

**Employee Relations for Managers & Supervisors**  
**July 21, 2011**

Julie?

>> J. Nelson: Thank you, Leon.

Our next case study involves an employee intoxication issue.

As a manager, your employee Josh is traveling -- is in travel status attending mandatory training in another state.

Due to some conduct issues, Josh is asked by the instructor to leave the training on Wednesday of the week-long training.

He proceeds to drive home during work hours.

On Thursday and Friday, he fails to show up for work.

He does not contact you, and he did not request leave for those days.

Despite your attempts, you cannot reach him.

On Friday, your law enforcement ranger informs you Josh is in jail in another city because he was arrested for driving under the influence in his own vehicle on the way home from the training.

He will be spending the weekend in jail and is scheduled to see a judge the following Monday morning.

Later on that Friday, you find out Josh was calling his co-workers on his cell phone during his drive home.

They could tell he was drinking and asked where he was.

Because they were concerned, they reported the situation and his location, which led to his arrest.

The next week, Josh does not report for work on Monday or Tuesday.

He does not contact you or request leave.

Josh returns to work on Wednesday, but goes about his day as if nothing has happened.

Two weeks later you receive a copy of Josh's government issued credit card statement.

You notice a purchase made at Biff's gas, guns and liquor that was made on the same day Josh was arrested while driving home from the training.

You contact Biff, the proprietor, and request a copy of the receipt, which shows Josh purchased 14 gallons of fuel, a case of beer and a bag of chips.

>> L. Thomas: Thanks, Julie.

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Once again our panel will discuss this case study and then we'll take questions.

So, please, give us a call, send in a fax or knock out a quick e-mail or Tex message and we'll be with you shortly.

What issues arise in this case study?

>> Well, Leon, there are several issues in this case study.

One that I noticed was the employee's improper use of his government credit card.

>> Definitely another one would be the conduct issue that led to him being asked to leave the training.

>> Intoxication is definitely one.

>> Potential absence without leave again is another one.

>> L. Thomas: With so many issues, how many -- how do you select a penalty in this case?

>> Well, now, that's really key.

We're going to dissect this case study.

My colleagues and I just named at least four of them, and it's really imperative in this case for the supervisor to visit the ER specialist.

The ER specialist uses a table of penalties, and that table of penalties is found what I like to refer to as our ER Bible, the Department's conduct and discipline manual.

The table of penalties list several offenses for various charges of misconduct, and across from those charges of misconduct are penalties for each offense.

In this particular case, what the ER specialist would do would be to determine, if you will, those particular charges and simply look them up in the table of penalties along with the penalties that would be associated with those particular offenses.

Now, if this is the employee's first offense of intoxication, if this is the employee's first offense of A.W.O.L., then the charge would state so, that it is a first offense of that particular -- of that particular misconduct.

But we do have -- our range goes from a first offense all the way to a third offense of any misconduct.

The ER specialist advises the supervisor at that time on the appropriate disciplinary action that should be taken based not only on the table of penalties but on supporting documentation that the supervisor has gathered, either through fact-finding or supporting documentation that the supervisor has gathered on his or her own.

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The employee relations specialist provides a recommendation to the supervisor, but it is the supervisor's responsibility to decide whether or not he or she will follow on with that recommendation.

A lot of times it gets misunderstood, if you will, that it is the action of the employee relations specialist, but it is not our action.

It is the supervisor's action, and the supervisor has to take ownership of that and has to feel comfortable in the type of proposal or decision he or her will make.

>> P. Sienkiewicz: I think one other point I would make about that table of penalties is that, you know, they got the first, second, third offense.

A lot of times supervisors think that that's a first offense of absence without leave and yet you have to have a second offense of the same offense.

The person has to be absent again.

No, the table of penalties means just a separate offense.

You can have the first offense can be an attendance offense.

The second offense could be some different type of issue.

That would be considered a second offense.

We're not looking at repeat offenders here in order to move through the table of penalties.

That's a misunderstanding sometimes that I've seen managers have about the table of penalties.

This is only the first time that they're doing this.

Yes, but you have 15 other warnings in the file to this person.

You know, we can move --

>> Any other type of misconduct would bump them up on the table.

I also think it's important to note in the case that -- what you brought up, Terry, even though on this one we named at least four different possible offenses, combined it's one incident, and if there is no prior discipline for this employee, the supervisor should be looking in that first offense column, even though there were four offenses, it would be a first offense.

