

Managing Employees 101

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Presented by:

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Agenda

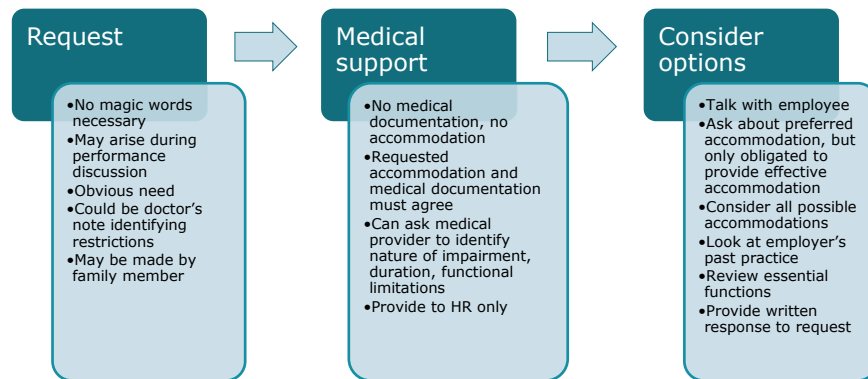
Part I:

10 Things Every Manager Should Know
About Employment Law

Part II:

Managing Employees within this Legal
Framework

Managing the Interactive Process



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Accommodating Religion

- Employers also required to make reasonable accommodations for sincerely held religious beliefs
- Interactive process required
- Typical accommodations:
 - › Leave
 - › Change in schedule to permit religious observance
 - › Dress code/grooming
 - › Change in duties?
 - › Time to pray at work
 - › Vaccine exemption?

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Accommodations: Responsibilities of Managers

- Review accommodation policy in Handbook
- Pay attention to anything that sounds like a request for an accommodation
- Contact HR if you think an employee needs or has requested an accommodation
- Honor all approved accommodations
- Address any impacts on co-workers
- Maintain confidentiality!

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You be the judge!

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Manny in the Morning


The Assistant Sales Manager, Manny, is a solid performer who generally meets or exceeds expectations. The one frustration his manager, Jill, has with him is that he seems to be disengaged during sales meetings. The meetings are scheduled every Tuesday and Thursday afternoon and Jill wants Manny to take a more active role in the important discussions during the meetings. When Jill includes this feedback in Manny's annual performance evaluation, Manny confides that he was recently diagnosed with ADD and he has a hard time paying attention in the afternoons – he believes that mornings are a much better time for him to be actively engaged in a meeting. He says he wants to be successful and asks Jill to move the meetings to the mornings. Jill is miffed because she wants Manny to be a more active participant and does not want to disrupt the entire schedule just to accomplish that.

- Does Jill have to change the meeting schedule?

Tina the Traveler

Tina is the Controller of a large company. She has Multiple Sclerosis that is generally well controlled. Four times a year, Tina has to travel to a three-day finance meeting which is usually held at a conference center near one of the company's facilities. Tina's boss schedules the kickoff to the meeting at 2:00 p.m. on a Tuesday to enable everyone to work in the office on Monday to get the week started and then travel to the meeting in the morning on Tuesday. Traveling is exhausting for Tina and she asks to go to the conference center on Sunday so that she can recover from the travel before the meeting starts. That schedule results in two extra nights of hotel expenses for each meeting.

- Does the company have to provide this accommodation?

- 
4. Federal and state laws prohibit retaliation based on certain protected activities.

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Broad Sources of Protection

State laws

SOX

Title VII

ADEA

ADA

FMLA

False
Claims Act

OSHA

FLSA

ERISA

USERRA

More...

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Proving Retaliation

- “Temporal proximity” – adverse employment action follows relatively closely on the heels of adverse employment action.
 - › Gives rise to an inference of causation.
 - › Inference weakens and evaporates with passage of time.

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5. There are limits to at-will employment.

