



**APRIL COMPLETE CARE SOLUTIONS LTD
(The “Company”)**

Staff Welfare Policy

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12:1 Introduction

This chapter examines the interface requirements in the context of various problems (both personal and personnel orientated) that can affect the workforce. It is estimated that at any one time up to 20% of an organisation's employees may have a problem likely to be serious enough to affect their performance. Of such employees nearly a half (that is around ten per cent of the total workforce) will be experiencing a serious problem - divorce or separation, serious illness, attempted or actual suicide, addictions, legal proceedings and so on, all of which will affect them to a greater or lesser extent in terms of output, accuracy and even imperilling the safety of the employee, their colleagues and the employer's assets and property.

12:2 Employee assistance programs

Employee assistance programs are reported to be used by over 80% of the top 500 US employers and by a growing number of UK employers.

Checklist 12.1: Assistance with personal problems

1. Information on a wide variety of subjects should be available to all employees. This would usually involve the provision of the services of and referral to a person used to dealing with the particular problem.
2. Tactful and sympathetic counselling, ranging from information provision, through outline or detailed advice and help, to the option of simply having someone listen to and share a problem (that is, allowing the employee to unburden and to discuss the problem with an objective outsider) should be available.
3. The company could also assist by referring the problem to a third party (doctor, solicitor, citizens advice bureau, housing office, etc.) to provide or obtain access to expert advice.
4. This service should be provided totally confidentially, and be effected responsibly with due regard for the subject's rights and feelings.

Note:

Whilst it may be necessary to confirm any arrangements made or decisions affecting such problems in writing, any attempt by the employer to assist should commence with a meeting.

Checklist 12.2: Personal problem meeting

1. Find the facts before the meeting, including as many personal details as possible. Knowing some personal details will aid rapport and encourage a feeling that here is someone who understands and cares.
2. Although a one-to-one meeting is helpful, this may be impractical if the two parties are of different sexes and the subject matter is personal. However the intervention of a third party should not be forced on the subject who may resent such an intervention. There should be no hard and fast rule about this. Sometimes an employee may find it easier to discuss a problem with a member of the opposite sex. The decision needs to be left to the employee and the matter raised at an early stage. Smaller employers who find it difficult to provide counselling services internally should consider retaining external consultants to assist.
3. Be tactful and allow plenty of time - including the possibility of a short recess for a short or longer period.
4. Provide refreshments, and allow those who wish to smoke, to do so.
5. Ensure the interview is confidential and protected from unwarranted intrusion.
6. Try to move to some solution however skeletal.
7. In case of ongoing personal problems try to arrange for referral to experts (for example, Samaritans, doctors, solicitors, and so on).
8. Take notes of what transpires.
9. Keep immediate superior informed of progress.
10. Update on progress as necessary.

Note:

1. To those who smoke the opportunity to do so when discussing problems may be a valuable method of relaxing them in order to encourage a discussion of the problem. If there is a site no smoking rule, either a discussion room provided for such a purpose should be exempt from the requirements, or the discussion should take place 'off-site' (but still in the employer's time, unless an alternative is suggested by the employee).
2. A number of organisations now exist to provide services to assist employers and employees with problems. 'Counselling in Companies' recommends

employers take prompt action with employees with problems to avoid potentially expensive damage being caused to the organisation itself as well as to the subject. (Contact: WPF Counselling, 23 Kensington Square, London W8 5HN. Tel: 020-7937 6224

3. The employer should take a reactive not proactive role in order to grant and preserve the self-respect of the employee.
4. It has been estimated that at any one time as many as 20% of the workforce of the average organisation will be coping, or trying to cope with, a personal problem likely to affect their performance. Of these nearly half (that is just under 10% of the total workforce) will be experiencing a serious problem, such as divorce, death or serious illness of a close relative or friend, court case, and so on. All such problems cause stress which is not only detrimental to the output of the employee, but can also affect the output of their colleagues.

This may be compounded by unsympathetic attitudes of those in any position of authority who in trying to achieve output or targets, may feel their efforts are being negated, virtually deliberately by those suffering from such problems. Unlike a broken leg, or a heavy cold, stress symptoms are far less obvious, and thus more difficult to discern and counter. Stress-related illnesses account for well over a third of certified absences in the UK and are likely to account for a substantial number of problem employees, who require counselling and help rather than sanctions.

