

Finders, Keepers

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Finding and Managing *Talent*

- The talent in your organization comes from your people
- Management's job is to find good people and keep them
- Your programs and systems should be integrated and should all respond to a key objective: increase your productivity by developing improved processes to attract, develop, retain and engage good people
- Good people are those with the required skills and aptitude to meet current and future business needs
- Give loyalty and expect it in return



The Challenge and the Response

- ◆ We all know about shrinking labour pools and the fluid movement of your human resources.
- ◆ There is no magic solution to help you hang on to good people, but there are sensible strategies:
 - ◆ Be a good recruiter within your community
 - ◆ Provide ongoing assessment to your employees

More about the Response

- ◆ Promote training, development and coaching; provide your employees with tools to succeed
- ◆ Implement effective succession planning
- ◆ Exit “dead weight” through an effective CAP and a good attendance management system



Using Management's Policies

- ◆ Promptly notify your employees of any changes in practice that you are implementing – teach them first
- ◆ Regularly review and update policies and practices – the Calendar System
- ◆ Consider your actions and justify your decisions within the context of your framework and operational requirements

Performance Management

- ◆ LEADER
- ◆ supervisor vs. lead hand responsibilities
- ◆ the management TEAM – working together
- ◆ positive reinforcement – regular support and scheduled performance evaluations
- ◆ corrective action plan
- ◆ attendance management
- ◆ your team: focus on US, not THEM

Poor Performance Management

- Lousy employee morale
- Management time spent on “fixing” employee relations issues at expense of other programs
- Reactive and crisis-oriented relationships
- Over reliance on third-party participation to resolve disputes – often to nobody’s satisfaction



Guidelines for Supervisors



- ✓ Keep a written record of investigation & action
- ✓ Ensure documents are put in the employee's file
- ✓ Follow-up on warnings you have issued
- ✓ Progress the discipline if further misconduct
- ✓ Consult with the management team to discuss proposed action and obtain appropriate approvals

be a L~E~A~D~E~R

- Lead, do not simply manage - learn from yesterday, plan for tomorrow, act today
- Excellence should be your goal
- Action should be your bias
- Document: *cover your assets*
- Evidence: *preserve the present*
- Responsibility: *pass the buck, with value added*



AGENDA – Quick Overview

- ◆ *Review Management Rights and Restrictions (Boundaries) on those Rights*
- ◆ *Review the importance of Supervisors*
- ◆ **common law**
- ◆ **statutory law**

Agenda cont'd

some key statutory concepts

- ESA emergency leave
- human rights and supervisory obligation to be pro-active in preventing harassment
- WSIB - reporting and return to work
- health and safety - duties, responsibilities, work refusals, prosecutions, Bill C-45
- labour law – rights of the union and foundation of the collective agreement and arbitration process

Agenda cont'd: C/A

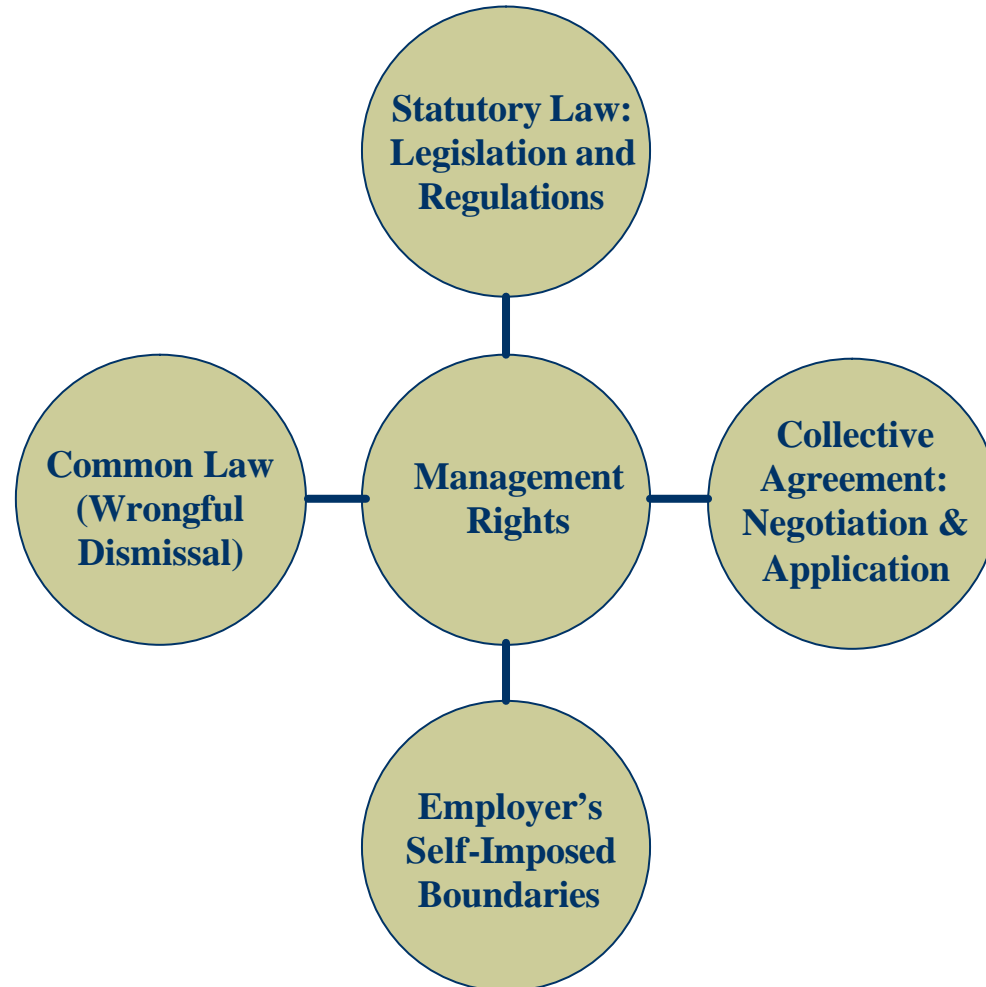
- ◆ **collective agreement**
- ◆ **your workplace culture**
- ◆ *review collective agmt. -
key provisions*

