

## 2011 Negley Awards for Excellence in Risk Management

## Avoiding Wrongful Termination

## United Services, Inc. - Winner of the Board of Directors Award

United Services has implemented a comprehensive system that supports retention of well performing staff, improved hiring practices and support for improvement in performance when warranted. This program has been successfully implemented without adverse legal issues, despite the number of underperforming staff who have left the organization since implementation.

The implementation of this program has resulted in decreased turnover and increased performance simultaneously, as employees have a clear understanding of performance expectations. With decreased turnover, managers also have the opportunity to enhance their supervision and training with existing staff rather than constantly recruiting and training in basic skills for the job. The overall decrease in turnover has been accompanied by an increase in the percentage of employees who leave the organization as a result of a termination or a resignation in lieu of a performance based termination. Despite this increase, we have successfully upheld each of the separation decisions with no lawsuits, and in the one case that was forwarded to the Commission on Human Rights and Opportunities and the EEOC, a dismissal on facts.

United Services Senior Management Team made the decision to re-vamp our human resources systems for hiring, performance evaluation and termination after the cost of turnover and the cost of not dealing with performance issues became an issue with tightening budgets. We were aware that we did not have consistent performance monitoring and expectations throughout our rather diverse programs, and the systems to monitor the manager's own performance as supervisors were not in place. In the

rare event that we actually terminated an employee for performance issues in 2007 or 2008, the issue usually related to an action which was a serious, verified and direct violation of a policy rather than an ongoing performance or competency issue.

United Services employees are represented by District 1199 of the Service Employees International Union. As such, they are afforded union presentation in the event of discipline, including termination. This added level of scrutiny has resulted in attention to clarity and detail in any record of expectations and performance, but it did not support the need for increased attention to performance across the board, as the least rigorous supervision became the standard for any action with union personnel. The union had become the arbiter of differential treatment of employees, and in many cases, poor performance could not quickly be addressed because other areas of the agency were not addressing performance in a similar fashion.

An additional area where changes needed to be made was the treatment of staff with medical conditions which were protected under the federal and state Family and Medical Leave Act. However, in some cases employees had significantly exceeded those protections without any consistent process to determine whether we could reasonably continue to hold their position. Because we were inconsistent, we only terminated employment when medical information indicated that an employee would never return to work. We also did not consistently monitor the use of sick time outside of FMLA designation, leading to differing treatment by supervisors.

We began the process to deal with these issues by distinguishing the use of our Progressive Discipline Policy

(Attachment A) as mainly a tool for dealing with employee behaviors rather than ongoing competency. Those behaviors included work rule violations, tardiness, incomplete work, etc. We further defined acceptable use of sick time outside of FMLA time and designed a payroll report to centrally monitor use of sick time (Attachment B: Absenteeism Guidelines). Despite initial opposition from employees in general and the union in particular, we have used the Progressive Discipline Policy in these cases and have been able to successfully change sick use patterns.

In 2008 and 2009 we began a redesign of the Performance Evaluation System which specifically targeted productivity and documentation. Our Electronic Health Record, which is used throughout all direct service programs, allowed us to create reports (Attachments C and D) that allowed managers to monitor individual performance and senior managers to monitor program performance, against goals. Additional reports allowed QA staff to monitor timeliness and completeness of documentation. Each staff member received and acknowledged their productivity goal at the beginning of the fiscal period, and each received a written report of their performance against the goals. In the next two years we saw an increase in Performance Related Resignations from 12.2 percent in 2007 to 25.8 percent in 2008 and 28.0 percent in 2009. However, 100% of the employees with performance problems left as resignations in 2008, with 86% in that category in 2009. Clearly, employees were beginning to understand

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exactly what was required to be successful, and they were opting out voluntarily with a consistent, data driven evaluation system. Managers were held accountable for the overall performance of their programs, and their evaluation included review of the performance of their staff. In 2009 we also noted that we had a significant number of probationary employees (less than 6 months of employment) who were struggling with meeting performance expectations. In fact, 32 percent of the probationary employees never successfully transitioned to regular status. At the same time, voluntary resignations had significantly decreased as employees had clear expectations and measurements of performance, and we were no longer “carrying” individuals who were not performing.

By 2010 we had successfully implemented a culture of productivity and documentation compliance, and we were ready to concentrate on including competency measures in the performance management system (*Attachment E*). Our previous Performance Evaluations were cumbersome, and the level of detail masked the critical criteria for successful performance. All evaluations were edited to tie directly to job descriptions, with General Performance Standards for every employee, and Performance and Competency Measures for each position (*Attachments F and G as examples*). Our Human Resources Information System is used to record any Plans for Correction or Improvement required, and the manager must submit the required review to Human Resources. Each staff member receives a new Performance Plan as part of the evaluation, including a personalized plan for improvement in a Best Practice Standard.

No recommendation for termination of an employee for performance can be made unless the Employee Competence and Performance System has been used, and there is documen-

tation of supervisory efforts to correct performance issues that are both measurable and relevant to the particular employee’s deficits. Supervision Notes are kept by each manager (*Attachment H*) to document supervision. Employees have access to these notes, and again, clear knowledge of how they are performing.

The final area that had become an issue for performance related to the use of FMLA protected leaves by employees who were struggling to perform. While we comply with state and federal law, we needed to ensure that we had the personnel resources to deliver services. We therefore instituted a practice that we would review whether we could hold positions open for anyone who exceeded FMLA protected leave. We work with the employee and their medical provider throughout the leave to ensure that we encourage people to return to work by identifying reasonable accommodations, etc. However, unless we have a clear return to work date within a reasonable time of the end of the FMLA leave, we accept a resignation or terminate the employee. If at some future date the employee can return to the workforce, we will consider an application for an open position. This new policy has resulted in an increase to 17.9 percent of exiting employees in 2010 exceeding FMLA leave. However, every other category of termination and resignation has significantly decreased, leading to a more stable workforce and allowing managers to support and encourage employees with longevity, rather than spend their time recruiting and training a constantly changing workforce.

In summary, United Services has instituted a data-driven, outcome based system of monitoring performance and supervision that supports good decisions on employee retention. This system allows for better hiring, closer probationary monitoring, ongoing review of performance measures, and no questions on the part of super-

visors or employees about whether they are successfully meeting expectations. Based on the use of clear expectations, we have terminated up to 20 percent of the employees in a given year, with no resulting legal issues or expenses, since the employee, and any legal counsel they might consult, had clear documentation of both expectations and a regular review of progress. At the same time, employee turnover overall has steadily decreased from 20 percent of employees in 2007 to 10.9 percent in 2010 providing a solid foundation for continued excellence in performance and productivity.

#### About United Services:

*United Services Inc is a non-profit 501(c) (3) health and human services agency, offering more than 47 years of experience serving as the Local Behavioral Health Authority for all of Northeastern Connecticut. It offers an unparalleled continuum of care with over 30 different programs that serve Connecticut residents throughout the region. With offices in Dayville, Willimantic, Columbia and Waukegan, United Services is committed to the mission of “creating healthy communities.” Programs are organized into three service divisions including Clinical Services, Adult Community Support Program, and Prevention and Early Intervention. The service divisions partner with support staff specializing in medical records management, accounts receivable, and reception/access management, as well as quality assurance, information technology, accounting, finance, human resources and fundraising/development to deliver high quality services responsive to the needs of the area. United Services is a member of both MHCA and the National Council as well as the Connecticut Community Provider Association, Connecticut Council of Family Service Agencies and Connecticut Nonprofits.*

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