5. There can be little doubt that there is on many employees a continual and growing pressure to perform effectively. Indeed surveys indicate that at a time when unemployment is still in excess of 1,200,000 the numbers of hours of those in work has increased in many areas. Early presumptions that the incidence of the Working Time Regulations would begin to have an effect seem unfounded. This possibly follows concern over the lack of permanence of job security, increased pressure to perform and a lack of confidence in the future. Regardless of cause these pressures have in turn resulted in the growth of stress as an on-going medical condition.
6. As far as employers are concerned the problem is encapsulated in the decision in the Walker v. Northumberland County Council where the High Court found in favour of the employee who had suffered two nervous breakdowns as the result of his work and the fact that his employer had done little or nothing to alleviate the stress that he had been under. The employee was awarded £176,000. Many cases of stress could last longer than 12 months and would thus be a condition covered by the Act (which the Walker case predated). Since compensation for disability discrimination is unlimited the sums involved could be considerable.

7. There has been a considerable rise in the number of employers providing Employee Assistance Programmes in recent years. Generally these are confidential services provided to enable employees to source advice and counselling regarding problems often, but not exclusively, related to the work environment and relationships. Making arrangements so that any employee feeling stressed should contact such a service for advice might help an employer defend a subsequent claim. April endeavours to assist all its employees with a clear management structure, a Duty Manager on call 24 hours a day, for advice, support and assistance. If an employee of April Complete Care Solutions feels that they require extra assistance, then the Human Resources Manager and the Nurse and Care Manager are available to discuss any problems. If the problem is of a magnitude that the individual wishes to discuss at a higher level then arrangement for the Managing Director to discuss the issue with the employee would be made. Further assistance would be obtained from external sources, if necessary.

The most common causes of pressure are:

- (a) long working hours;
- (b) work overload;
- (c) job characteristics (e.g. dealing with the public);
- (d) lack of management support;
- (e) lengthy and/or wearying travelling;
- (f) bullying and harassment,

and most are to a greater or lesser extent the responsibility of the employer with the critical additional factor of the employee not having control over any of these items creating the stress itself.

WARNING:

In seeking to provide a working environment conducive to safe production work as well as to show a defence in the event of a claim related to stress, employers need to be proactive not reactive. Managers may need to be trained to watch for stressful characteristics (although these are not always visible) and to initiate action when such characteristics are noticed. The problem, and potential loss, may be much greater than currently perceived.

12:3 Addictive drugs

In referring to the word 'drugs', one immediately tends to call to mind the so-called hard drugs - cocaine, heroin, etc., and whilst these are a problem for some employers, other addictive substances usually pose by far a more widespread threat.

12:3.1 Tobacco

April operates a no smoking policy and encourages its staff when on placements not to smoke, either in our Clients' homes, or in organisations such as Nursing/Residential Homes or Hospitals. If the employee does smoke in any of the latter, then they should comply with that organisation's smoking policy and if a designated area has been set aside, they should only smoke in that area.

This move follows a number of developments, not least a ruling by the European Court of Justice which found in favour of an employee whose health was perceived to have been damaged by latent smoking, that is exposure as a non-smoker to smoke from colleagues' cigarettes. In addition, public opinion has changed in recent years, so that smoking in public places, and, in this context, workplaces tend to be included as public places, is perceived by the majority (including many smokers) to be socially unacceptable. Whilst, to a non-smoker, the imposition of a smoking ban may be seen as a relatively minor step, to a smoker addicted to nicotine, the thought of being forced to do without regular intakes can be extremely fraught.

Introducing a smoking ban thus needs to be carried out over a timespan and with consideration for all involved.

WARNING:

In the case of *Waltons & Morse v. Dorrington*, the EAT held that a secretary who resigned because of the environment within which she was required to work was unfairly constructively dismissed. The employee was forced to work in a corridor giving access to three offices. The occupants of the offices (the doors of which were usually open) as well as the three secretaries who also occupied the corridor, all smoked. The tribunal stated that employers were not entitled to balance the interests of smokers and non-smokers equally since passive smoking can lead to cancer and heart disease.