Agenda cont'd

Review Performance Management Concepts:

- ◆ Are YOU an HR Professional?
- ◆ Are you a LEADER?
- ◆ What do you need to know?
- ◆ Can you do BETTER?
- ◆ *Questions should be asked throughout, but there will be time at the end*

the boundaries limiting **Management Rights**



Supervisors

the foundation of management

- 👍 Define vs. Lead Hands
- 👍 Power to impact on economic well-being of individuals (hire/fire/discipline/promote/leaves)
- 👍 Generally, hands OFF the tools
- 👍 Supervisors are key to management's success
- 👍 Supervisors are part of the management TEAM
- 👍 Support is a TWO-WAY street
- 👍 Compromise is necessary and oh-so-Canadian!



Key Management Issues

Some key management issues that you N2K:

- a. **Consistency** among supervisors re enforcement of steps and policies
- b. **Documentation** of disciplinary actions
- c. Appropriate steps in **corrective action plan**
- d. Dealing with employees off for extended time
- e. Relationship with human resources
- f. Conducting performance reviews



Effective Management Rights

Effective exercise of management rights:

- ◆ The Collective Agmt. limits management's rights; interpret ambiguous provisions in our favour
- ◆ Know management's position on contentious or ambiguous provisions
- ◆ Do not compromise your authority
- ◆ Do not share responsibility for interpreting and applying the Collective Agmt. with the union steward



First Boundary: The Common Law

- ◆ **Everyone is employed under a contract**
- ◆ **Employees who are represented by the union move out of the common law and under the collective agreement**
- ◆ **Common law principles should still apply:**
 - *Good faith*
 - *Fair representations*
 - *Just cause*

Second Boundary: Statutory Law

- ◆ **Legislators have felt the need to regulate:**
 - Employment Standards (minimum standards)
 - Labour Relations (union law)
 - **Health and Safety**
 - Workers' Compensation (WSIA)
 - **Human Rights (discrimination and harassment)**
 - Pay Equity

Employment Statutes

- ◆ The statutes (legislation) that are relevant in employment law are the following:
 - *Employment Standards Act, 2000*
 - Employers have to meet at least the minimum statutory requirements in order to operate a business.
 - Emergency leave provides employees with 10 days of leave/year.
 - Termination (notice and severance) provisions.
 - *Human Rights Code*
 - People must be hired and promoted in the workplace without regard to external characteristics such as race, culture, gender, age or even handicap.
 - Supervisors have a positive duty to STOP harassment and to prevent the development of a POISONED workplace.



Employment Statutes

- *Occupational Health and Safety Act*
 - Intent of Act is to improve workplace health and safety conditions in order to protect workers.
 - Almost every worker, employer and supervisor, manager and workplace in Ontario is covered.
 - Supervisors have a positive duty to ENSURE safety compliance.
- *Workplace Safety and Insurance Act, 1997*
 - The insurance system run by the provincial governments that provides a system of benefits to workers who are injured or who become ill because of workplace situations.
 - Injured workers have a right to return to work – either their former job or to modified work.
 - Workplace injuries/illnesses must be fully and promptly reported.



