

by Boyd Byers

He Who Hesitates is Lost — Avoid 'Joyless March to the Inevitable'

Ken Burns' new documentary, "The Tenth Inning," artfully chronicles the past 16 years of Major League Baseball. One segment of the film covers baseball's "steroid era," including fans' mixture of ambivalence and cynicism as a chemically enhanced Barry Bonds caught up and surpassed Hank Aaron's all-time home run record in 2006. "The whole thing was a joyless march to the inevitable," as Bob Costas put it.

Costas' colorful turn of phrase — "joyless march to the inevitable" — stuck in my head. The expression reminds me of a phenomenon I see all too often: employers needlessly delaying the firing of an employee who needs to go. I understand *why* employers do this — avoiding unpleasantness, procrastination, unfounded hope that the employee will "turn it around," slack managers who neglect to pave the way for a clean discharge. Yet I still ask myself, *why do employers do this?*

Don't get me wrong — I'm not saying managers should hastily make and execute firing decisions on the spot. But all too often honest evaluations and tough employment decisions are put off for no good reason. The resulting march to the inevitable negatively affects everyone involved. The employee is unhappy, and the poor performance or bad behavior doesn't improve or worsens. Life is miserable for the poor performer's manager and coworkers. The longer the situation festers, the worse it gets. Things go from bad to worse when the employee starts documenting every detail of the workday to try to build a lawsuit. Or, worse yet, the employee preemptively strikes with a discrimination, harassment, or workers' compensation claim, thus setting up a retaliation claim. In short, an otherwise clean discharge can get messy if you wait too long to pull the trigger.

A case study

A recent case from the Eleventh Circuit, *Alvarez v. Royal Atlantic Developers, Inc.*, reinforces that truth. A CFO felt her new controller wasn't up to snuff and needed to go but, not wanting to be short-staffed, left her in place during the search for a replacement. The controller caught wind that she was on the chopping block and did what any ambitious junior executive would do — she wrote a letter to the company president alleging that she was being discriminated against because of her national origin. The company then had an epiphany that the controller needed to be shown the door pronto because it would be "awkward and counterproductive" to keep a disgruntled employee around.

On cue, the controller sued for both national origin discrimination and retaliation. The court tossed the discrimination claim, observing that if the company had simply fired her when it first made the decision, the case would be easy. But the company's about-face in response to the discrimination complaint and its explanation for accelerating her firing provided enough evidence to let the retaliation claim go to a jury trial (even though back-pay damages would be limited to the time between her actual and prospective discharge).

A different approach

Netflix is one company that takes an aggressive approach to parting ways with underperforming employees. Netflix says on its website that like other companies, it tries to hire well; but unlike many companies, mere adequate performance results in a pink slip. Netflix tells its managers that like pro sports coaches, their job is to "hire, develop, and cut smartly, so we have stars in every position."

Netflix managers apply the "keeper test": *Which of my people, if they told me they were leaving in two months for a similar job at a peer company, would I fight hard to keep at Netflix?* Those who don't make the list are promptly severed. Managers and employees are told to be honest with each other about performance to avoid surprises. While loyalty is a good "stabilizer," unlimited loyalty to an ineffective employee "is not what we are about," Netflix says.

He said it

There comes a time in matters like this when you have to sh_t or get off the pot. The great trouble here is the indecision.

— Richard Nixon