The recent publicity given to reports that passive smoking is injurious (as well as moves to ban smoking in public places) can only bring extra pressure to bear on more employers to create non-smoking environments.

Checklist 12.3: Smoking ban introduction

1. Communicate the decision, outlining the reasons (that is a résumé of those set out above) to all employees. April has an existing procedure with regard to smoking whilst on duty and this may be referred to in the employment handbook.
2. Advise that during their working shifts, employees found smoking in inappropriate areas will initially be cautioned for smoking but not via the disciplinary procedure, that is the caution will be more of the encouragement and counselling type.
3. Possibly client sites, such as Nursing/Residential Homes and Hospitals may have designated a specified area for smoking and these should be used.
4. Provide counselling support and other assistance to those who decide they wish to give up smoking.
5. However, if an employee totally disregards the rules and procedures regarding smoking whilst on duty with a client, after initially having received counselling, then April would have no recourse but to move to the disciplinary procedure.
6. Where there are breaches of the ban reported to April's main office, these will need to be dealt with under the disciplinary procedure.
7. Where an Employee Assistance programme (i.e. one providing counselling support) is in operation, or where it may be necessary to find a place where confidential counselling can take place, the exclusion of such a room from an otherwise comprehensive ban may be advisable.
8. In particular cases it may be helpful to set aside a room or place to which smokers can retire occasionally.

[Note: Whilst at first glance this may seem to be an obvious solution to the problem of heavily addicted employees, it can, however, have problem repercussions unless the rules under which such a room or place can be used are clear and enforced. Firstly, the number and length of such 'smoking breaks' needs to be delineated and related to the number and length of breaks available to non-smokers, to avoid any backlash against the concession. Secondly, there may need to be set aside a similar 'room' for non-smokers. Thirdly, under draft European Union proposals it may be necessary to provide separate facilities for pregnant women and nursing mothers (that is those who have given birth recently and/or who are breastfeeding their baby) who may thus need a 'smoking' area separate from any used by other employees.]

Obviously some employees will find it impossible to comply with a no-smoking ban and may then be forced to reconsider their employment. The introduction of such a rule, whilst it is in many cases a unilateral change to working conditions, will not normally allow an employee to claim constructive dismissal if they resign because of such a change. In the *Dryden v. Greater Glasgow Health Board* case, a tribunal held that the employee's contract gave her no implied right to smoke at work. The fact that the employer had consulted widely, given reasonable notice of the change and offered counselling and support to smokers who would be affected stood it in good stead.

12:3.2 Alcohol

The consumption of alcohol has been recognised as potentially dangerous by a large number of employers, particularly those involved in Nursing and Care and interface with the public. It is now recognised that even a small intake of alcohol, for example at lunch time, can impair performance and, particularly where employees are operating equipment/machinery, could be dangerous either to that employee's safety, or to other employees, or to the client - or any combination of the three. In the same way that 'no smoking' rules are becoming more prevalent, so too are no alcohol rules.

Note:

Research by the Canadian Centre for Substance Abuse indicates that 70-80% of all accidents and other alcohol-related problems occur amongst those best described as 'moderate drinkers' (i.e. not 'heavy' drinkers who traditionally have been assumed to be the worst offenders). The International Labour Organisation (which commissioned the research) estimates that around 3% of the average workforce are either alcohol or drug (or both) dependent. The groups most at risk are low status workers, younger people and males

12:3.2.1 Realistic application

The fact that there is a no-alcohol rule should obviously apply in all cases during working hours given the nature of April's business.

12:3.3 Solvent and drug abuse

For the same danger elements as are referred to in dealing with alcohol, solvent abuse and the use of drugs for non-medicinal purposes cannot be countenanced within April's and the client's environment. Unfortunately the effect of these kinds of addictive drugs can be far more difficult to deal with than either tobacco or alcohol, and in most instances it will be necessary to refer sufferers to experts for assistance. Although their advice will be invaluable, the employer may have to take the first steps in order to

(a) recognise the problem for what it is; and

(b) counsel the employee that he or she needs advice and help.