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Limits to At-Will Employment

- Employers may terminate at-will employees “for any reason or no reason at all”
- But . . . may not fire for an unlawful reason
- Unlawful reasons include:
 - › Discrimination
 - › Retaliation
 - › Social media use protected by NLRA
 - › Medical issues

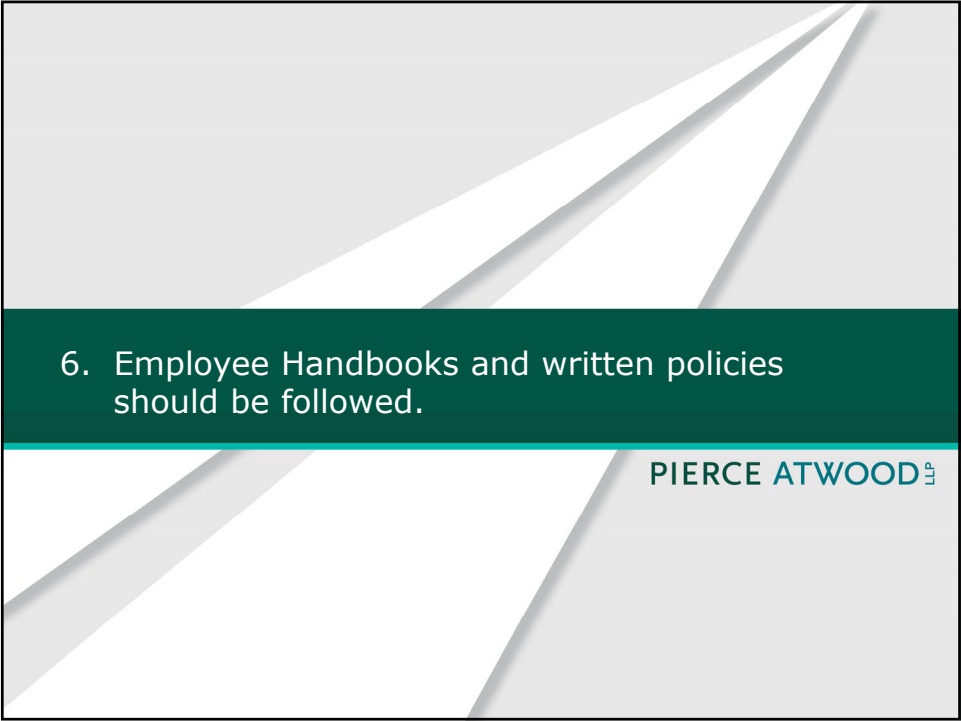
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At-Will Employment

Important tips:

- Generally best to hire employees with an offer letter/at-will employment instead of a contract (except for C-suite)
 - › Don’t promise a job for any period of time
 - › “We never fire anyone around here”
- Cannot require any particular notice for resignation, but can request it (2 weeks is typical)

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6. Employee Handbooks and written policies should be followed.

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Employee Handbooks

- Not a contract
- But, in most situations should be strictly followed
- Examples:
 - › Time off approval process
 - › Pay practices (e.g. overtime approval, business expenses)
 - › Conduct rules

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7. Nonexempt employees must be paid for all hours worked.

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Classification Issues

Exempt (Executive, Professional, Administrative, Outside Sales, Computer)

- Salary basis (\$844/week; \$43,888/year)
- Primary duty meets the definition
- No overtime; and no reduction based on hours worked

Nonexempt (Everyone else!)

- Must be paid for all hours worked
- Minimum wage and OT for hours over 40 in a workweek

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Hours Worked

Nonexempt employees must be paid for all hours worked, including:

- Hours recorded by employee and
- Unauthorized work that is performed with the knowledge and acquiescence of management

Meal Periods

If unpaid:

- Must be relieved of duty

If paid:

- Check state law regarding break requirement

Overtime

- Review Handbook – does overtime have to be pre-authorized?
- Under wage and hour laws, if employee works overtime without authorization, must be paid, but employer may take disciplinary action for failure to follow policy
- If you know employee is working off the clock, **take action**

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8. Federal law provides job protected leave.

