Personnel Decisions: Don’t We Have To Treat All Employees “The Same?”

No. You really don’t. Not in an absolute sense anyway. Under most equal employment opportunity or workplace civil rights laws, you need to treat similarly situated people similarly. That doesn’t mean “identical always in all ways.” Employees rightly expect consistency and everyone naturally feels that prior situations involving leave, discipline, termination, pay, etc. “set precedents.” So it’s wise to strive for consistency as a general goal. But there are plenty of legitimate and non-discriminatory reasons – including the passage of time and accompanying changes in business, financial, or other operational circumstances – that may justify treating one employee “differently” than you’ve treated others in the past. Of course, any reason(s) for “differential” treatment must be verifiably true, business-related, and unrelated to the employee’s legally protected status or conduct. In addition, such reasons should be well and carefully documented. While each situation is unique, here are some “differentiators” that may justify treating a given employee differently from others

1) Temporary v. regular employee status
2) The employee engaged in a different type or degree of misconduct compared to others
3) Supervisor v. non-supervisory status (shouldn’t you hold leaders to a higher standard?)
4) Intervening change in applicable policies/processes (preferably documented)
5) Prior disciplinary history (or LACK thereof)
6) In discharge/discipline decisions, strength (or lack) of evidence of policy violation or other wrongdoing
7) In hire/promotion decisions, strength (or lack) of prior, relevant experience or education
8) Materially different job duties, functions or expectations
9) Other “mitigating” or “aggravating” factors

Everyone wants and deserves to be treated “fairly,” but that doesn’t mean being treated “identically.” And making a knee-jerk decision to approach personnel decisions “the way we did it in the past” often is not what’s truly best for business. Don’t differentiate in employee treatment based on protected categories, but DO differentiate based on conduct, performance, and other legitimate job-related factors. And be sure to make appropriate records of your decision-making process!

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