Note:

Research by the Canadian Centre for Substance Abuse indicates that alcohol and drug abuse at work costs the world's industrialised economies billions of dollars each year in lost output with young low-skilled males the worst affected. The International Labour Organisation which commissioned the above research estimates that around 3% of the average workforce are either alcohol or drug (or both) dependent, whilst a further 8-10% may be suffering from the early effects of substance abuse. The groups most at risk are low status workers, younger people and males.

Checklist 12.3.1: Drug dependency and response

A. Awareness

1. Identify the symptoms - for example, erratic work, erratic attendance, excited responses to mundane matters, low output and/or quality of work, difficulty interfacing with colleagues, poor attention to appearance, poor health and/or appearance, physical disabilities (running nose, dilated pupils, marked skin, etc.).
2. Attempt to identify the problem. Many of the symptoms described above may indicate addiction, but equally they could indicate a number of other problems. Nothing would be guaranteed to add to the stress of an employee suffering because (say) of the breakdown of a relationship, than to learn that their employer feels they may be drug addicted. Someone unable to concentrate on his/her work, with a running nose and an untidy appearance, could be addicted, but equally these symptoms could be the result of his/her partner having left him/her whilst simultaneously (s)he has a persistent heavy cold.
3. Do not make assumptions - invite confidences. Rather than setting up an interview and making a statement, invite the person to confide the problem as the symptoms indicate there is a problem with which a responsible employer would like to help if possible and if required.
4. If the employee refuses to discuss the position, request a medical examination, either by the employer's own retained medical advisor or by the employee's doctor.
5. If the employee is prepared to identify the problem - take notes without comment and without criticism. Offer access to suitable third party advice or, if apparently welcomed, to personal advice if it is felt that this is of value.

6. Invite repeated discussions to provide support.
7. Advise the line manager and possibly colleagues (although this will depend on the problem and the circumstances), stressing the need to provide help and support rather than interference and publicity.
8. Hold a watching brief and request further referral to experts as and when necessary.

B. Responses

The responses from an employer will vary according to the exact circumstances of the reported problem. In all circumstances it would be safest for the employer to ensure advice is sought from someone experienced in dealing with the problem:

- (a) Drugs and/or solvents discovered: take possession and secure safely. Endeavour to discover who stored the substance(s). Contact the police and invite to investigate (and to determine the nature of items).
- (b) One employee informs that another has substances: try to preserve confidentiality of the informant's name. Make a search and if substances are found invite an explanation for their presence. Secure the substances safely. Contact the police and invite investigation.
- (c) Employee found in possession of substance(s) (apparently non-medicinal): take possession and secure safely. Contact the police to identify substance(s) and advise regarding action.
- (d) Employee seems to be under influence of substance(s). If behaviour is abnormal regardless of whether substance(s) are medicinal or not they will need to be removed from the workplace. If they admit that the substance(s) is/are non-medicinal contact the local hospital for advice. If there is no immediate danger to life arrange transport for the employee to their home and state that they must not return until free from the effect of the substance(s).

WARNING:

Employers who become aware of the presence of non-medicinal drugs on the premises must notify the police. Failure to do so renders them liable to criminal penalties. Despite the movement towards the decriminalisation of the use of cannabis, supplying the drug is still illegal

Note:

Suspending action regarding the violation of rules pending receipt of a medical report puts pressure on the employee to attend. If (s)he does not attend, then the disciplinary procedure should be invoked to deal with that point. The fact that counselling was offered and not utilised would obviously be relevant in deciding any sanction.

12:3.3.1 Medical examination

When considering sickness and absence control the possibility of utilising a retained doctor or medical consultancy to act as the April's named retained medical advisers, was considered. However, due to the size of the business it has been deemed more prudent that when requiring a medical report, to request one from the individual's own GP after gaining their written consent. The fact that this arrangement exists, and that April will expect employees to agree to be referred to such medical facilities in such circumstances should be promulgated to all likely to be affected.

Whereas such facilities may be set up in order to provide an independent opinion of the state of health of real or sham sickness claimants, the fact that they exist can be used as a source of counselling and help to employees facing problems both medical and non-medical.

Having medical reports available can be very helpful if employers need to consider taking disciplinary action - even dismissing a sick employee. However, although employers should obtain medical advice concerning an employee's condition, as the EAT stated in the case of *East Lindsey District Council v. Daubney*, they 'cannot be expected to be, nor is it desirable that they should set themselves up as, medical experts, the decision to dismiss or not to dismiss is not a medical question but a question to be answered by the employers in the light of available medical evidence'. It is important, therefore, that when seeking advice, employers should do so in terms suitably adjusted by the circumstances.

