FSM-325
Students Notes

Lectures Related To Legal and Regulatory Issues
At the societal level there is increasing concern that employees be treated fairly
* The workforce
  — Communicate their concerns in many ways
    * Company supplied options such as a suggestion box
    *
  — Federal laws and regulations
CONCEPTS OF FAIRNESS TO EMPLOYEES

Distributive Justice (actual outcome or resolution of a situation)
- Promotions
  - Corporate executives vs lower level workers
    * Currently about a 50 to 1 ratio a factory worker
    - Among peers in firm and peers in other firms

Procedural justice
- Relates to perceptions about fairness of the process

  - The information use in the decision is appropriate and accurate
  - All parties have opportunity to make input to the decision process
  - Less powerful parties are protected from the more powerful parties
  - System is stable over time
  - System adapts to changing conditions

REACTIONS TO FAIR AND UNFAIR TREATMENT

1. Leave the organization
2.
3. Stay but engage in negative behavior
4.
5. Voice your concerns to external authorities
MANAGING TO ENSURE FAIR TREATMENT

Grievance procedures
- Usually involves one or more hearing panels
- They are reactive
- Common method in unionized organizations
- Becoming more common in non-unionized organizations
- Often viewed as a necessity in today's legal environment

Proactive policies and practices
- Can be in conjunction with a grievance procedure but need not be
- Different approaches
  - Formal performance appraisals
  - Progressive disciplinary process
  - Management training programs on how to treat employees fairly
  - And many others

THE REGULATION MODEL

SOURCE: J. Ledvinka and V. Scarpello
The US is the most litigious in the world

- High ratio of lawyers per capita
- Equal Employment Opportunity Commission (EEOC) backlog of complaints
  - 42,000 in 1990
  - 97,000 in 1994
  - And still increasing

Different types of Federal laws

- Constitutional Laws
  - US Constitution has the 14th amendment which guarantees due process and equal treatment
- Statutory Laws
  - Fair Labor Standards Act, 1938
    * Control hours worked and overtime
  - Civil Rights Act, 1964
    * Prevents discrimination on the basis of race, color, religion, sex, or national origin
  - Occupational Safety and Health Act (OSHA), 1970
  - Americans with Disabilities, 1990
    * Protect against discrimination of individuals with disabilities
  - Civil Rights Act, 1991
    * Does away with dual motive cases
      * Allows for trial by jury rather than just a judge
  - Family and Medical Act, 1993
— And many more (check Appendix in the Schuler textbook)

- Administrative regulations
  — Agencies empowered to define guidelines for enforcement to the law

- Executive Orders
  —
  — For example: Executive Order 11246 applies the provision of the Civil Rights Act to the Federal Government and Federal contractors

- Common laws
  — Rules made by judges as they resolve disputes between parties
    * Establishes precedents
    * For example:


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**TYPES OF REMEDIES TO DISPUTES**

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Court system (only a few cases actually ever reach court)
- Monetary damages as a result of losing a court case
  - Negotiated by the court system
  -
  - Often no wrong doing is admitted

Alternative methods for resolving disputes
- Mediation
  - Both parties come before a neutral third party (the mediator) and they attempt to find some middle ground
- Arbitration
  - Both sides present their case in a formal matter like in a court case
  - Arbitration can be binding or non-binding
ENSURING FAIRNESS IN THE WORKPLACE

Fairness to all groups
● Most focus currently is on race, age, gender, and religion
  — The US Supreme Court has recently ruled that if there are preferential hiring programs they must be narrowly defined and based on past discrimination history

Fairness in all aspects of employment relationships
● Same rights and privileges exist at all levels in the firms

Fairness and ethics
● Conflict of interest issues

Harassment in the workplace
● Most concern is with the
  — Submission to such conduct is explicitly or implicitly made a condition of employment
  — Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment
● Other factors as well (race, religion, age, national origin, disabilities)
● Preventing harassment
  — Make employees aware of company policy on harassment
  — Set up reporting procedures for harassed employees to use
  — Specify disciplinary steps for perpetrators of harassment
**Employee privacy**

