consider me your HR Advisor for the day
- I'd like to work with you for a few weeks to help you process/develop your expectations/work culture, but let's use the time we have today as efficiently as we can.

### OUR TIME MANAGEMENT

- We have until 11:45 to get this done


### SUPERVISOR SELECTION & TRAINING

- Often internal promotion to Management
- Ability to manage (people) is a special skill
- Use discipline (correction) system as a way to keep, not get rid of, employees
- You are not alone
- Contact your HR Staff(???)to assist you
- Attend supervisor training



### CONGRATULATIONS! YOU ARE A SUPERVISOR!

- You define what the jobs are and keep employees informed of all conditions surrounding job
- Coach employees/arrange for employee's training
- Be aware of personnel rules /procedures, budgets, work rules, reporting requirements, and many other matters relating to the job
- Work to earn and maintain the respect and confidence of employees
- While close personal involvement with employees is not appropriate, the supervisor should be concerned about the welfare of staff



### HOW NOT TO SUPERVISE

Corny labels, but they get the point across


<p>The Volcano</p> 	<p>The Phantom</p> 
<p>The Knee Jerk</p> 	<p>The Treat-Everybody-Alike Manager</p> 
<p>The Avoider</p> 	<p>The Minimizer</p> 

### LISTING A FEW THINGS SUPERVISORS SHOULD UNDERSTAND THAT DON'T REQUIRE EXTENSIVE TRAINING...

- Don't get (overly) emotional with an employee, or their issue(s)
- Recognize that avoiding some issues will cause them fester and blow up later (A poor referee) – Develop and maintain a consistent culture.
- Don't have employee "favorites", but you can give good performers more freedom than those on correction plans
- And yes, there are times when you have to "pick your battles"

### LEADERSHIP SKILLS


- Fosters creative thinking
- Supports independent decision making
- Supports risk taking and thinking outside the box
- Leads by example –demonstrates hard work, humor, etc.
- Communicates clear directive to their team that is in keeping with overall departmental and organization wide goals/missions
- Identifies short and long term goals
- Supports the importance of teamwork
- Honesty and fairness



### MANAGEMENT PHILOSOPHY

What's yours – would these be helpful?


- I want to provide you the resources you need to be successful
- I believe in 'management by walking around'
- I respect you as a professional and want to hear your suggestions
- I want you to take care of issues in your area and keep me informed as necessary
- We need to be an efficient and consistent organization
- Keep people informed
- Set reasonable and clear goals
- I will provide you feedback



### MANAGEMENT'S EXPECTATIONS

Regardless of what job a person has...

- Employees to be on time
- To be at work regularly
- To be physically and mentally prepared for work
- To learn the job at hand, as well as new jobs
- To respond positively to direction
- To adjust to change
- To get along with co-workers
- To put in a full day's work



### MORE ON EXPECTATIONS (AND HOW)


- SHARING THEM IS IMPORTANT!! – NECESSARY!! – A MUST!! (was that redundant enough?)
- Setting (documenting) your initial and on-going (or changed) expectations are vital to the health of a work unit
- Your expectations are vital to your success IF applied consistently and are communicated
- How? ( Policies, unit/team meetings with minutes, one to one meetings, etc.)

### PAUSE FOR MN STATUTE 179A.07 RIGHTS OF EMPLOYERS

- Subdivision 1. **Inherent managerial policy.**
- A public employer is not required to meet and negotiate on matters of inherent managerial policy... include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, selection of personnel, and **direction** and the number of personnel. No public employer shall sign an agreement which limits its right to select persons to serve as supervisory employees or state managers under section 43A.18, subdivision 3, or requires the use of seniority in their selection.


### EMPLOYEE'S EXPECTATIONS

- Appreciation
- Sound management
- Responsible supervision
- Fair and predictable treatment
- Adequate job training and orientation
- Information concerning their performance
- Safe and healthy working conditions
- Fair compensation for work performed
- Fair promotion and transfer procedures
- **Right to be treated with dignity and as people with responsibilities that extend beyond the workplace**



### EMPLOYEE SELECTION AND ORIENTATION (just this one slide)


"It's funny—I'm asked about my greatest weakness in so many interviews and yet I still haven't decided if it's my pathological lying and stealing or my uncontrollable bouts of blind rage"



Prospect: The Top Ten cartoon clichés

### DOCUMENTATION (an every day occurrence)

- Good documentation is vital and will contain:
  - Every day occurrences (good and bad)
  - Obviously, details of an incident or conduct that resulted in the commendation and corrective action.
  - The objective circumstances surrounding your meeting with the employee, and,
  - The information that was communicated to the employee regarding expectations about the employee's future conduct or performance.




