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No. 67030-1-I

COURT OF APPEALS DIVISION I  
OF THE STATE OF WASHINGTON

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REYNOLD QUEDADO,

Plaintiff/Appellant,

v.

THE BOEING COMPANY,

Defendant/Respondent.

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**BRIEF OF APPELLANT**

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COURT OF APPEALS  
DIVISION I  
STATE OF WASHINGTON

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**TABLE OF CONTENTS**

I. OVERVIEW AND RELIEF REQUESTED .....1

II. ASSIGNMENTS OF ERROR.....2

III. ISSUES RELATED TO ASSIGNMENTS OF ERROR.....2

IV. STATEMENT OF THE CASE .....4

    A. The Implied Contract And Promises Relied Upon  
    By Mr. Quedado Made By Boeing Found In The  
    Code Of Conduct And The Disciplinary Policies It  
    Incorporated. ....6

        1. The Boeing Code Of Conduct..... 6

        2. BPI-2606 And PRO-1909 And The  
        Specific Terms Addressing  
        Investigation Of And Corrective Action  
        In Response To Employee Misconduct. .... 8

    B. Mr. Quedado’s Knowledge Of And Reliance Upon  
    Boeing Employment Policies.....10

    C. The Hiring Process At Boeing At The Time The  
    Conflict Of Interest Accusations Were Made  
    Against Mr. Quedado.....12

    D. How The Investigation Of Mr. Quedado Began,  
    And What It Revealed Regarding Boeing’s Hiring  
    Of Appellant’s Relatives.....14

        1. What Initiated The Investigation Of Mr.  
        Quedado. .... 15

        2. The Information Revealed By Ms.  
        Lackie’s Investigation Affirmed No  
        Influence By Mr. Quedado In The  
        Hiring Of Mr. Joven..... 17

        3. Ms. Lackie’s Investigation Revealed  
        Mr. Quedado Did Not Influence Or  
        Participate In The Hiring Of Allan  
        Alonzo..... 19

    E. The Disciplinary Action Taken Against Mr.  
    Quedado Violated Boeing Policy; Even If He Had

“Influenced” The Hiring Of Relatives, Mr. Quedado’s Corrective Action Was Unfairly Excessive And Inconsistent With Discipline Imposed In Similar Circumstances. ....	24
1.    Based On Discovery Provided By Boeing, Mr. Quedado Is The Only Employee Respondent Can Identify As Having Been Subject To Demotion As Corrective Action.....	25
2.    The Only Other Employees Identified By Boeing As Receiving Corrective Action For A Like Offense (Improper Conduct In Hiring Process) Received Only Time Off Work. ....	26
3.    The Determination Of Corrective Action Against Mr. Quedado Did Not Conform With BPI-2616; Boeing Personnel Are In Conflict As To Who Actually Decided To Demote Mr. Quedado. ....	27
4.    Based On The Evidence, Mr. Quedado Asserts That There Is Reasonable Inference His Managers Used The Hiring Allegations As Pretext To Move Him Out Of Management. ....	29
F.    Procedural History – Mr. Quedado’s Complaint In This Action And The Trial Court’s Entry Of Summary Judgment. ....	31
V.    STANDARD OF REVIEW.....	32
VI.   ARGUMENT .....	33
A.   It Is A Question Of Fact As To Whether The Boeing Code Of Conduct Constituted An Implied Contract Between Mr. Quedado And Boeing. ....	35
1.   Whether The Code of Conduct Created An Implied Contract Is A Question Of Fact Precluding Summary Judgment. ....	37

2.	The Implied Contract Between Mr. Quedado And Boeing Included The Promises Made In BPI-2616 And PRO-1909, Regardless Of Whether Mr. Quedado Specifically Read Those Policies.....	38
B.	Whether The Disclaimers In BPI-2616 And PRO-1909 Were Effective Is A Question Of Fact.....	40
C.	Whether The Promises Made By Boeing In Its Code Of Conduct And BPI-2616 And PRO-1909 Were Specific Enough Was An Issue That Could Not Be Determined On Summary Judgment.....	43
D.	There Were Questions Of Fact As To Whether Mr. Quedado Could Justifiably Rely On Promises Made In BPI-2616 And PRO-1909.....	46
E.	It Remains A Question Of Fact As To The Propriety Of Boeing’s Investigation Into Mr. Quedado’s Alleged Misconduct.....	48
VII.	CONCLUSION .....	50
	APPENDIX 1: Code of Conduct (CP 220).....	vi
	APPENDIX 2: BPI-2616 (CP 232-246) .....	vii
	APPENDIX 3: PRO-1909 (CP 248-261).....	xxii
	APPENDIX 4: FAQ (CP 313-319) .....	xxxvi
	APPENDIX 5: Excerpt from BPI-2616 (CP 321) .....	xliii

## TABLE OF AUTHORITIES

### Cases

<i>Alexander &amp; Alexander v. Wohlman</i> , 19 Wn.App. 670, 578 P.2d 530 (1978).....	39
<i>Berg v. Hudesman</i> , 115 Wn.2d 657, 801 P.2d 222 (1990).....	37
<i>Bulman v. Safeway, Inc.</i> , 144 Wn. 2d 335, 27 P.3d 1172 (2001).....	46
<i>Drobny v. Boeing Company</i> , 80 Wn.App. 97, 907 P.2d 299 (1995).....	39, 44
<i>Flower v. TRA Industries</i> , 127 Wn.App. 13, 111 P.3d 1192 (2005).....	33
<i>Folsom v. Burger King</i> , 135 Wn.2d 658, 958 P.2d 301 (1998).....	32
<i>Gaglidari v. Denny’s Restaurant, Inc.</i> , 117 Wn.2d 426, 815 P.2d 1362 (1991).....	35, 48
<i>Gingrich v. Unigard Security Ins.-Co.</i> , 57 Wn. App. 424, 788 P.2d 1096 (1990).....	49
<i>H.D. Fowler Co., Inc. v. Warren</i> , 17 Wn.App. 178, 562 P.2d 646 (1977).....	39
<i>Korslund v. DynCorp Tri-Cities Services, Inc.</i> , 121 Wn.App. 295, 88 P.3d 966 (2004).....	44, 46, 47
<i>Kuest v. Regent Assisted Living, Inc.</i> , 111 Wn.App. 36, 43 P.3d 23 (2002).....	33, 42
<i>Lyll v. DeYoung</i> , 42 Wn.App. 252, 711 P.2d 356 (1986).....	38, 39
<i>Morinaga v. Vue</i> , 85 Wn. App. 822, 935 P.2d 637 (1997).....	49
<i>Mountain Park Homeowners Association v. Tydings</i> , 125 Wn.2d 337, 883 P.2d 1383 (1994).....	32
<i>Payne v. Sunnyside Community Hospital</i> , 78 Wn.App. 34, 894 P.2d 1379 (1995).....	40, 42

