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Best Practices in Dispute Resolution

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Best practices in dispute resolution, whether by a human resources generalist or a lawyer for an employee or an employer share a common essential element—specific attention and consideration of the individual employee or applicant. That necessarily implies avoidance of generalizations or falling back automatically on established procedures or prior experiences.

As long confirmed by psychological studies and research, a job means more to an individual than just a source of income. Individuals tend to define themselves by the nature and scope of their employment. What might happen to an individual's position can have serious and long-lasting consequences depending on the individual's particular circumstances and characteristics.

A threat to the scope and duties assigned to an employee, and particularly the termination of employment, can have deeply emotional effects. Violent reactions are well known and even regrettably characterized commonly as “going postal.” Less apparent are those effects that are not shared, even with friends and family. I represented an individual who, after being fired, continued to let his wife prepare his lunch, which he took to a park, where he sat and brooded until time to return home. In another case, in which we were able to negotiate a sizable settlement at mediation, my client changed her mind the following day. The money was refused even after the judge entered an order enforcing the settlement. The money rested in an interest-bearing account for more than three years before being claimed.

To appreciate and apply best practice for resolving employment disputes, there first must be a full understanding of the potentially aggrieved individual, and equally as important, honest recognition of the role and goal on those who seek to bring about a proper resolution.

Consider what response would be given to the question, “What do you do?” That is probably the most common question asked when one addresses another person for the first time.

The response very likely will begin with the words, “I am,” such as in, “I am a human resources generalist at X Corporation,” or “I am a lawyer.” The short answer does not describe one’s duties, or day-to-day activities, or individual abilities, responsibilities, professional pride, or standing in the community. Whether or not we articulate it, or even describe it in some detail, we tend to identify with our occupation to the extent that any potential disruption or injury to the occupation is intensely personal.

That must be recognized and kept in mind throughout any discussion about another person’s job, particularly when the discussion involves a workplace conflict at whatever point it might be addressed.

When anticipating or confronting an employment conflict, the best practice is to focus on the person or group raising a concern, and secondarily keeping aware of how and why we are addressing it. A handy way to keep both in mind has been proposed as the acronym WAIT: “Why Am I Talking?”

That might serve as a constant reminder to let the concerns be presented specifically and detail, without unnecessary interruption or any judgmental comments and to resist the urge to resort to what we believe are applicable company policies or provisions of law and court decision. It also can be a reminder to patiently and carefully consider all material circumstances before attempting to address the problem. The latter includes introspection as to why and how we are dealing with the situation. Are we letting ourselves be influenced by a desire to display our knowledge and experience? Are we considering how our approach to the problem might benefit us personally by enhancing our position or providing monetary benefit? The reminder should be to listen more than talk and to recognize and accept our own motivation.

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