

CASE STUDY #1: PERFORMANCE EVALUATIONS

Susan is an IT specialist assigned to assist students in the computer center, maintain computers, update software, and assist staff members with computer problems. She is a long-term employee of the district. She was assigned to a new supervisor last year. The supervisor reviewed her personnel file and found that Susan had not received a formal evaluation in five years. The old evaluations in her file were generally positive.

Her supervisor noticed that Susan frequently could not be found in the learning center for long periods of time when Susan was scheduled to be on duty. She also noticed Susan frequently speaking on her cell phone or working at a computer for extended periods of time. The supervisor suspected that Susan was surfing the web, taking personal calls, and not performing work for the college during periods of time when she was on duty. The supervisor mentioned to Susan on numerous occasions over a six-month period that she was concerned that Susan was frequently not where she needed to be and that she appeared to be spending too much time on her cell phone and computer conducting personal business. Each time Susan denied that she was doing anything wrong. Eventually, when the supervisor asked Susan why she could not find her during working hours, Susan responded that the supervisor must not have looked hard enough for her. The supervisor implemented a sign-out binder for all employees in the computer center to sign out indicating where they would be when they were not in the learning center. Susan continued frequently to be “missing” without signing out. The supervisor became exasperated and wrote a disciplinary memo to file as follows:

“Your attitude and approach to your job over the past six months has been totally unprofessional. You have been unreliable by being missing from your assigned work area on numerous occasions. Our students and staff are not receiving needed services from you because of this. Your response when asked why you could not be found during work hours was disrespectful and insubordinate. Further behavior of this type is totally unacceptable and will not be tolerated. No one else in the department is failing to perform their share of the workload in this manner. You seem to have good technical skills, and you are able to solve computer problems when you put your mind to it. For example, you correctly identified a virus that crashed the system in October and got the system back up and running with only a short interruption of services. But, you must improve your performance, which is the worst I have seen during my experience as a supervisor.”

Questions:

- 1. What portions of the disciplinary memo are good?**
- 2. Why are these portions good?**

- 3. What portions of this disciplinary memo should be changed or eliminated and what is wrong with these portions?**

CASE STUDY #2: PERFORMANCE EVALUATIONS

You Need Help Evaluating

You are the manager of a department with ten supervisors. Each of the supervisors evaluates several employees. It is your responsibility to review each of the performance evaluations prepared by the supervisors and ensure that they are well written. You are going to meet with each of the supervisors to discuss the evaluations each of them has prepared. You have noticed the following entries on the supervisors' evaluations: Please be prepared to respond to each of the following entries with: (1) what is wrong with it; and (2) how you are going to counsel the particular supervisor who wrote it to re-write it.

Questions:

1. PERFORMANCE FACTOR = Quantity of Work

Comment: **“Given his level of experience and education, Tom should be producing more work.”**

2. PERFORMANCE FACTOR = Oral Communications

Comment: **“Tom communicates well with his fellow employees.”**

3. PERFORMANCE FACTOR = Quality of work – Thoroughness

Grade: **“Outstanding”** – No comments

4. PERFORMANCE FACTOR = Attendance

Comment: **“Larry used 10 days of sick leave this year.”**

5. PERFORMANCE FACTOR – Productivity

Comment: **“As a new supervisor, I did not know what to expect from a 33-year employee. I have to say that I am impressed. Good work, keep it up!”**

6. PERFORMANCE FACTOR - Use of Equipment

Grade: **Exceeds Standard**

Comment: **Seymour had one accident this year with a District vehicle”**

7. PERFORMANCE FACTOR – Accuracy

Comment: **“Sandra has been suffering from Crohn’s Disease during much of this performance cycle. As such, her accuracy has understandably suffered in the following ways:”**

8. PERFORMANCE FACTOR - Understanding Instructions

Comment: **“Fred frequently fails to understand the instructions he receives as is evidenced both by the number of mistakes he makes as well as the number of times he asks for an explanation of how to proceed. Several examples of Fred’s mistakes include the following - (Assume several examples are given).**

