

LESSON 11

LO4.2- Describe the employment exit procedures used by two organizations.

Objectives

Students should be able to:

1. Recognize procedures used in cessation exercises
2. Recognize errors used in cessation exercises
3. Make suggestions on improvement in the exit procedures practiced by organizations.

Take notes:

- Examine the reason for termination
- List the action(s) taken by manager/supervisor
- Note the procedures followed
- List conditions under which termination was offered
- Note actions taken by employee and final result

Case Study: Termination of Restaurant Manager & Handling of Subsequent EEOC Complaint

- Situation: Hiring & Firing

Bill Jones owned The Bistro, a small, quick-serve restaurant in Raleigh, NC. He hired Sid Milliman to manage The Bistro. Sid was a 54-year-old white male with 15 years of restaurant management experience; Bill thought he had hit a homerun.

Unfortunately, Sid turned out to be one big strike-out. After six months on the job, Bill had to terminate him for poor performance and violation of company policy. The “front of store” was not properly cleaned and stocked; the kitchen was not cleaned; food was not prepped; and employees were not being supervised. Sid frequently took time off for personal business during work hours without informing anyone. Bill tried to coach Sid on his performance, but did not see any improvements

One night after closing, Bill went to check something in the back office, and found Sid looking at pornography on his computer. Bill confronted Sid and, after further investigation, discovered Sid regularly looked at pornography and spent a significant portion of his work day emailing his wife, helping his daughter with homework, and even designing his own restaurant.

The Bistro's employee handbook clearly stated that employees were not to use company equipment for personal use. All employees, including Sid, had received and acknowledged receipt of the employee handbook.

Bill had no choice. He fired Sid for poor performance and violating company policies.

- **Employee Response:**

EEOC Complaint Sid wasted no time responding to his firing. He immediately filed an EEOC charge of discrimination, claiming that he was replaced by a female under the age of 40 and thus was a victim of age discrimination

- **Employer Response: Look at the Evidence**

To deal with the EEOC complaint, Bill brought in his HR consultant. Bill's HR expert first reviewed hiring/firing statistics for The Bistro. The data demonstrated that Bill had been consistent in firing people for performance—without regard to sex or age.

She learned that Sid had not been replaced, but that his duties had been redistributed to two existing employees, one male and one female; and she verified that Bill had followed proper protocols for firing Sid, per the employee handbook.

Bill's HR expert also organized the evidence to demonstrate that Sid had violated company policy—copies of personal emails, websites surfed, and Sid's personal business plan—all done during work hours.

Outcome

At the EEOC hearing, Bill presented his evidence, declined a cash settlement, and successfully had the discrimination charges dropped.

Names and personal details were changed to protect individual identities.

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Case#2: Does Racism
amount to a poisoned
workplace

At the end of last month, the Ontario Court of Appeal concluded in *General Motors of Canada Limited vs Yohann Johnson* that while the former employee, Johnson, “genuinely believed that he had been the victim of racism in his workplace” and that his “perception of events unfortunately led to stress and mental anguish”, the evidence did not support Johnson’s claim of a work environment poisoned by racism or constructive dismissal.

In a fairly rare move, the Court of Appeal overturned the trial decision because it disagreed with the trial judge’s factual conclusions, rather than any significant concern with the application of law.

Facts

In that case, Johnson, a black man, was a production supervisor in the body shop at GM's Oshawa assembly plant. Among his various duties, he was responsible for training group leaders in the body shop on a new system of policies and guidelines.

One employee named Markov refused to train with Johnson. Based on a number of factors and statements by co-workers, Johnson claimed that Markov refused to train with Johnson because of race. The Court of Appeal accepted the evidence that Markov refused to train because of an insensitive remark Johnson had allegedly made to Markov a few years earlier.

The company conducted three different investigations, and each time had concluded that Markov's refusal to train with Johnson was not motivated by race. Markov, in fact, had agreed to take the training with another supervisor who was of colour.

What remained a significant challenge at trial was that Markov had unfortunately died before trial, so his credibility and his version of events could not be admitted or tested.

- **Medical Leave**

Johnson eventually took a medical leave, asserting disability arising from discriminatory treatment due to racism in his workplace. He was absent from work for the next two years, after which he met with the company's doctor, who concluded that Johnson was fit to return to work.

The company offered Johnson two different positions, both of which were approximately a kilometre away from the assembly plant body shop, offered to adjust Johnson's shifts and possibly his supervision. Johnson declined the offers, maintaining he was disabled from working in any GM plant, but provided no medical information to support the claim. Johnson remained concerned that he would run into certain employees, including Markov.

