Employee Relations for Managers & Supervisors
July 21, 2011

Now we're going to go back to Terry pierce for our last employee relations case study.

Terry?

>> T. Pierce: Leon, our last case study involves an employee medical issue.

Here's the background on this one.

Anna has been a Field Office employee for approximately five years.

Greg has been her supervisor for the same amount of time.

Their working relationship started out well, but it began to get a little awkward with the increase in her unplanned absences.

Since 2008, Anna has been off work for a variety of medical reasons, which are usually unplanned and not scheduled in advance.

Her absences usually do not exceed three days at any given time.

She often calls in on the morning of her absence and leaves a message on Greg's voice mail that she is not going to be at work.

She provides no call-back number nor does she call back to make sure Greg received the message.

The reason for her absences range from, an allergic reaction to strawberries, a sinus headache, a cold, dizziness.

You name it, she said it.

There have also been occasions when someone who identifies themselves as a family member calls on Anna's behalf and just leaves a message.

Now, here's something... six months ago Anna provided medical documentation from her physician that she has fibromyalgia.

However, the notice did not contain specific information as to the diagnosis, prognosis or if her work will be affected by her medical condition.

Greg needs assistance from the ER specialist.

>> L. Thomas: Thanks, Terry.

If you have any questions or comments, and we've had some great ones, so please, please, please... go ahead and send in a fax, e-mail, or text message, or please just call in.

We've had some great questions so far and our panel is anxious to answer some more questions.

But before we get to the questions, let's start with the panel.

What are available leave options in this situation?

>> Leon, there are many leave options available to employees.

There's leave without pay, voluntary leave transfer program, reasonable accommodation, family medical leave act, known as FMLA, annual leave, sick leave.

There's a lot of options an employee can consider.

The supervisor should make the employee aware of their available leave options.

If they're not sure what all is available, they should work with their benefits or employee and labor relations specialist.

In this particular case I think FMLA might be the best option for this employee but we need to keep in mind the employee has to invoke FMLA.

We can't actually force them to fill out or comply with the FMLA regulations.

It's an actual opportunity for them to be able to take care of their medical condition.

For example, there's -- in the leave option category, a lot of supervisors aren't aware you can do more than one leave option at the same time.

So if I have leave on the books, I can be actually in the FMLA program and apply annual leave or sick leave in lieu of FMLA so I'm still going to get paid, but if I'm in a situation where I don't have leave on the books, I can use FMLA and then apply for the voluntary leave transfer program.

So leave options, you can use multiple of them at the same time.

I think that's always a good opportunity for employees to take advantage so they can take care of their medical needs.

>> L. Thomas: How would the leave approval be communicated?

>> P. Sienkiewicz: Well, when an employee requests leave, it's up to the supervisor to make the determination as whether or not that leave is going to be approved or not approved.

Just because someone sends in a request that -- at 10:30 in the morning saying I'm taking sick leave today or taking a day off doesn't mean that the supervisor has to automatically approve it.

The supervisor has the ultimate authority to approve or disapprove that leave.

One of the thing that we would encourage supervisors to pay attention to is to see what sort of notification or leave procedures have they set up for their employees?

Is it acceptable for an employee, for example, to just leave a voice mail, "I'm going to be off today?" ?

Is there a time period by which that voice mail needs to be left?

Or do you accept e-mail responses?

Or will you not accept e-mail responses.

It's important to communicate that to the employee.

>> L. Thomas: Is it ever appropriate for the family member to call in on behalf of the employee.

>> That can be.

It can happen every now and then.

It should not become a habit for the employee but it could happen if the employee is truly incapacitated and can't call in for themselves.

If this happens, the supervisor can ask who is on the phone and are they related to the person.

Either way, as soon as the employee is able, they should contact the supervisor themselves.

>> L. Thomas: When it comes to privacy, especially a person's medical privacy, is a sticky situation.

So how does a supervisor request medical documentation?

>> This is an instance where you would need to go to the ER specialist, and you can dissect these kinds of situations in a variety of ways, but to keep things simple, if an employee's absence has continued for a pretty long time because of medical reasons, and that employee ends up letting the supervisor know that they've got a medical problem but perhaps with no documentation, just that they have a medical problem, or if the employee goes to the supervisor and says that "I have a medical problem and I'm going to be off work for a while."
Now, in this particular case study, Anna has had a history of being out for various and sundry reasons, but then she was diagnosed with a pretty serious medical condition.

