HOW TO TERMINATE THE POPULAR TEACHER OR ADMINISTRATOR
How Did We Get Here?

Almost 70% of US managers are scared to talk to their employees

• 69% of respondents said that they found “communicating in general” to be the hardest part about communicating with employees.

• Conversely “primary things employees say they need to feel engaged and productive at work is regular, meaningful communication with their managers”.
Two Kinds

- 98% in the ‘grey zone’
- 2% who commit egregious acts/fireable offenses (striking a child, pornography on school computer). Such cases require a different, more direct approach

Both require messaging to the community.
It’s All About Accountability. . .

But accountability is not binary
It’s All About Accountability. . .

It’s artificial intelligence. It’s adaptive, not either/or, black/white, yes/no, right/wrong
It’s Shades Of Grey
The Legal Underpinnings – Know Your Legal Risk

• At Will Employment

In most states, the law presumes that employees are “at-will” and that, therefore, the employment relationship may be terminated at any time and for any reason.

Exceptions?
Is There A Contract?

- Contract takes you out of at-will employment
- Must follow terms of contract
  - Notice
  - For Cause/Ability to Cure
  - Severance
- Handbook provisions
  - Progressive discipline
Even if an employee is “at-will,” he or she cannot be terminated for an ILLEGAL reason

- Protected categories - prohibits discrimination/harassment on the basis of race/color, gender, disability, national origin and religion
- Age Discrimination in Employment Act (40 and over)
- Americans with Disabilities Act (disability discrimination)
- Recently Taken Leave or Applied for Leave
- Whistleblower
- Reported Harassment
- Workers’ Compensation
- Can be additional state specific protected classes
Anatomy of a Lawsuit – Step One

• Plaintiff makes out a prima facie case:
  • Protected class
  • Adverse employment action
  • Under circumstances giving rise to an inference of discrimination.
Discrimination

Discrimination is the use of a protected characteristic as the basis to treat otherwise similarly situated employees differently.

For example, if two employees are otherwise identical, but the supervisor does not give one employee a raise/promotion, etc. because of his/her national origin, that is discrimination.
Anatomy of a Lawsuit – Steps Two and Three

• Employer must articulate a **legitimate, non-discriminatory reason** for its action.

• Plaintiff must show that the employer’s stated reason is a **pre-text** for discrimination or that discrimination was more likely than not the real reason for the decision.
How Do We Show the Legitimate, Nondiscriminatory Basis for Termination/Non-renewal?
Progressive Discipline

• Use the right tool for the right job or ‘Don’t use an elephant gun to kill a mosquito’

• We are giving you guidelines (and legal guard rails). It’s NOT “paint by numbers”

• Caveat: You have to make all this your own, so that your dealings with the teacher are genuine—but clear—and your actions reflect your style and character—doing so is crucial and adds to your overall credibility. Acting in a way that is not you is both ineffective and damaging to your reputation in the short and long run.
Case Study #1 (Firing Popular teachers is much more about a pattern of behavior than it is about a smoking gun. . .)

Defcon #1- From Head of School/Immediate Supervisor
Jane-

While I value open and honest dialogue, at yesterday’s faculty meeting, when we were discussing the children’s behavior at recess and how we would like to improve it, you seemed a little strident in your views. Please stop by (when you are free/sometime this week) so we can discuss that. (I look forward to our conversation)
Case Study #1

What are your reactions to/thoughts about this email?
Jane-

While I value open and honest dialogue, I am concerned (maybe “very concerned”) with the stridency with which you expressed your views about the children’s behavior when we were discussing playground issues. (and I think your colleagues/others in the room were concerned as well).

You seemed angry and frustrated and almost as if you don’t like the children. Please make an appointment this week with my assistant, Sally, so that you and I can discuss this. OR I need to discuss this with you (ASAP? Sooner rather than later?) Please make an appointment with Jane (my assistant) so that we can have that conversation.
Jane,

I am not (at all) happy with your behavior at yesterday’s faculty meeting, when we were discussing the children’s playground behavior and interactions.