9. PERFORMANCE FACTOR - Getting along with fellow employees

Grade: **“Needs Improvement”**

Comment: **“As you will recall, we specifically included getting along with others as a goal and objective in last year’s evaluation. Very little progress has been made toward reaching that goal.”**

10. PERFORMANCE FACTOR - Observance of Safety Rules

Grade: **“Meets Standards”**

Comment: **“Tom has observed the safety rules of the Department.”**

CASE STUDY # 3: PRIVACY

The Little Community College District issues smart phones to all of its classified supervisory employees. The City's "Electronic Use Policy," AP 9000, provides that "All District-owned computers and other electronic devices are to be used solely for District-related business." Additionally, during yearly supervisory trainings, supervisors are told that all District-owned equipment could be subject to audits.

Sally, a Business Management tenured faculty member and chair of her department, has been employed by the District for ten years. Last month, a student submitted a complaint against Sally, alleging, among other things, that Sally is attempting to recruit students to become involved in her outside business venture of selling insurance policies. Sally is employed as an independent contractor of a large insurance company that sells these policies. The student's complaint alleged that the premise of the business is a pyramid-type scheme in which the more persons Sally recruits to sell insurance, the more money she makes. The District hires an outside investigator to conduct an investigation. During the course of the investigation, the investigator learns that Sally has been sending text messages to several students attempting to recruit them to join their company. The students, however, deleted the text messages, and it is unclear whether Sally (1) used her own cell phone or the District cell phone to text these students and (2) sent the text messages during working hours. The investigator informs the Vice President of Human Resources that she is unable to determine whether Sally sent such messages, and if she did send them, what District resources she used, if any.

The Vice President of Human Resources would like to access Sally's District-issued cell phone and provide her text messages to the investigator for review.

Questions:

- 1. Can the District search Sally's District-issued phone? What factors should the District consider before deciding to do so?**
- 2. What could the District do to improve its written policy so that it is made clear to supervisors that they do not have a reasonable expectation of privacy in their District-issued cell phones?**

CASE STUDY # 4: PERSONNEL FILES

Tom Trouble was recently issued a Notice of Intent to Suspend for using a District-issued vehicle on several occasions to go to lunch. Before his *Skelly* hearing, Tom went to look at his personnel file, where he discovered that his file contained a memo from his supervisor to the Vice President of the department, dating November 2015, recommending that the Vice President deny him a promotion because he is inefficient and does not get along well with his colleagues. While Tom's supervisor had previously (in passing) spoke with Tom about him taking too long to complete tasks and the aggressive attitude he had displayed toward others, Tom had never seen this memo. Tom applied for a promotion in October 2015 and was denied the promotion in December 2015. Tom files a grievance objecting to the inclusion of this memo in his personnel file and requesting that the Vice President reconsider him for the promotion.

Questions:

- 1. Does Tom have a valid grievance regarding the inclusion of the memo in his personnel file?**
- 2. Does Tom have a valid grievance regarding the request to review the letter of recommendation?**

CASE STUDY # 5: DISCIPLINE

Eddie is a probationary microbiology instructor at Brawny Community College District. He is an excellent instructor. However, students have reported that they feel intimidated by him due to several outbursts he has had in the classroom. Eddie was counseled about his temper, but has received satisfactory evaluations in his first two probationary years at the District.

At the beginning of his third contract in September of this year, Eddie's inability to control his temper resulted in a dangerous altercation between him and Elena, a student in a weight training class. Elena was working out in the weightlifting room on a machine used for abdominal exercises. Eddie, who was in a hurry to finish his workout before his next class, told Elena that he needed to use the machine. Elena asked him to please wait for his turn. Eddie grabbed Elena's towel, which was placed under her arms to keep the machine clean from sweat. In trying to grab her towel away from Eddie, Elena knocked Eddie's iPod causing it to hit the wall.