Now, we don't know how much medical documentation she provided, apparently the notice was not sufficient enough to -- to inform the supervisor so that the supervisor can make an informed decision as to whether or not this employee can perform the duties of her position a if there are any accommodations that need to be made on her behalf.

The ER specialist uses the Code of Federal Regulations, CFR part 339 in this situation and in part 339 there's a laundry list of certain questions a supervisor can ask in this particular case.

Number one: the diagnosis, the prognosis, will the employee need any kind of accommodation, will the condition get worse as the aging process goes on?

Then we always tag in the question, is the employee able to perform the duties of his or her position?

Most of the time we're the ghost writers for the supervisors.

So the ER specialist would prepare a memo on the supervisor's behalf to the employee subject request for medical documentation.

We would summarize what the somebody senses have been like, whether they have been approved or whether they have been not approved or unplanned and unscheduled in advance as most of those kinds of situations are.

We would apply some of the questions that are found in part 339.

Now, there's a boilerplate paragraph that we use, and that is, if -- because the employee does not have to provide the medical documentation requested, and some employees you will find will not do that because they want to maintain some privacy.

The supervisor's intention is not to find out everything that's going on but just enough to be able to make an informed decision on how to carry out the mission and the operations of that office.

However, there is a paragraph that we use that states something like this: in the absence of medical documentation judged to be adequate and supportive by the agency, we will have no option but to consider only the information we have at our disposal.

So in that regard, it would behoove the employee to provide that kind of medical documentation, but he or she doesn't have to.

>> L. Thomas: Thank you, Terry.

Very informative.

We actually have a call.

We have Patrick from the Phoenix district.

Patrick, are you on?

>> Caller: I am.

>> L. Thomas: Your question?

>> Caller: Okay.

I've got a question.

It seems your panel has been using the term "fact finding" and "investigation" interchangeably.

>> P. Sienkiewicz: That's a good point to make.

Fact finding is not an investigation.

A fact finding is a much less formal process than an investigation.

I apologize if we've used it improperly.

It's a good correction to make.

But for us, the important part from employee relations perspective is to gather the facts.

It is not a formal process.

It's an informal process which is conducted by the supervisor.

Does that help?

>> Caller: Yeah, I believe so.

So that the question was specific: what is the difference from a supervisor's point of view, the difference between fact finding and investigation.

>> Well, fact finding is usually done by a supervisor.

An investigation is usually done by the OIG or the law enforcement personnel.

So I would say basically that's the difference.

>> Or EEO.

>> Or EEO.

>> The fact finding is just -- is really exactly what it says.

You're gathering the facts you need to decide what happened and if an action needs to be taken.

So it's very informal.

>> Caller: Okay.

Well, thank you very much.

>> L. Thomas: For your question.

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

>> L. Thomas: Thanks.

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This is our last opportunity to -- for you all to ask any questions you have.

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

In fact, I have a text message right here.

In reference to the second case study there was no mention of the employee -- the employees that were on duty in the office that saw it fit to contact the law enforcement that ultimately landed their co-worker in jail.

Is there any process that employees should go through within the office prior to contacting the police?

>> P. Sienkiewicz: Is there a required process?

>> I would say no to a required process.

This is certainly just the method that this employee chose.

It's always good when you obviously know something like this is going on to report it to somebody.

If you're more comfortable with your supervisor, maybe the office manager or law enforcement.

I think the key here is that they reported it and that's what to focus on.

There is no set procedure, but they should report it.

>> L. Thomas: Hopefully that answers your question out there.

A person of my own heart text messaging.

I spend 90% of my time doing that.

We have an e-mail question as well.

What happens if the employee has not identified a medical issue or has not requested a reasonable accommodation?

Does the supervisor have the authority to request medical documentation?

>> I would answer that question, no.

I'm broad stroking that because I'm going to assume that there aren't any issues.

So the supervisor certainly can't willy-nilly without some kind of legitimate reason to do so request medical documentation.

>> I'll piggyback on that a little bit, Leon.

I think another thing is when you're working with your ER specialist, you can identify the problem of the attendance you're seeing with the employee and they can help craft a letter bringing to the attention of the employee the actual pattern that you're starting to see and give them an opportunity in the letter, say, if there's something you haven't disclosed to us in reference to any medical condition, please bring that forward.

We can put it out there that they can bring information to us, but officially we wouldn't require them or confront them, hey, I think you have a medical condition.

>> P. Sienkiewicz: It's much safer for the burden to be on the employee to present that information than for a supervisor to go fishing for it.

There's no reason to.

If there's conduct problems, we deal with the conduct issues as a conduct issue.

If it turns into a medical issue later on, then we'll deem with that as it comes along.