### EFFECTIVE DOCUMENTATION

- Be objective
- Separate your emotions and look at the circumstances before taking any action
- Be sure you had been a good COACH before you disciplined the employee.
- Only after you have tried to help employees succeed and observed their behavior objectively are you ready to begin your documentation.
- Effective documentation is written so that the reader will conclude:
  - The employee has failed to perform his or her job and
  - The supervisor has tried to help the employee succeed

### CRITICAL INCIDENT DIARY


- Pocket or desk calendar, spiral notebook, etc.
- Serve as a tool to monitor on-going performance and identify emerging patterns of behavior
- What to record?
  - Positive and not-so-positive Performance
  - Performance Objectives
  - Training/Coaching
  - Corrective Counseling
  - Oral Warnings
  - Progressive Discipline



Documenting Discipline

### HOW TO USE YOUR CRITICAL INCIDENT DIARY


- Positive Performance
  - "1/15/11: Joe Jones called today to say Bill Smith handled their burglary investigation well. Told him thanks for a good job."
- Training
  - "9/28/10 - Showed Jim how to operate snow plow. Told if questions, see Gary".
- Corrective Counseling
  - "3/3/11: Jack 45 minutes late. Reminded him of tardiness rule."
- Oral Warnings
  - "5/31/11" Met with Fred. Told him that sexually explicit jokes are not tolerated and that any future jokes will result in discipline.
- Progressive Discipline
  - "7/5/11: John received 3 day suspension for taking county property home without permission."



Documenting Discipline




### KEEPING YOUR DOCUMENTATION

- Your Incident Diary is an ongoing, up-to-date record of your efforts to help your employees succeed.
- If an employee ultimately is unsuccessful in his or her job, your incidents diary will help you show that you did your job as an effective supervisor.
- Keep your Incident Diary in a safe place.



Documenting Discipline

### OBJECTIVE OR SUBJECTIVE?

<p><u>Subjective</u> You were drunk!</p>		<p><u>Objective</u> Your speech was slurred, eyes bloodshot and breath smelled of alcohol</p>
<p>You are a thief!</p>		<p>I heard you tell Fred that you took the money.</p>
<p>You were late!</p>		<p>I saw you come in at 8:35 am.</p>

Documenting Discipline

### OBJECTIVE OR SUBJECTIVE?

What if a subjective evaluation is necessary?

- "You were hostile."

How could this subjective statement be documented in an objective manner?



### IF YOU'RE NOT AN EXPERT, YOU'RE NOT AN EXPERT

- Example: An employee in your work unit has been demonstrating increasingly odd, and anti-social behavior at work & will not communicate with co-workers. When other employees go to this person with questions, this person starts crying and says they can't deal with the question. Most recently, this employee has refused to meet with supervisor.

- How do we objectively document this as a supervisor?

### DOCUMENT BEFORE TAKING ANY ACTION

- The time to create and collect documentation is **before** disciplining the employee



- We have the straw that broke the Camel's back, but where is the rest of the camel?

Documenting Discipline

### FOSA

- Facts
- Objectives
- Solution(s)
- Action

Documenting Discipline

### FOSA

- **Facts:** Employee behavior; prior supervisory action; impact of employee behavior; third party observations; employee response
- **Objectives:** Give the employee a pattern to follow; set a specific result for the employee to achieve
- **Solutions:** offer solutions(if you have any); document what you discussed
- **Action:** discuss the action you are taking now; discuss what action will be taken in the future if the behavior does not change.

Documenting Discipline

### FACTS

- Employee Behavior
  - The who, what, when, where, why and how
  - If you cannot state objective facts then you do not have grounds for discipline
- Prior Supervisory Action
  - Previous counseling, coaching and disciplinary actions
- Impact of Employee Behavior
  - Reports, dollar amounts and pictures
- Third Party Observations
  - If available, get a signed written statement
- Employee Response
  - Deny or admit and explain

Documenting Discipline


### OBJECTIVES

- Tell the employee what is expected on the job
  - Give the employee a specific behavior pattern to follow, or set a specific result for the employee to achieve
  - "You must turn in your monthly report by the last working day of the month" (specific behavior) or
  - "You must complete five cases per week" (specific result)
- Subjective expectations allow the employee to focus on your action as a defense against having to change their behavior

