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Lou DiLorenzo

Training Supervisors

Retaliation Issues

By: Louis P. DiLorenzo¹

Recently, I spoke at the New York State Tug Hill Commission Local Government Conference in Watertown, New York. The topic was Five Tips for Improving Your Personnel Program. One of the recommendations made was that employers conduct supervisory and managerial training. There are many reasons for conducting such training. Two of the most important are: (i) supervisors, more than anyone or anything, create a human resources culture by the manner in which they enforce the employer's policies; and (ii) it may serve to prevent liability or minimize the recovery of damages, including punitive damages.

Two neglected, but very important areas of supervisory training, are: (i) understanding and avoiding retaliation claims; and (ii) the role of internal complaint or dispute resolution processes — the employer's grievance or open door policy.

Retaliation Claims

Supervisors need to understand the type of activity that is protected under the law (whistleblowing, harassment, opposing discrimination to themselves or someone else, filing complaints, testifying, participating in an internal investigation, providing and gathering evidence to support a claim, etc.) Supervisors need to understand that the number of retaliation claims has doubled in recent years and they are regularly tacked on to other discrimination complaints. Supervisors also need to know that even if the main claim is found to lack merit, but the employer can still be found guilty of retaliation. One of the reasons liability is often established is that juries and other decision makers tend to believe that human beings are inclined, at varying levels, to seek retribution against those who they believe have wronged them. Finally, supervisors need to know the law, since the Supreme Court's recent decision in Burlington Northern, now prohibits retaliatory conduct committed away from work and perhaps directed at a protected employee's friends or relatives. The test now is whether the employer's conduct is likely to deter a future employee from complaining.

The cost of training in this area can run about as much as lunch for your supervisors and pay future significant dividends in cost avoidance.

Grievance Procedures

The Mechanics

The purpose of an internal process is to resolve complaints internally, rather than externally. Resolving

complaints in this manner is more efficient, both in time and money; keeps agencies, plaintiff's lawyers, unions and other outsiders, that may not have your organization's best interests at heart, away from your door; and demonstrates credibility of a culture that reinforces fairness by supporting good decisions and modifying bad ones.

A good internal grievance procedure, or open door policy, has the following characteristics:

- (i) Broad jurisdiction over all types of claims or disputes (the goal is to get claims into the process);
- (ii) Either no statute of limitations or limits which are equal to or in excess of those legally applicable (again, the goal is to discourage external complaints);
- (iii) Multiple avenues of complaint to make certain access is not discouraged because an individual gatekeeper is the target of a complaint; and
- (iv) A simple process and appeal mechanism that provides the level of fairness and relinquishment of control which is appropriate taking into consideration the nature of your business, organizational culture and type of expected claims.

Supervisory Training

To have an effective policy, supervisors and managers need to be trained in many aspects of the policy. Such training should include:

- (1) A very good understanding of the policy and the reasons for it;
- (2) Supervisors need to understand that internal complaints are to be welcomed and encouraged — the alternative is external litigation, complaints to governmental agencies, plaintiff lawyers or unions;
- (3) Complaints must be handled promptly; and
- (4) Employers are not to be retaliated against for utilizing the procedure.

Word travels fast in a workplace concerning grievance resolution. A good procedure gets referred to others; an ineffective or retaliatory procedure is avoided by users and potential users.

REMEMBER — we want employees to use our internal procedures and supervisors need to understand that fact.

Be careful out there!

(Footnotes)

¹ Mr. DiLorenzo is a senior partner at Bond, Schoeneck & King, PLLC, and Co-Chair of its Labor and Employment Law Department. He divides his time between the firm's Syracuse and New York City offices.