But we don't want to go looking for those type of medical problems.

>> Exactly.

And you want to focus on the behavior and how it's affecting their job performance or the agency.

Hopefully the employee would be up front about the medical condition.

But it's their choice.

Even if they never tell you, you just continue down the path on focusing on the behavior.

>> And I just want to piggyback on that.

I just want to crow a little bit.

Throughout the BLM we have a cadre of trained ER professionals, and we don't always go to the reg and say, okay, all right, this is what we're going to do, and there's going to be some paper exercise or there's going to be some kind of disciplinary action to you.

We use a lot of judgment.

We use a lot of discernment.

And we use a lot of intuition.

Sometimes it just boils down to the supervisor approaching the employee and just talking with them.

And sometimes it might even lend itself to a conflict and dispute resolution process.

So I just want to make it clear that we come to the -- come to the ER specialist as we've been trying to drive home today, come to the ER specialist.

We're your best advisors to let you know which way you should go.

>> L. Thomas: Thanks, Terry.

We actually had a follow on question.

When medical documentation is received, who receives the medical documentation from the reporting -- the physician.

>> P. Sienkiewicz: The medical documentation goes to the supervisor.

Obviously it's very, very sensitive information.

The supervisor is expected to keep it in confidential file, but it does go to the supervisor directly first.

>> And if she has a reason to question it coming from the employee to her in lieu of directly from the physician to her, she can request it however she sees fit.

If she wants to request in writing, she could say have your physician send it directly to me at this address.

>> L. Thomas: We have Don from Portland.

Are you on?

>> Caller: Yes, I am.

>> L. Thomas: Hi, dawn.

We're ready for your question.

>> Caller: Yes, I'm going to go ahead and follow on, since the string has still been on reasonable accommodation --

>> L. Thomas: Before you start your question, can you please turn down your TV?

We're hearing the echo in the background there.

>> Caller: Okay.

And I guess I have to turn up the phone.

Once you receive the documentation regarding the medical situation, do we not then need to follow the reasonable accommodation policy in that regard?

Does it not then go from ER to EEO in that case?

Maybe I would need to give a little more specifics, but many times the manager would then receive the medical documentation and need to have an -- a process, conversation with the individual to determine whether or not they could do the essential functions of their job.

And if any accommodations would be needed.

That discussion, if it goes into any type of medical or that type of thing, I believe is with EEO, not with ER.

>> You are right, and that's when -- if the employee is requesting reasonable accommodation -- most of the time in my experience, the cases that I've had, the employee hasn't requested reasonable accommodation, or any kind of accommodation at all.

But that is a good point, and you are right on target with that.

If it were me, and I think any one of the ER specialists, we would coordinate with the EEO office.

They are the experts in that area, and every last one of us should be coordinating with them.

>> I think the key point here is we have to make sure that the employee requests it, but I think any of us would also partner with that disability program manager who is in EEO and say, I just want to give you a heads-up, the employee appears to have a medical condition.

I believe they might be requesting reasonable accommodation.

>> Caller: Some of the law I've read and some of the cases I've read, it is not required for an employee to say the words that they are requesting a reasonable accommodation.

>> That's correct.

>> Caller: They just need to say that they have a problem, an issue, they have cancer, they have -- they've had a stroke, they have the fibromyalgia, that type of thing, signifying there is accommodation needed.

They do not have to say the words.

So that's just something I wanted to state, because our managers do have a problem -- we have here in Portland quite a bit of our managers coming to ER with many of the medical issues of our employees who may have really accommodations, requesting accommodations, for PTSD -- I mean, different types of issues that really do not fall into ER in those areas.

Any comments on that?

And then I had one more question.

>> I just think -- I mean, we're using the words reasonable accommodation loosely.

I think any time an employee would say they needed some additional assistance to perform the essential functions of their job, we would be partnering with that disability program manager.

That's where that partnership lies.

>> P. Sienkiewicz: I think it's a good caveat to give to managers, yes.

If that question is there, certainly there might be a different Avenue that needs to be followed.

>> Caller: Thank you.

>> L. Thomas: Thank you, dawn.

We have a -- actually an e-mail question -- looks like it came from a Blackberry from rich, the Newfield manager in Missoula.

The question is: if the employee is performing their duties adequately but their frequent medical absence affects others, how does a supervisor consider effects on the office and -- in their response?

>> As I understand the question correctly, did you state that the absences or the medical condition is affecting the others in the office?

>> L. Thomas: Right.

>> But it's not affecting his performance?