Documenting Discipline

### SOLUTIONS


- Giving an employee some solutions, may be the key to changing behavior.
- Documenting that you gave the employee solutions to perform better may improve your credibility if the disciplinary action is appealed or grieved.
- What kind of solutions?
  - Provide coaching
  - Resource persons
  - Resource materials
  - Training courses or workshops



Documenting Discipline

### ACTION

- What if employee does not meet objectives?
  - What action you are taking now, and
  - What action will occur if the employee's behavior doesn't change.
- Action statements for the following events:
  - Training
  - Counseling
  - Oral Warning
  - Written Warning
  - Suspension
  - Termination




Documenting Discipline

### CORRECTION PLANS

- You could implement a joint agreement that specific work related behavior(s) and/or performance measures will be met by employee (It could take the form of a memo as well).
- Listing behaviors that need to change, performance goals, training that may need to occur, etc.
- BE CAREFUL not to enter into something that looks like a contract - ie. "I will re-evaluate this performance again on 11/8/13" What happens when you take that Friday off?



### LIST OF DISCIPLINE PROBLEMS

- Abusive, Profane or Obscene Language
- Alcohol and Alcohol-Related Conduct
- Carelessness and Negligence
- Criminal Activity or Drug-Use or Possession
- Difficult Behavioral Problems
- Dishonesty or Falsification of Work Records
- Dress or Grooming
- Gambling
- Insubordination or Poor Performance
- Moonlighting or Off-Duty Conduct
- Union Activity/Steward Abuse
- Violence, Fighting and Altercation




### TYPES OF PROBLEMS TO DOCUMENT

- Poor Attendance/Tardiness
  - Communicate a clear expectation
  - Impact of tardiness
  - Watch for patterns
- Sick Leave Abuse
  - Sick Leave is a benefit, not an entitlement
  - Require a Doctor's Certification if abuse is suspected
- No-call and No-show
  - How many days of no-call warrant cause for dismissal?
  - Consider mitigating circumstances


### ABSENTEEISM AND TARDINESS

- Reasonable Policy
- Just Cause Principle
  - How frequently has the employee been absent or tardy?
  - Of what duration were the absences?
  - Over what period of time?
  - What are the reasons for absence or tardiness? Do those reasons qualify for legal protections?
  - Did the employee provide timely notice and required documentation?
  - Has progressive discipline or corrective action been taken?
  - Has employee been put on notice of requirements?
  - How did employee's record compare to others?
  - Have similarly situated employees been treated same way?
  - Are there mitigating factors?



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### POOR ATTITUDE




- Employee can be disciplined
- Employee must have exhibited unacceptable conduct repeatedly and failed to respond to warnings and counseling
- The factors important to this type of case are
  - Employee's 'bad attitude' continued over a long period of time
  - Supervisor made good faith efforts to improve the situation by less drastic measures, with no corresponding effort on the employee's part
  - Employee's conduct continued unabated up to the time of discipline
  - Employee's attitude had some negative effect on the workplace, such as causing general morale to drop or creating emotional disturbances in other employees
- Arbitrators are generally willing to sustain fairly severe discipline, particularly where poor attitude is accompanied by inadequate or borderline job performance
- **Employer must have adequately documented the employee's conduct and must have properly warned the employee**

### BREAK?

- Prepare to discuss the investigation process


### INVESTIGATE

- Before disciplining, investigate and verify the specific details of the performance problem or conduct
- Different **process** depending on the situation
- Accurate documentation will be very important!




### INVESTIGATE CONTINUED

- Different **process** depending on the situation
  - Garrity Warning
  - Tennessen Warning
- Interview witnesses, obtain records and statements
- Witness Statements
  - Ask the witness to provide a written statement
  - Take adequate notes during the interview
  - Employee's being interviewed as witnesses **may** be entitled to **Union representation** under certain conditions (more on this to come)



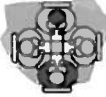
### PURPOSE OF AN INVESTIGATION

- Employers should expeditiously investigate allegations of misconduct prior to taking action against an employee
- Include the employee's version – part of due process (more on this to come)
- The purpose is to discover whether or not an alleged act of misconduct occurred
  - What happened
  - When
  - Where
  - Who was involved
  - How
  - Why




### EMPLOYEE PARTICIPATION IN THE INVESTIGATION

- Before beginning to talk about the incident, make it clear you want to know about:
  - Specific incident or behavior
  - Just want the truth
  - Expect cooperation
- At the end of the conversation:
  - You will take action if there are facts you need to know and are not told about
  - Chance to change their statement or add facts
  - You want all the information available and any additional information should be brought to your attention immediately




### INVESTIGATIVE SUSPENSION


- An investigative suspension should only be contemplated when there are allegations of serious misconduct that will require a full investigation and the employee presents an immediate threat to others.



