

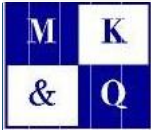


SUPERVISOR ROLES AND RESPONSIBILITIES

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NOTE: The information set forth in these materials is intended to provide an outline of the law existing as of the presentation date. It is not intended as, nor should it be considered, “legal advice.” If you are presented with a specific issue, you should consult with legal counsel.



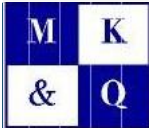
Definition: Employer

Entity/person owning, controlling, or operating a business that employs at least one person.

Definition: Employee

An individual who is performing or has performed services for an employer in employment, for which the individual receives financial compensation.

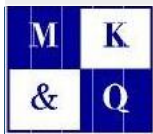
- Performs job functions
- Follows lawful employer policies, e.g., attendance, anti-harassment, *JIE*
- Work product belongs to the employer
- Duty of loyalty during the course of employment



Definition: Supervisor

Supervisor: Overseer of employees

- Carries out direction of employer
- Ensures that employees are adequately, timely, and safely performing required job duties
- Serves as a mentor, trainer, and coach for employees to improve performance of each individual, which then raises overall performance of the team or department



Employer/Employee Relationship

Employee/supervisor actions can bind employers.

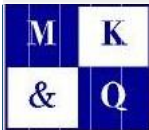
- E.g., contracts

Can also create liability

- E.g., discrimination claims, negligence claims, harassment claims (power imbalance)

Employer Liability for Employee/Supervisor Actions

Vicarious liability: Employer is liable for acts committed by an employee (supervisor) within the scope of employment that cause an injury or harm to another's property or person.



Employer Liability for Employee/Supervisor Actions

- Negligent Hiring
- Negligent Retention
- Negligent Supervision

Employer Liability for Employee/Supervisor Actions

- Employment anti-discrimination laws
 - State and federal anti-discrimination laws prohibit employers from making hiring, discharge, and other job-related decisions on the basis of protected class.
 - Also prohibit retaliation
- *JIE* contains an EEO policy

Anti-Discrimination Laws

- Minnesota Human Rights Act prohibits discrimination based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, familial status, disability, sexual orientation, or age.
- Federal laws contain similar protections for race, color, national origin, sex, pregnancy, age, disability, genetic information.

Employer Liability for Employee/Supervisor Actions

- Harassment

- Unwelcome verbal or nonverbal conduct
- Based on actual or perceived protected class status

- Two types of sexual harassment

- Quid pro quo claims
 - “This for That” = Tangible employment action against the victim
- Hostile or offensive environment
 - Harassing/offensive actions and statements can lead to claims if the speech or conduct is so severe or pervasive that it creates an abusive or hostile work environment.

Justice in Employment

- Framework for the employer/employee relationship in the Archdiocese

- Preamble
 - Work as an extension of human dignity
 - Right to decent and productive work and fair wages
 - Workers have responsibility to work conscientiously and justly.

Hiring

“Each individual’s application file should include the employer’s offer of employment, a position description, a completed employment application and a signed and dated receipt of these policies.”*

**Justice in Employment*

- *JIE* envisions a hiring process that includes a written offer and orientation, along with a probationary period.
- Supervisor may be involved in employee hiring process and may be responsible for preparing written offer.
- Supervisor would typically be involved in employee orientation.

Hiring

(continued)

- Importance of the Job Description
 - Should be current for each job *
 - Identifies “essential functions” (most important job duties)
 - Used in evaluating employee performance
 - Used for responding to FMLA leave requests
 - Used in analyzing requests for disability accommodation
 - Used to defend claims relating to discharge or discrimination

****Supervisor typically is responsible for updating job descriptions.***

Probationary Period

“Unless otherwise specified in writing, all new employees are subject to an initial training period of up to three (3) calendar months. If a longer initial training period is required, it will be specified in writing.”*

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Supervisor Roles:

- Input from supervisor about the appropriate length of a probationary period is helpful. If *JIE* minimum three months is inadequate, the length of the period of probation must be listed in writing.
 - Keep in mind any extension of the probationary period must also be in writing.
- The supervisor must carefully monitor the period of probation and know when it expires.

Performance Evaluations

“The employee’s immediate supervisor must conduct written evaluations at the end of the second and third month of employment. . .”*

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- Note that two (2) separate written evaluations by the employee’s immediate supervisor required:
 - End of second month
 - End of third month

- The supervisor should closely monitor the new employee’s performance so any deficiencies can be addressed in a timely manner. This regular check-in by the supervisor also gives the employee an opportunity to ask questions of the supervisor.

Good Faith Assistance

“. . . probationary employees should, to the extent practical, be accorded the necessary assistance to become regular employees.”*

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- This coaching function by the supervisor allows the supervisor to share organizational information with the employee and allows the employee to showcase skills.

Change of Status to Regular Employee

“The approval of the employer and his/her designate (i.e., supervisor) is required before an employee may be upgraded from an in-training employee to a regular employee status. The upgrade must be in writing and must state the effective date of the change from in-training status to regular employee status.”*

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- A successful supervisor will be in regular communication with the employee so any performance concerns that might delay upgrade to regular status will not be a surprise to the employee.