Eddie became enraged. He struck Elena in the chest with his right arm, causing both him and Elena to fall. Eddie then attempted to strangle Elena. Two male students ran to pull Eddie off Elena.

The news quickly spread throughout the District that Eddie had attacked a female student. Eddie went to teach his class after the incident as if nothing happened. When he was asked what occurred by his Dean, he stated, that his actions were justified because Elena attacked him first. Eddie also claims he cannot be disciplined as an instructor during the incident because he was auditing the class and was therefore a student at the time of the incident. He refuses to apologize for what has occurred.

The President/Superintendent understands that because Eddie is starting his third contract with the District, he will work an additional year before his contract will end. The President wants him terminated immediately for unprofessional conduct, and evident unfitness for service under Education Code section 87732.

Questions:

- 1. Can the District proceed on these charges?**

CASE STUDY #6: PAST PRACTICE

You are a new supervisor of classified employees in the Maintenance department. Your first week on the job, you observe several college maintenance trucks parked in front of fast food restaurants across the street from campus during work hours.

You decide to investigate. A few employees advise you that, as a past practice, they are permitted to purchase their lunch while on duty, and bring it back to the break room so that they can use their full 30 minute lunch period to eat.

The collective bargaining agreement states:

HOURS

A normal workday for a classification shall consist of consecutive hours of work interrupted by a break for lunch of not less than thirty (30) minutes.

EFFECT OF AGREEMENT:

It is understood and agreed that the specific provisions contained in this CBA shall prevail over employer practices and procedures, prior written agreements, and over state laws to the extent permitted by state law, and that in the absence of specific provisions in this CBA such practices and procedures are discretionary.

During the term of this CBA, the parties expressly waive and relinquish the right to meet and negotiate and agree the parties shall not be obligated to meet and negotiate with respect to any subject matter, whether referred to or covered in this CBA or not, even though each subject or matter may not have been within the knowledge or contemplation of either or both the District or the Association at the time they met and negotiated on and executed this CBA, and even though such subjects or matters were proposed and later withdrawn.

Questions:

- 1. What additional information do you need to determine if the employees' purchase of lunch during work hours is a binding past practice?**
- 2. Is there any language in the CBA that could prevail over an existing past practice?**

- 3. If the ability to purchase lunch during work hours is found to be a past practice, what steps can the supervisor take to attempt to change it?**

- 4. The CBA will expire in three months. Human Resources asks you if there are any issues you would like to address in negotiations. You would like to prevent lunch purchases during work hours in the future. Prepare proposed language for this provision.**

CASE STUDY #7: HARASSMENT

Lance Larson teaches Physics. During the course of the fall semester, Lance makes the following comments in several of his classes:

“No one with XX chromosomes has ever gotten the highest score on a test in my class.”

“Girls seem to complain more and are grouchier than boys...I wonder if it has anything to do with those two X chromosomes?”

“Have you ever considered a career in sewing?!”

“Guys, it’s not like the old days in here, believe me!”

“The XX chromosome group may not understand the difficult material here.”

Several of the women students file a complaint alleging that Lance is creating a hostile learning environment. Lance cheerfully admits making the statements.

Questions:

- 1. Is there a problem?**
- 2. Is there sexual harassment?**
- 3. Does your analysis change if Lance explains that he has a pedagogical reason for his comments, which is that he knows girls have historically not had as many opportunities for good science preparation, and he is trying to encourage them to make the extra effort to do better?**
- 4. Does your analysis change if Lance explains that he has a pedagogical reason for his comments, which is that he knows girls have historically not had as many opportunities for good science preparation, and he is trying to encourage them to make the extra effort to do better?**
- 5. Lance’s supervisor learned that he made these comments as the result of a student’s course evaluation. Does Lance’s supervisor have a duty to report these comments to the District?**

CASE STUDY #8: ABSENTEEISM/DISABILITY

Janet is a tenured faculty member of the District. She maintains a full-load of two in-person classes and two online classes. She is required to maintain a total of five hours of office time for students to be able to meet with her, including for online classes. Janet has had a long history of excessive absenteeism. Although the District has provided Janet with FMLA/CFRA forms, she never turns in the paperwork. The absences have been intermittent.