Perhaps the latter part of this advice should have been heeded by the employers in the case of *Chamberlain Vinyl Products Ltd v. Patel*. In that case the EAT held that the dismissal of an employee suffering from depression was unfair. The EAT stated that when they become aware of the employee's illness, the employer was under a duty to investigate it fully since the illness itself might have affected his attitude which was the cause of the dismissal.

WARNING:

One result of a medical examination might be the discovery of a latent long-term medical condition which could mean that the employee is then protected by the Disability Discrimination Act. This situation would need to be handled very carefully to avoid breaching the Act, the minimum threshold of 15 employees is to be abolished from October 2004.

Figure 12.1: Sample arrangements for medical attention

1. April intends that if it is deemed that an employee should be seen by a medical practitioner, they should be referred to their own GP for an independent medical report in the event of sickness. A request to attend for independent examination will only occur:
 - (a) when the absence record of the employee is considered poor; or
 - (b) when April feels that it needs an independent medical report to confirm the report provided by an employee' or
 - (c) when malingering is suspected; or
 - (d) when the organisation feels that the health of the employee is such that a medical examination would be helpful.

Such facilities can also be used either at an employee's request or at April's suggestion where the employee feels that the counselling likely to be offered by such medical experts may be of assistance to them.

2. The employee can choose the doctor, and will be given an opportunity of inspecting any report provided. The fees for all such employee examinations, which will normally be carried out during normal working hours, will be paid by April.
4. The organisation reserves the right to suspend with or without pay, any employee who it considers is incapable of carrying out their work for medical reasons, and any employee who refuses to attend such an examination when requested to do so under categories 1(a) to 1(d) above. Subject to an investigation, refusal to attend such an examination, will be regarded as gross misconduct.
5. Additional health services as follows are provided for all employees:
 - (i) health check-ups - either provided under the medical cover or by a retained doctor, whose fees are usually met by April in whole or to a prearranged limit;
6. Confidential counselling services will be arranged and made available for those who believe they are suffering from stress. If after examination it is suggested that such stress may be caused by the working environment or matters related to work, it is important that the employer is told in order that an urgent review of matters can be conducted.

Note:

The Court of Appeal in dismissing three stress compensation claims stated that where employers provided stress-counselling services, they were unlikely to be held liable in the event of a stress claim.

12:4 AIDS

The greatest difficulties in dealing with AIDS sufferers may not be their own health and allied problems, but the prejudice to which they and their condition are subjected by the ignorance of their fellow employees. Attempting to combat this ignorance is essential. In case of difficulty it might be helpful to publish a policy document, or include an item in an employee handbook on the subject. This should stress the fact that AIDS cannot be contracted from someone with the disease in the ordinary course of employment - it can only be spread by sexual contact, by an infected mother to her unborn baby, or by blood infection (e.g. using a needle for drug injection that has been used by an AIDS sufferer or someone who is HIV positive).

It should be noted that since HIV/AIDS is an illness which is likely to last in excess of 12 months (or the rest of the life of the subject) a sufferer may be protected by the Disability Discrimination Act.

Notes:

1. Refusal to work with an AIDS sufferer may be grounds for dismissal, although such action would hardly be good industrial practice, and some kind of compromise, taking account of an individual's feelings might be advisable.
2. There is little to be gained by phrasing such a letter in a harder manner. Using a medical expert may assist by providing the level of reassurance that the employee needs. Obviously if there is a refusal following such action, then it may be necessary to refer to the disciplinary procedure.
3. Leaflets AIDS at work and AIDS in the Work Place are available from the Department of Employment and providing copies to all those involved may assist.
4. It may be helpful to include a requirement to deal fairly with AIDS sufferers in that part of the employer's equal opportunities policy that deals with disability discrimination. A failure to comply would then place that person in conflict with the rules of the organisation. However the real concerns of other employees (no matter how apparently unjustified) need to be appreciated. Gaining

acceptance by persuasion will almost certainly be more effective than gaining it by force.

