

Manager/Supervisor Risk Management

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TOPIC: EMPLOYMENT LIABILITY – THE OSTRICH DEFENSE AND OTHER AXIOMS

The supervisor is of central importance in any employment liability investigation. Below is a list of unfortunately not uncommon issues that YCPARMIA encounters.

- The Ostrich Defense: The manager/supervisor sticks their head in the sand, and hopes the problem goes away. Obviously this works -- except when it doesn't, and when it doesn't it usually has aggravated the situation badly. A hostile work environment and often retaliation are a series of events. Ignoring them just adds to the list. The claimant's agenda is advanced when we do nothing.
- "No good deed goes unpunished": "I could have had them fired, but I decided to give them a break, and this is how they thank me!" Not holding an employee accountable to the expectations and policies of the employer merely empowers them. There is little appreciation in a person who already thinks of themselves as a victim. The standard is to be reasonable, fair, and **consistent**.
- "Not worth the paper it isn't written on": When it comes time to defend a claim, paper speaks louder than words, but some supervisors are hesitant to memorialize their thoughts or actions on paper. Realize that it is not uncommon for the claimant to be keeping a journal. Notes taken at the time of an event or meeting make responding to the claim at a later date much easier.
- "Their annual performance review isn't really accurate": We have a disconnect when the performance review rates the employee as above average, and the supervisor then states that they really weren't a very good employee. When a supervisor has to explain under oath why they lied on the employee's annual review and how they are not lying now, there is not much credibility left.
- "I always knew he/she was trouble": I once sat in a seminar where the speaker asked everyone in the audience to identify in their own minds who the most likely person in their operation to file a claim might be. No one had any problem doing it, but when asked what special precautions they took to protect their employer from a claim by that person no one had done anything. They had all identified a risk, but chose not to address it (see the Ostrich Defense above).
- "I never would have expected it from him/her": A supervisor in denial. This is the flip side of the previous axiom. The supervisor states that they never would have expected this employee to make a claim. When we talk to the claimant they assert that they have been complaining for some time, but no one would listen. All of their co-workers saw it coming, but management missed it, possibly by seeing only what they wanted to see (the Ostrich Defense revisited).
- "We handle our problems inside the Department; no one else needs to know what is going on": The manager often fails to realize that they might be part of the problem, and that a person outside their department (HR) might have the experience and perspective to gain control of the situation. Thinking that no one outside their operation needs to be involved with employment issues in their unit is naive.
- "I dealt with the situation, and it is over": We sometimes find a manager who thinks that they can order the employees to behave, and that they will. Interestingly, management by intimidation and threats is not inconsistent with a hostile work environment. The authoritarian manager often adds to the employee's feeling of victimhood, and alienates the co-worker witnesses needed to defend.

Next topic: Sexual Harassment – a very short primer