<i>Swanson v. Liquid Air Corp.</i> , 118 Wn. 2d 512, 826 P.2d 664 (1992).....	35, 37, 41, 42
<i>Thompson v. St. Regis Paper Co.</i> , 102 Wn.2d 219, 685 P.2d 1081 (1984).....	passim
<i>U.S. v. Taylor</i> , 166 FRD 356 (MDNC 1996).....	33
<i>Weden v. San Juan County</i> , 135 Wn.2d 678, 958 P.2d 273 (1998).....	32
<b>Rules</b>	
Washington Superior Court Civil Rule 56(c) .....	32

## **I. OVERVIEW AND RELIEF REQUESTED**

This case arises from appellant Reynold Quedado's June 1, 2006 demotion from a Level 2 manager position with respondent Boeing Company's Commercial Airplane (BCA) Production Engineering Group. At the time of his adverse employment action, Mr. Quedado had been employed by Boeing for over 25 years and maintained a stellar performance record. As a result of his demotion, Mr. Quedado was dropped two management levels to a non-management position, and was reassigned to another Boeing unit. Mr. Quedado was disciplined by Boeing for allegedly influencing the hiring of a second cousin and nephew in violation of a conflict of interest policy. The investigation and resulting corrective action did not comport with Boeing employment policies and the Boeing Company's Code of Conduct.

As will be explained below, Mr. Quedado's rights under Boeing policies were violated by his demotion. The evidence shows that Mr. Quedado did not influence the hiring of relatives, and otherwise did not violate any Boeing hiring policy. The record indicates the action taken against Mr. Quedado was pretextual. Well before any charges of misconduct were contemplated, Mr. Quedado's managers, unbeknownst to him, tried to reassign appellant out of management. The conflict of interest charges were later brought against Mr. Quedado, affording

Boeing's managers opportunity to accomplish their original goal of reassigning Mr. Quedado through "corrective action." The action taken against Mr. Quedado violated his implied contract with Boeing based on the Code of Conduct, and the promises of specific treatment made in Boeing's corrective action policies.

This appeal follows the trial court's dismissal of Mr. Quedado's claims on Boeing's summary judgment motion. There are material issues of fact that precluded summary judgment. The trial court's ruling should be reversed and this case remanded.

## **II. ASSIGNMENTS OF ERROR**

Because there were material issues of fact established by the record, the trial court erred by granting respondent's summary judgment motion and dismissing appellant's claims as a matter of law.

## **III. ISSUES RELATED TO ASSIGNMENTS OF ERROR**

1. Were there issues of material fact as to whether the elements of contract formation, i.e. an offer, acceptance, and consideration, were satisfied so as to create an implied contract between Mr. Quedado and Boeing based on respondent's Code of Conduct?

2. On Mr. Quedado's implied contract claim based on the Boeing Code of Conduct, where the language of the Code of Conduct incorporates by reference Boeing's employment policies, under contract

law principles were Boeing's disciplinary policies part of the implied contract even though Mr. Quedado had not specifically read the actual disciplinary policies?

3. Were Boeing's disclaimers found in BPI-2616 and PRO-1909 inapplicable to appellant's implied contract claim based on the Code of Conduct, where the Code of Conduct itself has no disclaimer, and Mr. Quedado had never seen nor read the disclaimers contained in the corrective action policies?

4. Did issues of fact exist precluding summary judgment as to the effectiveness of the disclaimers found in BPI-2616 and PRO-1909 based on Boeing's statements and contradictory employment practices?

5. Did issues of material fact exist as to whether the terms found in the Boeing Code of Conduct, BPI-2616, and PRO-1909 were sufficiently specific enough to create an implied contract between Boeing and Mr. Quedado, or promises of specific treatment in specific circumstances that could be enforced by appellant?

6. Even though Mr. Quedado had not read word for word BPI-2616 and PRO-1909, were there questions of fact as to whether appellant could justifiably rely upon the promises contained in those corrective action policies based on other evidence establishing his awareness and understanding of those policies? This other evidence

included management training, interaction with Boeing human resource personnel, and actual participation in investigations and corrective action taken in accordance with BPI-2616 and PRO-1909.

7. Were there questions of material fact precluding summary judgment as to whether Boeing's investigation of Mr. Quedado's alleged misconduct was reasonable and fair, and its determination of corrective action had been made in good faith? In determining whether Boeing's investigation and corrective action was fair and in good faith, can the trier of fact consider the specific investigation procedures and corrective action matrix set forth in BPI-2616?

#### **IV. STATEMENT OF THE CASE**

Mr. Quedado began his employment career at the Boeing Company in 1980, following his arrival to the United States from the Philippines. CP 193-194. He started as an engineer, and received subsequent promotions to management positions. *Id.* He became a senior manager in 1997, and continued to hold senior management positions in the years that followed. *Id.* Mr. Quedado remains employed with Boeing today.

This case arises from Mr. Quedado's demotion from a management position at Boeing. Mr. Quedado's demotion was memorialized by a "Corrective Action Memo" ("CAM"). CP 263-264.

The CAM issued to Mr. Quedado is dated June 1, 2006 and accuses him of allegedly violating a Boeing conflict of interest policy involving the hiring of relatives. *Id.* The CAM was issued based on the Boeing Code of Conduct and the application of two Boeing employment policies: the Administration of Corrective Action Policy (“PRO-1909”) posted online at Boeing with an effective date of April 11, 2006, and the Employee Corrective Action Guidelines (“BPI-2616”) posted online at Boeing was effective as of April 11, 2006. CP 232-246; CP 248-260. BPI-2616 sets forth the specific procedures for investigating an employee’s alleged misconduct, and any discipline (corrective action) to be imposed. CP 232-246. BPI-2616 includes a “matrix” of corrective action, which can be viewed as akin to “sentencing guidelines” imposed upon courts in criminal proceedings. CP 240-246; CP 321.

Under the BPI-2616 matrix relied upon by Boeing when it disciplined Mr. Quedado, the most severe corrective action for Mr. Quedado’s alleged violations was five days’ time off work without pay. CP 321. As stated in the policy itself, the BPI-2616 matrix must be followed to assure that consistent disciplinary action is taken for the type of conduct/violation. CP 233-234; *see also* CP 250 (PRO-1909). Mr. Quedado received a harsher punishment not found in the BPI-2616 matrix – a demotion out of management.

A. **The Implied Contract And Promises Relied Upon By Mr. Quedado Made By Boeing Found In The Code Of Conduct And The Disciplinary Policies It Incorporated.**

1. **The Boeing Code Of Conduct.**

During his employment with the Boeing Company, Mr. Quedado was required to sign the Boeing “Code of Conduct.” CP 194-196; CP 220-222. Every Boeing employee, regardless of rank or stature, is required to read and sign the Code of Conduct annually, including all management personnel. *Id.* As affirmed by Boeing’s CR 30(b)(6) designee and Human Resources Specialist Tom Hansen, an employee’s signature and compliance with the Code of Conduct every year is a condition of continued employment with the Boeing Company. CP 404-410; CP 313-319.

