

CHAPTER FOUR

PHYSICAL ACTS OF VIOLENCE

In the last chapter, we looked at non-physical acts, specifically verbal and other intimidating acts by coworkers. In this chapter, we'll show you how to handle employees' physical acts of violence.

What Are Physical Acts

A physical act of violence is any act in which a coworker maliciously touches or tries to touch another, or otherwise physically harms another, regardless of intent. In the last chapter, we dealt with speech. Now we're dealing with specific physical actions regardless of intent. Physical acts encompass the following six types of incidents.

Physical Attack With Intent to Harm

First, and most obvious, is the situation where an employee physically attacks a coworker, supervisor, subordinate, or client. This physical attack is usually committed with one's own body, e.g., punching, kicking, or head-butting. Even more serious is the use of an object which could be used as a weapon, such as a gun, knife, or any other object, for example, an iron pipe, stick of wood, paperweight, ashtray, or any of hundreds of items available on any job site. Any type of physical attack with intent to harm, if proven, must result in a serious disciplinary action—usually removal.

Fighting

Fighting is a physical confrontation between two employees in which they are both essentially guilty of a mutual attack. While the person who started a fight may get a more severe disciplinary action than the other, the party who continued it, unless acting solely in self-defense, is also guilty of an offense.

Physical Acts Where Intent to Harm Exists But Cannot be Proven

I've talked with many supervisors who have presented me with this scenario: an employee, who usually has issues with coworkers and even supervisors, frequently, but "accidentally," bumps into or otherwise physically comes into contact with others. The employee always apologizes and acts like it was an accident, but you know that it wasn't.

In one case, the federal supervisor I spoke to had an employee who was always arguing with coworkers, and one day he was walking down the stairs right behind a woman coworker whom he had a squabble with. As she reached the landing, he "accidentally" stumbled down a few stairs and slammed her hard in the back with his forearm. He immediately apologized profusely for the "accident," yet it was apparent to the woman he hit, and to the supervisor who heard the story later, that it was no accident.

His personnel office told the supervisor not to do anything because he couldn't prove that the employee had any intent to harm. And they were partially right. Had they charged the employee with some form of assault or other deliberate attack, they could not have met their burden of proof.

Had they looked at the case from a different perspective, they would have had an easy cause for a formal disciplinary action. Remember our discussion in the last chapter about the "efficiency of the service" standard. Discipline under that standard can be for both intentional or unintentional acts that affect other employees. From that angle,

just look at it as a safety issue and discipline the employee for unsafe acts. Sure, it won't get you a first offense removal as you would for a straight physical attack, but if you give him, say, a letter of reprimand for working in an unsafe manner causing injury to another employee, you will at least start down the progressive disciplinary action road. Then, the next time he does something like that, you'll administer a more severe action, a few days suspension, then when it happens again, you'll have a completely unshakable removal.

Horseplay

Remember the episode of *Friends* where Joey has that girlfriend who is always punching him in the arm in a masculine, horse-play manner? She wasn't attacking him or trying to hurt him, but just doing it the way men do it to other men. Monica tells Joey how cute she is, and Joey says, "I don't know. I mean, I like her a lot, and she's really nice, but she keeps *punching* me!"

In an appeals case a few years ago, the Post Office disciplined a manager who was doing the same sort of thing. He was going around and playfully slapping subordinate supervisors in the face. Again, he was not trying to hurt anybody, he was just giving them playful little slaps in the face. The Post Office suspended him based on a disciplinary charge of "striking a Postal supervisor." When he appealed to the Merit System Protection Board, he argued truthfully and sincerely that he was not trying to hurt anybody, and since there was no intent to harm, he could not be disciplined.

The MSPB nonetheless upheld the disciplinary action. Remember our brief discussion above about framing charges and how third parties hold you to the exact meaning of the words you use. Well, that works both ways. On the one hand, you can get reversed because your charge does not perfectly fit the facts. On the other hand, if you carefully choose your words, you can take an imaginative disciplinary action. And the MSPB pointed out that the charge the Post Office used was perfectly accurate. The word, "strike" does not imply any intent to harm, therefore he did "strike" the other person. Since this person was a Postal supervisor, he struck a Postal supervisor. And

it affects the efficiency of the service when superiors strike subordinates. Case closed.

What this case gives us, therefore, is the opportunity to use disciplinary actions against employees who engage in horseplay or other physical acts where they do not intend to harm the other person, but nonetheless physically touch that person.

Hazing

Hazing and other initiation rituals involving physical contact or forcing people to commit various repulsive acts under the threat of physical attack is a particularly malevolent form of workplace violence. One of the dark secrets of the fire/law enforcement community is how much of this goes on, and it's about to blow up in some of their faces.

This type of behavior seriously damages the mission of federal agencies, and federal managers have every right to use the whole spectrum of formal disciplinary actions to combat it.

Destruction of Property

The last type of violence is the deliberate destruction of property in anger—smashing a phone down angrily, throwing a laptop against a wall. While actionable, it is the least serious of the six, if for no other reason than the fact that no humans are hurt. I include it in this chapter because it is one of those behaviors that if not corrected, will eventually lead to violence against people.

Recall our discussion earlier about nipping problem behaviors in the bud, and how low-level acts escalate. By dealing with the behaviors right now, we accomplish one of two ends: first, we may be able to help the employee deal with his or her anger and never become a serious problem; second, if the person does not correct the behavior and continues to destroy property, we will remove the person with progressive discipline before that anger is directed against people.