### EMPLOYEE MISCONDUCT

- Examples
 

<ul style="list-style-type: none"> <li>Absenteeism</li> <li>Sleeping on the Job</li> <li>Insubordination</li> <li>Assault</li> <li>Negligence</li> <li>Conflict of interest</li> <li>Patient abuse</li> <li>Personal use of government property</li> </ul>		<ul style="list-style-type: none"> <li>Tardiness</li> <li>Fighting</li> <li>Threats</li> <li>Racial slurs</li> <li>Sexual harassment</li> <li>Drunk on duty</li> <li>Gambling</li> </ul>
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### OFF-DUTY MISCONDUCT


- An employer may not discipline an employee for off-duty conduct
  - Exceptions
    - the conduct renders the employee unable to perform the job
    - the employer is directly or indirectly harmed by the off-duty conduct
- Discipline or no discipline?
  - Depends upon the employer conducting its own investigation
  - Criminal court guilt or innocence does not necessarily bind the employer
- Depending on the department and the work the employee performs, employees may be required to notify their supervisors of arrests and/or criminal charges. Discipline may be imposed only when the outside activity definitively relates to the employer's operations.
- The misconduct must have arisen out of employment activities or carry with it a serious threat of disrupting the orderly, efficient, or safe conduct of the employer's business.

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### LAWFUL CONSUMABLE PRODUCTS ACT


- 2010 Minnesota Statutes, section 181.938.
- Subdivision 2. States,
  - An employer may not refuse to hire a job applicant or discipline or discharge an employee because the applicant or employee engages in or has engaged in the use or enjoyment of lawful consumable products, if the use or enjoyment takes place off the premises of the employer during nonworking hours.
- Subdivision 3. Exceptions
  - relates to a bona fide occupational requirement and is reasonably related to employment activities or responsibilities of a particular employee or group of employees
  - is necessary to avoid a conflict of interest or the appearance of a conflict of interest with any responsibilities owed by the employee to the employer

2010 Minnesota Statutes



### UNION REPRESENTATIVE


- When conducting an investigation, you must allow (offer) an employee to have a Union representative present when that employee reasonably believes that the investigation may lead to discipline.
- **NEVER** continue talking to an employee after that employee states that they want representation. To do so can be considered a serious lack of due process and may cause an appeals panel or arbitrator to rule against the disciplinary action despite all other facts.
- The right to union representation is often referred to as one's Weingarten right named after the 1975 case National Labor Relations Board v. J. Weingarten, Inc.






### UNION REP TRUE OR FALSE

- True or False?
  1. A Union representative can ask the supervisor to clarify any questions the employee may not understand.
  2. A Union representative can negotiate regarding the subject of the meeting.
  3. A Union representative can request a recess during the meeting if they need more time to confer with the employee.
  4. A Union representative can advise the employee to not answer a question or give untrue answers.
  5. A Union representative can provide the County with additional information when the questions have ended.
  6. A Union representative can request that the meeting continue at another time if information is presented that requires additional investigation or preparation.



### FIFTH AMENDMENT PRIVILEGE

- The Fifth Amendment to the United States Constitution provides that "No person...shall be compelled in any criminal trial to be a witness against himself."
  - This privilege against self-incrimination is applicable not only to criminal trials, but to numerous government proceedings seeking to obtain evidence regarding alleged criminal actions, including investigations conducted by government employers.



### GARRITY WARNING


- The Fifth Amendment privilege against self-incrimination is applicable to public employees and investigations conducted by government employers in accordance with *Garrity v. State of New Jersey*, 385 U.S. 493 (1967)
- It is improper for a public sector employer to compel an employee to waive his or her constitutional right in a criminal proceeding by a threat of dismissal from employment.
- It is proper for a public sector employer to demand an accounting of a public employee's performance of his or her duties even though criminal activities may be involved, an employee's refusal to give such an accounting may be deemed insubordination.