The Code of Conduct states:

The Boeing Code of Conduct outlines expected behaviors for all Boeing employees. Boeing will conduct its business fairly, impartially, in an ethical and proper manner, and in full compliance with all applicable laws and regulations.<sup>1</sup>

CP 220. Under the Code of Conduct, every Boeing employee is required to comply with “Expected Behaviors.” *Id.*; CP 259-260; CP 318; CP 404-410. The “Expected Behaviors” are detailed in Exhibit B of PRO-1909, and included the following:

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<sup>1</sup> As defined by Boeing, “laws and regulations” as used in the Code of Conduct included all Boeing employee policies and procedures. CP 318.

\* \* \*

4. PROCESS AND REPORT INFORMATION  
ACCURATELY, HONESTLY, AND PROPERLY.

\* \* \*

6. ADHERE TO COMPANY AGREEMENTS,  
POLICIES, AND PROCEDURES.

\* \* \*

CP 260 (p. 13) (Emphasis in original). The Expected Behaviors specifically incorporated BPI-2616 as governing infractions of the Code of Conduct. *Id.* The contractual implications of the Boeing Code of Conduct are set forth in Boeing’s explanatory communication to employees (CP 313-319):

- The Code of Conduct is a “condition of employment.” CP 316.
- An employee found to have violated the Boeing Code of Conduct after signing the agreement faced disciplinary action, per PRO-1909 and BPI-2616 Employee Corrective Action Decision making process. CP 314, 316.
- The Code of Conduct required “without exception, (all employees) will comply with all applicable laws, rules, and regulations.” Laws, rules and regulations specifically included Boeing employee policies and procedures. CP 318.

Mr. Quedado understood the Code of Conduct to be the equivalent of a contract. CP 195. He understood he was obligated to follow Boeing policies and procedures. *Id.* He also understood that all Boeing

employment policies were incorporated into and made a part of the Code of Conduct. *Id.*

2. **BPI-2606 And PRO-1909 And The Specific Terms Addressing Investigation Of And Corrective Action In Response To Employee Misconduct.**

Boeing has promulgated a number of policies, procedures, and business process instructions addressing employee rights and obligations. CP 391-398. The two policies at issue here are BPI-2606 and PRO-1909.

BPI-2616 was specific as to when, how, and by whom disciplinary action was to be taken against a Boeing employee. By its terms, no discretion was afforded in enforcing the policy:

Corrective action ***shall be taken*** when an employee engages in conduct contrary to the Boeing Code of Conduct or reasonable common sense rules of conduct. (Emphasis added.)

CP 233. BPI-2616 did not allow discretion as to how its procedures are applied:

These guidelines ***must be applied consistently*** throughout the workplace. The corrective action processes described in this procedure are ***intended*** to correct unacceptable conduct and to avoid its repetition.... (Emphasis added.)

CP 233. BPI-2616 imposed a mandate as to how the disciplinary process must be implemented, including the specific process steps in taking corrective action:

Each incident ***must be evaluated*** on the facts after a thorough investigation of the circumstances in the specific case.

In order to do this evaluation, ***the following steps need be performed.***

CP 234 (emphasis added). BPI-2616 goes on to describe the four required steps in the disciplinary process: Step One: Investigate; Step Two: Review Investigation Findings; Step Three: Make ECA (Employee Corrective Action) decision; and Step Four: Issue ECA. CP 234-237. In each step, BPI-2616 identifies the Boeing personnel required to participate: the Human Resources Generalist assigned; the Employee Corrective Action Coordinator assigned; and the Manager of the employee who is the subject of the disciplinary process. *Id.* In the “Step 1 Investigate” process, Boeing required the following action by the designated investigators:

***Ensure that a thorough investigation*** has been conducted and all relevant facts and data have been gathered. Investigations include:

- Gathering facts, as opposed to opinions and hearsay;
- Interviewing all material parties involved and documenting the information received;
- Weighing the evidence appropriately and reviewing the employee’s work and ECA (Employee Corrective Action) history.

CP 234 (Emphasis added).

BPI-2616 specifically states that its investigation and disciplinary procedures are to be used in conjunction with the procedure found in PRO-1909. CP 233-234. PRO-1909 mirrors BPI-2616 in directing that corrective action be based on facts and applied uniformly and consistently. CP 250-251.

**B. Mr. Quedado's Knowledge Of And Reliance Upon Boeing Employment Policies.**

Before Mr. Quedado's demotion on June 1, 2006, Boeing employment policies were available solely online, and consisted of the equivalent of thousands of pages of information in printed form. CP 195-196; CP 472-473. Boeing CR 30(b)(6) designee, Steven Miller, a Human Resources Specialist with expertise in respondent's employment policies and procedures, says there are over 3,000 business process instructions and 1,900 procedures. CP 472-473. He has not read every one. *Id.* In fact, even Mr. Miller has not read through all of the policies specifically limited to human resources, the subject area within his own job responsibilities. *Id.*

As a long time employee, Mr. Quedado originally had access to Boeing's employment policies in printed form contained in a binder. CP 195-196 (Quedado ¶ 8). Sometime around 2005, Boeing converted the policies into electronic format and made them available online only. *Id.*

Before receiving his CAM on June 1, 2006, Mr. Quedado acknowledges that he had not specifically read PRO-1909 that had been posted online with an effective date of April 11, 2006, nor had he specifically read BPI-2616 posted online at Boeing with an effective date of April 11, 2006. CP 196. However, well before the issuance of his CAM on June 1, 2006, Mr. Quedado was specifically aware of these policies, knew they existed, and understood their substance through training; his role and experience as a manager responsible for subordinate employees; and close interaction with Boeing human resource personnel while serving in a management position. CP 196-199.

Mr. Quedado also understood and was aware of the substance of PRO-1909 and BPI-2616 from his own active participation with Boeing human resources personnel during investigations involving appellant's own employees. CP 197-199. Those investigations were conducted in accordance with BPI-2616 and PRO-1909. *Id.* Two of those investigations occurred in 2005 and 2006 near the time of the investigation against Mr. Quedado. Both of those investigations resulted in the issuance of a CAM to the employee in accordance with Boeing policies. CP 198-199.

From the guidance and experience received, Mr. Quedado understood and expected that these same processes and procedures would

be followed if he was ever subject to investigation or corrective action. CP 199. This expectation was also based on the Boeing Code of Conduct, which required any employees who investigated Mr. Quedado or decided corrective action would do so only in strict adherence to Boeing policy and procedures. *Id.*; CP 220. At no time in his employment did Mr. Quedado sign any policy disclaimer. CP 199. Before his demotion, Mr. Quedado had neither seen nor read any disclaimer in any Boeing policy, including any found in BPI-2616 or PRO-1909. CP 80.

**C. The Hiring Process At Boeing At The Time The Conflict Of Interest Accusations Were Made Against Mr. Quedado.**

Mr. Quedado's demotion followed accusations that he exerted influence in the hiring of relatives in violation Boeing conflict of interest policy. At the time of the accusation, Boeing had an established process for hiring employees. CP 200-202. All hiring was through the Boeing Employee Staffing System, or "BESS." *Id.* BESS is an online system that contains the posting of available job openings at the Boeing Company. CP 200-201. On BESS are posted job descriptions for available positions including the educational requirements and experience required for each position. All job applications had to be submitted online through BESS. CP 201.

