



ZASHIN & RICH

County Engineer's Association
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Discipline or Consequences

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Jonathan J. Downes

- More than thirty years of experience and expertise in representing public and private employers in all aspects of labor and employment law and human resource management.
- Negotiated over 500 labor contracts.
- Represented employers in arbitrations, organizing campaigns, and administrative hearings.
- Defends employers in state trial and appellate courts, the Ohio Supreme Court, federal district courts and the United States Court of Appeals for the Sixth Circuit.
- Preeminent rated by Martindale Hubbell.
- Fellow in the College of Labor and Employment Lawyers.
- Recognized many times over as a subject-matter expert, Jonathan was selected as one of the Top 50 Central Ohio Lawyers of 2015 and every year since 2004 has been named an Ohio “Super Lawyer”.



DISCIPLINE OR CONSEQUENCES

This presentation addresses the role of supervisors in the management of employees, the importance of the supervisors, and the possible consequences from discipline, positive and negative.



SUPERVISORS ROLE IN MANAGEMENT

Supervisors are the first line of management.

- **Supervisors are the staff sergeants of the Engineer's office.**
- **Supervisors are more aware of the day to day work and performance of employees**



SUPERVISORS RESPONSIBILITIES

- **Supervisors: higher standard of conduct**
- **Responsible for enforcement of standards, such as:**
 - **Attendance policies**
 - **Drug testing**
 - **Workplace conduct policies**



CONSEQUENCES OF DISCIPLINE

- **Legal**
- **Practical**



LEGAL CONSEQUENCES OF DISCIPLINE

- **Lawsuits**
- **Restructured jobs**
- **Accommodations**
- **Workers compensation**
- **Retraining required**
- **Insurance costs**



PRACTICAL CONSEQUENCES OF DISCIPLINE

On a daily basis if an employee is not performing or violates rules the supervisor is the one who must address the performance.

If there are issues with an employee the supervisor must also respond to the concerns of the other employees.



SICK LEAVE FORMS

When in doubt, do not sign.

Approving or Recommending Sick Leave

Identify “Serious Health Condition” FMLA event



ADA – EYESIGHT & DRIVING TRUCKS

Rorrer v. City of Stow 743 F.3d 1025 (6th Cir. 2014)

Is Eyesight an Essential Function for firefighters?

Were national guidelines adopted? Position description does not specifically identify a lifting requirement or any other physical fitness requirement.

Is driving an emergency vehicle an essential function of firefighter?



ADA – LOST LEG, ACCOMMODATIONS

Henschel v. Clare County Rd. Comm'n, 737 F.3d 1017 (6th Cir. 2014)

Employee was as an excavator operator when he lost his left leg above the knee in a motorcycle accident. Employer did not allow employee to return to work because it claimed (1) hauling is an essential function of the excavator operator position; (2) on its own conclusions that the position would fundamentally change if that responsibility were given to another employee; and (3) that it lacked other employees to undertake the responsibility. Summary judgment reversed.



ADA – DRINKING AT LUNCH

Blazek v. City of Lakewood, 576 Fed. Appx. 512 (6th Cir. 2014)

An employee is caught drinking during his lunch break. He maintains a commercial driver's license, and his job duties require him to operate vehicles. He tells the employer that he is an alcoholic. The employer terminates the employee.

Employee did not seek an accommodation for his disability (alcoholism) before he lost his job. Further, he lost his job for violation of the employer's alcohol policy, not for being an alcoholic. If the employee were not violating a conduct rule and had asked for an accommodation, the employer may have had a responsibility to provide it.



ADA/FMLA/WC – USE OF UNPAID LEAVE

ADA: unpaid leave is a form of reasonable accommodation.

FMLA: unpaid leave or leave with pay can be given to a qualifying employee.

WC: leave from work may be necessary to permit an employee to heal. Leave may be paid/unpaid, and/or WC benefits may be payable.



ABSENTEEISM

- **Patterned Absences.**
- **What if there is no “pattern”, it’s just excessive?**
- **Define excessive absenteeism in your policies or collective bargaining agreements to include both types of absenteeism.**
- **What about “Physician’s Notes”?**



RESPONSES TO SICK LEAVE REQUESTS

- **Don't make it so easy to call off sick.**
- **Don't accept just any old doctor's excuse.**
- **When in doubt, send the employee to your own physician.**



FMLA – WHAT ARE THE CLUES

- **Don't overlook the obvious.**
- **Is this a qualifying medical condition?**
- **What's a "Serious Health Condition"?**



MEDICAL EXAMINATIONS

- **When Can You Send an Employee for a Medical Examination?**
- **What do You Want the Examination to Tell You?**
- **Getting the Employee to Sign a Release.**
- **Involuntary Disability Separation.**



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THANK YOU!

If you have questions concerning this presentation, please contact:

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