



A Business Manager's Human Resources Overview

Presented by:
Mary L. Dowell
Liebert Cassidy Whitmore

Today's Agenda

- Management Rights, Past Practice and Handling an Employee Grievance
- Conflict Resolution
- Employee Performance Evaluations
- Personnel Files
- Implementing Discipline
- Discrimination Issues
- Disability Issues





**MANAGEMENT RIGHTS,
PAST PRACTICE AND
HANDLING AND
EMPLOYEE GRIEVANCE**

Management Rights

- Set standards and level of service
- Determine means and methods of operations
- Hire, promote, transfer, assign and retain employees
- Direct and manage the work of employees



Management Rights

- Layoff for lack of work or funds
- Determine the size of the workforce
- Discipline employees
- Evaluate the performance of employees
- Determine the hours of operations
- Establish standards of productivity



Past Practice

- Does the collective bargaining agreement address the issue?
- Is the collective bargaining agreement clear and unambiguous or silent?



Past Practice – ELEMENTS

1. Consistency
(recurring)
2. Longevity
(occurring over period of time)
3. Mutuality
(acceptance)



Past Practice – REVERSING

- Consult With Management
- Publicize Intent
- Allow Time Interval
- Set and Implement a Deadline



Employee Grievances

- Purpose
- Procedures
- Definition of Grievance
- Timeliness



Employee Grievances

PRACTICAL ADVICE

- Prepare for meeting
- Listen carefully
- Get the facts/investigate
- Give your answer
- Follow-up

Try to develop a positive relationship with the union!





EVALUATIONS

Employee Evaluations

TWO PRIMARY PURPOSES:

1. Communicating to Employee How He/She is Doing
2. Documenting Performance for the Time Period Since the Last Review

ACCURACY



Employee Evaluations

A TOOL TO:

- Reward Good Performance
- Encourage Improvement When Needed
- Tell Employee When Performance is Unsatisfactory and the Consequences of Continued Poor Performance
- Evaluate Non-Performance, Job-Related Traits, Such as Attendance, Attitude



Employee Evaluations

A FEW KEY POINTS:

- No Surprises
- Document and Communicate
- Apply Proper Criteria
- Cover the Appropriate Time Frame



Evaluation of Community College Employees – Classified Employees

- Requirements for classified employee evaluations are usually contained in
 - Collective bargaining agreement
 - District policies/procedures





PERSONNEL FILES

What *Can* You Put In?

- Education Code 87031
- If the employee wishes someone else to inspect his/her personnel file, the employee must provide written authorization.
- Inspection may be monitored.
- Copies of documents in the file can be obtained at a reasonable copying expense.



**Medical information must
be maintained in a separate
confidential file.**





DISCIPLINE OF EMPLOYEES

Classified Employees Non-Merit System Disciplinary Procedure

- Governing board prescribes written rules and regulations
 - Requirements
 - Written notice of specific charges
 - Statement of employee's right to hearing on charges
 - Time period for requesting hearing (not less than 5 days after service of notice to employees)
 - Demand for hearing and denial of charges

Education Code § 88013(c)



Classified Employees Non-Merit System Disciplinary Procedure

- No disciplinary action for:
 - Cause occurring prior to employee becoming permanent
 - Cause arising more than 2 years preceding date of filing notice of cause
 - Exception: If cause concealed or not disclosed by employee

Education Code § 88013(d)



Classified Employees Merit System Disciplinary Procedure

- Personnel Commission
 - Set rules and causes for dismissal
 - Caution: Bargaining unit members, scope of representation and negotiated agreement
 - Causes for suspension or dismissal in addition to Personnel Commission rules



Classified Employees Merit System Disciplinary Procedure

- Types of Discipline
- Written charges and service on employee
- Additional provisions for specified offenses brought in a court of competent jurisdiction



The *Skelly* Procedure

REQUIRES:

- The employee receives a preliminary written notice of the proposed action stating the date it is intended to become effective and the specific grounds and particular facts upon which the proposed action is based.



The *Skelly* Procedure

REQUIRES:

- That along with this notice the employee be provided with any known written materials, reports or documents upon which the action is based.



The *Skelly* Procedure

REQUIRES:

- The employee be accorded the right to respond informally either orally, in writing, or both to the proposed charges.
- Must be Conducted by an Appropriate Level Individual
- Need Not be Formal Evidentiary Hearing



Final Notice of Discipline

- This notice mirrors in most respects the notice of proposed discipline.
- It should contain the statement of charges and facts upon which the final decision to discipline is based.
- The employee should also be informed of his or her appeal rights.



