



Managing Safety Risk Takers: Legal Discipline Strategies For Workers Who Disregard Safety Obligations

Presented by:
Edwin G. Foulke, Jr.
Phone: (404) 240-4273
Email: efoulke@fisherphillips.com

1

Safety Is A Personal Decision



2

Workplace Injuries

What is behind most workplace injuries?

- A lack of safety training
- Poor equipment, policies, or systems
- Ignorance
- Inattention to risks

3

Safety Issues: What were they
thinking?



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Perceived Risk Levels

An individual's perception as it relates to a particular job or task:

Ability to determine risks associated with the individual's definition of his/her experience, history, training & communication, amount of control individual feels they have,...to the criteria they use to judge the situation.



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Safety = Personal

Safety is something that's personal – it involves an individual

Making a conscious decision to work safely in the workplace or at home.

6

Safety Challenges

1. Attitudes
2. Competing Priorities
3. Hazard Awareness

7

The Four A's of Safety

- Attitudes
- Awareness
- Action
- Accountability

8

Attitudes

- It won't happen to me!
- I've been doing this job for 15 years
- I'm CAREFUL!
- I don't want to get (someone) in trouble!

9

Safety As A Value

- Safety part of your employee's character
- Think about safety
- Talk about safety
- Work safely
- Safety as a habit

10

Safety As A Value

Without safety awareness employees
may think about:

- The next day's schedule,
- Mowing the lawn,
- Evening activities

Anything but safety.



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Safety Awareness

Why develop a sense of safety awareness?

Without it employees will not:

- Wear their PPE, or wear it properly
- Be aware of the potential for injury or illness
- Observe simple rules (such as good housekeeping)

12

Human Factors and Safety

The following human factors are common causes of incidents:

Memory – Memory lapse may occur at any time

Judgement and reasoning power – May be reduced due to many factors

Attention – Failure to remain attentive or lack of attention

Delayed or false sensation of the sensory organs – Failed senses that could otherwise stimulate a response to avoid the incident



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Prevention Measures

Incidents that are caused due to human (personal) factors may be prevented or reduced by the following preventative measures:

- Training and skill development
- Education and awareness
- Supervision, monitoring and controlling
- Feedback and reports
- Frequent inspections and audits



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Performance Management In Dealing With Safety Risk Takers

- Performance management is an ever increasingly important tool of employee relations
- Gone are the days of relying on the “at-will” clause and here are the days of acknowledging that using coaching and counseling prior to termination has numerous benefits
 - Decreases transitional cost and time for replacement
 - Increases employee engagement; and
 - Reduces risk assessment in termination cases.



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Hypothetical

You recently took over a foundry operation that has 20 employees. An employee in the pour department, Thorn N. Myside, has been in the pour department for about two years. He is constantly not wearing his PPE. He is more interested in horse playing instead of focusing on his job. Because of his horse play, another employee received burns from splashing hot iron. Thorn has also failed to follow the company’s LOTO procedures when performing maintenance of his equipment. We have to do something here.



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Traits of An Effective Manager

- Addresses and resolves problems as they occur
- Identifies employees who need training, support, or direction
- Is accessible and approachable
 - True open door policy
 - Follows up with employees
- Accurately documents issues and discussions



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Your Role As Supervisor

- Creating standards for employee safety performance
- Demonstrating leadership in department competencies to motivate high levels of safety performance
- Objectively analyzing employee's safety performance and giving timely feedback
- Collaborating with your Safety Department to improve employee safety performance
- Keeping employee on notice of both positives and negatives of safety performance
- Effectively documenting the employee's overall safety performance



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Understanding HR's Role In Performance Management

HR Departments provide guidance and support to both the manager and the employee through consultation.

HR Departments assist managers with drafting and delivering all performance-related notices.

HR Departments can help facilitate difficult conversations and assist in documentation and record-keeping.



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Overview



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Step 1: Getting The Right People

- Recruiting
- Screening
- Interviewing
- Hiring
- *This also applies to internal promotions and transfers.*



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Step 2: Making Safety Expectations Clear

- Sources of information to employees regarding the company's safety expectations
- Orientation
 - New hire
 - Department-specific onboarding
- Employee handbook
- Other company safety policies and procedures
- Written job description to include safety
- Offer letter
- Safety training
- Quarterly performance discussions
- Regular 1:1 meetings (at least once a month)



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Step 3: Safety Performance Management



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Nine Requirements for Successful Coaching

Accurately identify what safety behavior change you desire

Employee's behavior must affect the results

Maximum involvement of employee in face-to-face discussion

Provide specific feedback

Identify for employee the need for the change

Employees must understand they are responsible for their own safety behavior

Employees must perceive this is in their best interest

Equally committed to same goals

Acknowledge and praise safe actions as they occur



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The High Cost of Disengagement

- \$450 - \$550 Billion annually in U.S. alone
- \$2,264 per disengaged employee
- Disengagement gives rise to other costs:
 - Theft/pilferage
 - Diminished productivity, safety & quality
 - Increased medical and other expenses
 - Impaired customer service/employee relations
 - Turnover



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Seven Guarantees for Failure in Coaching



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Ways to Provide Performance Management of Risk Takers

- Immediate Review of Unsafe Behaviors or Practices
- Quarterly or Annual Performance Evaluations
- Weekly or Monthly Status Reports
- Informal Coaching and Mentoring
- Corrective Action Notices
- Disciplinary Action



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Benefits of Quarterly or Annual Safety Performance Evaluations

- Accomplish important objectives
 - Goal setting and motivation for employee
 - Reinforces good safety performance (and reverse)
 - Basis for raises, bonuses, and promotions
 - Makes record (good/bad) for legal defense



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After Any Employee Safety Performance Management Conversation

- Use corrective action if appropriate
- Make notes throughout the quarter for next conversation
- Follow-up on unsatisfactory safety performance – separate employees who fail to improve their safety record



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Methods of Corrective Actions



- Always work with your HR Department to draft and deliver performance counseling



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Engaging In and Documenting Corrective Action

- No matter the method of delivery, keep your performance management “C.L.E.A.N.” and “N.E.A.T.”



