

How to “Effectively” correct or dismiss difficult employees *(and avoid being sued)*

A PRESENTATION BY UNION M



Introduction

- About your presenter
 - David Muñoz, Jr.
- Why the discussion?
 - “Not all employees are winners”
 - Issues **NOT** addressed can cause major operational and/or financial challenges to your business.
 - The “effectiveness” of addressing issues can be the difference between an improved workforce or litigation nightmares.
 - Employee discussions of a delicate nature can be difficult for some employers.

- Fine Print!
 - Some of the information may not apply to businesses that have “collective bargaining agreements.”
 - Not an employment law attorney.
 - All employment issues must be addressed on a case by case basis.





Effective Employee Correctives (“Alignment”)

The HR industry does not like the word “discipline”.

- Don’t discipline adults.
- Industry prefers other “buzzwords.”
- Millennials

When issues arise it is important to understand the problem type:

1. Performance/talent Issues
2. Conduct/Behavior Issues

(Skills – Talents – Abilities)

❖ Define what is important for your company via written policy.

- a. **Employee Handbook (Manual) is a must.**
- b. Handbook can expand as company grows and expands but there must exist policy that describes “what is” and “what is not” acceptable behavior or conduct and “what are” employee expectations.
- c. Include probationary / introductory period in handbook.

Effective Employee Correctives



Engage the employee

- Address the issue
 - Check your emotions.
 - Be firm – not harsh.
 - Listen attentively for key points but make sure you are understood.
 - Take notes – “If you do not write it down, it did not happen.”
 - Have an “appropriate” third party present.
 - No discipline behind closed doors without a third party present.
 - Recordings should be done by professionals.
- Be consistent in the discipline.
 - Apply discipline equally but while evaluating case by case.

The Written Warning

- Effective written warnings have a minimum of 4 components:
 - Description of incident,
 - Exact, who, what, where, when, how, negative impact to company,
 - Plan of Improvement, if any
 - Consequences of further infractions, and
 - Signed acknowledgement of Receipt.
- Some infractions need to be made an example.
 - Employee Theft
 - Disrespect for Company Equipment
 - Verified intoxication or drug use on premises.
 - Loss of monies
 - Verified harassment
 - Violent conduct

Effective Employee Dismissal



Effective employee dismissal

- No reason needed.
- Cannot dismissed for “wrong” reasons.

Take appropriate time

- Do not make decisions under strong emotions.
- Temporarily suspend as necessary.
- Protect your assets and systems.
- Have an exit protocol in place.
 - IT, Security, Dept. Manager, payroll.
- Always pay final check!

The “Exit” Interview

- Prepare final check, written notice and have exit meeting at appropriate time and location.
- Be empathetic but firm. Use employee manual.
- Document exit interview.
 - E-mail to other manager(s) with instructions to go to employee file.

The Settlement Agreement

- To be used when potential risk of litigation may be present.
 - Age 39 and under – Effective immediately upon signature.
 - Age 40 and over – 7 day waiting period required before being effective.

Translated documents

- Both Spanish and English required but Spanish will contain additional paragraph stating that Spanish was provided for ease of understanding purposes but English version is the legally standing document.

Pro-active Insulation



Pro-active Approach

- Completed Employment Application before Interview
- New Hire Employee Documents and Orientation
 - Mutual Arbitration Agreement
 - Key Employee Policies with Receipt
 - Confidential – Non Disclosure Agreement
- Important
 - Don't be an A-hole!
 - Do not react under strong emotions!
 - When dismissing, secure what's important.
 - Do not forget final pay!
 - Invest in New Employee Orientation (Min. 4 hours)



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SB1343 – Expanding Sexual Harassment Training



Currently, under AB 1825, employers with 50 or more employees are required to give two hours of sexual harassment training to their supervisors once every two years.

This legislation expands the training requirement to include all employers with five or more employees by the year 2020.

It also mandates one hour of sexual harassment training for nonsupervisory employees by 2020.

Training of existing employees must be completed by January 1, 2020.

Training of new managers or employees must occur within six months of hire or promotion.

Training must occur every two years.

For seasonal and temporary employees, or any employee hired to work for less than six months, training shall be provided within six months or within 100 hours worked, whichever occurs first.

Training for workers supplied by a temporary services provider must be provided by the staffing agency, not the client.

SB 820 – Ban on NDA's for Sexual Harassment



This law bans any provision in a settlement agreement that would prevent disclosure of factual information relating to a claim filed in civil court or an administrative agency for (a) sexual assault, (b) sexual harassment in business or professional relationships, (c) workplace harassment or discrimination based on sex, or (d) retaliation for reporting sexual harassment/assault.

Any non-disclosure provision in a settlement agreement made on or after January 1, 2019, will be void.

This law does not ban non-disclosure provisions in pre-litigation settlements.

The law does not prohibit non-disclosure provisions regarding the amount paid in settlement of a claim.

A confidentiality clause that shields identity of claimant (or facts that would reveal identity) may be included at the request of the claimant.



Also passed. . .

AB3109 – Testifying at a Criminal Trial

This law bans any settlement agreement from prohibiting an employee from testifying in a subsequent criminal trial, or an administrative, legislative, or other judicial proceeding where criminal wrongdoing is alleged.

Offending provisions are unenforceable starting on January 1, 2019.

SB1300 – More Limitations

Employers cannot, in exchange for a raise or bonus, or as a condition of continued employment, require an employee to:

release claims or rights under the FEHA; or

sign a non-disparagement agreement or other document that prevents disclosure of information about unlawful acts in the workplace including sexual harassment.

Coming Attractions in 2019



Expansion of paid sick days.

Accommodation of cannabis use
by employees.

Predictable work schedules.

Dynamex decision:

- Overturn it.
- Codify and extend it.
- Add or increase employer penalties for misclassified independent contractors.



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