12:5 Violence

12:5.1 Between employees

Fighting between, and the causing of bodily harm to, employees is usually regarded as serious misconduct punishable by instant dismissal of the perpetrator and sometimes of both parties - although great care should be taken regarding the application of sanctions to the 'victim'. Some element of striking back may be necessary to mitigate the effect of an attack and it could be perceived as unfair to apply the ultimate sanction in such circumstances. Each case needs to be assessed on its own merits.

In such circumstances, the attitude of the employer to the fact that injuries have been suffered may be to ignore them simply since those involved have only themselves to blame. However, this may be dangerous as the employer's attitude in such circumstances could be held to be 'supportive' of the perpetrator.

The Health and Safety Executive has previously gone on record as stating that employers may be liable to their employees if the latter suffer as a result of violence during their employment and that they might take action in certain cases.

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) were amended with effect from 1 April 1996 to require employers, amongst other things, to report acts of non-consensual physical violence done to a person at work.

Note:

Obviously an employer needs to take immediate and strict action where there has been violence not only to ensure the safety of those involved and any others who could become involved, but also since a failure to behave reasonably may mean the employer becoming liable.

12:5.1.1 Incomplete approach

In an unreported case two employees were involved in a scuffle at the commencement of their shift. Subsequently they were both dismissed - one for the flagrant provocation of the other and the second for 'fighting'. The latter claimed he had been unfairly dismissed and the tribunal agreed since:

- (a) in disregard of its own procedure the employer did not immediately suspend the employees but allowed them to work near each other for

the whole of the rest of the shift and for two further days before their disciplinary hearings thus indicating that it did not consider the incident as being 'serious';

- (b) knowing there was an eye witness the employer did not ask an eye witness for his version of events (in fact the first time he was asked what he saw was at the Tribunal hearing);
- (c) it was generally known that the person who provoked the other was an aggressive bully but that previous complaints had not been taken seriously by the employer and no sanctions had been applied;
- (d) the provocation had occurred over some time and was evidenced by third parties some of whom had complained (pointlessly) and no account was taken of this mitigating factor;
- (e) the appeal was superficial.

12:5.2 From external sources

It is also possible for an employee to suffer injury caused by an attack from a third party in the course of or incidental to his or her employment. The incidence of muggings and violent robbery of and from employees whilst engaged on their employer's business has increased in recent years, despite the Health and Safety Executive's recommendation to all employers that they have an obligation to try and protect such employees from these attacks, or to prevent them occurring (that is by changing procedures or practices). Should an employee suffer injury the natural inclination may be to offer sympathy and support, however, the employee in such circumstances may have a claim against the employer and the words used in any letter may need to be subject to the inspection of the employer's liability cover insurers. Those insurers will not wish any such letter to indicate an acceptance of liability which could prejudice their chances of a cheaper settlement or avoiding any settlement altogether.

Note:

Violence can be caused by words as well as by actions. In a Tribunal case it was recorded that a fitter who was carrying out regular maintenance work was sworn at repeatedly by a customer. This created an awkward atmosphere whilst he completed the work. The employer stated at the tribunal that the customer (the contract with which was regarded as important) had requested that someone other than the fitter attend on subsequent occasions. However, without the fitter being aware of this fact, he was asked to visit the customer again - twice on one day. His first visit was peaceful, but there was a heated exchange during the second visit and at one point the fitter retaliated by swearing under his breath.

On leaving the premises he phoned his employer to inform them what had happened - including the provocation to which he had been subjected. The employer suspended and then dismissed the fitter who claimed unfair dismissal. A letter was produced from the customer to the tribunal but it seemed that this had been generated some days after the event and after the dismissal suggesting that the employer had already decided to dismiss and then tried to gain evidence of external pressure to support such a decision.

The tribunal held that this was unfair dismissal since the fitter had been placed in a difficult position by:

- (a) his own employer who knew, though he did not, that the customer wanted someone else to attend to them; and
- (b) by the employees of the customer who had repeatedly sworn at him in an abusive way.