There is a “check and balance” system to assure the integrity of the hiring process and compliance with Boeing policies. CP 399-401. Hiring is a joint enterprise involving the Boeing business unit filling the position, and Boeing Human Resources. CP 200-202; CP 399-401. Boeing HR “owns the process,” from job posting on BESS through candidate selection, candidate interview, and the making of a job offer. *Id.* Assigned to the business unit’s hiring “Skills Team” is a counterpart from Human Resources who participates in the entire hiring process. CP 200-202; CP 399-401; CP 506, 508-520.

Here is how the hiring process worked: After job application were submitted, the Boeing business unit responsible for hiring decision would first review the applications received from all applicants. CP 201. This review was called “down select”, and was a process to narrow down the pool of candidates who would participate in the next step of the hiring process. *Id.* The down select process focused upon determining which candidate’s job application and resume matched the job descriptions’ stated qualifications. *Id.* Once the pool of candidates was narrowed down through down select process, those candidates went through the most important and determinative part of the hiring process: the structured interview. CP 201. The structured interview consisted of a standard set of questions developed specifically for a particular job

description, with each candidate interviewed being asked the same standardized question. CP 202. Part of the structured interview process, at least two and up to three interviewers participated. *Id.* Throughout each step of the hiring process, Boeing HR personnel were directly involved to insure that the candidates met the qualifications described for the position, and to confirm that the salary and other benefits for the position were consistent with Boeing policy. CP 202.

**D. How The Investigation Of Mr. Quedado Began, And What It Revealed Regarding Boeing's Hiring Of Appellant's Relatives.**

Mr. Quedado's second cousin, Reynold Joven, was hired by Boeing in November, 2005. He was hired through BCA Production Engineering's Skills Team headed by Pete Masten. Mr. Quedado had no involvement in the hiring of Mr. Joven. CP 204-205. He did not assist Mr. Joven in his job application or resume. CP 204. He did not screen Mr. Joven's application and resume during the down select process. CP 205. Mr. Quedado did not participate in any structured interview with Mr. Joven or any other candidate for the position he was seeking. CP 204-205. Mr. Quedado had no participation in the decision to make Mr. Joven a job offer. *Id.*

Mr. Quedado's nephew, Allan Alonzo, was also hired by The Boeing Company in November, 2005. CP 206. Mr. Alonzo was hired by

an entirely different Boeing group, BCA Payloads and Structures, based in Everett, Washington. *Id.* Mr. Alonzo was hired through the BCA Payloads and Structures Skills Team, which was headed by a first level manager, Tarun Hazari. *Id.* Mr. Quedado had no involvement in the hiring of Mr. Alonzo. CP 206-210. He did not assist Mr. Alonzo in either his job application or resume. CP 206. He did not participate in the down select process for Mr. Alonzo's position. *Id.* Mr. Quedado did not participate in any of the structured interviews conducted for the position sought by Mr. Alonzo, including the interview of Mr. Alonzo. *Id.* Mr. Quedado did not participate in the decision to hire Mr. Alonzo. *Id.*

**1. What Initiated The Investigation Of Mr. Quedado.**

Boeing witnesses have given two different accounts as to how the investigation of Mr. Quedado started. One version is the investigation was triggered by Don Pennington, a Level I manager who reported to Mr. Quedado. On February 13, 2006, Mr. Pennington came to O'Brian Woodfolk, who reported that there was an employee failing training school, and that this was going to be a problem because he was "a neighbor of Rey's (Mr. Quedado)." CP 521. The employee was Reynold Joven. Mr. Woodfolk was the HR representative assigned Mr. Masten's Skill Team, and he reported this information to Tom Hansen, the HR generalist assigned to BCA Production Engineering. Mr. Hansen and Mr.

Woodfolk both reported the situation to their boss at Boeing Human Resources, Jana Lackie. Mr. Woodfolk affirms that at no time after he spoke with Mr. Pennington did he ever learn independently that Mr. Quedado had any involvement in the hiring of Reynoldo Joven. CP 522.

Mr. Pennington, however, tells a different version of events. He testified that it was Mr. Woodfolk who triggered the investigation. CP 477. Accordingly to Mr. Pennington, on February 13, 2006, he was approached by Mr. Woodfolk, who said that he had heard allegations that Mr. Joven was hired by Mr. Quedado because of appellant's management position. *Id.* Mr. Woodfolk asked what Mr. Pennington knew about the situation. According to Mr. Pennington, all he knew was a second hand report from another Boeing employee that Mr. Quedado had been making inquiries about helping Mr. Joven with training school. CP 477-478.

Mr. Pennington denied hearing that Mr. Quedado had used his position to get Reynoldo Joven hired. CP 482-483. Mr. Pennington affirmed that during the time that he worked with Mr. Quedado at the Boeing Company, he did not recall any situation involving the hiring of an employee that he (Mr. Pennington) felt resulted from any influence exerted by Mr. Quedado. CP 484-485. Mr. Pennington cannot think of any time when he worked with Mr. Quedado where Mr. Quedado directed

that the hiring process be outside of standard Boeing hiring procedures.  
CP 486-487.

2. **The Information Revealed By Ms. Lackie's Investigation Affirmed No Influence By Mr. Quedado In The Hiring Of Mr. Joven.**

Based on Boeing's Motion for Summary Judgment, the only evidence of any "influence" exerted by Mr. Quedado in the hiring of Mr. Joven was an offhand statement he made to an employee during the initial application/resume down select process, using words to the effect "take a look at Joven, he is a real good guy." CP 20.

On April 4, 2006, Ms. Lackie interviewed Geoffrey Fischer. CP 156-157. Mr. Fischer worked for Pete Masten in the BCA Production Engineering Skills Team. CP 156. Mr. Fischer and a co-worker, Bill Knutson, performed the down select of applications/resumes for the position Mr. Joven had submitted an on-line application. *Id.* Their down select created a total pool of 30 or more candidates. CP 156-157. According to Mr. Knutson, during this initial screening process of many, many on-line applications, Mr. Quedado "made a suggestion that Joven may be a good candidate." CP 156. Mr. Knutson indicated that Mr. Joven was included in the down select group in part because of Mr. Quedado's input. *Id.* But Ms. Lackie was informed there were other unrelated and

important reasons why Mr. Joven was included in the down select pool.

As stated in Ms. Lackie's interview notes of Mr. Fischer:

(Mr. Fischer) said Joven had an aero-structures background, he appeared to have mechanical and assembly skills, and he listed that he worked on 767 floor beams per the Boeing drawings and specifications. Geoff said Joven was 'the next best thing.' Geoff also said Joven had a degree.

CP 156.

Ms. Lackie also interviewed Tim Harlan. CP 555. Mr. Harlan and another coworker, Kevin Tomer, were the two individuals responsible for performing the structured interviews from the down select pool of over 30 candidates that had been separately assembled by Mr. Knutson and Mr. Fischer. CP 555. According to the statement Mr. Harlan gave Ms. Lackie, the only person with whom he had any conversations with concerning Mr. Joven during the hiring process was Kevin Tomer, the other interviewer. CP 555. He did not speak with Mr. Quedado. *Id.* As reported to Ms. Lackie, Mr. Harlan said that both he and Mr. Tomer determined at the end of the interview that Mr. Joven would be acceptable. Mr. Harlan made one point clear to Ms. Lackie – "...there was no encouragement from others or outside solicitation on Joven." *Id.*

Boeing asserted on summary judgment that Mr. Joven failed his training class, and that he was reinstated into that class as a result of Mr.

