

MANAGING THE INTERPLAY BETWEEN WORKERS' COMPENSATION, EEO, AND EMPLOYEE RELATIONS ISSUES

Bryan Richardson, Worker's Compensation Branch Chief, Customs and Border Protection

Kristin Coyle, VISN Workers' Compensation Specialist, Veterans Health Administration

1

Accommodation

- Jim requests a reasonable accommodation consisting of "day shift only". He submits a Dr.'s note stating nights and evening shifts and working overtime is "aggravating" his ability to keep his Diabetes under control.

1. Do you have to grant his request ?
2. What constitutes acceptable medical information?

2

Disparate Treatment

- Roberta, a police officer, works in a predominantly male environment. When her supervisor disputes her CA-1 for an injury she suffered, she files an EEO complaint based on disparate treatment and the fact that he has never disputed any of the male officer's injuries. Also she feels he gives her more physical assignments to "run her off" because he doesn't think women can handle being police officers. After the claim is denied she goes out indefinitely for stress.

1. Can she file an EEO complaint?
2. What do you do about the absence?

3

Discipline Process

- Sandra has been issued a letter of proposed removal for AWOL and disrespectful conduct towards her supervisor. In response to the proposal, she submits medical information from her Dr. stating her actions giving rise to the "charges" against her were caused by her service-connected PTSD. Her lawyer argues she is protected under the ADA/Rehab Act from being removed. She has also just filed a CA-2 for stress.

How does the new medical or the new claim impact the proposed removal action?

4

Light Duty

- Vance, WG-2 Laborer, has been on "restricted" duties as a result of a work-related injury (back strain). He has failed to provide updated medical despite repeated requests by his supervisor. The last note being more than 60 days old. After being advised that if he fails to bring in updated medical by the end of the week, he will be put back on "grounds" duty, he submits a request for reasonable accommodation for his "disability".

What are the supervisor's options?

5

Performance

- William has had difficulties completing his assignments recently and the supervisor is not sure why. When asked, William confides in his supervisor that he is taking medication that makes it hard for him to focus. He asks if he can have some of his "harder" cases transferred to other claims reps. However, the supervisor is reluctant to do this due to staff shortages and the workload of the others.

1. What are the potential issues or problems here?
2. How might we respond to them?

6

FMLA

- Samantha has used 8 weeks of FMLA leave for an ongoing health condition. She returns to duty but her productivity is poor and when she is questioned about this and given a performance counseling letter, she has a medical setback and is placed off duty for an indefinite time by her private physician.

1. What are the potential issues or problem here?
2. How should management proceed?

7

Retaliation

- Thomas, a program analyst, has a history of several OTJ injuries, excessive absences, and requests for reasonable accommodation. He has also filed several EEO complaints alleging various forms of harassment and failure to accommodate. Currently, Thomas was 1 of 3 candidates being considered for a promotion to the supervisory position. He received the highest ranking from the panel. However, the selecting official is hesitant to choose him given his history of medical issues and complaints.

1. What are the potential pitfalls?
2. What is your recommendation to the selecting official?

8

Retaliation

- Jane has a history of compensable injuries, most of which seem to be reoccurrences of prior injuries. Because of the frequency of injuries, her management decided to reassign her to a less physical and volatile work environment but still work in her job description and same pay/grade. Because Jane felt this was retaliation for filing prior OWCP claims and a prior EEO claim against her supervisor, she filed a second EEO claim based on reprisal.

Does management have any vulnerability on this EEO complaint?

9

Disability Discrimination

- Carly filed a workers' compensation claim for her knee. The workers' compensation specialist reviewed the claim and filed a written dispute, asserting that the information on the claim form was misleading and inaccurate. Carly filed an EEO complaint of disability discrimination.

What is management's exposure in this case?

10

Job Offers

- Joshua was offered an alternate duty position as a result of a work-related injury. A co-worker who had a similar injury was not offered anything and Joe wants to file an EEO complaint stating that he was singled out to return to duty due to discrimination and harassment by his supervisor. The EEO investigator demands to see the records of all injured employees of the facility who were offered other jobs following their work-related injury.

1. Does the agency give the records to the EEO Investigator?
2. What about those who weren't offered other work?

11
