

Zero Tolerance

By: Robert D. Sollars

When we start discussing zero tolerance, the expectation is that whatever you're talking about is not going to be allowed – no matter what. That means no exceptions, no deviation, and literally no tolerance for the action created from prescribed policy and procedure correct? In normal terms yes it does. But I have to remind you that the world is full of gray, it's not as simple as black and white any more.

Anyone who has been around in the business world for a long time will know what I'm talking about. Yes the policy does say that, for example, that anyone caught making a threat is to be suspended immediately and an investigation started, and possibly even the police called in to arrest the person. Normally this would be a good idea for most all things, right?

But a threat is only a threat when it's said with malice. If 2 friends are walking out the door together, laughing and joking, and one says to the other 'You SOB, I'm gonna kick your ever lovin a** when I get you into the parking lot!' The way they say it will indicate whether it's a good natured jibe or whether it's something to worry about. If one employee is wagging his finger at another, with an angry scowl on their face, and says 'I'm kick your SOB f***** a** when we get to the parking lot!' I'd be much more worried than I would be at the first phrase.

On the front of it, if you take your policy and procedure manual seriously (and you should but with a grain of salt we'll talk about in a minute), both of those phrases are grounds for suspension, arrest, and termination at the very least! They even **can** be **the** cause for lawsuits as well. As with our schools these days.

In early 2013, 2 6 year-old boys in Maryland were suspended from their elementary school for playing a game of 'pow pow'. They were pretending to shoot each other with their fingers and were disciplined for it. Also a young girl was suspended for threatening to shoot her friend with a 'Here Kitty' bubble maker! Does that make sense in a normal world? Read your own manual and then think about it.

And while workplace incidents such as these don't make the news like school's do, it still occurs at businesses. Usually the only time we'll hear about it is if the employee, supposedly in the wrong, files a suit or complaint with the EEOC. And many times, even then we don't hear about it.

A zero tolerance policy has to be, by nature, be tempered by common sense. If it's not, then you could be treading on legally a 'slippery slope', when it comes to disciplinary action. Whether it be in a mediation, arbitration, or a court of law. Even those venues can be tempered with common sense once in a while, so do you want to twirl the wheel of fortune?

Utilizing common sense in your disciplinary actions and judging every single action and incident as an individual one may be time consuming and not necessarily the best use of your time. And it can be both of those, not to mention the expenditure of money in them as well. But in this world of overly litigious employees, for both good and bad reasons, and their attorneys, you have to make individual determinations, and sometimes that means you can't follow the policy or procedure verbatim!

Yes, I did say that. Sometimes you need to make a judgment call and *not* follow the manual. Yes I understand it could be grounds for getting yourself in trouble and even terminated. But again, is everything black

and white? If you decide not to follow the manual then you need to document everything you and explain it in detail. Hopefully, this will keep you out of the unemployment line and your butt out of the boss's sling!

You may think that it violates the policy you have against favoritism in the workplace as well. And of course disparate treatment can also lead to WPV, but if done correctly this won't violate anything you have.

But it's not a contradiction it may be one of the smartest things you can do to prevent someone getting upset and possibly threatening for no reason. If you look at every single action you take during the course of every disciplinary action and determine that one was met with laughter and mirth and another one was souring the mood and placing a dark storm cloud over everyone, which one is more than likely a true threat?

This is not always the best indicator either. An example is one from St. Joseph Missouri back in the late 1980's. A manufacturing plant had an employee who was teased and harassed incessantly for months. As was the case back then, for the most part it was good natured. But the employee didn't take it well. He proceeded to brew some 'Yura-pee-an' coffee for his co-workers. Was this a potentially violent act and done with malice? Yes it was, especially with the AIDS/HIV scare that was still occurring.

But what about when 2 friends play a practical joke on one another and one goes ballistic? If the one friend begins yelling and screaming at their friend and threatening anything like above, is that a true threat or just anger and no retribution of a violent nature planned? That is where common sense **has** to be included in your investigation and meeting with them. The one had no malice towards his friend but was suspended anyway. Again, this happened in St. Joseph in the late 1980's. Should he have been suspended? By the book and the mandated policy & procedure manual yes. By common sense and determination, no.

The key is to use **common sense** when discussing disciplinary action against someone for uttering a threat or something. I've solved several problems, albeit temporarily, by having two security officers shake hands and agree to work together. I then transferred one of them later on at his request. And this tactic works temporarily. So the question you have to ask yourself is this ***'Is this a real problem or was it an honest mistake? Or was it just a good natured jibe at the person.'***

Obviously, you have to talk and discuss the situation with the employees involved, but doesn't your disciplinary and other policies have any lee way for mistakes? Remember the world is not just black and white anymore – if it ever was. There are just too many shades of gray to make blanket and snap decisions about an incident.

The incidents I talked about above were in a different time of relations with employees. HR Managers had much more leeway with dealing with employees, even in an union environment, which both incidents in St. Joseph were. But, even with doing more with less, time, staff, & money, we have to do better than a cursory look and investigation. And at the risk of beating a dead horse, use common sense.

As a parting shot, look at a ruling by the NLRB in 2012. The decision dealt with internal investigations, but I believe you can see how it could very easily be applied to zero tolerance; The NLRB ruled that Banner Health Systems violated the law when it issued a blanket statement and decision concerning a policy on internal investigations. The key here being **blanket**.