Employment Statutes

- *Labour Relations Act, 1995*
 - Determines how trade unions gets certified.
 - The LRA creates the framework to govern the relationship between the union and the employer.

Third Boundary: Collective Bargaining Agreement

- ◆ The Collective Agreement sets out the terms and conditions of employment negotiated with the union
- ◆ Management Rights prevail unless limited by the Collective Agreement
- ◆ Know the C/A and comply with it
- ◆ In a non-union workplace, consider the Phantom Agreement

Overview of Trade Unions and Collective Agreements

- ◆ Union organizing campaigns.
 - To qualify for certification, a trade union must receive support of a majority of eligible workers.
- ◆ Before a collective agreement is signed.
 - Where a trade union and an employer are unable to reach agreement through negotiations, then either party may seek recourse through a lock-out or a lawful strike.
- ◆ Dismissals during an organizing drive.
- ◆ Dismissals during a strike or lock-out.
- ◆ Discharges for just cause during the term of the collective agreement.



Grievances and Complaints

- The grievance procedure in a union shop is a problem solving mechanism, which facilitates the peaceful resolution of a dispute
- You can set up the same kind of system in a non-union workplace – big improvement on Open-Door
- A grievance is a written complaint alleging:
 - A contravention of a collective agreement, employer policies or rules, or employment statutes (e.g. ESA, OHRC)
 - Improper classification
 - Unjust discipline, suspension or dismissal



Supervisors handling Complaints

- Initial and informal oral stage of complaint
- Supervisor and employee have opportunity to resolve the problem without recourse to formal complaint process
- Supervisor plays a key role in early steps
- Supervisor usually primarily responsible for initial investigation of complaint
- Keep supervisor involved; s/he is best informed about the circumstances of the complaint

Be PRO-ACTIVE

- Communicate with your employees
- Always respond to employee complaints
- Keep employees informed of what you are doing about their concerns and complaints
- Listen to complaints of your subordinates
- Act promptly to deal with complaints, but avoid making snap judgments



Keep LISTENING

- ✓ Avoid creating an atmosphere where employees feel the only way to be heard is through a grievance
- ✓ Treat each complaint as unique
- ✓ Do not make commitments or promises you can't keep
- ✓ Admit your mistakes and correct them as soon as you are aware of an error



Denying Complaints and Grievances

- A denied complaint should simply state that no contravention of company policy (or the collective agreement) has occurred
- If there has been a procedural irregularity such as failure to comply with time-limits set out in the policy, the complaint should be denied on that basis
- Even if denied this time, look for the real issue that has led to a complaint

Settling Complaints and Grievances

- Settle the complaint on its merits
 - Support the entitlements in your framework
 - Support management's appropriate actions
 - Admit mistakes graciously and promptly;
grant the appropriate remedy if justified

Give your employees What they Already Have

- ✓ Provide employees with their entitlement under the law, the collective agreement (if applicable) and management policies
- ✓ Apply the provisions of the law, the collective agreement and policies in a consistent and reasonable manner
- ✓ Avoid playing favourites
- ✓ Don't let personalities colour your judgment⁺

Settlement Details

- ✓ In writing – small words, short sentences
- ✓ Identify the complaint in question
- ✓ Indicate that a settlement has been reached by the parties
- ✓ Clearly state terms and conditions of settlement
- ✓ Stipulate that the complaint is resolved
- ✓ If appropriate - without admission, without prejudice and without setting a precedent



Adjudication

- Failure to resolve a dispute may result in the matter being referred to some form of adjudication
- The decisions of an adjudicator are final and binding
- Burden of proof – “party which asserts a fact must prove it” – discipline vs. everything else
- Process – PING PONG ping
- Civil standard of proof – balance of probabilities; may be a clear balance in serious discipline cases



Fourth Boundary: Self-Imposed Boundaries

- ◆ *The self-imposed boundaries are those that employers create themselves through:*
 - Policies
 - Practices
 - Rules
 - Culture
 - History

Communication of Rules etc.

- ◆ Rules and standards must be job related or have an operational and business basis
- ◆ Employee must be aware of them
- ◆ Employee must know that failure to obey will lead to discipline
- ◆ Rules and standards must have been consistently enforced

Key Management Documents

Some key documents that you N2K:

- ◆ 1. collective agreements that matter
(yours or others in your industry)
- ◆ 2. Company code of conduct & rules
- ◆ 3. Human Rights:
 - ◆ *harassment free workplace policy*
 - ◆ *equality of opportunity*



More Key Documents

- ◆ 4. attendance/punctuality policy
 - ◆ *attendance management forms*
 - ◆ *sick leave*
 - ◆ *absences from work*
- ◆ 5. health and safety:
 - ◆ *safety rules and regulations*
 - ◆ *health and safety orientation guide*

More Key Documents

- ◆ 6. use of computers & electronic networks
- ◆ 7. performance reviews
- ◆ 8. EAP
- ◆ 9. Others?