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FMLA Basics

- Applies to covered employees of covered employers
 - › Employers with more than 50 employees
 - › Employees who have been employed for at least 12 months, have worked for 1250 hours in past year, and work within 75 miles of 50 employees
- May take up to 12 weeks of unpaid leave in rolling 12-month period
- For FMLA-covered reasons
- Must be returned to former job – or an equivalent one with the same pay and benefits

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Important Details

- FMLA leave may be taken continuously, intermittently, or through a change in schedule.
 - › But, intermittent leave is not required for healthy birth or adoption of child
- When medical need for intermittent leave is foreseeable, employee may be required to transfer temporarily into an alternative position with equivalent pay and benefits
- **FMLA is the floor, not the ceiling!**
- **FMLA leave and ADA leave do not count for attendance policy purposes**

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9. State law also provides job-protected leave – but for different reasons.

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Leave Laws: Important Reminders

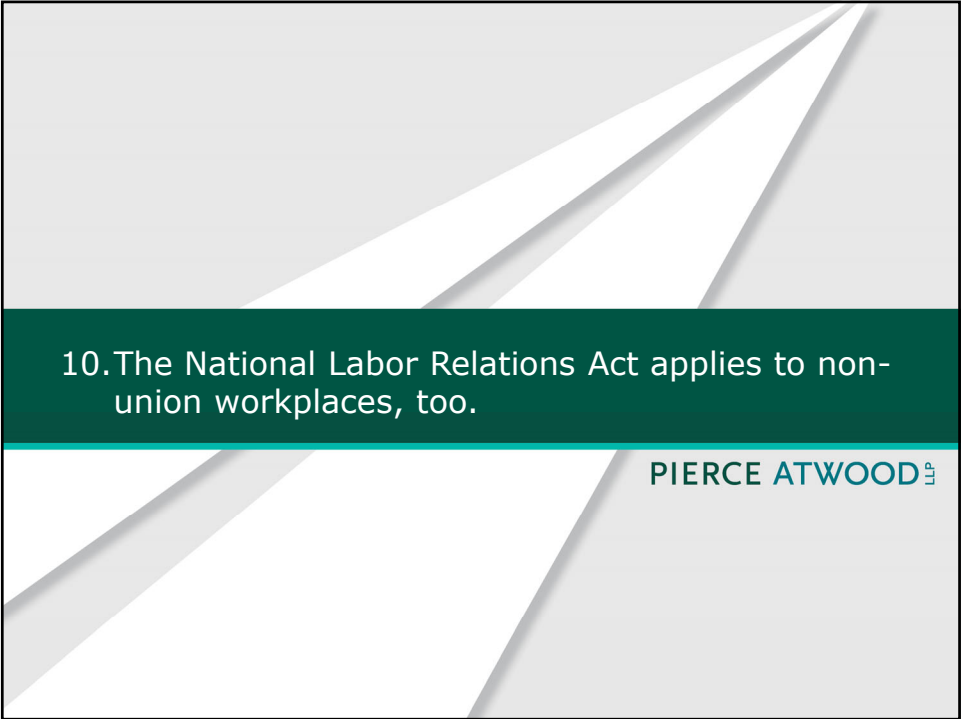
Employees may be entitled to a lot of leave (especially in MA) and use of leave is increasing!

- This is ***not*** inconsistent with a strong work ethic

Planning is important!

- Consider cross-training, utility players, staffing company relationships

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10. The National Labor Relations Act applies to non-union workplaces, too.

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National Labor Relations Act Basics

- Employee (union and non-union) have the right to engage in “protected concerted activity”: the right to communicate with one another (even very disparagingly) about
 - › Wages;
 - › Hours; or
 - › Working conditions.
- To be “concerted,” conduct must be engaged in by:
 - › 2 or more employees;
 - › 1 employee authorized to act / speak on coworker’s behalf;
 - › 1 employee seeking to induce or prepare for group action; or
 - › 1 employee raising group concerns.

