ASSOCIATION OF CALIFORNIA COMMUNITY COLLEGE ADMINISTRATORS (ACCCA) 2014 ADMIN 101

Nuts and Bolts of Human Resources in Community Colleges

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Today's Agenda

- Performance Evaluations
- Personnel Files
- Discipline
- A Word About Past Practice
- Discrimination
- Disability Issues

An Overarching Theme

The focus of Human Resource is conflict management;

- How do you manage conflict?
Employee Evaluations

TWO PRIMARY PURPOSES:
1. Communicating to Employee How He/She is Doing
2. Documenting Performance for the Time Period Since the Last Review

ACCURACY

A FEW KEY POINTS:
• No Surprises
• Document and Communicate
• Apply Proper Criteria
• Cover the Appropriate Time Frame
Evaluation of Community College Employees – Classified Employees

- Requirements for classified employee evaluations are usually contained in:
  - Collective bargaining agreement
  - District policies/procedures

Evaluation of Community College Academic Employees

- Frequency (Education Code § 87663)
- Academic Employees
  - Probationary (contract)
    - At least once in each academic year
  - Permanent (regular)
    - At least once in three academic years
  - Temporary
    - Within first year of employment
    - Thereafter, at least once every six regular semesters or once every nine regular quarters

Personnel Files
What Can You Put In?

• Education Code § 87031
• If the employee wishes someone else to inspect his/her personnel file, the employee must provide written authorization
• Inspection may be monitored
• Copies of documents in the file can be obtained at a reasonable copying expense

Personnel Files

Medical information must be maintained in a separate confidential file

Discipline of Employees
**Classified Employees Non-Merit System Disciplinary Procedure**

- Governing board prescribes grounds and written rules and regulations
  
  Education Code § 88013(c)

**Classified Employees Non-Merit System Disciplinary Procedure**

- No disciplinary action for:
  - Cause occurring prior to employee becoming permanent
  - Cause arising more than 2 years preceding date of filing notice of cause
  - Exception: If cause concealed or not disclosed by employee

  Education Code § 88013(d)

**Classified Employees Merit System Disciplinary Procedure**

- Personnel Commission
  - Sets rules and causes for dismissal
  - Caution: Bargaining unit members will be in negotiated agreement
  - Causes for suspension or dismissal in addition to Personnel Commission rules
Academic Employees

Disciplinary Procedures

- Probationary (Contract) Academic Employees
- Permanent (Regular) Academic Employees

Education Code § 87732 establishes the causes – not negotiated

Academic Employees

Disciplinary Procedure

- Probationary faculty: Understand the distinction between non-renewal of contract v. discipline
- If discipline, must use same procedure as for tenured faculty members

Academic Employees

- Contract Employee Release
  - First Contract (Education Code § 87608)
  - Second Contract (Education Code § 87608.5)
  - Third Contract (Education Code § 87609)

- Challenges to decision to release are processed as a grievance
Academic Employees

Disciplinary Procedure

- Procedures are also set out in Education Code
- Statement of charges served on employee
  - 4 year jurisdictional bar
- If hearing requested, arbitrator selected or OAH assigns ALJ

Academic Employees

- Employment of Educational Administrators
  - By appointment or contract of up to 4 years (Education Code § 72411)
  - Absence of express appointment or contract (Education Code § 72411.5)
    - Tenured
    - Non-tenured

Skelly Procedures

- Protect the due process rights of employees being disciplined
- Elements:
  - Written Notice
  - “Skelly” Hearing
  - Imposition of Discipline
  - Right to Appeal to Neutral Party
What Discipline is Appropriate?

- Work with HR!
- Considerations:
  - Offense
  - Longevity
  - Prior Discipline
  - Performance Record
  - How Others Treated for Same or Similar Offense

A Word About Past Practice

Past Practice – DEFINITION

An ongoing reaction to recurring types of situations having mutual acceptance by both labor and management.
Past Practice – ELEMENTS

1. Consistency
   (recurring)

2. Longevity
   (occurring over period of time)

3. Mutuality
   (acceptance)

Past Practice

• Does the collective bargaining agreement address the issue?

• Is the collective bargaining agreement clear and unambiguous or silent?

Past Practice – REVERSING

• Consult With Management
• Publicize Intent
• Allow Time Interval
• Set and Implement a Deadline
Past Practice – QUESTIONS

- Am I consistently implementing and enforcing rules and policies?
- Is there any laxity or disparity in the application of practices?
- Are there practices I need to eliminate before they become binding?

Discrimination and Harassment

Federal & State Law Prohibit Discrimination Based on:

- Race
- National Origin
- Disability/Medical Condition
- Sex (Includes Pregnancy)
- Religious Creed
- Marital Status
- Age (40 & Above)
- Sexual Orientation
- Gender Identity/Expression
Forms of Discrimination

- Disparate Treatment
  - Intentional
  - Harassment
  - Retaliation
- Disparate Impact

Forms of Harassment

- Quid Pro Quo (Sexual Harassment)
- Hostile Work Environment
- Retaliation

Quid Pro Quo Sexual Harassment

Job Benefits Promised in Exchange for Sexual Favors or Denied If Sexual Favors are Not Given.
“Hostile Work Environment” Harassment

- Protected Status
- Physical, Verbal or Visual Behavior
- Objectively and Subjectively Offensive
- Severe and/or Pervasive
- Interfere with Employee’s Ability to Perform His/Her Job or Alter the Conditions of Employment

Retaliation

- Protected Activity
- Adverse Employment Action
- Causal Link

NO RETALIATION

Disability Issues
Two Issues

• Does the Individual Have a Disability?
• If So, Have You Met Your Reasonable Accommodation Obligations?

Physical Impairment

• Individual with a physiological disorder, condition, etc. affecting one or more bodily systems
• Individual regarded as having such a disability
• Individual with a record of such disability
• ADDITIONALLY, under FEHA:
  – Impairment requiring statutorily provided special education or related services
  – Condition posing future impairment

Mental Impairment

Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities
Major Life Activity

- Caring for one’s self
- Performing manual tasks
- Bodily functions
  - breathing, seeing, hearing, speaking
- Learning and concentrating
- Walking, sitting, standing, lifting, reaching and sleeping
- Participating in community services
- Working

Interactive Process

- Interactive Process is Communication Held in Good Faith Between Employer and Employee to Identify and Implement a Reasonable Accommodation
  - In the 9th Circuit, Interactive Process mandatory under the ADA
  - Interactive Process also mandatory under FEHA

What Triggers Interactive Process

- Notice to employer by employee of desire for accommodation
- Employer’s actual or constructive knowledge of employee’s impairment
Examples of Employee Requested Reasonable Accommodation include:

• Modify work schedules
• Changes to workplace or acquisition of equipment & devices
• Modifying a current position (but not essential duties)
• Transfer to Vacant Position (equal or lower level)
• Paid or unpaid leaves of absence
• Personal assistants
• Employee uses his/her own equipment or services

Reasonable Accommodation and Discipline

• No duty to waive discipline even if disability is the source of misconduct
• Must accommodate disability to allow employee to participate in grievance or discipline process

Thank You

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