Quedado's inquiries. CP 21. There was nothing in the record to support any of these allegations. Ms. Lackie's investigation record actually reflected to the contrary, based on her interview of Greg Lusk on April 7, 2006. CP 367-368. As the person responsible for conducting the training class testing, Mr. Lusk contacted Mr. Quedado to ask for his assistance in contacting Mr. Joven to schedule him for his second module test at a different location. CP 368.

Ms. Lackie also was informed that Mr. Joven had passed his testing module the second time around with a score of 95%. This information was provided to her during the interview with Bill Knutson, on April 4, 2006. CP 152-154. Mr. Knutson told Ms. Lackie that Mr. Quedado had no influence in hiring Mr. Joven; Mr. Quedado had never done anything inappropriate in the hiring process; Mr. Quedado was good to his people; Mr. Joven had a good resume, a good interview, and scored well so he (Mr. Knutson) "...likes to think the process works." CP 154.

3. **Ms. Lackie's Investigation Revealed Mr. Quedado Did Not Influence Or Participate In The Hiring Of Allan Alonzo.**

Boeing Human Resource Generalist Hansen was designated Boeing's 30(b)(6) designee most knowledgeable concerning Mr. Quedado's CAM. CP 305-311. At his deposition, Mr. Hansen affirmed that Mr. Quedado had no influence in Boeing's decision to hire Allan

Alonzo. CP 416. Mr. Alonzo was hired by BCA Payloads and Structures, located in Everett, Washington. BCA Payloads and Structures was a completely separate business unit, and the person responsible for hiring Mr. Alonzo into The Boeing Company was Tarun Hazari, the Level I Manager that headed that business unit's skills team. CP 206.

Mr. Quedado's only involvement concerning Mr. Alonzo was to help Mr. Hazari out of a jam. After Mr. Alonzo was hired by Mr. Hazari in November, 2005, the position he was hired into was no longer available. CP 206-207. Mr. Alonzo was now a Boeing employee that Mr. Hazari needed to find a new home for. CP 206-210. It is a sizable problem for The Boeing Company if it hires somebody, and then does not have a position for them. CP 488-489.

Ms. Lackie's investigation affirmed there was no evidence indicating Mr. Quedado had any involvement whatsoever in the *hiring* of Allan Alonzo. The only evidence obtained by Ms. Lackie was how Mr. Alonzo was "*placed*" in a different position following his original hiring by BCA Payloads and Structures (Mr. Hazari's unit). The evidence given to Ms. Lackie was a string of emails from December 12, 2005 and ending December 21, 2005. CP 283-290. This evidence affirmed no impropriety on the part of Mr. Quedado.

In the first email initiated by Mr. Hazari dated December 12, 2005, he solicits Mr. Quedado's aid in finding placement for Mr. Alonzo. CP 294. As affirmed in his email, Mr. Hazari was initiating contact with Mr. Quedado upon the recommendation of his boss, Doug Ackerman at BCA Payloads and Structures:

"Hi Rey. We have tried for the last two weeks to place Allan Alonzo, but no manager had a need for his skills. Doug Ackerman was suggesting that he be placed somewhere in your organization. Thoughts?"

CP 294.

After receiving Mr. Hazari's email, Mr. Quedado's only involvement concerning the *placement* of Mr. Alonzo was to recommend to Mr. Hazari that he contact two Level 1 Managers to see if they could help him place Mr. Alonzo: Pete Masten, who reported to Mr. Quedado, and Jeffrey Tribou, another Level 1 Manager in a business unit entirely outside of Mr. Quedado's group. CP 294. This is what Mr. Quedado said in his reply message to Mr. Hazari:

Great idea, he would be a good candidate for interiors, electrical, or structure. Please coordinate with Pete Masten or Jeff Tribou, also forward his resume to Pete and Jeff.

CP 294.

The email exchanges following Mr. Hazari's initial December 12, 2005 email affirmed that Mr. Quedado did not place Mr. Alonzo in any

job position, nor did he direct or order anyone to do so. CP 206-210; CP 283-290.

As of December 21, 2005, Mr. Alonzo had not been successfully placed in a position within The Boeing Company. This is reflected in the December 21, 2005 email sent by another Boeing employee, Susan Lydon, to a multitude of acquisition/redeployment managers outside of Mr. Quedado's BCA Production Engineering group. Ms. Lydon informed these hiring managers that Mr. Alonzo had been hired by Everett; that he needed a new placement; a new placement had yet to be found; and that the clock was ticking, because Mr. Alonzo was reporting to work on January 9, 2006. CP 292; CP 208.

The date of Ms. Lydon's email (December 21, 2005) is important: after December 21, 2005, The Boeing Company effectively shut down for its 2005 holiday break, which extended to January 3, 2006. CP 208. Mr. Alonzo had not been placed before the holiday shutdown. The Boeing Company did not reopen for "business" until Tuesday, January 3, 2006. *Id.* Mr. Alonzo was scheduled to report to work on Monday, January 9, 2006. This meant Boeing needed to find a placement for Mr. Alonzo between Tuesday, January 3 and Friday, January 6, 2006. *Id.*

As Ms. Lackie learned during her investigation, Mr. Quedado was not involved with or otherwise in contact with anyone regarding Mr.

Alonzo's placement after December 21, 2005, the date of Ms. Lydon's email. For the remainder of December, 2005, Mr. Quedado (like Ms. Lackie and other Boeing employees) was on vacation for the holiday break. CP 208-209; CP 430-433; CP 299-303. After the 2006 Christmas holiday, Mr. Quedado started January 2006 out of the office by attending a hiring event in Florida. CP 209; 224. Also attending the same hiring event were Pete Masten and HR Liason O'Brian Woodfolk from BCA Production Engineering. CP 209. Coincidentally, Mr. Hazari from BCA Payloads and Structures was also in attendance. *Id.*; CP 420-421. Mr. Quedado's attendance at the hiring event in Florida is reflected in his calendar for the week of January 2 through 8, 2006. CP 224.

It was only on his physical return to the Renton office on Monday, January 9, 2006 did Mr. Quedado discover that Allan Alonzo had been placed. CP 209. The person who had placed Mr. Alonzo was a Level 1 Manager in BCA Production Engineering, Donald Pennington, following the weekly acquisition and redeployment meeting held on Friday, January 6, 2006. CP 209-210. Mr. Pennington, on his own initiative took in Mr. Alonzo, without discussion or communication with Mr. Quedado, Pete Masten, or any other BCA Production Engineering manager. *Id.* With Mr. Masten attending the hiring event in Florida with Mr. Quedado, Donald Pennington had substituted for Mr. Masten at the January 6, 2006

acquisition and redeployment meeting with the other skills team managers.

