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Lisa is going to present our third case study, which highlights a problem which can occur in today's electronic workplace.

Lisa?

>> L. Powers-Michaud: This case study addresses inappropriate use of government computers within the workplace.

Eric has been an employee in the administration office for the past 20 years.

During his tenure in that office, he has received annual exceptional ratings and awards.

Additionally, he has never been -- had any conduct-related issues for -- during his employment time in that office.

On last Thursday, the HR office received an I.T. security incident report from the NOC.

This report contained pornographic images and identified these images as coming from Eric's computer.

The ER specialist contacted Gale, the supervisor, and gave her the report.

The ER specialist advised Gale to meet with the employee to discuss what she had learned.

Gale was also advised that the first offense of inappropriate computer misuse could be subject to disciplinary action up to a 14-day suspension.

During the meeting, the employee denied any wrong doing.

He said over and over that he did not access porn and he did not recall typing anything or seeing anything.

>> L. Thomas: Thank you, Lisa.

Once again, we invite your participation.

If you have some questions or comments for us on the computer case study that Lisa just presented, or for any other case studies for that matter that we presented, please call, send in a fax, e-mail note or a text message.

In fact, before we get into this case study about the computer use, we have a call where someone wants to ask a question about one of the prior case studies.

We have MARQUISA from Washington.

Are you on?

>> Caller: I had a question about the previous -- hello?

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>> L. Thomas: I'm here.

We hear you.

>> Caller: Oh, okay.

I was calling because of the previous case study.

There was a scenario where the individual may have gotten arrested, and if he was found guilty of the charges, what would be the course of action then?

>> I'll take that one.

As a supervisor, you have the choice of taking action based on the behavior as it happened or waiting until criminal charges are pressed and then the disposition of those charges.

A lot of times it's good to address the behavior itself because charges can be dismissed for various reasons, and so then that would blow your case if you were waiting for a guilty plea and then it didn't happen.

Two, if they are found guilty, I mean, obviously all our employees must obey the law and one key that comes into this is notoriety.

For example, if it ends up in the paper, if they miss work because of jail, you know, the co-workers find out, but you can take an action based on either a guilty plea or a verdict of guilty for a different criminal crime.

Does that answer your question?

>> Caller: Yes, it does.

>> L. Thomas: Thanks so much for calling in.

Let's talk a little bit about the case study we talked about as far as the inappropriate use of the computer, the Internet, porn, things of that nature.

Whenever this comes up, in the case study as well, we always talk about zero tolerance.

What exactly does zero tolerance mean?

>> P. Sienkiewicz: The Department has a zero tolerance policy when it comes to Internet use and abuse.

These reports are things we've all seen coming across our desk and we've had to work with supervisors on.

I know a lot of time the supervisor will think zero tolerance means that the employee must be fired.

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That is not the intent or the meaning of zero tolerance, at least as far as the way we understand it and administer it.

But zero tolerance to us does mean that the action is taken seriously and some form of disciplinary action needs to be taken.

The supervisor could not just say, well, this is just a first time and we'll not going to deal with it.

We are going to require the agency -- the agency requires there be some action that is taken.

I know, for example, in the circumstance I've seen, the cases I've handled in our state, people are generally suspended if they're caught abusing the Internet policy.

>> L. Thomas: Okay.

You know, lots of times we sign employees who have a great record or pretty decent record just stumbling along the web site or clicking the wrong link.

Does good performance and conduct qualities consider any mitigating circumstances in a case like this?

>> It does, Leon.

Actually, when a supervisor is taking a disciplinary action, they should complete the Douglas factors.

The Douglas factors are a series of 12 questions that are designed to get the supervisor to look at the employee's overall situation.

If the supervisor decides to take a disciplinary action of short suspension, long suspension or removal, they're actually required by Department policy to be completed by both the proposing and the deciding official.

They can be useful in other situations, too.

Oftentimes a supervisor doesn't know what action they want to take or what's appropriate or consistent, and so by completing the Douglas factors, it does get them to look at the whole situation and help guide them to a good decision or a good penalty that will change the behavior of the employee.

I don't know if I mentioned, there are 12 Douglas factors, one of which is the employee's prior disciplinary record, and another one discusses the employee's past performance history.

So if those are good, they'll be considered mitigating.

If either of those are poor, it could be considered aggravating.

But either way, they are considered.

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>> P. Sienkiewicz: But let me say, and in my experience in dealing with these cases, although a manager has to consider mitigating factors when they do the Douglas factor, the -- this zero tolerance does come into play, though.

There is not a lot of mitigating factors that will excuse an employee getting onto a government computer and using that computer to access inappropriate sites or to send an improper e-mail.

What we have seen is sometimes employees weren't aware of the fact that if they access their own personal e-mail, let's say their Yahoo account, through their government computer and they send some sort of salacious e-mail through that process, that's being tracked, and that comes across our desk.

>> Anything that occurs on the network.

>> P. Sienkiewicz: That's right.

So the employee in that circumstance will say, I didn't know.