Performance Evaluations for Regular Employees

“A performance analysis should be conducted at least once a year.”*

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- Objective criteria for performance assessment must be listed in position description.
 - Best practice: Supervisor provides ongoing/regular feedback throughout the year.
- Conduct meetings privately.
 - Identify performance concerns and provide clarity about those.
 - Note positive performance areas.
- Provide employee opportunity to comment in writing
- Copies retained in individual’s personnel file

Resolution of Work Related Issues

STEP 1

“The employee and the immediate supervisor first should discuss thoroughly the work-related issue(s) to achieve mutually satisfactory resolution.”*

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- Supervisor should carefully document discussions with employee about issues and proposed solutions.

Resolution of Work Related Issues (continued)

STEP 2

“. . .the employee should, within thirty days or some other mutually agreed upon time period of time, give the *immediate supervisor* a written statement summarizing the nature of the work-related issue under consideration, and proposing suggestions for its resolution.”*

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- If supervisor has been engaged in ongoing observations of the employee’s performance and discussions with the employee, the employee’s issues should not be a surprise to the supervisor.



Resolution of Work Related Issues (continued)

STEP 3

“If resolution is not reached within ten (10) working days after the *supervisor* receives the written statement, the employee may request further discussion at the next supervisory level.”*

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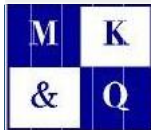


Resolution of Work Related Issues *(continued)*

STEP 4

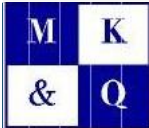
“The higher supervisor will investigate the dispute and respond to the employee in writing within ten (10) working days after receiving the written complaint.”*

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Resolution of Work Related Issues *(continued)*

- Resolution at the local level is encouraged.
- Participants are required to maintain confidentiality, unless otherwise required by law.
- If the local process is not successful, may seek resolution through Archdiocesan conciliation process.



Progressive Discipline

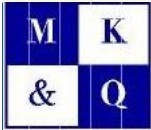
The progressive discipline steps identified in *JIE* are:

STEP 1

Oral Warning

(to be documented in writing)

**copy to employee and employee file*

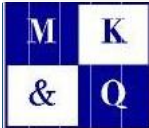


Progressive Discipline *(continued)*

STEP 2

Written Warning

**copy to employee and employee file*

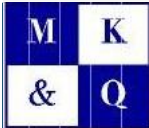


Progressive Discipline *(continued)*

STEP 3

Final Written Warning
and/or suspension

**copy to employee and employee file*



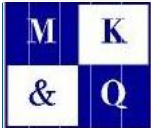
Progressive Discipline *(continued)*

STEP 4

Dismissal

Supervisor Role in Progressive Discipline

- Identify unacceptable conduct (in writing).
- Describe nature of improvement required (in writing).
- Give employee a reasonable period to comply.
- State consequences for failure to meet expectations.
- Have employee acknowledge receipt of Warning Memo.
- Confer with Human Resources, Pastor, outside counsel, as necessary.



Sample Progressive Discipline Form

[Employee Name]
[Oral] [Written] [Final] Warning

From: [Supervisor Name]
Date: April 6, 2017
Time: 2:00 p.m.
Present: [Employee]
[Supervisor]
[Parish Administrator]
[Pastor]

NATURE OF PRESENT CONCERN

This is to notify you that we are [initiating] [continuing] progressive discipline under Justice In Employment.

[Refer to specific policy employee has violated.]

Background

[Describe prior disciplinary instances.]

Improvement Required

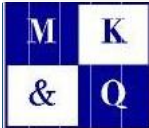
[Describe specific corrective action and a timetable, if appropriate.]

Consequences

“Any further violations of this policy or any other performance deficiencies will result in discipline, up to and including immediate termination.”

Progressive Discipline Guidelines

- Thoroughly investigate alleged misconduct.
- Ask for the employee's explanation or response.
- The goal is to correct unacceptable behavior and improve performance.
- No requirement that all steps (oral warning, written warning, final written warning) be followed before termination is permitted.
- Carefully document all steps in writing.



Discharge

- General Rule: At will
 - Meaning: Terminate for any non-discriminatory reason
 - Supervisor must conduct employee evaluations during probation period.
 - Probationary period: “At will” applies

Discharge (continued)

- Regular employees: May only be terminated for “Just Cause”
 - Documentation supporting Just Cause termination is responsibility of supervisor.

“After an employee is upgraded from probationary or in-training status to the status of a regular employee, the employment relationship which exists between the employer and its employees will be broken only ‘for cause,’ that is, if there are valid reasons for taking such an action.”

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- Review by qualified attorney, per *JIE*

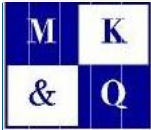
Discharge: Just Cause

Supervisor responsible for developing and documenting information supporting Just Cause termination.

1. Discharge following progressive discipline; *OR*
2. Immediate discharge without progressive discipline
 - Illegal discrimination or harassment
 - Theft, misappropriate, falsification of records
 - Misconduct at the work place which endangers others
 - Insubordination or breach of professional ethics
 - Working under the influence of illegal or controlled substances
 - Consumption of alcohol/drugs at or prior to work so as to affect performance
 - Public conduct which is inconsistent with the faith, morals, teachings and laws of the Catholic Church
 - Other gross violations of the employer/employee relationship

Policies Beyond *JIE*

- Review and follow employer handbook policies as part of termination process.
 - E.g., EEO policy, harassment/offensive behavior policy
 - Identify employee policy breached by employee that supports termination decision.
- Supervisors, in particular, must be familiar with how the policies work.
- Keep in mind that the employer has the right to implement personnel policy changes (as often stated in the handbook) and also to make decisions about and changes to work priorities and procedures.



Questions?