Janet's dean, Chris, tells Janet that the excessive absences have been a strain on the Department. They are having to scramble for day-to-day subs or need to have other faculty members fill-in for Janet. This also disrupts Janet's classes. At least three students have complained to the dean's office about the inability to reach Janet during her assigned office hours and the inconsistency with instructors.

Chris comes to Richard, Vice-President, Human Resources, and asks for assistance. Richard reviews Janet's absenteeism over the last two years and sees that Janet's absences are well beyond the average for faculty members. During the file review, Richard notices that Janet also has on file a Consent for Outside Employment. Janet was granted permission to work as an event planner at a company that arranges for catering, entertainment and similar details for weddings, birthdays, and so forth. Janet is also part owner in that Company.

Richard is suspicious that Janet may be abusing her leave to work at her outside employment, but is also concerned that Janet may be unwilling to advise the District that she has a medical condition that is causing her absences.

Richard meets with Janet and advises her that in light of her excessive absenteeism, any further absences must be supported by a doctor's note. Janet is absent the following week and presents a doctor's note indicating only that Janet needs "intermittent leave when experiencing a bad health day due to a chronic medical condition."

Questions:

- 1. What should the District do next?**
- 2. Can the District discipline Janet for excessive absenteeism?**
- 3. If Janet's absences are legitimate, what are the District's obligations in regards to accommodating Janet's possible disability? What types of accommodations should the District consider providing?**

CASE STUDY #9: HARASSMENT

Matt and Eric are very good friends, although Matt supervises Eric in the District's Finance Department. Recently, Matt has been making a lot of jokes to Eric about the new Finance Analyst, Janet, who is transgender. Matt will almost always make jokes about her when she is eating and when she is walking around the office. Matt has recently started calling her "The Linebacker" or "Manet." This makes Eric really uncomfortable but he does not tell Matt to stop because they are friends and Matt is his boss. Eric also suspects that Janet knows that Matt makes fun of her, but thinks she is probably too new of an employee to feel comfortable making a complaint.

Frankie is a supervisor in the District's Information Technology Department. One day, Frankie overhears Matt tell Eric that they should make a bet as to whether "Manet" will use the women's restroom or the men's. Eric laughs in response but does not say anything to Matt. Frankie immediately reports this conversation to Human Resources.

After Frankie reports this conversation to Human Resources, the Human Resources Director begins an investigation. During the investigation, the Director interviews Eric to gather the facts. At the end of the interview, the Director asks Eric not to disclose the content of their interview to anyone as the Human Resources Director may need to interview more people as this is an ongoing investigation. After Eric is interviewed, Matt immediately asks Eric if he was a "snitch."

QUESTIONS:

- 1. How should Eric respond to Matt's inquiry?**
- 2. Is being transgendered a protected classification?**
- 3. Has Janet been a victim of harassment?**
- 4. Can Eric be disciplined for not reporting Matt's mean jokes to Human Resources?**

CASE STUDY #10: VOLUNTEERS

The Hilltop Community College District runs an 8-week summer camp for at-risk youth in the community. The camp is largely run by volunteers from the community, many of whom are former camp participants. Blanche is the Director of the Camp and supervises eight volunteers who run the program. While opening the District pool in the morning, Blanche overhears several of the volunteers playing a guessing game. After listening for several minutes, Blanche determines that they are attempting to guess which one of the pool lifeguards is gay. Blanche knows that some of the volunteers who are playing the game are gay. She assumes everyone is having a good time and does not believe that the volunteers are being mean spirited.

No one ever complained to Blanche or any other supervisor about the conversation.

Questions:

- 1. Does the District still have any duties regarding possible harassment and discrimination even though the persons make such comments are volunteers?**
- 2. What should Blanche do?**