

# MANAGING EMPLOYEES 101

*Presented by:*  
**Suzanne W. King**  
**Pierce Atwood LLP**  
**617.488.8159**  
**[sking@pierceatwood.com](mailto:sking@pierceatwood.com)**

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# Agenda

Part I:

10 Things Every Manager Should Know  
About Employment Law

Part II:

Managing Employees within this Legal  
Framework



# 10 Things Every Manager Should Know About Employment Law



## 5. There are 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

# 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)

## 6. Employee Handbooks and written policies should be followed.

- 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

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

# Classification Issues

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

- Salary basis (\$684/week; \$35,568/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



# 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

- Even “voluntary” work is not permitted if unpaid

Know your state law

- Significant variation in how states handle this issue

# 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

8. Federal law  
provides job  
protected leave.

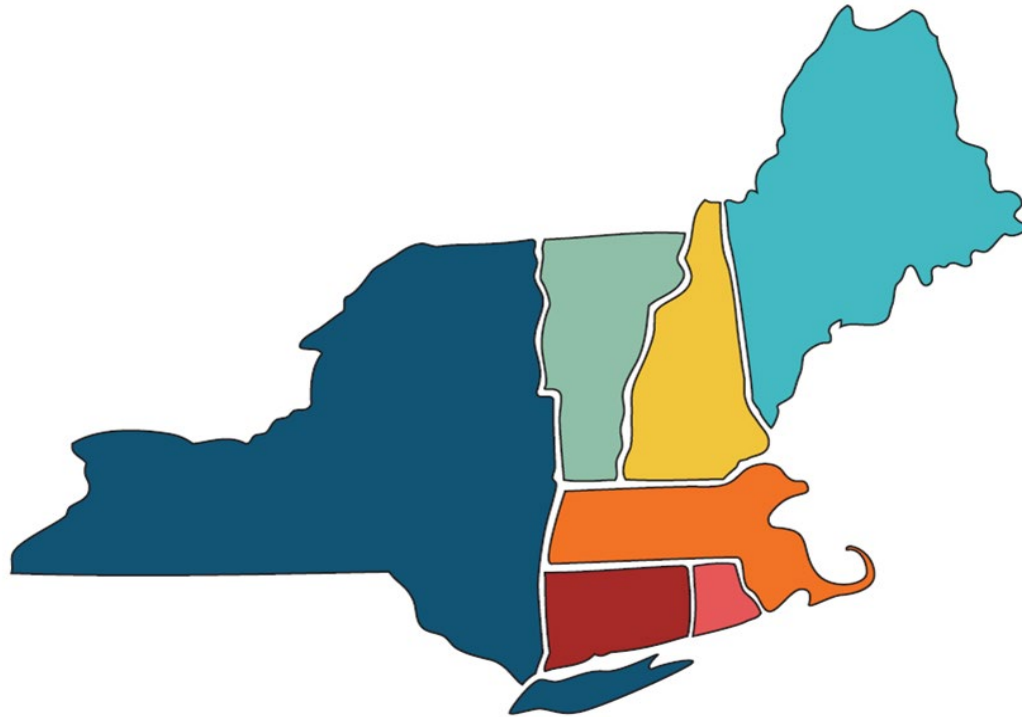
# FMLA Basics

- 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

# 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**

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



9. Many states also provide job-protected leave – sometimes (but not always) with different details



# 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

# 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.

# Applying the Law in the Workplace

# 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!

# Performance Management: Best Practices

- Managers generally required to 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
- Hold managers accountable for how they manage people!!