While I value honest and open dialogue, your tone, stridency and overall demeanor were borderline unprofessional, and thus were off putting to me and I (strongly) suspect, to many of your colleagues as well.

Please make an appointment with Sally [my administrative assistant] today. We need to talk about this within the next day or two (immediately? Before the week is out)
What are your reactions to/thoughts about these two emails?
Jane,
I am really not happy with your behavior at yesterday’s faculty meeting, when we were discussing the children’s playground behavior. I have spoken to you several times before about your tone at faculty meetings, and the importance of sharing your views in a way that invites dialogue and interaction, rather than suppresses it.

Despite the numerous conversations we have had, yesterday-and I don’t have the exact words, but this is a pretty close rendition- you said “let’s be honest, most of our children are spoiled and entitled and so why should we even bother trying to get them to behave better toward each other when they aren’t taught that at home”.

While I value honest and open dialogue, your tone and stridency were unprofessional and not at all reflective of our mission and philosophy here at Golden Academy.

I have asked Sally to find time today if possible, but certainly within the next 24-48 hours, for us to meet about this.

Tom
• Word choice
• Tone of the email
• Just the facts
• Less is more (at first)
• Counseling – The role of the leader
• Has the employee been told about their poor performance? Can they improve?
• Counseling Out
Is there sufficient evidence of the poor performance?

"I've written you a disciplinary letter in French to soften the blow."
Avoid Litigation - Is your performance management going to stand up in court?

• Employees must be treated consistently – is this something other employees are also doing wrong?
  • Do not give even the appearance of favoritism
  • Comparable situations will be discovered
• Has poor performance been excused/ignored in the past?
• If there has been a violation of policy, is the policy clear? In writing?
Remember Key Principles About Writings

• Not all documents are created equally
• Which would you rather have to rely upon?
  • Napkin
  • Note to “file”
  • Email to HR
  • Email to Employee
  • Employee Observation Form
  • Formal counseling document signed by employee
Observation Forms

• These forms/processes are not very useful in defending employee claims
• Visit is usually scheduled and planned by the teacher
• The teacher is on his/her best behavior and typically manages the class well
• The observation is almost always positive
• Don’t rely on them as your only source of documentation or (better yet) ensure that the form reflects all input so far for the year (not just about the 45 minute lesson).
Coaching/Counseling Memos

• Coaching/Counseling is a softer method to adjust behavior/performance

• Coaching/Counseling should occur throughout the full evaluation year as issues need to be addressed or when patterns develop

• Coaching/Counseling should be documented using good documentation principles
Did We Document Enough?

• Every incident does not need formal written reprimand
Case Study #2: What about Bob?

- You are a new HOS;
- Bob is a very popular teacher, he has been with the school for 20 years, he likes to joke around with the students and the parents think that he is fun and down to earth.
- Behind the scenes Bob is not mission focused, he does not contribute to the team atmosphere, and he is not adjusting to the new direction the school wants to take.
- For example, your school is attempting to change its teaching style and one of the elements is to have fewer multiple choice questions on tests. You hear that Bob is continuing to give all multiple choice tests.

What is your next step?
Outline Specific Steps, Issues, or Goals That You Want The Employee To Meet

- Think about what performance or interaction deficiencies you want to see addressed and by what timeframe
- Write out your specific, measurable goals
  - “You must give three non-multiple choice questions per class per semester”
  - “Have all student grades posted within department guidelines.”
  - “Participate in every staff meeting.”
  - “Integrate technology into your lessons.”
Outline Specific Steps, Issues, or Goals That You Want The Employee To Meet

• State your expectations on behavior
  • “You must ensure that you always use a positive and supportive tone of voice”
  • “You need to mingle with and engage alumni at fundraising events”
Ensure All Your Communications Are Appropriate

• Make sure there is no language in the reviews that could infer bias in any form of communication ("Mr. Smith doesn’t seem to be able to work with technology due to his age")
• Be careful in how you describe people ("Mr. Williams has a grandfatherly demeanor")
• When criticizing attendance, be careful with job protected leave
Avoid giving a time frame for improvement.

