

THE
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Success*

OF RISK MANAGEMENT

PARMA ANNUAL CONFERENCE

FEBRUARY 7-10, 2023

SACRAMENTO CONVENTION CENTER

Managing Employment Practices Liability Exposures- Where Do You Start?

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HIRING THE RIGHT PEOPLE

Evaluating Candidates

- Is experience most important?
- What are you looking for in your new hire?
- Individual talent or a team member?
- Be willing to train
- Evaluate in a social situation when possible
- Give candidate a task to get back to you

HIRING THE RIGHT PEOPLE

After Onboarding

- Provide training
- Provide ongoing mentoring
- Get new employee on teams or task forces

EFFECTIVE COMMUNICATION WITH EMPLOYEES

- Possibly the most important part of supervision
- Shows the employee you are engaged
- Allows the employee to discuss challenges, pose questions
- Should be regularly scheduled and calendared
- Content of discussion needs to be documented and recapped
- Provides excellent opportunity for supervisor to discuss performance issues
- Should either take place of or augment annual evaluation



EFFECTIVE COMMUNICATION WITH EMPLOYEES



- Scheduled one on one meetings great time for supervisor to listen to employee



- Bolsters team approach instead of “my way or the highway”

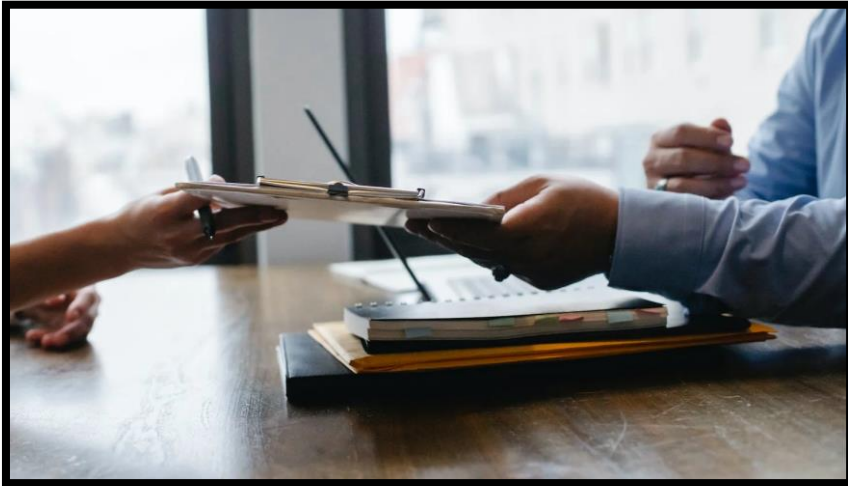


- Is a good opportunity for to provide support to employee if there is a mistake made



- Allows for any growing tensions to be released
- Provides a great record for potential litigation on performance issues

SEPARATING AN EMPLOYEE (SUCCESSFULLY)



- Documentation wins lawsuits
- Timely performance evaluations and emails about interim issues are critical
- Show “managerial courage”
- If a PIP is involved, follow your policy to the letter
- During PIP, provide resources the employee needs to do better
- Involve HR Department
- HR should consult legal counsel/hotline

SEPARATING AN AT WILL OR PROBATIONARY EMPLOYEE (SUCCESSFULLY)

“At Will” and
“Probationary” are not
free passes for
termination

Don’t need a reason,
until a lawsuit is filed

Be prepared for potential
FEHA allegations of
discrimination due to
race, religion, gender, etc.

Document poor
performance issues,
discuss with the
employee

Give timelines to improve
(even if not a formal PIP)

Managers need to involve
HR Department

HR should consult legal
counsel

EMPLOYEE COMPLAINTS

- Employee complaints must be 100% confidential
- Do not “tip off” the employee being complained about
- HR should investigate allegations, internally or with an external investigator
- HR should contact legal counsel/hotline
- HR should communicate result of investigation to complainant in a timely manner
- Supervisor – DO NOT RETALIATE!



EMPLOYEE COMPLAINTS



How to deal with employee complaints:

- Make it known there is an open-door policy
- Listen and gather as much specific information you can about the nature of the complaint
- React quickly, do not put it on the back burner
- Meet with and brief HR staff as to nature of the complaint
- Advise employee complaint has been provided to HR
- Proactively follow up with HR for action taken

SUPERVISOR DO'S AND DON'TS



Do:

- Continually educate yourself on best practices for a Supervisor. Conferences, trade publications, books, talking with successful peers, professional coaches.
- Have team building events with all of your employees. On campus fun events, off site bowling, etc.
- Be available
- Be a good listener
- Apply the rules consistently with everyone

