EMPLOYEE DISCIPLINE, CORRECTIVE ACTION, AND TERMINATION
By Barry W. Szymanski, Lawyer

STORIES. A new EMT, Jane, whose work is of very good quality, has begun to come to work late. Jane’s tardiness is causing some tension with the other EMT’s.

Paul, age 53 and a seven-year employee, has started to argue with his newly promoted supervisor, a Captain who is younger than Paul.

Tammy is well aware of the no smoking policy anywhere in the building, but keeps retreating to the basement when the weather is bad outside.

A veteran firefighter, John, has a personality conflict with his new Lieutenant, and feels that he should have been promoted instead of her.

EMPLOYEE DISCIPLINE. John’s Jane’s, Paul’s, and Tammy’s supervisors all have an employee who has a problem which requires attention. The necessity to correct or discipline another person often causes headaches for supervisors. It also detrimentally affects employee morale – both that of the problem employee and his or her co-workers. The intent of this article is to offer some guidelines to supervisors. [Note: if there is a union, then the contract must be adhered to in all cases.]

HIRING RIGHT FROM THE BEGINNING – OR AT LEAST ATTEMPTING TO DO SO. Obviously, hire right. Too often a person is hired because there is a job to be filled. The only job qualification is that a person knows how to complete a task [for example, Word and / or Word Perfect, and Excel]; whether a person is a good ‘fit’ for your department’s culture is not considered. [And, like it or not, every department has a ‘culture’]. One of the ‘big-ten’ accounting firms had great qualifications – what a few members lacked was integrity and honesty.

When you are considering hiring a new person you must consider their attitude and courage. You should investigate their willingness to learn and to adapt to change. In personal interviews you can ask carefully crafted questions through ‘what-if’ scenarios. An applicant’s references should be contacted by telephone, or, even better, in person. Inquiries could be made as to how the reference felt around the applicant. How did other employees feel around the applicant? How did the applicant make other employees feel? Customers? Did customers enjoy interacting with the applicant? Did other employees enjoy interacting with the applicant? Did you enjoy interacting with the applicant? While many references may be reluctant to give any information, some may be very helpful. There are entire books written on the subject of proper hiring, but these are some suggestions to start you on the path.
SUPERVISORY POWER. The supervisor of a problem employee must, repeat, must, have the authority to both hire and to discipline their employees. That power must extend from immediately suspending an employee to termination. A supervisor who is the person directly affected by the problems caused by an employee must have the clear authority to discipline. No buts . . . !

CORRECTIVE DISCIPLINE VERSUS OUTRIGHT TERMINATION. Department clients often contact me to discuss the actions of a disruptive employee and what options they have. My response to this first inquiry is to ask the employer if it is simply better to keep a disruptive person on the department rather than have a disrupted workforce! Some people just do not fit in a department.

Then, the second question I ask is whether the department desires to correct the employee, i.e., retain his or her services, or whether the employer desires that, no matter what, they want the employee relationship ended. Before termination, it should be asked if there is a personality conflict between the supervisor and the employee, or if there was [and is] a lack of training, or whether the employee can be transferred to another site [not just pawned off].

If an employer does intend to terminate an employee, then, because the State of Wisconsin is an “at will” employment legal policy state, the employee can be terminated. In other words, as long as there is no law, policy or procedure which conflicts with termination, or no contract with a union, a person may be terminated ‘at will’ for no reason. In an ‘at will’ employment state, there is no reason need be given to address ‘good’ or ‘bad’ faith. Important limitations, include, but are not limited to union contracts, employee contracts, rights set out in departmental policies and procedures, rights established by law in the state’s statutes, and public policy limitations on any employer’s right to discharge employees established by decisions of both federal and state courts.

For example, if the EMS or fire department has a written handbook, or a policy or procedure book, then, the employer’s own policy governs. In those situations where a written policy exists that ‘Just Cause’ be established, then the employer must comply. Historic grounds for fault or misconduct are usually these:

- refusal to comply with a supervisor’s / an officer’s / the department’s / the employer’s legitimate directions
- conviction of a felony
- under the influence of drugs or alcohol while on-duty or on-call
- use of illegal substances
- excessive absence other than that expressly allowed by agreement
- dishonesty
- conflict of interest and / or
- gross misconduct: defined as conduct that threatens serious injury to the department’s / employer’s / fellow employee’s / other member’s / visitor’s goodwill, or welfare [which may include the department’s reputation].
However, grounds for immediate suspension and/or termination are:

- insubordination
- willful misconduct
- disobedience
- any felony [crimes] and/or
- certain misdemeanors [crimes].