But even that is not a mitigating factor when we talk about Internet abuse and the zero tolerance policy.

>> That's correct.

Policies are definitely one thing that's considered in the Douglas factors.

Also consistency of penalty.

That's consistency with both the table of penalties in the Department manual and those penalties imposed on other employees.

>> And I'm glad that you mentioned that, Julie, because that's a thought that I had while Paul was talking.

As you know, as an ER specialist, we have to look at the Douglas factors.

We have to look at the table of penalties, the supporting facts of the case, and also dialogue with the supervisor.

But when you're talking about Internet or misuse of the government computer, there should really be pretty much consistency across BLM lines when it comes to viewing that sort of action that you're going to take on an employee.

As Paul indicated, also depending on the case, there would probably be far too little mitigating circumstances, and because the Department has come on very strongly, as well as our BLM officials about the misuse of government equipment, especially in this case study dealing with pornography, it really is a zero tolerance, and there really should be some evidence of consistency across BLM lines when approaching that.

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>> I think one thing, also, that employees may not realize is that it's not just a picture that you might identify as pornography.

It could be a cartoon that has that same type of gesture.

It could be language, interactions in e-mails where you're describing such behaviors.

It's not always just a picture.

Every day when we sign on our computer, we're acknowledging that we're aware that anything that we do on our computer is monitored.

>> L. Thomas: There's a major push in our agency to do telework, so how would a disciplinary action in this area affect an employee's telework participation?

>> The telework enhancement act, as most of us all are familiar with, became law last year, late last year, and there are two provisions that are set aside that would make employees ineligible to participate in telework, and that's ineligible to participate currently now on a permanent basis.

One of them is to have a formal disciplinary action for A.W.O.L. of more than five days.

And the second one would be for viewing, storing or receiving pornographic material via your government computer.

There are those two provisions, and only those two, that would make an employee ineligible to participate in telework.

Now, when I say formal discipline, formal discipline would be documented by a standard form 50, SF-50, and I'm sure everyone knows what an SF-50 is.

An SF-50 is a permanent document that is placed on the permanent side of the person's official personnel folder, and if a person has received an SF-50, official formal discipline for that particular incident, then they are ineligible to participate in telework.

>> As of now it's on a permanent basis.

>> Yes, as of now it's on a permanent basis, yes.

>> Also an SF-50 would go into a personnel file as -- if they've had a suspension.

Just a warning does not go into the file.

>> That's right.

Well, a warning does not produce an SF-50.

So it would be a suspension.

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>> We talked about the supervisor's role with the SF-50 putting it in the personnel file and things of that nature.

What other -- what other responsibilities would a supervisor have in a situation like this?

Leon, I'll take that one.

In this case the supervisor needs to evaluate the IT. security report, talk to the employee about the incident.

Oftentimes it helps, it provides clarity for the supervisor to understand if the infraction was intentional or unintentional.

Maybe it was a Spam e-mail that came in that they opened and they weren't aware what it was versus somebody sending an e-mail out or forwarding a joke.

So I think that actually helps when they complete the Douglas factors.

And they need to actually work with the ER specialist to consult on that disciplinary action.

And remember, for Weingarten rules would apply for this particular employee if they were in a bargaining unit.

>> L. Thomas: Thanks, Lisa.

>> P. Sienkiewicz: I spoke about fact finding.

This is a good example of where fact finding is going to be pretty basic.

You're not going to have a bunch of questions to ask.

You have a report and you want to find out, what do you know about this?

So it's a good straightforward.

But still the fact finding should be done.

>> We found in some instances where employees took their computers home or they were on travel and they didn't realize anything they did on the network applied.

So if they allowed their child to use the computer and their child was use surfing the net, they were getting in trouble because of things their children did as well.

So it's their responsibility for anything that transpires on that network.

>> So you mean my children are not mitigating factors?

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>> They are not.

>> L. Thomas: All right.

We have a call.

We have Valerie from California.

Valerie, are you there?

>> Caller: Yes, I am.

>> L. Thomas: You're on.

>> Caller: I just wanted to make the point, when you initially spoke about the report from the NOC being from the user's computer, they would need to take that down a step further and actually confirm it was that employee's user I.D., and even if the employee still maintained that they did not access the porn, they need to remember from the annual I.T. security training that even if you walk away from your desk and forget to lock your computer, you're still responsible for anything that happens on the network with your individual computer I.D. and password.

>> Very good.

>> L. Thomas: That's a great point, Valerie.

Thank you very much.

Do we have another seat up here for Valerie?

Thank you very much, Valerie.

>> Caller: I happen to be an I.T. specialist as an EEO counselor.

>> L. Thomas: All right.

Thank you, Valerie.

>> Come on over to the other side, Valerie.

>> L. Thomas: I also have a faxed in question.

Can you elaborate on the fact that employees believe that they have worked their 40 hours prior to the end of the work week so they believe they are entitled to take off the next day or leave early without prior approval?

>> I can attach on that one a little bit, Leon.

