



Use Common Sense to Avoid Employment Law Problems

by Will Cascadden

The law is intended to be the formal reflection of the values and expectations of our society. This means that legal rights and obligations mirror our collective expectations as to how people act and how people are treated. One result of this connection between the law and our personal beliefs is that “doing the right thing” legally is also often the same as “doing the right thing” morally, ethically, and practically.

In the employment law context, therefore, there are several simple principles that, if applied, will usually result in the correct legal approach to many employee issues. These are as follows:

- Treat others the way that you would like to be treated; with respect, dignity, and honesty;
- If something feels wrong, it probably is (where there’s smoke, there’s fire);
- People deserve a fair chance;
- There are at least two sides to every story;

I will address each of these in turn.

Treat others the way that you would like to be treated, with respect, dignity, and honesty

Discriminatory treatment, harassment, dishonesty, and meanness – these are things that will almost certainly result in human rights complaints and law suits. These are also actions that are generally frowned upon by right-thinking people. We don’t need the law to tell us these things are wrong, but the law provides remedies for people who are so wronged.

If you discover that one of your employees was using derogatory language when speaking to another employee, you shouldn’t need a lawyer to advise you that such conduct is wrong and unlawful; you also should not need to be advised that the employer is also liable if it does not do anything to remedy the situation. Ask yourself the question “How would I feel if that happened or was happening to me?” The answer generally will dictate the appropriate legal response.

Also, don’t lie to employees. You will usually be caught. Even if you’re not, it’s not fair, it’s not right, and it’s bad faith conduct.

If something feels wrong, it probably is (where there’s smoke, there’s fire)

The manager of a retail operation (for which you happen to be the Human Resources Manager) comes to you and says “I know that they’re getting set up or they’re cleaning up, but we’re paying too much overtime to our clerks, stop paying them for time in the stores when the stores are not open.”

Seems wrong, doesn’t it. Well it is. People cannot be made to work for free.

How about this, a senior male manager starts telling some female employees to come out with him after work. They don’t seem to want to go, but he gently pressures them to go – and they do.

Do you think it’s worth investigating?

Trust your feelings (“Luke”). If you don’t like something that is happening, if something seems fishy, follow up in a reasonable and proper way. You are better to be wrong and find no problem than to ignore a situation that turns into a serious incident or an expensive financial liability (the “unpaid overtime” issue has cost some employers tens of millions of dollars).

People deserve a fair chance

An employee goes through a tough divorce. As a result of the stress of the divorce, he has trouble sleeping and starts taking sleeping pills. Soon he can’t sleep without the pills, then he needs more and more. Soon he starts coming in late and missing work all together. When confronted about his lates and absences, he acknowledges that he has a problem. Can you fire him?

No, an employer is legally obligated to accommodate this employee who has a substance abuse problem.

The employee says that he will get treatment, and he starts, but he relapses. Can you fire him now?

No, probably not. An addiction to drugs is a difficult problem and one that is physiologically and psychologically difficult to overcome. You need to continue to accommodate him, even though it is becoming a significant burden.

The employee goes back into treatment, then quits, and then refuses to go back. What now?

If the employee has given up, then the employer is probably entitled to give up too. If you can honestly say “we gave that guy a fair chance”, then you have probably done everything the law requires of you.

There are at least two sides to every story

A manager storms into your office and demands that you fire an employee. The manager says that the employee “embarrassed me in front of a client by contradicting me.”

“What happened?” you ask.

He replies, “I told the client that we have five 280P Components in our warehouse, and that we could deliver them tomorrow.

She stood up and said that was untrue. The client was confused and upset.”

Should you now fire the employee? Do you need legal advice as to what the next step is?

Nope to both. You need to speak to the employee and find out what she said, and why she said it. In this example, the employee knew that the five 280Ps were promised to another client, who would probably sue if they were not delivered on time. The employee might be subject to some discipline depending on whether she could have handled the matter differently, but in these circumstances a just cause dismissal would be entirely unjustified – law and common sense tell you the same thing.

The law also generally requires a full investigation be completed before an employee can be dismissed for just cause, the law also usually mandates that the employee be given a chance to respond to an allegation of wrongdoing before the employer terminates for cause.

Conclusion

The above principles are examples of how common sense approaches to employment issues tend to get you to the right

legal answer. These examples show that a practical perspective can be a valuable tool. That is the real message here. Don't be afraid to use your own experiences, your own values and ethics, and your own judgment when you are assessing a situation. You might not always be right, but you usually will be.

So what does the employment lawyer do for you? First, he or she can educate you and your colleagues as to the law, so that you can better connect societal norms to legal rights and obligations. Second, he or she gives you another perspective, one that is more closely tied to the law, as well as a second objective opinion. Third, he or she will help you resolve those circumstances where the solution is not clear – you should absolutely get legal advice if you have any real doubt about a situation. Finally, he or she can help you when problems become too serious to handle in-house.

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