Issues at Post-Disciplinary Hearing

1. Has the district proven by a preponderance of the evidence that the alleged conduct occurred?
2. If so, was the level of discipline a reasonable exercise of discretion?
3. Or as defined by CBA



What is Appropriate?

- Offense
- Longevity
- Prior Discipline
- Performance Record
- How others treated for same or similar offense





DISCRIMINATION AND HARASSMENT

Federal & State Law Prohibit Discrimination Based on:

- Race
- National Origin
- Disability/Medical Condition
- Sex (Pregnancy)
- Religious Creed
- Marital Status
- Age (40 & Above)
- Sexual Orientation
- Gender Identification



Forms of Discrimination

- Disparate Treatment
 - Intentional
 - Harassment
 - Retaliation
- Disparate Impact



Forms of Harassment

- Quid Pro Quo (Sexual Harassment)
- Hostile Work Environment
- Retaliation



Quid Pro Quo Sexual Harassment

- Job Benefits Promised in Exchange for Sexual Favors or Denied If Sexual Favors are Not Given.



“Hostile Work Environment” Harassment

- Protected Status
- Physical, Verbal or Visual Behavior
- Objectively and Subjectively Offensive
- Severe and/or Pervasive
- Interfere with Employee’s Ability to Perform His/Her Job or Alter the Conditions of Employment



Retaliation

- Protected Activity
- Adverse Employment Action
- Causal Link

NO RETALIATION



Preventing Discrimination

- Adopt and disseminate anti-discrimination policy
- Post EEOC/DFEH notices
- Educate and train employees
- Adopt meaningful complaint procedures
- Investigate complaint promptly, thoroughly and fairly



Preventing Discrimination

- Take remedial action, if warranted
- Review recruitment and advertising material
- Review job descriptions, employment tests and selection criteria





DISABILITY ISSUES

Disability Discrimination

- Americans with Disabilities Act (ADA)
- Rehabilitation Act of 1973
- California Fair Employment and Housing Act (FEHA)

You must comply with all three!



Two Issues

- Does the Individual Have a Disability?
- If So, Have You Met Your Reasonable Accommodation Obligations?



Physical Impairment

- Individual with a physiological disorder, condition, etc. affecting one or more bodily systems.
- Individual regarded as having such a disability
- Individual with a record of such disability
- ADDITIONALLY, under FEHA:
 - Impairment requiring statutorily provided special education or related services
 - Condition posing future impairment



Mental Impairment

Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.



Major Life Activity

- Caring for one's self
- Performing manual tasks
- Bodily functions (breathing, seeing, hearing, speaking)
- Learning and concentrating
- Walking, sitting, standing, lifting, reaching and sleeping
- Participating in community services
- Working



Interactive Process

- Interactive Process is Communication Held in Good Faith Between Employer and Employee to Identify and Implement a Reasonable Accommodation
 - In the 9th Circuit, Interactive Process mandatory under the ADA
 - Interactive Process also mandatory under FEHA



What Triggers Interactive Process

- Notice to employer by employee of desire for accommodation
- Employer's actual or constructive knowledge of employee's impairment



Undue Hardship

Consider:

- Nature and cost of accommodation.
- Impact on overall financial resources and operation of facilities.
- Employer's overall financial resources and size of operation.
- Type of Employer's Operations
- Geographic separateness and administrative or fiscal relationship of facilities to employer.



Health & Safety Risks

- A significant risk to health and safety which cannot be eliminated or reduced with reasonable accommodation. Decision must be based on medical opinion.
- ADA: Takes into account only the health and safety of others.
- FEHA: Takes into account the health and safety of others and the employee.



Examples of Reasonable Accommodation include:

- Modify work schedules
- Physical changes to workplace or acquisition of equipment & devices
- Modifying a current position (but not essential duties)
- Paid or unpaid leaves of absence
- Providing personal assistants to help with specified duties
- Allowing the employee to use equipment or services that employer is not required to provide.



Reassignment to a Vacant Position

- Reassignment
 - Only if no other reasonable accommodation is available
 - Lower level position is acceptable (no promotion is required)
 - No duty to bump a more senior employer to create a vacancy
 - Insofar as possible, should be reasonably comparable in terms of pay, status and geographic location



Reasonable Accommodation and Discipline

- No duty to waive discipline even if disability is the source of misconduct
- Must accommodate disability to allow employee to participate in grievance or discipline process.



Thank you!

QUESTIONS?

Mary Dowell
310.981.2000
mdowell@lcwlegal.com