>> P. Sienkiewicz: That's a good distinction.

>> L. Thomas: So the supervisor uses the table of penalties, determines what disciplinary action they would like to take in this particular case.

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From there, what information is needed to support the disciplinary action that they decide upon?

>> P. Sienkiewicz: You know, Leon, when a supervisor is looking at taking potential conduct issues and taking them to task, the supervisor has a um inform options.

There are basically three levels of penalties that will be considered.

You'll have the informal penalty which we've spoken about already.

Then we've got the second, getting to a more formal stage.

We've got what's called disciplinary action.

Or then adverse action.

So when we're talking about making a choice of what the penalty will be, those are the considerations we'll be working with when we talk to the manager, which level are we going to go at.

Before we engage in penalty determination, we recommend, and strongly advise, that a manager, supervisor engage in what we call fact finding.

You want to make sure you know what happened in this incident before you get into deciding to discipline somebody.

As a matter of fact, there's even -- it's pretty good to do the investigation before the investigation.

You want to find out whether there was even a rule that was involved that was violated in this issue before you get into the entire potential disciplinary process.

The fact-finding process is something that we work with with the manager together, getting questions, the who, what, when, where, why, you know, who was involved.

A supervisor might also want to determine maybe there were other parties who he or she needs to speak to in terms of gathering all the facts.

I think the one caveat we would give, and that we've seen this happen as well, sometimes managers do do the fact finding, they talk to everybody, except they don't talk to the employee.

But they think they've got everything to move ahead.

It is very important that a manager, I think, talk to the employee as well to get the employee's side of the story.

Then after you've done that, then you would work closely with employee relations in determining what level of penalty might be appropriate.

>> Don't forget, Paul, for those managers that work in field offices that have bargaining units, during many fact finding process those employees have specific rights, actually called WEINGARTEN.

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>> Actually I also, too, would recommend that supervisor talk to the employee as one of the initial stages of their fact finding.

Oftentimes they'll find that possibly nothing happened, what is being accused is base on rumors.

They may find out they have the wrong person, or that other people were involved or that matter entirely different than what they heard.

So it is a key step and one I would take early in the process.

>> L. Thomas: Thanks, Julie.

We're now ready for your questions.

So once again, please, give us a call, send in a fax, text message or e-mail.

We would love to hear from you.

In fact I already have a faxed question right here.

What if the employee with tardiness issues would have been on a Maxiflex schedule?

>> I'll take this one.

Maxiflex is not an employee entitlement even though a lot of employees truly believe it is.

The whole goal, like Paul mentioned, was to correct the behavior and to come around that way.

So if you believe taking them off Maxiflex, whether it is putting on a fixed schedule, compressed schedule, supervisors have the full authority to do that any time they have a reason to do so.

>> P. Sienkiewicz: So there has been a decision made to allow this employee to use Maxiflex.

That decision can be taken back.

I have an assumption if someone is placed on Maxiflex, they're allowed to come in when they want to come in.

Not incredibly tardy.

>> If we're talking hours tardy or plus or minus 10 minutes would make a difference.

>> And again I think you would look at the policy that that individual manager has for their office.

So if I'm on a Maxiflex and my normal core duty is at 8:30 my supervisor might expect me to call in and say I'm running late even though I have that ability for Maxiflex.

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So there's still a communication piece, setting the communication for the employee on how you expect them utilize Maxiflex and then the employee in turn communicating with the manager on what they're doing.

>> Just to piggyback a little bit on what Lisa said, I totally agree with her, because even when an employee has a designated Maxiflex schedule there would be a communication or in writing with the form that is used to document the Maxiflex schedule what those hours will be.

So it might be something that you have to watch a little closer than you would someone on a fixed schedule or on any other type schedule, but if an employee has a Maxiflex schedule and there is an observation that they're even not getting in when they say they're going to get in per the Maxiflex schedule, then that bears watching at that time, too.

>> L. Thomas: That's a good point.

>> P. Sienkiewicz: I misspoke a little bit when I said they could come in whenever they want to come in.

>> L. Thomas: Yes, I mean, that would be a little complicated for a manager or supervisor to try to manage that, a Maxiflex schedule, simply because it is varying.

So you mentioned a form that they could fill out.

They can just go to their HR office and find that form?

>> Yes, it designates the type of schedule, work schedule, you want to be on, and the hours that you would stay, and you can obtain that from your servicing HR office.

>> L. Thomas: Very good to know.

All right.