Two months later, the company wrote to Johnson, who had still not returned to work, to confirm the offered employment opportunities, and concluded that in the absence of any medical support for the continued absence, Johnson was resigning from the company.

- **Johnson's Litigation**

Johnson sued for damages for constructive dismissal and a poisoned workplace based on racism. The Trial Judge agreed with Johnson, and awarded him various damages.

The Court of Appeal overturned the decision, concluding among other things that Johnson failed to establish systemic or institutional racist behaviour:

“I agree with GM's submission that a single incident of this kind, with a single employee, over the course of an eight year working relationship cannot objectively ground a finding of a work environment poisoned by racism.” (paragraph 71)

The Court of Appeal made several conclusions in support of the company, including the following:

there was no evidentiary basis to support that Markov was racially motivated in his refusal to train with Johnson, or that Johnson was required to return to a poisoned work environment when the company offered him two different positions;

Johnson did not have the right to dictate where he would work or the employment role he would assume on his return to work;

an objective standard governs the determination whether a workplace is poisoned, by reason of racism or harassment, not just the subjective perception of the plaintiff; and the company was “not obliged to immunize Johnson from any future contact with Markov or other body shop employees”, and the mere possibility of contact with the employees does not alone establish that such exposure would result in future discriminatory treatment of Johnson.

- **Take-Away for Employers**

The onus of establishing a poisoned workplace is on the employee making the claim. It is not an easy hurdle to meet, and must be based in solid, objective evidence.

The Court of Appeal was sympathetic to Johnson's genuine belief that he had been the victim of racism in his workplace and that he had suffered personal anguish as a result, but it could not conclude that Johnson's belief was sufficiently supported by objective evidence.

The critical step to all workplace human rights complaints is to ensure that all complaints are taken seriously, and that a well-trained person conduct an objective, detailed investigation and thoroughly explore the issues, interview witnesses and fully document the entire process. Because at the end of the day, it doesn't really matter what we all perceive to be the facts – we have to prove them to obtain a legal remedy.

<http://www.canadaemploymenthumanrightslaw.com/articles/termination-of-employment/>

- **A Termination at an Average Company**

Joe's entire 24-year career has been spent with Average Company. He's worked his way up from an entry-level staff position into middle management. Joe has always been a "company man" and until recently, loved by everyone in the organization. Along the way, he has accepted several relocations, always worked long hours and never complained as the demands multiplied. The company has been his life. Just a few years ago, Joe was "on top of the world," in his words, when Average Company named him Leader of the Year.

The past year has been a time of significant challenge. Joe's new position is much more complex and stressful than he envisioned. The 70-hour workweeks have been especially difficult for him and his growing family. Although Joe has restored the division's profitability, he continues to struggle with the area's longstanding customer service issues.

Joe's newest boss - his fourth in 18 months – has had enough. Under C-suite level pressure to fix the service problem, the boss concludes that Joe's roll up the sleeves work style is to blame. He is convinced that the solution lies in a more contemporary leader to dissect metrics and implement innovation

- The news is delivered to Joe via a surprise meeting with the boss and HR on a Friday at 4:30 pm. Joe is offered three months of pay and no other benefits. Coworkers are told that Joe decided to “pursue other options,” but are also advised to avoid contact with him. With an awkward handshake and under the watchful eye of the security manager (who was an indirect report to Joe), the door closes on a long career

- **A Termination at a Best Company**

Pete is a leader at Best Company. His situation closely mirrors Joe's. In contrast, however, Pete's long tenure and demonstrated loyalty is highly valued at Best. Senior leaders in Best Company are fully aware of the professional and personal challenges that have affected Pete over the last year, and they care about him as an individual. When Pete's new boss proposes replacing him with a different kind of leader, the tables are turned. The boss is charged with finding ways to develop and support Pete, ensuring his success in the role. Anything short of this outcome will be viewed as failure on the *boss'* part.

- If the boss and Pete collaboratively decide that a change is best for all, the boss will be supported by HR to identify a more suitable role within the company. In the unlikely event that there is no viable option for Pete, Best Company will invest in a generous severance package out of respect for his many years of service. The package will include outplacement assistance, recognizing that Pete can greatly benefit from this type of support. Pete will stay connected to the company through its social media alumni networks; regular personal contact with former colleagues will be encouraged. Throughout the transition and beyond, the company's main concern will be the preservation of Pete's dignity.

REFERENCES

- How Best Companies Terminate Employees. 2014. *How Best Companies Terminate Employees*. [ONLINE] Available at: <http://www.greatplacetowork.com/publications-and-events/blogs-and-news/2359-how-best-companies-terminate-employees>. [Accessed 31 October 2014].