# 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?

# 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

# 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.

# 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.

# 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

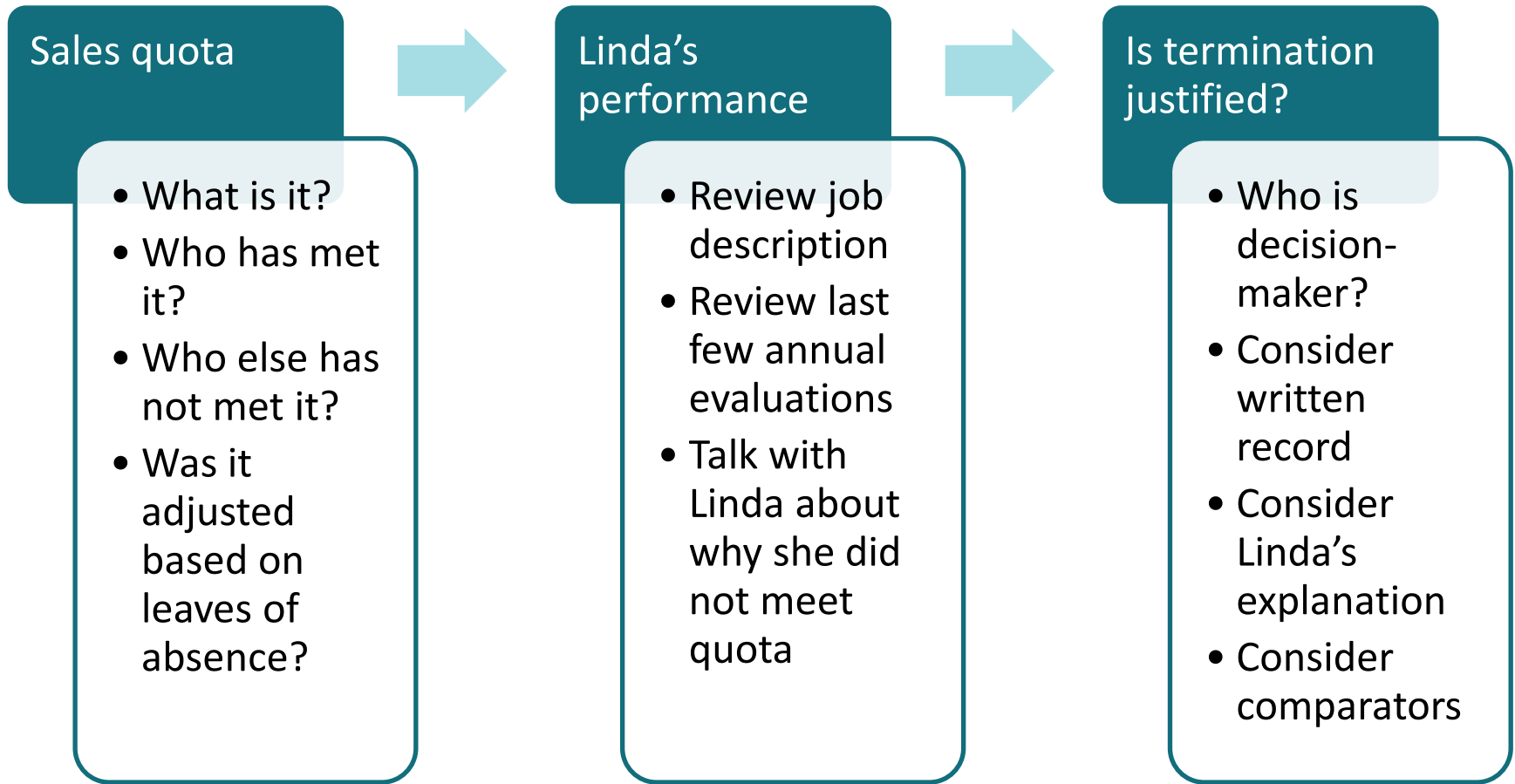
- Has the employee been on leave in past 12 months?
- Has employee ever reported harassment or discrimination?
  - › When?
  - › What happened?
- Has employee reported a concern about pay or benefits?
- Has employee reported any other wrongdoing by anyone in the company?
- Is there a good (written) record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