- Not much protection in this area
- Some protections
  - Equal access to certain records (e.g., credit files and employee medical records)
  - Medical records
    * It appears they can be used to terminate an employee
- This remains a very “gray area”
  - Computer files
  - Monitor telephone calls

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**EMPLOYMENT-AT-WILL DOCTRINE**

Employer can fire you at any time for no reason

**Exceptions:**
1. Violation to public policy — wrongful discharge for acts protected by law
   - Whistle blowing, being garnished, complaining about wage law and safety violations, union activities, filing a worker’s compensation or discrimination claim, cooperating in an investigation against the company

2. 

3. Implied covenant — wrongful discharge for a lack of fair dealing on part of employer

**Possible reasons for firing**

- Incompetence in performance or not responding to training or accommodations
- Civil rights violations
- Too many unexcused absences
- Repeated lateness
- Drug activity or drunkenness on job
- Falsification of records
Physiological/physical conditions

- Back injury (10 million annually)
- Diseases
  - Respiratory diseases
  - Sterility

Psychological

- Organizational stress
  - Particularly among white collar employees

BENEFITS AND COSTS OF A SAFE AND HEALTHY WORK ENVIRONMENT

Agriculture has a poor record in this area
- Just behind construction

Benefits include:
1. More productivity due to less lost days
2.
3. Reduced medical and insurance costs
4. Lower workers’ compensation rate and payments
5.
6. Better selection ratios because of enhanced image of firm
Costs include:
1. Workers’ compensations claims
2. Total cost is estimated to be over 100 billion annually
   - Alcoholism

LEGAL CONSIDERATIONS

The Occupational Safety and Health Administration (OSHA)
- Workers’ Compensation Claims
- The Common-Law Doctrine of Torts
  - Decisions made in court cases
- Local Initiatives
  - Michigan has several of these
    * MIOSHA
    * Field Sanitation Rules
- American with Disabilities Act (ADA)

HAZARDS IN THE WORKPLACE

Occupational accidents
- The incompetent, or unsafe, or dangerous, or violent employee
  - A violent employee (murder in the workplace is becoming more common) ==> Verbal threats, physical actions, frustration, loss of control, obsession, appears to be depressed or a loner, often has several weapons
Occupational diseases
- Respiratory diseases
  - Pathogens in livestock operations

Quality of working life is low
- Related to the “Core Job Characteristics Model”

Organizational stress
- The four S’s
  1. Supervisor
  2.
  3. Security
  4.
- Other factors
  - Organizational change
  - Physical environment (e.g., computers)
  - Job burnout (little control over the quality of their performance but still feel personally responsible)

STRATEGIES FOR IMPROVEMENT

Safety and Health Rates
- This is a process of monitoring
- Measures
  - Incidence Rate
  - Severity Rate
  - Frequency Rate
Accident control
- Ergonomics
- Behavior modification

Reducing occupational diseases
- Communicating health and safety information

Work environment
- Set up stress monitoring and management programs

THESE ARE COMPLEX REGULATIONS

They must be studied and reviewed
- Strongly suggest subscribing to a service that provides updated information

An example — completing an I-9 Form
- Needed for each worker hired after November 6, 1986
- Section 1 of the I-9 is completed when employee starts work, not part of interviewing process OR when hired
  - If translator is used, be sure that person does not have a vested interest in that persons employment
- Be sure to make copies of documents
- If cannot complete
  * Terminate
- Section 3 is used for change of name (e.g., marriage) or expired document
Types of violations
  — Administrative
    * Attempting to comply with the law but just making some mistakes

Inspections
  — 50 percent of the farms will be inspected sometime
    * 25% are OK
    * Rest have more serious problems
      - Fines
      -
  — It is illegal to correct after the fact of not having I-9s not done
  — A sub-contractor is not a means to avoid the I-9s

Other legal issues will be discussed as appropriate in the other sections of the course