>> L. Thomas: I'll read the question --

>> That was kind of a twist --

>> L. Thomas: If the employee is performing their duties adequately but their frequent medical absence affects others, how does a supervisor consider effect on the office in their response?

>> P. Sienkiewicz: That's a classic type of ER case ER doesn't always have a direct answer to.

We would explore with the supervisor just what the effect was that was happening in the workplace.

Because the employee is performing fine.

What is the nature of the employee's job in terms of interaction with others, other employees in the workplace?

And how -- what's the impact?

So we would work with the supervisor in trying to determine more information to see whether or not an employee who is performing satisfactorily is having a negative impact on the rest of the workplace.

What do you think, Terry?

>> Yes, I do, and I guess what I'm assuming, I'm reading into this, is that the work that that employee does connects with the work that others do.

So if that employee isn't there, then the others can't carry out their work.

And that is a case, rather than getting in the weeds where the supervisor would have to talk with the ER specialist, but off the top of my head, then the supervisor needs to look at the performance, needs to look at the absences, perhaps maybe needs to modify the work environment to some degree.

I mean, you know, that's really broad-stroking that answer to that question because we certainly need a little bit more information on that one.

>> P. Sienkiewicz: We do have circumstances where employees have medical conditions and it does impact the rest of the workplace, and we do go very carefully on those.

There is no one set answer, I guess.

>> L. Thomas: And if any of you feel like your question hasn't been answered adequately or you would like some more follow-up information about it, all of our panelists here are in Lotus Notes.

So they told me earlier that you all should feel free to go ahead and e-mail them and get some more clarification or expand on your question a little bit more.

Julie, you mentioned the Douglas factors earlier, and Terry and Monica would like to know where they can find those Douglas factors.

>> The Douglas factors are actually in the Department manual for discipline and adverse actions. That department manual is 370DM752.

The Douglas factors are in there.

You can also request a copy from your ER specialist.

If they ever send you a template for proposed suspension or long suspension or removal, there -- they should also be attached to that.

Several resources, but when doubt, call your ER person.

>> L. Thomas: Thank you, Julie.

And thanks to all of you for your fabulous questions.

It's really moved the show along great.

I think we've been able to share some valuable information.

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Here's some additional thoughts that I have.

Employee relations is a combined effort among ER professionals, the solicitor's office, the EE office, the office of conflict and dispute resolution and the employee assistance program.

Employee relations specialists are here to assist you with your management needs.

An open line of communication is your most effective resource in dealing with employee relations issues.

As you've seen with today's case studies, employee relations is a vital part of managing our workforce.

Your ability as a leader to make the right call at the right time is important, and working closely with your employee relations staff is key.

Remember... our goal is for all employees to behave in the workplace consistent with our established policies on conduct.

When issues arise, penalties should not be disproportionate to offensives, and they should be applied as consistently as possible.

Before we close things, I'd like to ask our panelists if they have any final thoughts.

Lisa?

>> L. Powers-Michaud: I think it's important for supervisor to document their occurrences as they arise, gather the facts before meeting with the employee, or actually meeting with the ER specialist.

Oftentimes asking your employee about concerns clears up any misunderstandings.

This can be helpful information before taking informal or formal actions.

>> L. Thomas: Julie, do you have any additional points you would like to make?

>> J. Nelson: Just one.

Actually, we understand that the process is required to address performance and conduct issues are complicated and can be very frustrating or intimidating.

Keep in mind this is a very important part of your supervisory duties appeared your employee relations specialist is here to assist you in accomplishing these duties and getting the results you desire.

>> L. Thomas: Thanks, Julie.

Paul, do you have any last-minute advice for the managers and supervisors watching today?

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>> P. Sienkiewicz: We've spoken about a number of ER issues faced by supervisor which could result in possible discipline.

One thing we'd want you to keep in mind is that the purpose of any disciplinary action is not to punish an employee but rather to correct behavior in order to have a more productive and effective workforce.

>> L. Thomas: Thank you, Paul.

Great point.

And, Terry, you get the last word.

>> T. Pierce: We've tried to give advice today on real-life examples with an emphasis on the importance of working with your employee relations specialist, but I also want to leave you with this... be fair and consistent when dealing with workplace conduct.

>> L. Thomas: Thanks so much, Terry.

Well, that about wraps it up for our HR forum on employee relations.

We hope this presentation has been of value and that we have helped illustrate some of the tools and techniques available to you as a manager when encountering employee conduct and employee issues.

Thanks for joining us and so long from Phoenix.

>> Announcer: This broadcast has been a production of the BLM National Training Center