# 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 wants to terminate her before she goes out on leave.



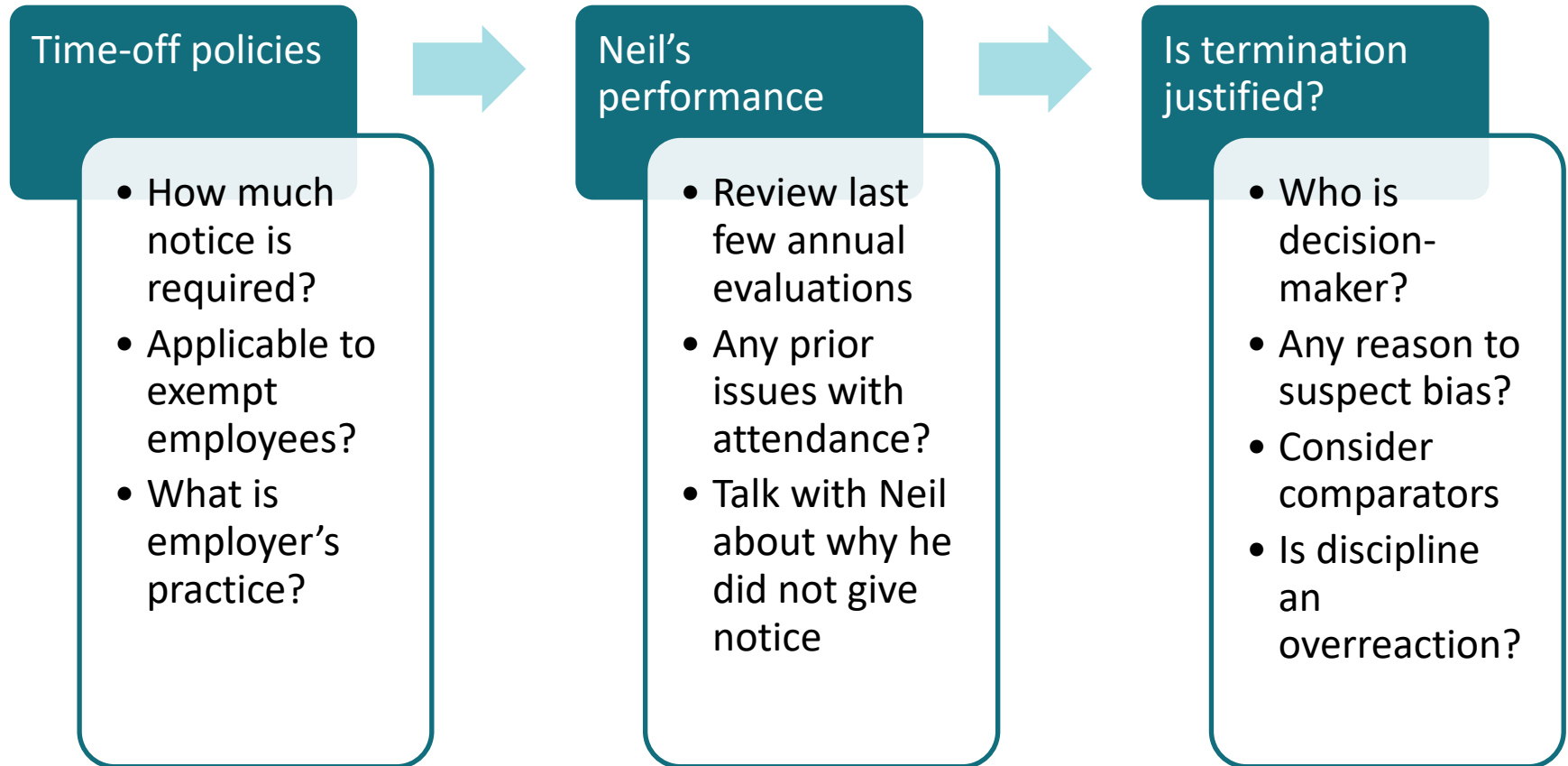
# Decision Process



# Bias?

Neil, an Accounting Manager, took 2 days off without advance notice or approval to attend an out-of-state rally promoting LGBTQ+ rights.

# Decision to Discipline: Neil



# 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!**

# UPCOMING WEBINAR:

## Managing Employees 201

*Setting Expectations, Giving Feedback,  
and Assessing Performance*

Thursday, October 12, 2023

2:00 pm – 4:00 pm



# Presenters

Suzanne W. King

[sking@pierceatwood.com](mailto:sking@pierceatwood.com)

100 Summer Street  
22nd Floor  
Boston, MA 02110

One New Hampshire Avenue  
Suite 350  
Portsmouth, NH 03801

PH / 617.488.8159