It should not be overlooked that employers owe their staff support and protection - not just from their own employees but also from others with whom their job brings them into contact

12:5.3 From internal sources

Unfortunately a considerable amount of the violence emanates from colleagues and even those to whom employees report. Violence in this context could include:

- (a) fighting (including intentional jostling, scuffling, etc.);
- (b) discrimination (in every variety of contexts);
- (c) harassment (not only actual physical contact but also effected by innuendo, electronic communication, etc.).

A survey carried out by Labour Research revealed that

- violent incidents occur in over 70% of workplaces;
- in about 25% of the workplaces violence occurs weekly; and
- physical assaults occur in 54% of workplaces.

It may be necessary to confirm action taken to a wholly innocent victim of such actions.

Note:

When Laurent Weinberger was late for work his colleagues made him dress as Hitler even though he was Jewish and his grandmother had died in Auschwitz. He sued his employer - Tullet and Tokyo - who settled out of court for £500,000.

1. Depending upon the nature of the incident it may be appropriate for such a letter to be written by a senior manager to attempt to convey the seriousness with which the employer regards the complaint. The danger for the employer is that if it is seen not to have taken action to police its procedures and to sanction those who offend, it could be joined in any subsequent action and be penalised. Employers need to be proactive in this area.
2. Confirming the action taken proves a permanent record to the victim as well as evidencing the seriousness with which the employer regards the complaint as referred to in 1. above.

12:6 Retirement

Whilst a few employees look forward to their retirement, most view it with something akin to fear and dread. The twin thoughts of empty hours and a reduction in income can produce a stressful situation some months, even years, in advance of the actual event. For this reason many employers now operate pre-retirement courses and/or literature aimed at providing their employees with information concerning, as well as encouraging them to contemplate, their retirement and to consider what they intend doing with it.

The EU has announced that by 2006 it will be illegal to insert a compulsory retirement age in contracts of employment. The aim is to encourage people to work longer and thus, in the process, minimise the time when they will be eligible for - and likely to claim - State benefits.

Notes:

1. Obviously not all employees do reach retirement but there is no point labouring this (it is entirely inappropriate in these circumstances anyway) and the aim is to try to reassure the subject of the letter that this is something that applies to everyone not just to them.
2. The courses can hardly be made compulsory although running them in company time and at company expense provides a considerable incentive. Obviously those who do not attend will be expected to work as normal.

12:7 Death

The death of an employee is always, whether or not it is anticipated, untimely and needs to be handled with tact, discretion and sincerity, which will be easier to

achieve if eventualities are considered and planned for in advance. The following checklist attempts to deal with all aspects.

Checklist 12.4: Actions in the event of death

A. Anticipated death:

Where the death of an employee is anticipated, the following steps should be taken:

1. Contact the employee (or a nominated member of their family, should they not be capable of dealing with the situation) to ask whether they wish to be made aware of entitlements.
2. Only if the employee and the family wish to discuss it, prepare a schedule comprising:
 - (i) Benefits and options under pension scheme. These should be carefully examined in conjunction with pension advisers since it may be that by taking an immediate pension during life, rather than awaiting death in service benefits, long-term payments may be improved for the dependents. Inevitably each case must be reviewed on its merits - the advantage of advance consideration is that it does provide an opportunity for alternatives to be considered and discussed.
 - (ii) Benefits under a Life Assurance scheme (if separate from the Pension arrangements).
 - (iii) For employees not covered by a pension scheme, consider the granting of an ex-gratia allowance. This is usually paid only to longer service employees or their dependents, who, for no fault of their own, were not able to join a pension scheme (thus employees who were invited to join the pension scheme but declined would not normally be eligible). It needs to be made clear to the employee and the dependents that, as this is an ex-gratia allowance, should control of the organisation change, it may cease.
 - (iv) For employees not covered by the pension scheme or the ex-gratia allowance, consider payment of a death gift.
 - (v) Payments due under any benevolent fund or voluntary contribution scheme.
 - (vi) Accrued holiday pay, sickness pay and any other entitlements.

(vii) Any rights under share option schemes, etc. Details of share ownership and arrangements for transmission or transfer of shares following death.

