



What Your Supervisors Really Need to Know About HR Law

“I can fire him for a good reason, a bad reason, or no reason at all because he’s an at-will employee, right?” Wrong. “We’ve never granted leave to an employee under these circumstances, so I don’t have to do it here either, right?” Maybe not.

To say the least, it’s a challenging time to be a supervisor, as they’re pulled in many directions and the HR minefield gets increasingly treacherous. Yet, employers must make sure their supervisors know more than just the basics of HR compliance. In particular, they must have the ability to identify risk, understand when issues need to be addressed, and take appropriate actions. Not only will this keep you out of legal hot water, you’ll also have more positive employee relations.

Navigating the minefield

To employees, their supervisor is “the company.” Supervisors who feel satisfied and appreciated are more willing, when confronted with employee distrust and suspicion, to communicate a positive message about the company. They’re also less likely to join in or initiate negative sentiment about workplace issues or the corporate hierarchy. Furthermore, nurtured supervisors can create a positive work environment for employees and reduce a company’s susceptibility to complaints of unfairness and mistreatment – the actions that may lead to legal claims.

Accomplishing these goals requires a knowledgeable supervisor. The following tips and strategies can help your supervisors enhance their knowledge and help them reduce your company’s risk exposure:

Documentation

While there’s no law that requires an employer to document an employee’s performance problems, doing so is a best practice. If someone is a problem employee, a court or jury will expect that to be reflected in their personnel file, and they’ll find it odd if it is not. Of course, documentation is not only a justification for terminating an employee. It’s ultimately a tool to address performance problems and company expectations with your employees before termination becomes an issue.

Timing of the termination

Most employment laws permit an employee to participate in “protected activity,” and they prohibit an employer from retaliating against an employee who engages in such activity. For example, complaining about discrimination or harassment is protected activity, as is taking leave for a disability and requesting a religious accommodation. If an employee is terminated shortly after he or she has engaged in a protected activity, the supervisor should at least be aware that such decisions are more risky than normal, and that extra precautions should be taken.

Remember the Americans with Disabilities Act (ADA)



Some employers are quick to terminate an employee who has exhausted all company leave time (including leave under the Family & Medical Leave Act, if applicable) and who is still not able to return to work. That can be a mistake. The ADA is a federal law that covers employers with 15 or more employees. More specifically, it requires an employer to provide reasonable accommodation to an employee with a disability, unless doing so would cause significant difficulty or expense for the employer. An employer must engage in an interactive process with the employee to determine whether or not additional time off would be reasonable under the circumstances, even after all company leave has been exhausted.

Be honest

Some supervisors avoid discussing performance problems by telling the employee that his or her job has been eliminated. This approach may create problems if the “eliminated” job is filled several months later, or if it never goes away in the first place. Supervisors are better served by addressing performance problems head on and having tough, frank discussions with an employee.



Be consistent

Inconsistency is a breeding ground for employee unrest and legal claims. Current or former employees frequently try to prove a legal claim by showing they were treated differently than a coworker who engaged in the same misconduct or unsatisfactory performance. Unless there is a law that requires you to give an employee special treatment, such as the ADA, make sure employees are treated equally for similar performance or misconduct.

To help your supervisors manage risk, be aware that it's a lot harder than simply saying, "Don't discriminate."



Opportunities to Develop Successful Supervisors

Successful supervisors don't happen overnight or by chance. It takes a concerted effort by senior management to nurture and educate them. Following are several opportunities to take your supervisors to the next level:

Training

Don't assume that your supervisors know how to effectively manage employees. Give them the skills they need to be successful, such as training them on how to hire, discipline, promote, and terminate employees. To help them manage risk, be aware that it's a lot harder than simply saying, "Don't discriminate." The devil is in the details and you want to make sure your supervisors follow the rules previously discussed. Plus, remind your supervisors that, under some laws, they can be held personally liable for their employment decisions. In other words, a current or former employee could sue the company and the supervisor. Lastly, several states mandate training for supervisors.



Recognition

Recognizing and nurturing good supervisory role models must be done within the culture and values of the particular organization, but there are many rewards that have nearly universal appeal. For example, providing supervisors with enhanced benefits and working conditions can be done lawfully and discreetly. As such, consider giving supervisors extra vacation days or a more lucrative incentive plan. When a supervisor achieves positive results or has shown above-expected effort on a project or problem, recognize his or her accomplishment with a note to the department head or division chief. If the recognition is accompanied by an extra day off or a gift certificate to a good restaurant, the employer has just banked a reserve of supervisory good will.

Be inclusive

Including supervisors "in the loop" on key organizational news and information is critical to create an atmosphere of supervisory loyalty and trust. Supervisors who feel they're in on things will enhance the cohesiveness of the management staff and facilitate cooperation and openness. Make sure supervisors are given important information, before employees learn about it, through regular and timely communication vehicles that are "for supervisors' eyes only." With this kind of nurturing, your supervisors will be more likely to provide positive employee relations.



ADP® can get your supervisors in top shape

ADP is your go-to partner to help you stay in compliance with employment law, including training supervisors and employees. From online courses to face-to-face programs, ADP provides the resources to teach your supervisors what they need to know to protect themselves and your business.