The policy or contract provision of termination for ‘just cause’ often justifies immediate termination of the employment. If no written policy exists that ‘Just Cause’ be established, then, under nondiscriminatory circumstances, the employer is free to terminate the employee.

CORRECTIVE ACTION. But what if the department wants to correct the actions of an employee? That is the main thrust of this article.

IMMEDIATE ACTION - TIMING IS EVERYTHING. In most instances, the employee should receive some sort of corrective statement as soon as possible after her or his breach. No supervisor should wait for days to pass before approaching an employee and then reminding the person of what they should have done days earlier. Even if the supervisor is not sure of what corrective action to take, the employee should at minimum be informed that a breach was made and that the supervisor will be approaching the employee within a few days to further discuss the breach and corrective action. During this time the supervisor should be discussing the matter with other departmental officers, and, if called for, the Board.

YOUR MISSION STATEMENT. Before I begin to talk about corrective action, I must address whether or not your Mission Statement is adequate to cover your employees. First, I trust that your EMS or fire department has a mission statement. Extremely brief examples of the department’s mission statement may be:

- “Our department exists to extinguish fires.”
- “Our department exists to help injured persons.”
- “Our company exists to ...________________.”

Usually, even a brief mission statement should suffice to cover all of the actions of the EMT or firefighter. But does it? Or should there be an addendum to the mission statement that also addresses the specific job obligations of the employee?

For example, our law office mission statement states that:

Our Law Office exists to solve matters and problems which are brought to us by Clients. Our standard of operation and service is excellence. We believe in substantial ongoing professional education. We believe that proactive law can protect the majority of Clients, and that education by newsletters and seminars are part of the proactive practice of law. We believe that no Client should ever
have a question or a concern as to how his or her matter is being handled. We believe that Clients should be presented with options so that the Client remains in control of the solution to their matter. We treat and care for a Client's problems as if they were our own and will loyally, honestly, and confidentially carry out our professional services.

But how does your bookkeeper begin to ‘own’ your overall departmental mission statement? How does your driver / bookkeeper / dispatcher / janitor / cook / vehicle mechanic view their own tasks? For if your employees cannot see themselves and what they do in your mission statement, then they will not picture themselves assisting your overall mission. There is no problem to add an addendum to their job tasks. And when your employee works with you to personalize what they do, they will start to ‘own’ the entire mission statement of your department and their part in it.

This is crucial, as I hope that you will shortly see, to corrective action.

It is also vital that when your employee is hired that he or she receive a copy of your department’s mission statement, as well as the addended employee mission statement for their job, together with a copy of your handbook of policies and procedures.

It is essential that your employee sign a statement when he or she receives the mission statement and handbook that he or she has received it, has had the opportunity to review it on paid departmental time, has had the chance to ask questions of you of any issues he or she has, and that he or she understands it. By the way, the same should be done to any additions or amendment to the mission statement and handbook.

KNOW YOUR EMPLOYEES. A supervisor should know her or his employees. Really know them. Know about their families. Know what their goals are. Know what makes them ‘tick.’ What are her and his concerns? What are their values? It is not enough to just have the employee show up for work. A supervisor does not have to be a ‘best’ or ‘close’ friend to know what drives the people they supervise. Motivation comes from within – not from the outside.

TWO TYPES OF CORRECTION. There are two types of correction which may be required, and you need to understand the difference. The first type is to correct an inviolable order or absolute rule. There is no discussion possible. The answer to the problem is either a yes or a no. Was Jane late for her shift? Did Robert turn in the EMS run report two days late?

The second type is the correction of a relative order. An example might be that Robert’s report was not what his new supervisor expected. This correction is arbitrary because prior supervisor’s may have accepted Robert’s late reports for the past 12 years without question. In this instance, Robert may view his new
supervisor’s attempt at correction as a personality clash rather than a job essential. Could Robert be right? Could the supervisor be right?

CORRECTIVE ACTION. If your employee is tardy, one ready course of action is to ‘read the riot act’ to the employee. But what if the tardiness continues?

Another, and friendlier, course of action recommended by some is to bring the employee into your quiet office with the door closed and ask the employee why she is coming in late, and ask what she will do in the future to correct her action.

I suggest that yet another method to handle the matter. Ask your employee to bring her mission statement and handbook to your office. Then ask your employee, after reviewing the mission statement and handbook, to write, on paid department time, her statement as to how her being tardy is, or is not, affecting the overall department’s mission statement. If there is a job addendum to the mission statement, then the question is more precise.

The employee's response will give you a better understanding of your employee's attitude. Attitude is what is of the essence in corrective action.