*Id.* This was something Mr. Pennington routinely did when Mr. Masten was unable to attend. CP 490; CP 209-210.

In its summary judgment motion, the evidence offered by Boeing concerning Mr. Quedado's alleged "influence" in the hiring of Mr. Alonzo included the Declaration of Pete Masten. CP 164-166. According to his declaration, Mr. Masten claims that Mr. Quedado requested that Mr. Alonzo be placed in training school in spite of Mr. Masten's opinion that he did not meet hiring criteria. CP 165. This statement was later retracted by Mr. Masten in his deposition testimony. In his deposition testimony, Mr. Masten said Mr. Quedado did not request the placement of Mr. Alonzo in training school. CP 441-442. In fact, Mr. Masten testified that the placement of Mr. Alonzo in training school was due only to the "circumstances" created by Mr. Hazari up in Everett— Boeing needed to find a new home for Mr. Alonzo. CP 434-435.

**E. The Disciplinary Action Taken Against Mr. Quedado Violated Boeing Policy; Even If He Had "Influenced" The Hiring Of Relatives, Mr. Quedado's Corrective Action Was Unfairly Excessive And Inconsistent With Discipline Imposed In Similar Circumstances.**

BPI-2616 provided a matrix for the appropriate level of discipline for each type of policy violation. Both PRO-1909 and BPI-2616 provide for *consistent application* of corrective action for like offenses. CP 233-

234; CP 250. According to Boeing, Ms. Lackie relied upon the matrix in BPI-2616 to determine the appropriate corrective action to be taken against Mr. Quedado. CP 414-415; CP 321. Ms. Lackie identified two policy violations she attributed to Mr. Quedado: conflict of interest, and fairness and favoritism. *Id.* Under the disciplinary matrix, the corrective action for violation of the conflict of interest policy was “time off from work.” CP 321. For violating the policy concerning fairness and favoritism, the appropriate disciplinary action was “a written warning.” *Id.*

1. **Based On Discovery Provided By Boeing, Mr. Quedado Is The Only Employee Respondent Can Identify As Having Been Subject To Demotion As Corrective Action.**

Responding to appellant’s discovery requests, *Boeing has identified only three employees who received corrective action for violating hiring policy.* CP 524; CP 263-264; CP 336; CP 348-365. Mr. Quedado is the only employee among the three to receive a demotion. *Id.* Mr. Quedado took the deposition of Boeing 30(b)(6) representative Steven Miller to obtain further discovery on this issue. Mr. Miller is an Employee Corrective Action Program Manager, a human resources specialist whose expertise is in the area of PRO-1909, BPI-2616, issuances of corrective action memos, corrective action, and employee discipline. CP 447-455;

CP 370-380. Mr. Miller testified that Boeing's EITS computer system has the capacity and capability to generate reports that would identify all demotions of Boeing employees during the time period of 2005 through 2010. CP 456-458. *Mr. Quedado is the only employee identified by Boeing as receiving a demotion for misconduct in the hiring process.*

2. **The Only Other Employees Identified By Boeing As Receiving Corrective Action For A Like Offense (Improper Conduct In Hiring Process) Received Only Time Off Work.**

Other than Mr. Quedado, Boeing has identified only two other employees disciplined for similar alleged hiring policy violations: a CAM issued to Mr. Quedado's subordinate, (DP) in September, 2006 (CP 336)<sup>2</sup>; and a CAM issued against another Boeing manager (EV) in 2009. CP 348. Unlike Mr. Quedado, these two other employees received the corrective action consistent with the BPI-2616 matrix: time off from work. CP 321.

Mr. Miller, identified as a Boeing expert on disciplinary/corrective action, testified that he had no memory of any Boeing employee being demoted for any improper conduct or violation of Boeing hiring policies. CP 459-460. Boeing's other 30(b)(6) designee, Tom Hansen, testified that

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<sup>2</sup> For Mr. Pennington, his September 2006 CAM was also the third CAM he had received in a period of just ten (10) months. CP 336-340. *See also* CP 333-334; 342-346.

he does not recall any manager being demoted by a CAM even in general, and that such discipline is “rare.” CP 413.

3. **The Determination Of Corrective Action Against Mr. Quedado Did Not Conform With BPI-2616; Boeing Personnel Are In Conflict As To Who Actually Decided To Demote Mr. Quedado.**

Mr. Quedado’s CAM was approved and signed by his immediate superior, Garry Totman. CP 263-264. BPI-2616 provides that an employee’s Manager is to be involved in all steps of the investigation and corrective action process. CP 234-237. In Mr. Totman’s Declaration he claims “minimal” involvement in the investigation leading to Mr. Quedado’s CAM. CP 38. In Mr. Totman’s deposition testimony, he asserts that he had no participation in the decision to demote Mr. Quedado. Mr. Totman testified the decision was made by “his management” and Boeing Human Resources. CP 498-500. According to Mr. Totman’s deposition testimony, from his experience it is the Human Resources personnel who determine appropriate disciplinary action. This is to assure consistency in corrective action. CP 494-497. Mr. Totman says he was informed by Jana Lackie and a representative from Boeing Ethics that a demotion for Mr. Quedado was “...the standard that we would use for this type of situation, and therefore, that’s the application.” CP 501-502. Mr.

Totman says Steve Miller was the Boeing Ethics representative present when this was explained. CP 502.

In his deposition, Steve Miller tells a completely different story. He had limited involvement in the review of Mr. Quedado's investigation, and the decision to issue the CAM. Contrary to Mr. Totman's testimony, Mr. Miller testified he never met with nor spoke to Mr. Totman at any time. CP 470. His limited contact in terms of Mr. Quedado's investigation and corrective action was in the form of two telephone conversations with Jana Lackie. CP 461-471. The second conversation lasted no more than five or ten minutes. CP 468, 470. The second telephone call was just before the CAM was issued, and the first and only conversation concerning the corrective action proposed for Mr. Quedado. CP 468-471. ***According to Mr. Miller, Ms. Lackie was not proposing the corrective action. Rather, it was Mr. Quedado's manager who was proposing the corrective action of demotion/downgrade:***

...what I remember of the conversation was that it was something her management, the manager, actually, not her manager – excuse me, her management customer, ***the manager of Mr. Quedado***, and her discussion with those folks were something they wanted to consider and wanted to know if that was possible.

CP 468. Mr. Miller's testimony continued:

**Q:** Okay. Did she (Jana Lackie) share any facts, any information, any thinking, rationale, behind that considered discipline from the people who managed Mr. Quedado?

**A:** So, for my part, my – as far as, again, not having the clearest distinct memories, it was – again, it was something that Mr. Quedado’s management had communicated at some point to her that they wanted to considering doing that, was it acceptable, and she was calling to confirm it was. I don’t have a specific recollection if she told me why.

**Q:** Okay.

**A:** It would be – I can only assume that it was based on the case facts.

**Q:** Okay. So fair to say that the idea of a downgrade was actually coming from Mr. Quedado’s managers, not Ms. Lackie?

**A:** That would be my – that was my understanding from the conversation. Yes.

**Q:** And in terms of the conversation with you, you weren’t recommending or suggesting that was the appropriate form of action; rather, it was commenting in terms of that being possible within the language found in PRO-1909?