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### GARRITY WARNING CONTINUED


- A Garrity Warning states the following:
  - The employee will be asked questions specifically, directly, and narrowly related to the employee's performance of official duties.
  - The employee has a right not to be compelled to incriminate himself or herself, and statements made or information provided by the employee during the investigatory interview will not be used against the employee in any subsequent criminal proceeding.
  - The employee will be subject to disciplinary action, including termination, if he or she refuses to answer questions relating to performance, fitness for office and/or conduct.

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### TENNESSEN WARNING (When conducting investigatory interview)


- An individual asked to supply private or confidential data concerning the individual must be provided with a Tennesen Warning prior to being asked to supply the data. Minn. Stat. Section 13.04, subd. 2.
- Key points of the advisory?
  - The purpose for the data collection
  - How the agency intends to use data
  - Whether the individual may refuse to supply data
  - Known consequences of supplying/refusing to supply data
  - Identity of other persons or entities authorized by law to receive data



### RIGHTS ADVISEMENT CORRECTIONAL OFFICERS DISCIPLINE PROCEDURES

- This right is pursuant to Minn. Stat. § 241.026
  - This advisory must be given to the Correction Officer before he or she is asked to give a formal statement to be used as evidence in a disciplinary proceeding against them
  - Any admissions the Correction Officer makes in the course of the formal statement may be used as evidence of misconduct or as a basis for discipline.
  - No disciplinary letter or reprimand may be included in their personnel record unless the Correction Officer has been given a copy of the letter or reprimand.
  - The Correction Officer may not be discharged, disciplined, or threatened with discharge or discipline as retaliation for or solely by reason of their exercise of these rights.
  - The rights set forth above are in addition to and do not diminish the rights and privileges provided to the Correction Officer under their collective bargaining agreement or any other applicable law.

2010 Minnesota Statutes



## NATIONAL LABOR RELATIONS ACT

- Under Section 8 (a) Unfair labor practices by employer:
  - It shall be an unfair labor practice for an employer (4) to **discharge** or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.



National Labor Relations Board

## WHAT IS PROGRESSIVE DISCIPLINE?

- A progressive discipline system (prior to termination) is a way for employers to provide employees one or more warnings that their performance or behavior is unacceptable.
- The system "progresses" through a series of warning steps; and each step contains some added element to impress upon the employee the growing urgency of compliance and risk of additional discipline or termination.
- If the employee does not demonstrate that they are an acceptable member of the workforce through repeated refusal or failure to adhere to established and reasonable standards, the employer is justified in terminating employment.

## WHAT IS PROGRESSIVE DISCIPLINE? CONTINUED

- Without due process, the discipline may be voided on appeal.
- The failure of due process is often expressed in terms of result; no just cause for the disciplinary action.
- The standards of conduct or performance must be clearly established.
- Progressive discipline systems usually seek to compel compliance through progressively increasing penalties.
- Two essential elements:
  - All employees must be treated equally or
  - Advance through the steps of the system in the same fashion without discrimination

## LEVELS OF PROGRESSIVE DISCIPLINE

- Oral Reminder /Corrective Counseling (Plan/memo)
  - Written Reminder or Reprimand or Warning
  - Disciplinary Leave or Suspension
  - Demotion
  - Discharge/Termination
- Important Note: Select the appropriate corrective action to address the conduct.
- \* Depending on the severity of the offense it is appropriate to skip progressive disciplinary action steps.

## DUE PROCESS

- The due process concept derives from the **14th Amendment's Due Process Clause**, which requires that the government act with adequate and fair procedures when depriving a person of life, liberty or property.
- Statutes or regulations requiring that a public employee can only be dismissed for "just cause" recognize a property right in one's job.




## DUE PROCESS CONTINUED

- Essentially, due process exists where
  - The employee is made aware of the violation of work rules or standards
  - A violation is shown by the weight of credible evidence
  - The employee is allowed to know the facts supporting the finding of a violation
  - The employee is given an opportunity to defend him or herself
  - The employee has the right to appeal to an impartial body

### JUST CAUSE


- **Notice**
  - Was the employee forewarned of the possible or probable disciplinary consequences of the employee's conduct?
  - Can be given by management either verbally or in writing
  - Certain offenses such as insubordination, coming to work intoxicated, drinking intoxicating beverages on the job, or theft of county property are so serious or so obvious that any employee in the industrial society may properly be expected to know already that such conduct is offensive and heavily punishable.



