

Wrongful Termination: Creating Policy and Practice to Avoid Risk

Bear River Mental Health Services, Inc., Winner of the President's Award



At the risk of jinxing ourselves, given the well used quote, “Never say never,” Bear River Mental Health Services, Inc. (BRMH), after 30 plus years of service, has *never* had a wrongful termination claim. That *does* feel like success, and that we must be doing *something* right.

How *do* we ensure that our employees are treated consistently during times of discipline? How *do* we ensure effective communication? And finally, how *do* we ensure the supervisory and disciplinary process is well documented? The answer is not, “With that one silver bullet.” We have not found one of those yet! We have found that it takes the form of several practices. Some of ours have included:

1. Creating an environment of consistent treatment and ongoing documented communication at the very beginning of the employment relationship, and sustaining that throughout employment.
2. Providing regular and ongoing documented supervision to every employee.
3. Training supervisors about consistency in critical human resource areas, including discrimination, and
4. Providing a regular opportunity for supervisors and management to huddle together for problem solving, training, and sharing.

Creating an Environment of Consistent Treatment

BRMH’s philosophy, which is emphasized during supervisor training, stresses that equal and consistent treatment of all employees, regardless of age, race, religion, gender, etc. is important *always*. We believe in teaching our employees early, that they will be treated consistently. Receiving fair and consistent treatment in one area breeds

the assumption of continued consistent treatment in others and creates an environment of respect and trust. A positive environment for staff who are providing service, increases the likelihood of service satisfaction amongst clients. (2010 State of Utah Satisfaction Survey data for youth and adults showed 89 and 95% respectively general satisfaction ratings for BRMH). Also, employees who feel respected, heard, and treated fairly, generally do not push back during discipline, nor sue you when they leave even if the decision to leave was not theirs.

Consistency in critical human resource areas at BRMH is like standing in a house of mirrors (*Attachment 1*). What you see in one mirror is reflected back from several other panels. Job announcements reflect the essential job functions, because the actual job description is posted for review on the website where applicants apply. Essential job functions, which are also reflected in the “standard” interview and reference check questions, are written in detail into the job descriptions that the employees sign at hire. By the time an employee is hired, they will have held the job description in their hands twice, once while applying for the position via our website, and again while sitting in the waiting room, waiting for the interview. Before the interview begins, questions about the essential job functions are clarified. Once hired, by signing the job description, employees acknowledge that, “I understand what is expected of me,” and we believe by then, they actually mostly do!

Providing Regular and Ongoing Supervision

Our employees are further developed from that point with clear and

concise messages mirroring those same expectations. The tool of delivery is formal *regularly* scheduled supervision appointments with their supervisor, which begin shortly after the signature on the job description. We have standardized our supervision process through our *Supervision Manager*, which is a software program, developed internally (*Attachment 2*). The goal is that supervisors all provide supervision in the same manner, with the same tool, in the same format, and with the same goals in mind. We believe this helps in consistent treatment of expectations and discipline.

Communication around those same essential job functions is the primary agenda throughout supervision until the end of employment. Supervisors are trained to, “Focus on performance of the essential job functions,” and to not get sidetracked on the “other stuff.” Feedback in the form of summarized data reports and supervisor coaching, as well as employee dialogue, is documented in the *Supervision Manager*. Documentation is standardized with preset formatting. The document is created, signed by the supervisor and the employee, and stored electronically. A copy can be immediately printed or emailed to the employee upon completion. While there are some required fields, the actual document can be customized further in each session. Performance reviews summarize and mirror the topics of the supervision documentation for the covered period.

Action Plans, the point at which discipline enters the picture, are docu-

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mented within the supervision documentation. By the time an Action Plan occurs, employees have been accustomed to the practice of dialogue and documentation around the expectations, and in most cases, own the behaviors or non-performance as their own to correct, with assistance from the supervisor. There is rarely anger at the supervisor or the company at this point.