3. Visit the employee and/or family with the schedule and explain the contents. [Note: Under the Financial Services Act, the provision of advice on such matters may only be carried out by an authorised person. Accordingly, other than explaining the significance of options and so on, the employer should not give advice. However, the Department of Social Security has recently stated (in its leaflet PP4) that advice and information about an employer's pension scheme does not infringe the Financial Services Act, as an employer is not receiving any financial gain and would not be deemed to be carrying on an investment business. In view of the potential backlash should advice - no matter how broad - subsequently be discovered to be poor, employers might still prefer to use the advisers rather than their own staff to provide it.]

If advice is required, it would be preferable for a representative of the pension scheme advisers to visit the family. If the employee has assets of a value likely to exceed the estate duty threshold (i.e. £255,000 at April 2003), the family should be advised to consult a solicitor so that probate preparations can be commenced.

4. Revisit the family as requested. If decisions are made by the family, advise those involved both within the organisation and amongst its advisers, to ensure all relevant benefits are paid.
5. Check that no documentation (other than the death certificate) is outstanding (e.g. birth, marriage, change of name certificates). If such certificates are required, suggest the family find and provide them immediately, and that they advise April immediately death occurs, and provide it with a copy of the death certificate.
6. Advise the family that the April is available and ready to help if it can - all they need to do is ask.

B. Sudden death:

Where an employee dies suddenly or unexpectedly, trying to communicate complex figures and options to the relatives will be much more difficult, and may be best left until, say, after the funeral, although this fact should be explained since the choice must be that of the family.

1. Advise the family that April is available and ready to help if it can - all they need to do is ask.

2. If any death benefit, e.g. a death in service gift, is payable, prepare a cheque immediately the news is known, made payable to the next of kin, and take it to the family.
3. When making contact with the family, check if there is a close relative (who may be less affected by the loss than the immediate family), who can act (if preferred by the family) as liaison between the family and April.
4. Check whether the employee (particularly if a member of the pension scheme) completed an Expression of Wish form, and, if so, pass it to the Trustees.
5. Prepare a list of benefits payable as listed under item 2 in the Anticipated Death procedure, and follow items 3 to 6 in that procedure.
6. If the family seems to be short of money, review with the Managing Director the possibility of short-term [April] assistance.
7. Make it clear that should any counselling be required, that April is ready to help, but does not wish to be intrusive.

C. Sudden death from work-related accident:

1. Advise the [April's] insurers of the accident giving as many details as possible via an incident form. Also advise the insurers that the actions listed in the Sudden Death checklist as set out above are to be implemented.
2. If an advance is to be made in respect of benefits payable, the insurers may require the letter sending the cheque to be marked 'Without prejudice' in order to safeguard their position in the event of any claim.
3. Follow the procedure set out in the Sudden Death checklist.

D. All deaths - supplementary checklist:

1. Advise work colleagues of event, and of family wishes with regards to any collection, etc. Advise Newsletter (if any) for obituary.
2. Obtain a copy of the death certificate.
3. Advise payroll department requesting payment of all outstanding sums under the contract and issue of P45.
4. Send P45 to tax office (advising if there are further amounts payable - e.g. in respect of bonuses not yet calculated, etc.

5. Send sums outstanding to family and explain P45 has been sent to local Inspector of Taxes, give address, tax reference number, and employee's National Insurance number.
6. Discover date of funeral, follow employee or family wishes regarding flowers/donations and so on. Attend funeral.
7. One month after funeral, telephone family to maintain contact (if no other contact made).

WARNING:

Advice should be taken before paying accrued wages, holiday pay, etc., to the family:

- (a) because those amounts belong to the estate of the deceased and should be declared for probate and possible taxation; and
- (b) since it may be unwise to assume that those with whom the employee lives are the family entitled to the money, or that the employee wanted such amounts to be given to a particular person or persons.

Notes:

1. Very often, in composing this kind of letter, the content may be less important than the fact that it is written at all. However, it is essential that the facts quoted are correct and that it is an individually prepared and personally addressed and signed letter. Pro forma and standard letters used in this context tend to create more harm and antipathy than good.
2. In composing such a letter, individual account must be taken of the type of occupation, length of service, and popularity of the individual, and so on. It is usually easier to write about an employee who has been something of a 'leading light' in company activities than it is about someone who has got on quietly with their work, but this should not mean that little is referred to about the latter.
3. Where the organisation does not already grant compassionate leave, it may be appropriate to consider the death of a dependant under the Parental or Dependants Care Leave arrangements.