Termination of Employment



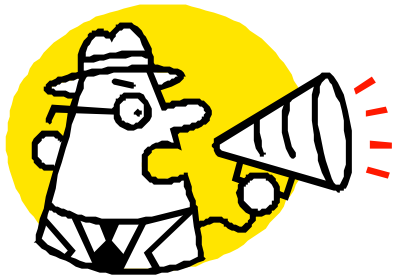
◆ Employment may terminate in one of the following ways:

- Just Cause
- Frustration (excessive absenteeism)
- Contractual term
- Indefinite lay-off

BUT FIRST:

how do we get to this point?

Corrective Action Plan



- Employee discipline is meant to be corrective, not punitive in nature
- The purpose of discipline is to create better, more efficient employees

Corrective Action Plan

- Three basic stages:
 1. Warnings: Oral counseling / verbal / written
 2. Suspension without pay (1 - 3 - 5)
 3. Dismissal (last chance)



Elements of Written Discipline

- Written discipline should outline:
 - The misconduct
 - The rule or standard breached
 - The corrective action required
 - The consequences of continuing or repeating
the sub-standard behaviour



Effective Discipline

- ✓ React to all breaches in a timely manner
- ✓ Investigate all incidents of misconduct
- ✓ Who, What, Where, When, and Why?
- ✓ Base decisions on the facts and circumstances of the case
- ✓ Carefully consider mitigating factors

MINIMUM *Force*

- Persistent inappropriate behaviour requires progressively more severe sanctions
 - Reinforces management's concern
 - Provides opportunity to improve
- Use minimum force - the least severe action you require to get results
- Act only after you investigate

Corrective Action

- Corrective action for breaches of rules may be specified in the framework or rules
- Otherwise, decisions regarding corrective action will be subjective, but influenced by the facts and circumstances of each case
- The standard is just cause
- The corrective action imposed should be appropriate to each situation



Penalty must fit the Crime

- The severity of the misconduct will impact on the severity of the penalty
- For example, breaching safety rules or destroying property are considered more serious acts of misconduct than tardiness
- The circumstances surrounding the misconduct will also influence the penalty
- Finally, the record can be the key (and lock!)



Mitigating Factors

- Many factors may ameliorate the severity of the discipline imposed. Some factors are:
 - Seniority
 - Compassionate reasons
 - Rehabilitation
 - Provocation
 - Training
 - Entrapment
 - Allowing for explanation from the employee



Just Cause

- Management should be able to establish that it did not act in an arbitrary, unreasonable, or discriminatory manner.
- Management must prove that:
 1. the employee committed the offence s/he was charged with (just the facts ma'am)
 2. the employee's misconduct warranted corrective action or discipline (yes or no)
 3. the penalty imposed was just and appropriate to the misconduct (mitigating circumstances)



Discharge

- Takes place after all efforts at correcting the employee's behaviour has failed
- Dismissal may be appropriate in cases where the misconduct is of such a serious nature that management is left with no other option:
 - i.e. attacks another employee with a tool or weapon, or
 - physically assaults a manager, or
 - is fundamentally dishonest



Evidence

- Just cause is normally established through:
 1. Evidence of witnesses
 2. Documentation pertaining to the misconduct
 3. Exhibits (things, photos, diagrams)
 4. Indirect or circumstantial evidence
 - Must point to employee as having committed the offence
 - Must exclude any other reasonable conclusion



Discipline Interview

teach, don't scold – correct, don't punish

- ✓ Discipline in Private
- ✓ Ensure the employee is informed of:
 - ✓ The misconduct for which s/he is being disciplined
 - ✓ The rules or standards that have been contravened
 - ✓ The disciplinary consequence being imposed
 - ✓ The reason for the severity of consequence assessed
 - ✓ The corrective action the employee is expected to take and the period of time within which improvement must be shown
 - ✓ The consequences of failing to correct misconduct



Health Issues

- ◆ Terminating sick employees
- ◆ Employees who become sick after termination
- ◆ Employees who claim to be sick at mature stages of progressive discipline for:
 - Stress
 - Stress-induced illness
- ◆ Drug and alcohol addiction
- ◆ Conditional returns to work/continuations



Questions

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