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Applying the Law in the Workplace

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Hiring: Best Practices

- Don't ask questions about or discuss protected characteristics
 - › Ask job-related questions
 - › Use consistent questions for all applicants
- Provide accommodations for the hiring process, if necessary
 - › Don't ask about accommodations needed during employment
- Don't consider protected characteristics in making hiring decisions
 - › What about diversity goals?
- Identify legitimate, job-related reason for selecting or rejecting each applicant
- If you hire someone who does not have all of the required skills or experience, be intentional about training and support!

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Performance Management: Best Practices

- Commit to giving fair and accurate feedback about performance, both formally and informally!
 - › Hold yourself accountable to setting expectations that are clear and reasonable and feedback that is specific
- Give fair, honest feedback in writing at least annually
 - › Don't include stray remarks
 - › Listen for requests for accommodation
- Informal record of performance is very useful (e.g., emails, notes of conversations, etc.)
- PIPs are useful tools for employees and important protection for employers
- Don't tolerate poor performance or misconduct!
 - › Taking leave is not poor performance

Managing Extended Absences

- Know your policies
 - › Request protocol
 - › Total time available
 - › State law differences
- Partner with HR early
 - › Start the leave clock as soon as possible
 - › Address how the work will get done
 - › Be supportive of co-workers, but maintain confidentiality
- No freebies!
 - › Accommodation only after interactive process
 - › Time off only in compliance with company policy

Managing Different Personalities

- **Focus on performance**
- Know your team
 - › What motivates each person
 - › What are their long-term goals
 - › How do they derive meaning from their jobs
- Assess your team
 - › Goal is to put the right people in the right roles
 - › What do you see as their strengths/what do they see as their strengths
 - › What training or resources do they need
 - › What are they contributing to the team beyond their skills
- Have you given everyone opportunities that are in line with what they really want?

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When to Get Involved

- Managers can't pick up everything
 - › Micromanagement is hard on everyone!
 - › Choose wisely what to tackle and what not to tackle
- Err on the side of early feedback to address a problem before it festers or grows
- Intervene:
 - › If job duties are not getting done over a period of time
 - › If you see patterns of behavior that are problematic
 - › If the issue will impact department or team results
 - › If training or other resources will fix the problem

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Feedback Issues

Yolanda is on the phone for hours each day talking to her adult children. When she misses an important deadline, she complains about having too much work to do.

Sam has a complicated personal life and takes it out on his co-workers with snarky comments and an aggressive tone of voice.

Andrew is 10 minutes late for every meeting. It is so common that people jokingly refer to "Andrew time."

Alice is disorganized and loses anything anyone gives her. It is common for her co-workers to send her the same thing 3-4 times so that they can be sure she has it.

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Feedback Issues

Kamil "forgets" to punch out every Friday. The manager suspects Kamil is leaving early.

Angelica hates running monthly reports, which are part of her job duties. When a new employee joins the group, Angelica takes it upon herself to have the newbie run the reports.

Tom deals with difficult customers all day long and has a particularly positive style. Tom's manager frequently receives compliments for Tom's approach to managing complaints.

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Discipline: Practical Tips

Know the facts

- Investigate before issuing discipline
- Get the employee's explanation

Document

- Confirm conversations about discipline or performance
- Can be formal or informal
- Avoid excessive documentation

Be fair and consistent

- But . . . be flexible
- Encourage employee to comment
- Follow up

Termination: Best Practices

- Ensure that there is a legitimate, non-discriminatory reason for every termination decision and write it down!
 - › Tell the employee the legitimate, non-discriminatory reason for termination
 - › Sugar coating is dangerous!
- Carefully review all personnel records to ensure that there is nothing inconsistent with the legitimate, non-discriminatory reason
- If terminating employee following leave, first consider whether additional leave is necessary under the ADA (or any other applicable job-protected leave)
- (For MA employers -- don't forget the presumption of retaliation under PFML (i.e., for six months following PFML leave))

Termination: Quick Checklist

- Has the employee been on leave in past 12 months?
- Has employee ever reported harassment or discrimination?
 - › When?
 - › What happened?
- Has employee reported a concern about pay or benefits?
- Has employee reported any other wrongdoing by anyone in the company?
- Is there a good (written) record to support termination decision?
 - › If not, consider a PIP before termination
 - › Do you know enough to make termination decision