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### JUST CAUSE


- **Reasonable Rule or Order**
  - Was the employer's rule or managerial order reasonably related to the orderly, efficient and safe operation of the department?
  - Even if the work rule in question is considered unreasonable, the employee must nevertheless obey it unless the rule or order would seriously and immediately jeopardize the employee's personal safety. The accepted rule of thumb is "work now and grieve later" if there is a perceived violation of the employee's rights.



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### JUST CAUSE

- **Investigation**
  - Did the employer, before disciplining an employee, investigate to determine whether the employee did in fact violate or disobey a rule or order of management?
  - This principle is referred to as the employee's "day in court." An employee has the right to know with reasonable precision the offense with which he or she is being charged and to have an opportunity to defend the behavior.



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### JUST CAUSE

- **Fair investigation**
  - Was the employer's investigation conducted fairly and impartially?
  - During an investigation the management official may be both "investigator" and "decision maker," but should not be a witness against the employee.
  - It is essential that a higher, detached management official assume and conscientiously perform the decision-making role.
  - In some disputes between an employee and a management person there are no witnesses to an incident other than the two immediate participants. In such cases, it is particularly important that the "investigator" rigorously and thoroughly question both the employee and management participant.

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### JUST CAUSE

- **Proof**
  - During the investigation, did the employer obtain substantial evidence or proof of the charges leveled against the employee?
  - It is not required that the evidence be preponderant, conclusive or "beyond a reasonable doubt." But, the evidence must be substantial enough to persuade an arbitrator. "Clear and convincing" is the standard that is generally applied.
  - The investigator should actively search out witnesses and evidence, not passively take what participants or "volunteer" witnesses offer.

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### JUST CAUSE

- **Equal treatment**
  - Has the employer applied its rules, orders and penalties evenhandedly and without discrimination to all employees?
  - A "no" answer to this question warrants negation or modification of the discipline imposed
  - If the employer has been lax in enforcing rules and orders and decides henceforth to apply them rigorously, it may avoid a negative ruling by telling all employees beforehand of its intent to hereafter enforce all rules as written.

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## JUST CAUSE

- Penalty
  - Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense; (b) the record of the employee in his or her service with the employer; and (c) the general discipline standards applied by the employer?
  - A minor proven offense may not merit harsh discipline unless the employee has properly been found culpable of the same or other offenses in the past.



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## RECAP OF JUST CAUSE

- The employee has forewarning and foreknowledge of the consequences of the conduct.
- The employer has established reasonable work rules.
- The employer has conducted a thorough, fair, and impartial investigation.
- The employer's evidence is substantial.
- The employer's practices are carried out in an evenhanded and non-discriminatory manner.
- The punishment fits the crime.

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## SUPERVISORY TOOLS

- Corrective Action Plans (CAP)
  - Identify the cause of the problem
  - Brainstorm solutions
  - Define expectations
  - Monitor progress
- Last Chance Agreement
  - Written document outlining past disciplinary actions, specific performance/conduct expectations and the consequences for not meeting those expectations during a specific period of time.
- Employee Assistance Program
  - Any time you are taking corrective action with an employee, you should take the opportunity to inform them of the service available from the Employee Assistance Program.



## THE EMPLOYER DECIDES AFTER AN INVESTIGATION TO TERMINATE

- Now what?
- Are there any steps to follow to notify employee of the termination action?

## LOUDERMILL DECISION


- The 'pre-termination hearing' and/or lengthy suspension procedures that are required vary depending upon the importance of the interests involved and the nature of the post-termination procedures available to the employee. The minimum due process requirements include the following:
  - Notice of the charges against the employee in sufficient detail to enable the employee to respond.
  - Explanation of pre-termination and appeal procedures and time table.
  - An indication of the consequences at stake for the employee.
  - A reasonable time for the employee to prepare a response.
  - A forum for the employee to present his or her response.

## SHRM ARTICLE BY ROY MAURER

- Outlines a number of good things to keep in mind when you have to go through a termination meeting (Loudermill - Pre-term hearing)

### VETERANS PREFERENCE ACT


- Minnesota Statute 197.46
  - Terminated only for incompetence or misconduct
  - A demoted or discharged veteran has 60 days to request a hearing
  - Remains on the employer's payroll until either the 60 days has expired without a hearing request from the employee, or until the conclusion of a hearing and the rendering of a decision upholding the employer's action.
- In addition to the applicable union contract and pre-disciplinary (Loudemill) procedures, the Notice of Intent to demote or discharge must inform the employee of his or her procedural rights under the Veterans Preference Act.



