

Case Studies Involving Human Resource Challenges

County Risk Sharing Authority

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CASE STUDIES

- Failed Drug Test:

- Sally worked in the Hickory County, Ohio, water treatment plant.
- Sally was selected for a random drug test, took the test six days later and failed because there was no urine present in her sample.
 - Was Sally's delay in taking the test an issue?
- Sally was placed on paid administrative leave the same day she failed the test and signed a letter agreeing to that leave the following day.
 - What are the pros and cons of placing Sally on leave before the investigation is completed? What would you have done given the situation?
- Sally was issued a Pre-disciplinary notice with the following charges:
 - Failing a drug test, in which the lab listed the test as a refusal because it was water without urine, which is considered a test refusal. The split sample also failed.
 - Dishonesty, as a urine sample was substituted for your urine in the test to deceive the test.



CASE STUDIES

- Sally responded that:
 - She had made a poor decision while under a great deal of stress. She is the caretaker and provider for many extended family members and 25 animals.
 - She had used marijuana and therefore knew she would fail the drug test, so that's why she attempted to fake it by putting spit in the container instead of urine.
 - The marijuana use had only occurred a few times in her life and that it wouldn't happen again and wasn't a habit.
- Do Sally's statements change your perspective/opinion on what discipline should be taken?
- Does the employer investigation risk getting into such potentially protected areas as the ADA or FMLA?
- Given the above facts, how would you discipline Sally, if at all? What factors are most important to you? What factors are less important?
- If you were the hearing officer would you terminate Sally's employment? If not, what alternative discipline would you impose?



CASE STUDIES

- FMLA, ADA & Sick Leave Abuse:

- Hillary worked in the Hickory County, Ohio, Recorder's Office.
- Her supervisor, Ryan, noticed a pattern of absences that he suspected were sick leave abuse.
- Ryan also had become concerned that Hillary may have a health condition that was hindering her job performance (even though she has never mentioned such an issue), as he had noticed Hillary consistently becoming verbally abusive with members of the public and had received numerous complaints regarding Hillary's conduct.
 - Under the ADA, should Ryan approach Hillary informally and ask her if she has a health and/or mental disorder?
 - If yes, what should Ryan say? Should he offer to accommodate her?
 - If no, what alternative steps should Ryan take? Should he discipline her for her inappropriate interactions with members of the public? Should he discipline Hillary for what may possibly be abuse of the sick leave policy?



CASE STUDIES

- Ryan decided to open an investigation into Hillary’s interactions with the public and into her sick leave usage.
 - Should Ryan seek outside counsel to run the investigation or should he himself run the investigation? What are the pros and cons of both choices?
- Ryan conducted both investigations himself. After interviewing Hillary and other employees, without providing a notice of the charges against her and without informing the Union, Ryan suspended Hillary for five days without pay.
 - Did Ryan follow the correct due process steps to investigate and discipline Hillary? What could he have done differently?
- Ryan also informed Hillary of his suspicions regarding her attendance patterns and told her that she would have to submit a doctor’s note for every day missed in the future. However, Ryan made no mention of his suspicions regarding a possible medical condition. Hillary asked about the possible availability of FMLA leave, to which Ryan responded “FMLA leave isn’t available.”
 - Were Ryan’s actions appropriate? Was his denial of FMLA information a violation of the statute? Would your answer be different if Hillary had requested an FMLA form and/or provided a specific reason for her need for leave?
- Did Ryan’s actions leave the County open to a lawsuit?



CASE STUDIES

- Employee Misconduct:
 - Derek was a Sergeant for the County Sheriff's Office.
 - Derek engaged in a chase with a suspect that ended with him firing shots at the vehicle as it drove away from him in a residential area and failed to report his use of deadly force to his fellow officers on the scene and his supervisors.
 - Given the information above, how would you discipline Derek?
 - On February 25, 2007, Derek received a Pre-disciplinary notice of a hearing on March 4, 2007.
 - Under the CBA, a notice of a Pre-disciplinary hearing must be given 14 days before the hearing takes place.
 - Derek was ultimately suspended for 10 days for the incident.
 - Are there any problems with the disciplinary process? Should Derek challenge the discipline?



CASE STUDIES

- 5 months later, Derek was called to the local college where there was a baby bear in a tree.
- But, he didn't inform anyone from the Sheriff's Office about the bear after leaving the scene, believing that the situation was under control.
- Derek was charged with failing to notify anyone above his rank after being made aware of a potentially dangerous or deadly scene and demoted to Patrol Officer.
 - What discipline do you think this specific incident warrants?
- Finally, about a year after the first incident, Derek was responding to a 911 call about a drunk driver, when he:
 - Didn't search the driver for ID, weapons, or in any way attempt to discover the cause of the accident. So, when transporting the driver to the hospital, the medics realized he had a loaded handgun on his person, endangering the medics and breaking policy.
 - Then, Derek moved the suspect's truck onto unauthorized private property w/o telling anyone and then hours later had someone re-enter the property and retrieve the truck.
- Should he be terminated? Why or why not?



DISCIPLINE OVERVIEW

- Goal of Discipline and Standards of Conduct:
 - Discipline should always be viewed as a tool to improve employee performance and not as a mechanism to simply punish, harass or target specific employees.
- Your disciplinary policy will be established by the standards of conduct/workplace policies and may be set forth in an applicable employee handbook and/or in the CORSA discipline policy attached at the end of this outline.
- Typical Forms of Discipline:
 - Verbal and/or written reprimand
 - Suspension
 - Removal
 - Reduction in pay or position



CONDUCTING AN EFFECTIVE INVESTIGATION

- When to Investigate?
 - Employers should immediately investigate allegations of improper employee conduct anytime an employer obtains knowledge of potential employee misconduct.
- Why Investigate?
- Pre-Investigation Process:
 - Making efforts to learn all the facts and potential witnesses at the outset helps ensure that the investigation will be brief and accurate.
 - Interview the accuser and gather necessary documents.
 - Ask the basic questions: Who, What, When and Where (if applicable).
 - Document everything.



CONDUCTING AN EFFECTIVE INVESTIGATION

- Who should lead the Investigation?
 - In-house personnel
 - Outside personnel
- What to do with the accused pending the Investigation:
 - Nothing
 - Administrative leave with pay or suspension without pay
 - R.C. § 124.388(A)
 - R.C. § 124.388(B)
 - Reassignment during investigation



CONDUCTING AN EFFECTIVE INVESTIGATION

- Conducting the Investigation:
 1. Remember the applicable Piper and Garrity notices (see next slide).
 2. Remind employees that it is CORSA policy that those involved in an investigation shall not discuss the facts of the investigation during the investigation.
 3. What documents to gather for the investigation.
 4. Who to interview.
 5. What to ask.
 6. Documenting the investigation.
 7. Concluding the investigation.



DUE PROCESS PROTECTIONS

- Garrity Warning
- Piper Warning
 - Required: During proceedings or investigations of a more formal nature
 - Not Required: informal investigative proceedings, proceedings where the witness doesn't answer questions, grievance meetings & performance reviews.
- Pre-Disciplinary Conference/Loudermill
- Any Due Process Requirements in Any Relevant CBAs



Thank You!

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