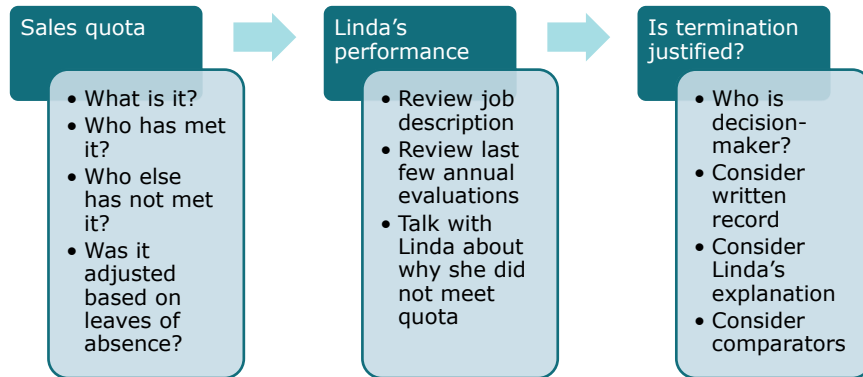
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Bias?

Linda, who just announced her third pregnancy in three years, failed to meet her sales quota for the second year in a row. Linda's manager, Sally, wants to terminate Linda before she goes out on leave.

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Decision Process



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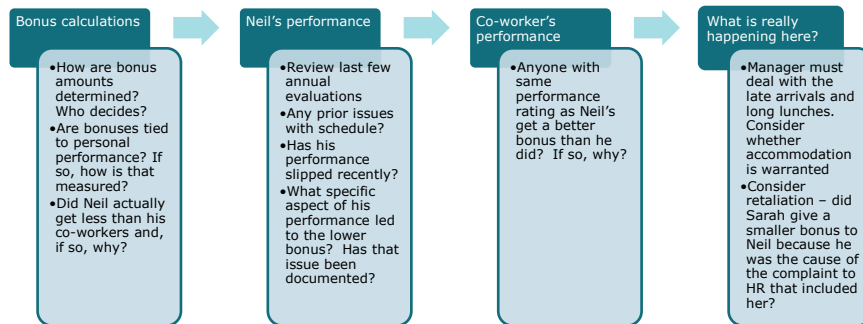
Bias?

Neil, an Accounting Specialist, has been at the company for 20 years. His work performance is fine (he routinely gets "meets standards" ratings and even occasionally gets "exceeds standards" on the things he does well), but he is not well liked by his co-workers because he makes strange comments that no one understands and is very rigid about procedures. People avoid him. Lately, Neil has been coming in late in the mornings and taking long lunches. He tells his manager, Sarah, that his doctor told him he has to take long walks throughout the day to manage his stress levels and that is why he is out of the office a bit more than he used to be. Sarah wants to respect Neil's privacy and decides to ignore his reduced hours. This is causing some resentment among the other Accounting Specialists who think that Neil is not doing his full share of the work. Three co-workers decided to go to HR to complain about Neil's performance and the manager's lack of response. No one in the group knows how HR handled that complaint.

When bonuses were paid out in March, Neil received the smallest bonus in his group. When he found out that everyone else in the group got substantially larger bonuses, he reported to HR that he was being singled out by his manager because of his mental health issues.

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Bonus Decision: Neil



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Final Thoughts

- Employment law is complicated!
 - › And people are complicated
 - › Good intuition and common sense are not always enough to get to the right decision
- "I need to run this business" will not go very far in a court room
- Increasing number of laws designed to protect employees
- Stay up-to-date on legal developments
- PARTNER WITH HR EARLY AND OFTEN!

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UPCOMING WEBINAR:

Managing Employees 201

*Setting Expectations, Giving Feedback,
and Assessing Performance*

Thursday, October 10, 2024
2:00 pm – 4:00 pm

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