**A:** Yes.

CP 469-470.

4. **Based On The Evidence, Mr. Quedado Asserts That There Is Reasonable Inference His Managers Used The Hiring Allegations As Pretext To Move Him Out Of Management.**

The reasonable inference from the evidence indicates that Mr. Quedado’s managers, Garry Totman and Karsten Overa, used the

misconduct investigation as a pretext to remove appellant from his management position in BCA Production Engineering. The evidence indicates that Mr. Totman and Mr. Overa tried to get Mr. Quedado out of management well before the investigation began.

Boeing produced handwritten notes dated in December 2006 reflecting an internal Boeing interview of Thomas Hansen concerning Mr. Quedado's CAM and demotion. CP 323-326. Mr. Hansen was a signatory on the CAM. CP 263-264. This is what Mr. Hansen reported in his interview, according to the notes:

Gary & Karsten made decision to take Rey out of mgmt. They were looking to find position for Rey outside of Core (BCA Production Engineering) even before investigation started. Not successful.

CP 326. *See* CP 203-204 (Quedado Decl., ¶¶ 21-23). Notwithstanding appellant's discovery requests, Boeing refused or was unable to identify the author of the notes, or the circumstances surrounding the creation of the notes. CP 528-547; CP 551-553.

BPI-2616 and PRO-1909 allowed Mr. Quedado's manager (Mr. Totman) to seek review of the proposed corrective action before a review board. CP 237; 250. Mr. Totman did not seek review on Mr. Quedado's behalf, notwithstanding his representation that he would. CP 211-213. This failure to act is further reasonable inference from the summary

judgment record that Mr. Totman wanted Mr. Quedado out of management, unrelated to any alleged misconduct.

**F. Procedural History – Mr. Quedado’s Complaint In This Action And The Trial Court’s Entry Of Summary Judgment.**

Mr. Quedado subsequently sued Boeing for damages arising from his corrective action. CP 3-8. Appellant asserted that the Boeing employment policies modified the at will employment relationship, creating either an implied contract and/or making promises of specific treatment in the imposition of discipline for alleged employee misconduct. *Id.* Mr. Quedado asserted that Boeing breached these contractual and equitable promises, and that the corrective action was not warranted at all because he had not engaged in any misconduct. *Id.*

Boeing moved for summary judgment, seeking dismissal of Mr. Quedado’s claims on the following grounds: (1) the disclaimer language found in BPI-2616 and PRO-1909 precluded his implied contract and promise of specific treatment claims; (2) the disciplinary policies relied upon by Mr. Quedado were entirely discretionary and therefore legally unenforceable; (3) even if it came to the wrong conclusion, Boeing’s investigation of Mr. Quedado was fair and supported a good faith belief that misconduct had occurred; and (4) since Mr. Quedado had not specifically read word for word BPI-2616 and PRO-1909 before his

demotion, he could not rely upon those policies for his equitable claim based on promises of specific treatment in specific circumstances. CP 17-32. Mr. Quedado opposed Boeing's motion, on grounds the issues presented raised issues of material fact. CP 168-192. The trial court granted Boeing's motion, dismissing Mr. Quedado's complaint. CP 610-611. This timely appeal ensued. CP 612-615.

#### V. STANDARD OF REVIEW

The appellate court reviews an order granting summary judgment *de novo*, and engages in the same inquiry as the trial court. *Weden v. San Juan County*, 135 Wn.2d 678, 689, 958 P.2d 273 (1998). Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c); *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998). All facts and reasonable inferences from the facts are viewed in the light most favorable to the non-moving party, here Mr. Quedado. *Mountain Park Homeowners Association v. Tydings*, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994).

In evaluating the evidence, the Court needs to give particular weight to the deposition testimony of two Boeing witnesses: Tom Hansen

and Steven Miller. Both witnesses appeared as Boeing's designees in response to Mr. Quedado's Civil Rule 30(b)(6) deposition notices. Designated as the persons most knowledgeable, the testimony of Mr. Hansen and Mr. Miller is deemed to be the complete, knowledgeable, and binding answers of Boeing on the subject matter designated in Mr. Quedado's 30(b)(6) notices. *Flower v. TRA Industries*, 127 Wn.App. 13, 39, 111 P.3d 1192 (2005); *U.S. v. Taylor*, 166 FRD 356, 361 (MDNC 1996). The testimony of Mr. Hansen and Mr. Miller is deemed not only the full extent of the facts known by Boeing on the subject matter, but also the subjective beliefs and opinions of Boeing on those subjects, and respondent's interpretation of documents and events. *Flower*, 127 Wn.App. at 39; *Taylor*, 166 FRD at 360-361.

## VI. ARGUMENT

As a general rule, absent a contract for definite duration, an employment relationship is terminable at will by either the employee or employer. *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 223, 685 P.2d 1081 (1984). However, an at will employment relationship may be modified by two different means. First, promises in an employee handbook or other employment policies promulgated by an employer may create an actual or implied contract. *Thompson*, 102 Wn.2d at 231; *Kuest v. Regent Assisted Living, Inc.*, 111 Wn.App. 36, 48, 43 P.3d 23 (2002).

Second, even absent the existence of an implied contract, an equitable claim may exist where the employer has made promises of specific treatment in specific situations to the employee, thereby precluding the enforcement of the at will aspect of the employment agreement. *Id.*

In this proceeding, Mr. Quedado asserted that Boeing had made an implied contract with him, or alternatively, made promises of specific treatment in specific situations, by way of the Boeing Code of Conduct and two policies governing employee discipline: BPI-2616 and PRO-1909. Mr. Quedado asserts that Boeing failed to follow its required investigation procedures and disciplinary policies that resulted in his wrongful and improper demotion. On summary judgment, Boeing sought dismissal of Mr. Quedado's claims on four grounds: (1) Mr. Quedado's claims were precluded by disclaimers found in the Boeing policies, (2) policies were discretionary based on their terms, thereby insufficient to create an implied contract or promises of specific treatment on the part of Boeing; (3) Mr. Quedado did not justifiably rely upon any promises otherwise made in BPI-2616 and PRO-1909 because he had never read those policies; and (4) Boeing's investigation was fair and the findings of misconduct and demotion were in good faith.

The trial court's ruling granting Boeing's motion should be reversed, and this case remanded for trial. As will be explained below,

there are material issues of fact as to each of Boeing's contentions made in its summary judgment motion. But before addressing respondent's contentions, Mr. Quedado will first address his implied contract claim. Boeing attempted on summary judgment to merge and treat as one the implied contract claim with appellant's promise of specific treatment claim.

A. **It Is A Question Of Fact As To Whether The Boeing Code Of Conduct Constituted An Implied Contract Between Mr. Quedado And Boeing.**

Policy statements made by an employer can create an implied contract. *Swanson v. Liquid Air Corp.*, 118 Wn.2d 512, 826 P.2d 664 (1992). To determine whether an implied contract has been created, the court looks for the existence of an offer, acceptance, and consideration. *Thompson*, 102 Wn.2d at 228. These elements of contract are satisfied, and an employer's policy will form an implied contract, when the employer provides a policy and explains its provisions to an employee; the employee accepts and agrees to abide by the policy; and the employee provides consideration by actually working for the employer. *Gaglidari v. Denny's Restaurant, Inc.*, 117 Wn.2d 426, 433, 815 P.2d 1362 (1991).