Calling an employee ‘on the carpet’ doesn’t change attitude. Or, if it does, her attitude may be that you are jerky and impossible to work for. But it does not attempt to cure her tardiness. Simply asking the employee why she is late, and what she can do about it, puts you in the same playing field as the employee; you are co-workers in solving a problem. Hopefully, by asking the employee to write a statement, after reviewing the department’s mission statement, of how she is fulfilling the goals of the department both reminds her of what those goals are, and also of how she is failing to assist in those goals. Most vitally, your employee is also disclosing her attitude toward you as the employer, individually and as a representative of the department. Further, you should not become the target. It is not you and your personality as a supervisor that is the key – rather it is her living up to what she signed up for as an employee. The employee may also realize that all fellow employees are all in the same situation [as well as you] in fulfilling the mission statement. This is critical to corrective action.

As a matter of operation, the employee should be given at least one-half hour to write her statement in a room by herself. You should not be in the room. She is to be paid on department time during this one-half hour and it should be during the regular work hours – not before or after [like a high school detention]. A definite, specific time should be given to the employee to return to your office. This is important. Then, at that time you should review her statement, be supportive if she shows that she desires to continue work for your department and is taking correction, and then both you and she should sign the statement. She should be given a copy, and be informed that the other copy will be filed in her personnel file. Thank the employee for her cooperation.
THE EMPLOYEE DOES IT AGAIN! When, using the tardiness example, the employee is late again, you begin in almost the same way. In a calm manner ask your employee to bring his copy of the mission statement and handbook to your office and to bring a copy of the statement he previously wrote about tardiness. Then ask your employee, after reviewing his prior statement, the mission statement and handbook, to write, on department time, a second statement as to how his being tardy is, or is not, affecting the department’s mission statement and how he views his first statement. This will give you more insight into the employee’s attitude.

THE EMPLOYEE DOES IT A THIRD TIME! Your first question after yet another breach is to ask yourself if this is time for termination. If, for some reason you decide that you want to continue to try to give the employee one more attempt, then I suggest that you inform him of the breach, but that you want to discuss the corrective action the next day. Then on the next work day you tell the employee that they will have [your choice] of either the entire day off with pay, or the afternoon off with pay, that he must leave the grounds, and to think about whether he wants to remain employed by the department. If he does, then to report back to work the next day. If not, then to inform you of his decision the next day. The employee is to leave the grounds at the time you set.

THE EMPLOYEE IS NOT COOPERATIVE. If your employee is not cooperative as to any step, he or she has caused their own dismissal. Non-cooperation is insubordination! There is no further discussion. This applies to all of the steps outlined above. If the employee refuses to write a statement, or to return at the appointment time, or to sign the statement, or . . . whatever, then that is grounds for immediate suspension, if not dismissal.

IF THE EMPLOYEE IS COOPERATIVE. If she cooperates fully, then you should have an employee with a change of attitude – or know why, which may even change your attitude – if that is appropriate!

YOUR MISSION STATEMENT RESTATED. If your mission statement is not clear, and / or is the job specific addendum is not clear, then it should be rewritten. In this case, especially with a smaller organization, you ought to seek input from all of the employees. If the employees are simply told, “top-down,” what the mission is, they will not own it. If the employees are part of the drafting of the mission statement, they will take ownership. Then, when corrective action is necessary, they will more readily accept it.

SUMMARY. The method which I outline is based on avoiding ill will, but, at the same time, discovering what the other person’s assumptions are. You cannot correct a person’s behavior in a vacuum. A gruff supervisor may say that she or he doesn’t care: “Just do it my way!” But that doesn’t create an employee who cares. What it creates is ill will and bitterness. [Perhaps that is why supervisor’s become gruff – they just do not know how to work with people.] Corrective
action is based upon adjusting the employee’s attitude to one of collaboration. Mere conformity to a rule may work in the short run, but it will not work in the long run. Well-run departments, like any organization, work as a partnership. And it takes time to develop a partnership – and it requires time to maintain one. Since both supervisors and employees spend over eight hours a day together – and in EMS and fire departments, it may over 24 hours together – it should be enjoyable to work together, which should be easier to attain if there is a shared common purpose.

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Barry W. Szymanski is a private Wisconsin lawyer and an emergency services consultant. Attorney Szymanski represents many EMS and fire departments, both volunteer and paid, government, for-profit and not-for-profit. He serves as the lawyer for the Wisconsin EMS Association. Barry W. Szymanski’s private practice includes employment issues. He often serves as a consultant on legal and ethical topics relating to operations and on policies and procedures. This article is presented to raise issues and questions, and is not intended as a detailed review of a very complex set of constantly modified state and federal statutory, regulatory, and case laws.

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