Employee Relations 101

Julie A. Murphy
Director
Workforce Relations Division
Office of Human Resources
Learning Outcomes:

You will:

- Understand the difference between Employee and Labor Relations
- Have a basic understanding of the role of the Labor and Employee Relations Specialist
- Have a general understanding of the Employee Relations Process
What is Employee Relations vs. Labor Relations?
## ER vs. LR?

<table>
<thead>
<tr>
<th>Employee Relations</th>
<th>Labor Relations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directly relates to a specific employee</td>
<td>Deals with the labor workforce as a single entity &amp; identifies the parameters for the labor/management relationship</td>
</tr>
</tbody>
</table>
# ER/LR Examples

<table>
<thead>
<tr>
<th><strong>Employee Relations</strong></th>
<th><strong>Labor Relations</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Conduct Based Actions</td>
<td>Management Rights</td>
</tr>
<tr>
<td>Examples:</td>
<td>Examples:</td>
</tr>
<tr>
<td>Insolence/Rude/Disrespectful</td>
<td>Assign work and set the standard for measurement</td>
</tr>
<tr>
<td>Failure to follow instructions</td>
<td>Request documentation</td>
</tr>
<tr>
<td>Credit Card or computer misuse</td>
<td>Deny requests in accordance with policy, regulation, and law</td>
</tr>
<tr>
<td>Off-duty misconduct</td>
<td></td>
</tr>
<tr>
<td>Performance Based Actions</td>
<td>Union Rights</td>
</tr>
<tr>
<td>Telework/Leave/Attendance issues</td>
<td>Employee Rights</td>
</tr>
<tr>
<td>Medical-Related Concerns</td>
<td>Grievances/Arbitration</td>
</tr>
<tr>
<td>Reasonable Accommodation</td>
<td></td>
</tr>
</tbody>
</table>

**Management Rights**
- Assign work and set the standard for measurement
- Request documentation
- Deny requests in accordance with policy, regulation, and law

**Union Rights**

**Employee Rights**

**Grievances/Arbitration**
Role of Employee/Labor Relations Specialist
ER/LR Specialists are:

Management’s Representative
Help supervisors/managers do their job and fire employees

Agency’s Representative
Our job is to protect the agency, not the supervisor
Primary Functions...

- Listen to the management official!
- Ask questions - gather facts/evidence
  Don’t take anything at face value
- Advise on options within legal boundaries
- Adjust...
Role of Employee and Labor Relations Specialist

**EMPLOYEE RELATIONS:**

- Provide advice and assistance to supervisors for addressing employee concerns, including an explanation of the process from beginning to end (through appeal options)
- Discuss options for appropriate management response
- Explain interactions of other processes, such as reasonable accommodation, VLTP/FMLA
- Regularly interact with supervisor by phone, follow up in email, etc.
- Draft/Review conduct letters prior to issuance
- Attend meetings as needed
- Follow-up after issuance to support supervisor
- Coordinate with OGC, as appropriate
Role of Employee and Labor Relations Specialist

LABOR RELATIONS:

• Provide advice, guidance and assistance to supervisors in identifying matters that involve labor relations issues and what to do about them
  • For example, when a meeting is a “formal meeting” and what that means
• Discuss various options
• Attend meetings with management
• Draft/Review notices, grievance letters prior to issuance
• Explain the role of the union
• Agency representative....
Employee Relations
Overview
Employee Relations

Two separate processes to address unacceptable conduct and/or performance:

- Conduct – Based (5 C.F.R. 752)
- Performance – Based (5 C.F.R. 432)
Conduct – Based Actions

• **Progressive Discipline:** Use lowest level of corrective action to address the misconduct

  *General guide:*
  • Counseling (written or verbal) / Letter of Reprimand
  • Low-grade suspension – typically below 7 calendar days
  • High – grade suspension – typically 7 – 14 calendar days
  • Demotion / Removal

• **Table of Penalties** = A guide, not an obligation
## Douglas Factors

<table>
<thead>
<tr>
<th>Factors</th>
<th>Consistency of the penalty with those imposed upon other employees for the same or similar offenses.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The nature and seriousness of the offense, and its relation to</td>
<td>Consistency of the penalty with any applicable Agency table of penalties.</td>
</tr>
<tr>
<td>the employee's duties, position, and responsibilities, including</td>
<td></td>
</tr>
<tr>
<td>whether the offense was intentional or technical or inadvertent, or</td>
<td></td>
</tr>
<tr>
<td>was committed maliciously or for gain, or was frequently repeated.</td>
<td></td>
</tr>
<tr>
<td>The employee's job level and type of employment, including supervisory</td>
<td>The clarity with which the employee was on notice of any rules that were violated in committing the</td>
</tr>
<tr>
<td>or fiduciary role, contacts with the public, and prominence of the</td>
<td>offense, or had been warned about the conduct in question.</td>
</tr>
<tr>
<td>position.</td>
<td></td>
</tr>
<tr>
<td>The employee's past disciplinary record.</td>
<td></td>
</tr>
<tr>
<td>The employee's past work record, including length of service,</td>
<td>Potential for the employee's rehabilitation.</td>
</tr>
<tr>
<td>performance on the job, ability to get along with fellow workers,</td>
<td></td>
</tr>
<tr>
<td>and dependability.</td>
<td></td>
</tr>
<tr>
<td>The effect of the offense upon the employee's ability to perform at a</td>
<td>Mitigating circumstances surrounding the offense such as unusual job tension, personality</td>
</tr>
<tr>
<td>satisfactory level and its effect upon supervisors' confidence in the</td>
<td>problems, mental impairment, harassment, or bad faith, malice or provocation on the part of</td>
</tr>
<tr>
<td>employee's ability to perform assigned duties.</td>
<td>others involved in the matter.</td>
</tr>
<tr>
<td>The notoriety of the offense or its impact upon the reputation of the</td>
<td>The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by</td>
</tr>
<tr>
<td>Agency.</td>
<td>the employee or others.</td>
</tr>
</tbody>
</table>

4/2/2018 | Title | 14
Unacceptable Performance – 5 CFR 432

- Based on PMAP and limited to that rating cycle
- Opportunity to Demonstrate Acceptable Performance (ODAP)

Typical Process:
- PMAP in place for 90 calendar days
- Progress review or other communication of unsatisfactory performance
- Performance Deficiency Notice – initiating ODAP
- ODAP (generally, 30 calendar days) period

Determination:
- Successful – must maintain for 1 year from beginning of ODAP
- Unsuccessful – demotion or removal
Employee Relations Process

- Proposal Letter
- Right to review materials relied upon
- Reply (oral and/or written)
- Decision Letter
Resources

• For additional information please visit:
  
  • 5 U.S.C. Part 75 and 5 C.F.R. Chapter 752
  • 5 U.S.C. Part 43 and 5 C.F.R. Chapter 432
  • www.opm.gov
  • Applicable collective bargaining agreements and HHS Instructions
Questions
Contact Information

Julie A. Murphy
Director
Workforce Relations Division
Office of Human Resources
Assistant Secretary for Administration

(202) 260-6555
Julie.Murphy@HHS.gov