

Complex Discipline and Discharge Issues Facing In-House Counsel - #607

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Difficult Employment Scenarios Facing In House Counsel



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- ◆ Has the #MeToo Movement and media attention in the past year changed how your company deals with sexual harassment complaints in the workplace?



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- ◆ The O'Reilly factor/Weinstein employee – the very valuable/powerful employee who generates great revenues for the company - or leads the company - but is a serial harasser and upper management/executives don't want the employee to be disciplined (let alone fired) because the employee is so important to the company's bottom line. Would you deal with this type of behavior any differently today than the company might have two years ago?

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- ◆ The current employee who files a charge or an internal complaint, and then has performance issues and the inevitable retaliation claim that results when the employee is disciplined.



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- ◆ The employee who goes out on leave immediately after a performance management issue or conversation with a manager. What do you do with this person when the leave is up and the business doesn't want the employee back?



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- ◆ Workplace safety concerns from an employee exhibiting erratic behavior in the workplace. The employee may say odd or seemingly irrational statements to co-workers or a manager, but the employee seems to be able to pull it together when Human Resources talks to the employee. Co-workers and managers may feel somewhat scared or threatened, yet there has been no specific threat against anyone by the employee.

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- ◆ Disciplining an employee for poor performance when the employee becomes ill and may need leave before management has the chance to actually administer the discipline.

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- ◆ Disciplining or terminating the long-term employee who has been passed around to various departments and is a poor to marginal performer at best, but management has never dealt with the performance problems.



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- ◆ What about the poor performing employee who does not have a well-documented history of performance problems, and then the employee has yet another performance problem and management decides it is the last straw and wants to fire the employee?

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- ◆ Dealing with a marginal/poor performer who seems intent on filing a workplace safety complaint with OSHA.



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- ◆ How do you manage a high performing employee who is very good at the job, but is a very difficult person (e.g., very rude, obnoxious, demeaning, offensive, etc.) for co-workers to deal with and leaves a lot of carnage in his or her wake?



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- ◆ Discipline of a union employee when Human Resources and the Labor Relations don't agree on whether or how to discipline.

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- ◆ In the acquisition context, when a larger company acquires a smaller, family-owned business and some of the family members become your employees – how do you terminate one of the family members after the acquisition has been completed and the business decides that the former family executive needs to go away? Or does your company have a practice of not hiring the former owners?

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- ◆ How do you terminate a Human Resources colleague that you have worked with, perhaps closely, for many years?



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- ◆ How do you deal with FMLA issues (eligibility, notification of leave, verification, tracking, return to work)? Does your company manage these issues internally, or do you use a third party provider, and why?

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- ◆ How do you deal with disability and reasonable accommodation issues from a process standpoint? Do you have a separate department that manages those issues, or is it part of Human Resources? What do you tell the employee's supervisor or manager about the disability and the need to accommodate? Do you utilize unpaid leave once FMLA leave has been exhausted as a form of reasonable accommodation?

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- ◆ For FMLA and ADA issues from the prior two examples, what if the company is a small to medium sized company that may not have the resources of a larger corporation like Medtronic, US Bank, or Xcel Energy – would your advice be any different?

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- ◆ What, if anything, do you do with employees who make negative or disparaging posts about the company, its products or services, and/or its management on social media like Facebook, Instagram, etc.?



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- ◆ Do you utilize social media sources when you are reviewing job applicants?



QUESTIONS