- Avoid “you have 30 days to improve” or “you will be put on 90 days probation”
- Use terms such as “immediately improve” or “within a reasonable period”
- Better to say that performance will be reviewed again in 30 days.
- You want to preserve the at-will status of the employee.
What would we say to Bob?

• Not personal
• Be specific
• Dialogue may be different based on time with the school
Make sure you are ready for the return volley
The Bob Saga Continues

The next day you get a call from a concerned parent. They report that they saw Bob yelling at a student last week, pointing his finger in the student’s face. The parent believed that the interaction was very inappropriate.

How do you handle this new incident? Do you have to name names?
How Does Documentation Help?

- It helps the school to be consistent
- It helps employees know what is expected
- It helps witnesses to remember

It helps the school to avoid liability for wrongful termination.
Don’t wait until it’s too late!

• Good performance management programs document employee performance systematically – not only when the problem has come to a head.

• Use a combination of observation feedback, evaluation form feedback, emails, and counseling/coaching forms.
Importance of taking the long view, especially when managing difficult but popular teachers

“The moral arc of the universe is long, but it bends toward justice”-MLK

Share my story about the groundwork I laid that ultimately got a new teacher fired, but it occurred after I left

-informal reaction/appreciation from the rest of the faculty, who knew/sensed/heard that I was holding Steve accountable. NOT leaning into the danger and holding everyone accountable ie the popular but toxic teacher, is deleterious in every way. Wrestling with alligators is not fun, but it is an abdication of authority and moral responsibility NOT to address obvious issues. The answer can’t be ‘Well, that is Steve, you know how he is.’
1. First step in decision to terminate - assess the appropriateness of legal basis

- Is the reason for the termination a valid, lawful reason?
- Will it be believed by a jury?
- Was the employee treated fairly?
2. **Second Question – is there adequate evidence to prove the valid, lawful reason(s)?**

- Was there performance management or an investigation of an incident?
- Is there documentation?
- How reliable are the witnesses?
- Will the decision-maker take responsibility?
3. Are there any claims the employee might make?

- Member of protected category?
- How have similarly-situated employees been treated in the past?
- Does the timing of the termination suggest possible retaliation?
- Did the employee engage in protected conduct (i.e. EEOC charge, whistleblower, etc.)
4. Non-legal Questions to Ask before terminating.

- How will this termination affect other employees’ morale and performance?
- What kind of precedent does this termination set?
- Are there any special circumstances that might evoke extraordinary sympathy? Especially with parents, school community?
- Does this person have a child in the school and what will the impact be?
What is the next step once the decision to terminate has been made?
Message to the School Community
Timing of termination

• When will you tell the employee?
  • Let them finish out the school year?
  • End their employment immediately?
Is there a reason to provide severance?

- Can control the message to the school community through a non-disparagement provision
- Release of claims
- Confidentiality
Termination Procedures

• Face to face is preferable
• Have two administrative employees present – one should make a written confirmation of termination
• Business-like and non-inflammatory
• No “off-the-record” remarks
• Plan to avoid embarrassment
• Consider safety issues
• Confidentiality
• Avoid defamation claims
How to Address Reference Requests?

- Have a policy directing reference requests to Head of School or other top administrator.
- If termination is for performance, do not give a positive reference.
What Do Raises Say to the Employee and to the Jury?
Terminations: Bottom Line

• It is not enough to simply act lawfully.
• An employer must act in a way that does not give any appearance of unlawful or unfair treatment.
Final Questions
THANK YOU
FOR THIS OPPORTUNITY

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