

CHAPTER ONE: Goals of Employment Dispute Management Systems; Measuring Success

Why do companies approach employment dispute management on a systemic basis?

The case for establishing an employment dispute management program is, by this time, broadly recognized. Employment dispute resolution programs lend consistency and therefore manageability to the handling of employment workplace disputes. When neutrally applied and administered, they enhance employee confidence and morale. They increase the likelihood that such disputes will be managed in a rational, business-driven manner and not in an emotional or vituperative way. Approached systematically, the interests of the employee and employer predominate over the individual employee's or supervisor's concern that his or her conduct be vindicated.

A systematic, managerial approach to employment disputes also encourages early assessment of conflicts in the workplace to determine at an early juncture such important issues as the extent of company legal exposure, the likelihood that the employee complaint is well-grounded, and ways in which company procedures or supervisory skills might be improved.

Like all pre-dispute policies, employment dispute management programs also provide the benefit of avoiding employee misinterpretation of employer motive in offering to resolve a particular dispute on its merits at an early stage. The canard persists that the party disputant who first proffers settlement does so out of weakness. Pre-dispute management programs provide a tool to dispel such a myth: A proffer to settle cannot be made out of either strength or weakness

if it is made pursuant to uniformly applied company policy. And a proffer to cure something that is wrong is equally welcome by – and equally beneficial to – both parties.

Finally, by virtue of recent Supreme Court decisions, management efforts to identify potential employee causes of action, to address them effectively, and to create nonlitigious avenues of redress for wronged employees may provide employers with cognizable legal defenses to employee claims of vicarious liability for the bad acts of supervisors. Therefore, well-planned and properly administered employment dispute management programs are not only the managerially rational thing to do; they are legally prudent as well.

There are, of course, employment disputes to which ADR may be inappropriate or precluded. Certain employee claims, such as those involving workers compensation, pension benefits or unemployment insurance, often are expressly excluded from an ADR program by statute. Employers frequently want to reserve access to judicial process in order to prevent the immediate harm that can flow from breaches of non-compete agreements or unauthorized use of trade secrets or other proprietary information. Court processes are also needed to enforce agreements to arbitrate.

The fact that an employee dispute ADR program is not a “silver bullet” curing all workplace troubles nevertheless does not reduce its powerful ability to accomplish vital and pervasive benefits.

How does one measure success?

The classic justifications for commercial ADR systems are speed, cost and control. That is, compared to adjudication through state and federal courts, ADR is more likely to resolve a commercial dispute quicker, cheaper, and on terms most consistent with the disputants’ interests, including business, emotional, legal and other interests. .

While these benefits are also realized in employment dispute resolution, they are often more difficult to quantify. Because quantification of system performance is vital to the management of any system, here are some scales that might be useful to measure system success. (It goes without saying that, to the extent possible, “benchmark” measurement should be performed prior to the institution of the system, so that the impact of the system can be compared.)

Cycle Time: How many days, or person-hours, elapse between the initiation of the employment dispute process and the resolution of the issue?

Management Time: Measured in a manner that “weights” the value to the company of the manager(s) involved, how much management time was devoted to resolution of the issue?

Legal Costs: Over a period of time, how much money was spent on legal fees to address employee disputes?

Rate of Litigation: Has the number of private and governmental charges been reduced?

Employee Turnover: Has the rate of employee turnover been reduced?

EEOC Charges: Has the rate of charges brought before state and federal employment agencies changed?

Utilization: Over a period of time, have more or fewer employees availed themselves of the program?

Rate of Resolution at Various Levels: Over a period of time, have issues been resolved more frequently at lower (i.e., less expensive) levels of management?

Junior Management Satisfaction: Are the members of the immediate supervisory level satisfied with the outcomes of disputes, and do they perceive that their own career paths are enhanced by using the system?

User Satisfaction: Are employees and other stakeholders satisfied by the process and the outcome of disputes taken through the program? Would they recommend that their peers use it?