A Supervisor's Guide to Proactive Labor Relations

### VETERANS PREFERENCE ACT CONTINUED

- A demoted veteran cannot be reduced in pay until the appeal right is either waived or a conclusion is reached following a hearing.
- A veteran being discharged must continue to be paid until the appeal process is either waived or completed.
- The employer is not obligated to retain the veteran on the job (stay away with pay instead).
  - Considerations:
    - 1.) The offense for which the employee was being discharged;
    - 2.) The nature of his or her work and the possibility of providing some alternative employment to the employee while the appeal is pending.



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### MORE VETERAN'S PREFERENCE ACT

- Probationary employees may not have VPA protections – but exercise great caution if you do so – SLC may be an exception.
- See your HR/Attorneys to confirm

### AVOID LIABILITY

Supervisors should NOT do the following:

- Joking about the incident with others.
- Rushing to judgment and taking sides.
- Firing the complainer.
- Texting, emailing, using social networking or otherwise discussing the complaint with others.
- Ignoring the complainer in meetings, in email and during office activities.

What Not to Do with Employee Complaints

### DISCRIMINATION

- When contemplating any disciplinary action, you should ask yourself the following questions:
  - Is the employee's performance or behavior unsatisfactory or unacceptable?
  - If the problem is not grounds for immediate termination, did you take reasonable steps to inform the employee of the situation and give him or her time to improve?
  - Has the employee failed to remedy the problems despite having the opportunity to do so?
  - Is discipline applied equally and are other employees held to similar standards?
- If you have answered yes to these questions, that's fine. Remember poor performers are not a protected class!

### RETALIATION

- Claims of Retaliation are on the rise and have surpassed Race discrimination as the most common charge employees make to the EEOC (Equal Employment Opportunity Commission).
- If a supervisor administers discipline, then later changes the employee's assignment or moves the employee to another office, make sure to document bona fide reasons for taking these actions.
- EEOC investigators look for retaliation when they are writing out the charge for the complainant. Make sure to document any post-charge interactions so they won't be viewed as retaliation.

US Equal Employment Opportunity Commission

### DISCIPLINE TIMING

- When is the best time to terminate an employee?
  - Be aware of your calendar and the employee's calendar
  - Is the employee close to retirement goal dates?
  - What about dates of emotional/equitable significance?
    - Year-end holidays, the employee's birthday, a major religious holiday, an anniversary of significance to the employee?
- Think of indignation as legal claim fuel. Spare the indignity and avoid having to defend even a bad legal claim.



Discipline and Discharge Handbook

### ACCOMMODATION REQUEST

- What should an employer do if an employee requests an accommodation for the first time in response to counseling or a low performance rating?
  - The employer may proceed with the discussion or evaluation but also should begin the "Interactive reasonable accommodation process"
  - If a reasonable accommodation is needed to assist an employee in addressing a performance problem, and the employer refuses to provide one, absent undue hardship, the employer has violated the ADA.

US Equal Employment Opportunity Commission



### ALLOWING A RESIGNATION VS. TERMINATION

- Saves you a lot of grief, right?
  - (Maybe)
- Use a written agreement (allowing the ability to rescind the decision) tied to a waiver of all other rights to grieve or appeal
- How do you respond to requests for information following such a separation?



### WHAT HAVE WE LEARNED TODAY?

- (1) When an employee must be disciplined, the actual disciplinary meeting can best be conducted by:
- A HR staff
  - B Department Head
  - C Supervisor of the employee
  - D Both the Department Head and the employee's supervisor

### WHAT HAVE WE LEARNED TODAY?

- (2) In preparing to discipline an unsatisfactory employee, the supervisor should do all of the following **except**:
- A Schedule the interview for late Friday afternoon.
  - B Ensure that accurate performance appraisal records have been kept.
  - C Discuss the matter with the Department Head.
  - D Review the employee's prior disciplinary records.

### WHAT HAVE WE LEARNED TODAY?

- (3) In conducting a **pre-termination** meeting with an unsatisfactory employee, the supervisor should:
- A Tell the employee that this decision was made by someone up the chain of command and there was nothing I could do about it.
  - B Honestly show his or her feelings of anger or disappointment to the employee, if those feelings exist.
  - C Not discuss the issue of employee references.
  - D Focus on the discussion of lack of performance, not on the employee.