SUPERVISOR DO'S AND DON'TS



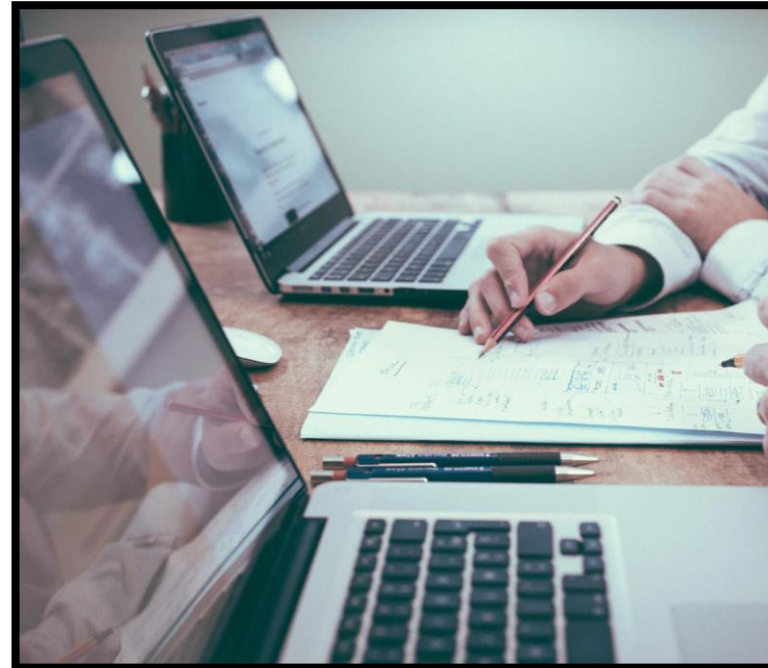
Don't:

- Micro-manage
- Play favorites, formulate close friendships with some of your employees
- Engage in or allow inappropriate banter, gossiping, etc.
- Employ the “my way or the highway” way of supervising
- Allow employee feuds to continue unaddressed
- Fail to document employee interactions
- Fail to involve HR Department

Claim Stage

Coverage Assessment:

- Policies potentially impacted
- Memorandums of Coverage
- Notification to risk pool and reinsurance/excess carriers
- Punitive damages
- Separate counsel in the event of conflicts



Claim Stage

Early Retention of Defense Counsel:

- Review of the agency's records (personnel file, internal investigation, etc.)
- Meeting with the agency's knowledgeable staff
- Identifying key witnesses
- Preliminary analysis
- Budget
- Settlement consideration



Claim Stage

Considerations:

- EPL cases are expensive to defend
- The law favors the plaintiff
- MSJs rarely extinguish the entire case
- Exposure to plaintiff's fees/costs if you lose the case
- Defense fees/costs are rarely recoverable
- Discovery battles can run up costs

Litigation Stage

Having a solid litigation management plan with a clearly defined goal.

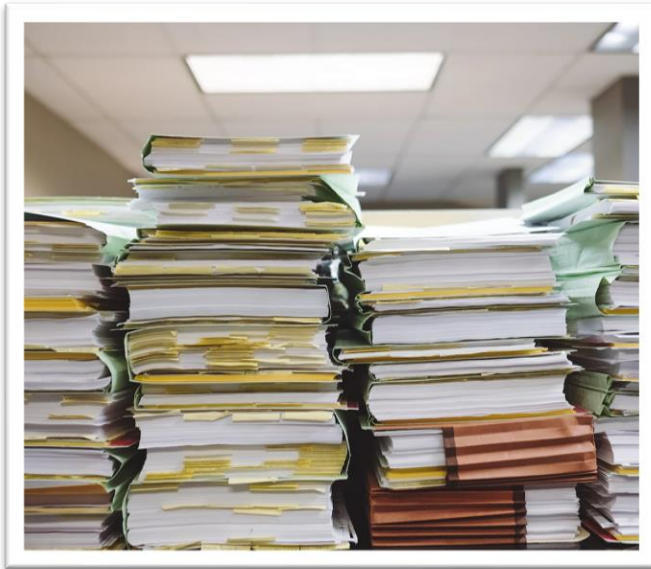
Strength of plaintiff's counsel

Economic damages: wages, benefits, medical treatment

Non-economic damages: emotional distress, shock value

Use of 998s to potentially cut off fees: Lump sum or fees to be set by the Court?

Litigation Stage



Considerations:

- Handling politics and emotions
- History of claims coming out of a particular department
- Dealing with the harasser, if there is one
- Strength in Numbers: Multiple plaintiffs in a single lawsuit

Litigation Stage



Mediation:

- Is everyone on board?
- Timing: Is there an early opportunity?
- Separating the plaintiff as part of the settlement
- Selecting a mediator
- Non-monetary demands and non-covered damages

Litigation Stage

Trial:

- Who will be the face of your agency?
- Quality of your employees as witnesses?
- Impression of the plaintiff?
- Handling optics (long term employees, progressive discipline, shocking acts)
- Arguing Damages/Accepting Responsibility: Why your number is reasonable

Post-Trial:

- Lessons learned

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