I think that goes back to the same comment we were talking about earlier, if you're on Maxiflex, or

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even if you're not and you're' on a straight schedule, you need to request permission from your supervisor to work outside of your tour of duty by either asking for comp time, overtime or flexing your schedule so you can have that additional day off.

Maxiflex is not really an entitlement for you to work your extra hours and then pick that you want to take Thursday or Friday off and not communicate to your supervisor.

Although Maxiflex does give you the flexibility to work the core hours, there's still a piece of communication that you need to work with your supervisor.

>> And supervisors also have the prerogative to -- you know, they can allow up to half an hour flexing without asking.

They can absolutely any flexing whatsoever needs to be approved.

Basically, in this scenario, I think that the problem is that it was a surprise.

It's never good to surprise your supervisor.

And, two, all of this should have been approved prior because it sounds like there was a lot of flexing going on.

So supervisor can kind of tighten policies and employees should be communicating all flexing.

>> L. Thomas: We have another question referring back to one of the other case studies.

How do you handle an employee who appears to be intoxicated at work?

>> That's what we would probably might say a little sticky wicket.

Let's talk about the obvious.

If an employee is obviously has a smell of alcohol on his breath, on his person, and his conduct is out of character for how he or she typically behaves, the first thing you want to do is you want to, as a supervisor, take control of the workplace.

Now, you never want to send an employee home.

So if you have a place at the workplace where the employee can go and sleep it off, then that's the first thing you want to do.

If you don't have a place like that, then if the employee has a family member who can come, pick him or her up and take him home.

The next to the last thing you want to do is have a co-worker take him home.

Or you can put him in a taxi and have him -- him or her taken home.

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So the first thing you want to do.

You don't want the employee to go home on his or her own.

So you have to be creative on how you're going to either have the person rest and sleep it off until that person gets into a position where they can leave on their own or you have them go home by taxi or someone take him.

But, now, the next day when that employee reports to work, or the following day after that, whenever the employee comes to work, then the supervisor needs to sit down, and it's that counseling session that we've been talking about, one on one.

These are my personal observations.

You were belligerent.

Or, you were out of character in some kind of way.

It's all about how the conduct and the -- and/or performance are affected.

So the supervisor doesn't conclude with his or her personal conclusions, I think you're an alcoholic, I think you have drinking problems, but just stick with the facts.

This is what I have observed, and what that supervisor has observed is something that could be categorized as misconduct.

Now, that's a clear-cut kind of example but for those that are kind of shaky, where an employee comes to work and may be acting out of character, it might not necessarily be because of maybe too much alcohol or under the influence.

It might be because the person might have even taken an overdose of NyQuil or something like that that could have nothing -- nothing against NyQuil or maybe some prescription medication that he or she is on.

If it affects the conduct in the workplace, the supervisor needs to have that conversation with the employee and get -- as Paul indicated a little while ago, ascertain from the employee his or her explanation.

Because it could always turn out to be that the employee -- that was just a one-time thing, or that the employee needs to avail himself or herself of the employee assistance program.

Once again, you just always want to address the conduct and address the performance.

>> L. Thomas: Great points, Terry.

Thank you.

I have another question.

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Going back to the leave and attendance case study, once an employee is at work -- an employee is at work, can they leave any time they wish?

>> Well, I would say no.

I'll answer that.

No, they can't just leave any time they wish.

No -- because if they do that, then they're de facto leaving the workplace without permission.

The supervisor has the responsibility to know where his or her employees are at any time, and the employee has a responsibility to let the supervisor know what his or her status is.

>> L. Thomas: We have a couple -- this is -- actually it's an e-mailed question from Anna Dykstra, California.

When should a manager conduct their own fact finding, and when should they ask someone else to conduct fact finding?

>> P. Sienkiewicz: That's an appropriate question.

Usually it's the first-line supervisor who will be expected to do the fact finding.

However, there are going to be certain times or certain instances where they will not be doing it.

For example, if we're dealing with a case, let's say, of potential theft in the workplace or potential criminal conduct, or let's say getting into the ethics issue, let's say there's an issue of conflict of interest.

You know, those types of scenarios, the direct supervisor would not be doing the fact finding.

Someone else would be coming in.

But general lip it's the first-line supervisor that would be doing it.

Did that address the question?

>> L. Thomas: I believe it did.

Hopefully it did.

She also had a couple follow-ons what is if it's law enforcement, another ER specialist.

Are there pros and cons --

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>> P. Sienkiewicz: Again, if it's a criminal investigation or something that relates to criminal, then law enforcement would be getting involved in it.

>> And if you're not sure, it never hurts to give them the opportunity.

Worst case, if they don't want to take it, they'll just give it back to you and you can proceed with administrative action.

>> P. Sienkiewicz: We probably would determine who would be the best to determine the fact finding through consultation with employee relations because we've dealt with a number of different issues, and we do understand that not every issue investigated by the supervisor.

Most of them can, but there are those which are touchy which we would not encourage the supervisor to do on their own.

>> L. Thomas: Thank you, Paul.

Thanks, Julie.