### WHAT HAVE WE LEARNED TODAY?

(4) An employee was unsuccessfully counseled over an extended period of time for a severe absenteeism problem. To support termination, the supervisor should have:

- A Past performance appraisal ratings which indicate unacceptable performance.
- B Memoranda indicating past counseling sessions with the employee, even if one of the notes indicates that the employee has done something positive.
- C A copy of the written final warning to the employee.
- D All of the above.

### WHAT HAVE WE LEARNED TODAY?

(5) The reason supervisors might postpone disciplining employees is:

- A They find the task of conducting disciplinary meetings extremely unpleasant, and therefore avoid it whenever possible.
- B The documentation process for discipline is excessively time consuming.
- C They fear an appeal or grievance from the employee.
- D All of the above.

### WHAT HAVE WE LEARNED TODAY?

(6) Supervisors sometimes "encourage" an unsatisfactory employee to resign through subtle hints to:

- A Avoid a possible scene if the employee were officially terminated.
- B Avoid facing the fact that they may have made a mistake in hiring the employee.
- C Be kind to the employee and allow him or her to save face.
- D All of the above.

### WHAT HAVE WE LEARNED TODAY?

(7) If after much "encouragement", an unsatisfactory employee still doesn't resign, what happens often is that the supervisor:

- A Immediately terminates the employee.
- B Writes up a "good" performance appraisal and hopes the employee transfers or promotes to some other supervisor.
- C Decides that the employee really isn't so bad after all, and the supervisor can live with the problem.
- D Hires someone else to do the critical tasks the unsatisfactory employee has not done.
- E All of the above.

### WHAT HAVE WE LEARNED TODAY?

(8) Terminating an employee does **not** usually:

- A Cause embarrassment.
- B Have long-term negative effect on the employee who is terminated.
- C Take a lot of management time.
- D Disrupt the morale of the unit, temporarily.

### WHAT HAVE WE LEARNED TODAY?

(9) When making the decision to terminate an employee, the supervisor should do all of the following **except**:

- A Check with the personnel department on termination policy and procedures.
- B Wait until another major problem occurs, then terminate the employee immediately.
- C Get into a relaxed state of mind before making the termination decision.
- D Consider how other employees in the agency will feel about the termination.

### WHAT ABOUT TAKING NO ACTION?

- What is the danger of NOT taking action?
  - No action is an action.
  - May preclude you from taking action in a similar situation in the future.
  - Signals there are no standards.
  - Allowing sloppy work practices, signals that it does not matter if the others are sloppy too.
  - When you fail to act on one employee's poor attendance, then you have sent the message that it really doesn't matter if your other employees come to work.

### WANT TO CHANGE EMPLOYEE BEHAVIOR? CHANGE YOURSELF FIRST

**Reflection Question**  
How are you contributing to some of the employee behaviors that are frustrating you?



**Action Items**

- Tell employees what you expect as clearly as you can and be prepared to repeat yourself dozens of times until it sinks in.
- Be positive and in a good mood more of the time - it is contagious. A foul mood will spread to employees... and... gulp... customers.
- Build on positives. Seeing mistakes is helpful but focus on the gains being made in order to motivate for greater achievement.
- Encourage people to help them recognize their own strengths. A lot of employee misbehavior is caused because of low self-esteem. Build them up.
- Be approachable - smile more often and employees will bring problems to you more quickly, before getting out of hand.

Want to Change Employee Behavior? Change Yourself First

### SEEING RED CARS WITH LAURA GOODRICH

- Encourages audiences to focus on what they DO want instead of focusing on why they don't!
- By having a positive attitude and taking action, viewers will be motivated to move in the right direction for themselves and for their organizations.



### FOCUS ON WHAT YOU WANT TO HAPPEN - NOT WHAT YOU WANT TO AVOID

- 1) Make a commitment
  - 1) Focus on what you want
  - 2) Say what you want
  - 3) Stay positive
- 2) Monitor yourself
  - 1) Be aware of your focus
  - 2) Celebrate success
  - 3) Catch yourself (when things don't line up)

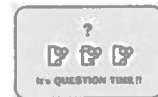
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### FOCUSING ON WHAT YOU WANT (CONTINUED)

- 3) Practice
  1. Be persistent
  2. Write it down
  3. Picture it

### THANK YOU FOR ATTENDING

- Any questions?





## HANDOUTS

- Tennesen Warning Samples – two versions
- Maurer, Roy. (August 2011) Avoid Violent Terminations with a Show of Respect. Society for Human Resources Management.

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