In the event that an employee is assigned to a new supervisor, the old supervisor meets together with the new supervisor and the employee. The historical documentation, which is stored in the *Supervision Manager* and backed up in the normal BRMH back-up process, is made available to the new supervisor. Data remains in the *Supervision Manager* indefinitely or until archived for further safekeeping.

Again, the ultimate goal is to consistently and clearly convey our expectations in the same way to all employees. When employees clearly understand what they are expected to do, see that others are held to the same expectation, and have the opportunity to regularly meet and dialogue along the way, they are less likely to become frustrated, disgruntled, or to behave in ways which require discipline.

Training Supervisors about Consistency and Critical H/R Areas

Developing confident, capable, and satisfied employees in their respective roles starts with having supervisors who understand how to do their jobs. In short, we try to develop confident, capable, and satisfied supervisors. Supervisors are trained in all that an employee experiences *and then some*.

New supervisors undergo a series of training sessions to all aspects of their role and specifically to critical human resource areas. New supervisors are provided a Supervisor Training Manual, which guides them through five to eight weeks of 30 minute training sessions on critical human resource topics (*Attachment 3*). This manual is theirs to keep and is also available to

them on-thy-fly via an internal website. This process assists in training them in areas they may lack competence with or may not have even known existed! The training manual also assists in fostering a good working relationship with the Human Resource Director. Supervisors learn that there is an open door policy with H/R, that they are responsible, but that they are not to be “The Lone Ranger” in critical H/R areas as being such may create the unwanted environment of inconsistency.

Management can also monitor whether or not supervisors are accomplishing their essential job function of supervising staff. Such reports can be generated from the *Supervision Manager*. When Action Plans are necessary, supervisors are asked to visit with the H/R director, who does not take an authoritarian role but rather acts as consultant. This is another avenue that lends to consistency across methods of discipline. The *Supervision Manager* provides a quick report on which employees are on Action Plans and easy access to the plans for review.

In addition, BRMH policy does not allow a supervisor to terminate an employee. The supervisor may recommend such action but understands that the H/R director and the CEO will be reviewing the issue(s) and supporting documentation, meeting with the employee for an independent review of his/her side of the story, reviewing potential liability issues, and ultimately making a decision. Employees are allowed to visit with the CEO or H/R director as many times as they would like, before, during, and after any BRMH initiated discipline or termination. Sometimes,

all an employee wants is to be heard.

Regular Supervisor / Management Meetings

As indicated earlier, the Lone Ranger is never welcomed on our team. Our supervisory group meets bi-weekly with administrative staff and functions as a team. There are two critical standing agenda items (*Attachment 4*). The first is a review of how all employees are doing relative to the standards. All supervisors participate in this activity and discussion. This setting allows administration and supervisors to hold each other accountable for consistency in enforcing standards.

The second standard agenda item is human resource training and personnel issues. During this time, supervisors receive regular and ongoing training on human resource topics. The group also discusses *together*, personnel problems, without breaching confidentiality, and what appropriate disciplinary path might be followed. This also provides a great opportunity to share creativity, approaches that are working well in coaching staff, and any personnel successes. When supervisors see and hear what a positive solution, idea, or outcome was for a given scenario, they are less likely to veer from that when confronted with the same situation.

Finally, our supervisors *and employees* are taught that there is an open door policy with Human Resources. Supervisors learn to view themselves as part of a team set on developing capable staff while keeping BRMH out of trouble with the law. Employees learn that BRMH is a competent employer and a great place to be employed. ❖

About Bear River Mental Health

Bear River Mental Health Services, Inc. is a private not-for-profit community mental health center in Northern Utah. With over 100 employees, comprehensive mental health services are provided to residents of Box Elder, Cache, and Rich Counties. Individuals from all age ranges and mental health diagnostic categories are

treated in a strong treatment team environment. BRMH began providing services in 1977 and has been growing ever since!

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