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The “C.L.E.A.N.” Doctrine

- **C**onsider facts behind discipline
- **L**earn what managers, witnesses, and documents have to say
- **E**valuate what disciplinary action has been taken in the past
- **A**nalyze risk
- **N**arrow down potential options and decide



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The “C.L.E.A.N.” Doctrine

- Consider the facts behind potential discipline
 - What happened?
 - Who witnessed it?
 - What documents exist?
 - How did the issue come to your attention?



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The “C.L.E.A.N.” Doctrine

- Learn what managers, witnesses, and documents have to say
- Collect information from managers and review relevant information
- If appropriate, talk to witnesses who may have seen the event or have knowledge about the issue (other managers about employee’s safety performance)
- Talk to the employee and get his/her side of the story



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The “C.L.E.A.N.” Doctrine

- Evaluate what disciplinary action has been taken in the past
- Department, facility, and potentially company-wide analysis
- How has this manager reacted to similar situations in the past
- “Didn’t we only issue a verbal warning to Sally last month ...?”



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The “C.L.E.A.N.” Doctrine

- Analyze risk
 - Who is the manager?
 - Who is the employee?
 - What support is available for the decision?
 - What protected safety category does the employee fall into?
 - Whistleblower
 - Recent complaints?
 - Other issues that could come up because of discipline (e.g., EEOC, wage and hour)?



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The “C.L.E.A.N.” Doctrine

- Narrow down potential options and decide
 - Training
 - Policy acknowledgement
 - Verbal warning
 - Written warning
 - Suspension
 - Termination
 - Severance?
- How are we treating similarly situated individuals?



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The “N.E.A.T.” Doctrine

- **N**otice
- **E**xplanation of deficiencies
- **A**ssistance in how to improve performance
- **T**ime for improvement



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Verbal Counseling

1 Creates a blueprint for more formal counseling

2 When possible refer to training materials, procedures or employee handbook

3 Don't allow it to go on for months



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Written Counseling

Detail what they did wrong
What, when, where, how and why

Refer to policies & procedures

Give deadline to correct problem
Effective immediately and going forward



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Written Counseling

- Meet with the employee to review safety evaluation and issues as well as expectations for improved safe behavior.
- Follow through by providing further counseling, disciplining or termination, if necessary.

Include language:
“Repetition of this conduct, failure to follow any of our normal work rules or rules of conduct, or to meet our standards of performance will result in further disciplinary action, up to and including termination of your employment.”



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Discipline Documentation - Example

Dear Bailey:

I was upset by your conduct last week. Your attitude indicates a lack of concern and attentiveness for safety and was insubordinate. If you have any problems, you should feel free to discuss them with me. If things don't improve, I may have to recommend your dismissal.



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Failure to Improve - Signature

I have met with my manager and have reviewed and discussed the above. This action is the result of performance deficiencies, problems, and/or other concerns cited herein and summarized for inclusion in my personnel file. I understand that if I fail to improve and/or correct the behaviour noted above, that I could be subject to further disciplinary actions up to and including termination. Signing this document is not an admission, but an acknowledgement that I have been counselled and warned as noted above.

Manager's Signature Date _____

Employee's Signature Date _____

Witness's Name & Signature Date _____



Documentation Is Critical

- Juries will only believe you if you put it in writing
- When its just your word against theirs, you lose most of the time



Step 4: Releasing of Safety Risk Takers

- Last resort is termination of employment
- Must be set up properly
- Documentation is critical
- Must show that employee has been advised of safety rule violations and/or poor safety performance in the past



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Termination Action Plan

- Identify the “critical incident”
- Review every decision before acting
 - N.E.A.T and C.L.E.A.N principles
 - Pre-termination review with HR Department
- Work with your HR Department to...
 - Get employee’s perspective
 - Be consistent across the organization and with similar prior unsafe acts or safety rule violations
- Document facts – leave emotion out of it
- Prepare the discharge notice with your HR Department



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High Risk Terminations

- Lack of documentation
- Long-term employees
- Problem employees
- Protected categories
- Timing problems – Employee back from recent LOA
- No “trigger” event



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Common Red Flags

- Untrue reasons for termination
- Vague/unsubstantiated reasons for termination
- Not giving any reason for termination
- Rush to judgment
- Termination for single incident of minor safety rules
- Misconduct termination when others engage in same safety rule violations and/or unsafe practice/behavior without consequence
- Termination of someone currently on, or who just returned from, a leave of absence
- Retaliation/whistleblower



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Drafting the Termination Notice

- Track warning language
 - *Refer to previous warnings and use same language*
- Be truthful
 - *Don't sugarcoat it*
 - *Avoid defamation*
- Be complete
 - *What you leave out may be the very reason you want to use in court*
- Avoid vague language



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FINAL QUESTIONS

Presented by:
Edwin G. Foulke, Jr.
Phone: (404) 240-4273
Email: efoulke@fisherphillips.com



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50

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51

Thank You!

Presented by:
Edwin G. Foulke, Jr.
Phone: (404) 240-4273
Email: efoulke@fisherphillips.com



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52