The Boeing Code of Conduct met all the requirements of an implied contract: offer, acceptance, and consideration. Mr. Quedado was provided the Code of Conduct annually by Boeing, which Mr. Quedado

was required to sign as a term and condition of continued employment; Mr. Quedado signed the Code of Conduct annually; and Mr. Quedado gave consideration by actually working for Boeing. The signing and compliance with the Code of Conduct was an express condition and term of employment with Boeing.

As explained earlier, the contractual implications of the Boeing Code of Conduct are set forth in Boeing's explanatory communication to employees (CP 313-319):

- The Code of Conduct is a “condition of employment.”
- An employee found to have violated the Boeing Code of Conduct after signing the agreement faced disciplinary action, per PRO-1909 and BPI-2616 Employee Corrective Action Decision making process.
- The Code of Conduct required “without exception, (all employees) will comply with all applicable laws, rules, and regulations.” Laws, rules and regulations specifically included Boeing employee policies and procedures.

There remained a question of fact as to whether the Code of Conduct created an implied contract, precluding the trial court's entry of summary judgment in favor of Boeing. Also, among the questions properly left for the trier of fact are the terms of the implied contract between Boeing and Mr. Quedado. The Code of Conduct specifically incorporates Boeing's employment policies. Therefore, the parties' implied contract should include the obligations imposed by BPI-2616 and

PRO-1909, regardless of whether Mr. Quedado read BPI-2616 or PRO-1909 “word for word.”

1. **Whether The Code of Conduct Created An Implied Contract Is A Question Of Fact Precluding Summary Judgment.**

Under Washington law, whether an implied contract is created between an employer and employee based upon employment policies is a question of fact that should not be decided on summary judgment.

*Swanson*, 118 Wn.2d at 522-24. In establishing this principle, the *Swanson* court adopted the following rationale:

The more modern view – and the view in keeping with the modern analysis of other types of contracts – is that the question whether employee handbook provisions are part of the contract is a question of fact. That is, the analysis is the same as that generally used to determine whether a contract has been formed: would a reasonable person looking at the objective manifestation of the parties’ intent find that they had intended this obligation to be part of the contract? (Citing 1 L. Larson, *Unjust Dismissal* §8.02, at 8-5 (1991)).

118 Wn.2d at 522-23. The *Swanson* court also noted that treating the issue as a question of fact is consistent with the rule established in *Berg v. Hudesman*, 115 Wn.2d 657, 667, 801 P.2d 222 (1990), which adopted the principle that extrinsic evidence is admissible as to the entire circumstances under which a contract is made as an aid in ascertaining the parties’ intent. As explained by the *Swanson* court:

While *Berg* was specifically concerned with ascertaining the parties’ intent as to the meaning of their contract, its

analysis is consistent with the idea that whether the parties intended policies in an employment document to be part of their employment contract involved an issue of fact. Also, it is consistent with our analysis in *Thompson v. St. Regis Paper Co.*, [102 Wn.2d 219, 685 P.2d 1081 (1984)] where we held that the issue is one for the trier of fact.

118 Wn.2d at 523.

Based on Mr. Quedado's testimony, the testimony of Boeing's 30(b)(6) designees Tom Hansen and Steve Miller, Boeing's explanatory statement concerning the Code of Conduct (CP313-319), and the express terms of the Code of Conduct itself (CP 220), material issues of fact were presented precluding summary judgment on the implied contract claim.

2. **The Implied Contract Between Mr. Quedado And Boeing Included The Promises Made In BPI-2616 And PRO-1909, Regardless Of Whether Mr. Quedado Specifically Read Those Policies.**

Under Washington law, a party is bound by any incorporated terms, whether they have been read or not. In *Lyall v. DeYoung*, 42 Wn.App. 252, 711 P.2d 356 (1986), the Court of Appeals held that an express warranty, even in a form provision that was unread and not discussed by the parties, was nonetheless binding upon them both. The *Lyall* court confirmed the rule that a voluntary signator to a contract cannot claim ignorance of its contents, absent proof of fraud. A party signing a contract is deemed to have had ample opportunity to study the contract and its provisions, including any notations or terms that are

referenced on the backside of a standard form. 42 Wn.App. at 256. *See also Alexander & Alexander v. Wohlman*, 19 Wn.App. 670, 578 P.2d 530 (1978) (employee could not avoid enforcement of a noncompetition agreement on grounds he had not reviewed nor read the provision before signing the agreement); *H.D. Fowler Co., Inc. v. Warren*, 17 Wn.App. 178, 562 P.2d 646 (1977) (a party cannot avoid enforcement of the terms on the reverse side of a job order on grounds that he had not read the “boilerplate”).

Accordingly, even if Mr. Quedado may not have read word-for-word BPI-2616 or PRO-1909, he was bound to those policies because the Code of Conduct specifically incorporated all Boeing’s employment policies. Moreover, Boeing’s explanatory statement to employees stated that the Code of Conduct was subject to compliance and discipline per BPI-2616 and PRO-1909. CP 316. If Mr. Quedado was bound to Boeing policies under the Code of Conduct, Boeing was equally bound to those same policies in its dealings with Mr. Quedado. This conclusion is consistent with the principles recognized in *Thompson*: where an employer chooses to establish policies and practices and publishes them to its employees, employers should similarly abide by those policies and not treat them as illusory. 102 Wn.2d at 229-230. *See also, Drobny v. Boeing Company*, 80 Wn.App. 97, 102, 907 P.2d 299 (1995) (“...by using

a manual or handbook, an employer secures promises from the employees which create a loyal, orderly and cooperative workforce, such that the employer should be equally bound to its promises to the employee which are designed to create an atmosphere of job security and fair treatment.”)

**B. Whether The Disclaimers In BPI-2616 And PRO-1909 Were Effective Is A Question Of Fact.**

As a general rule, an employer may avoid being bound to statements in employment manuals through use of a conspicuous disclaimer. *Payne v. Sunnyside Community Hospital*, 78 Wn.App. 34, 39, 894 P.2d 1379 (1995). Boeing relies upon two disclaimers, each found on the first page of BPI-2616 and PRO-1909. The disclaimer in BPI-2616 states:

This process instruction does not constitute a contract or contractual obligation, and the company reserves the right, in its sole discretion, to amend, modify, or discontinue its use without prior notice, notwithstanding any person’s acts, omissions, or statements to the contrary.

CP 232 (p. 1). Identical language is found in PRO-1909. CP 248. Based on the record, there were material issues of fact as to the effectiveness and enforceability of these disclaimers as to both Mr. Quedado’s implied contract and promises of specific treatment claims. For three reasons, the trial court was precluded from entering summary judgment in favor of respondent based on the disclaimers.

First and foremost, the Code of Conduct does not contain a disclaimer, nor does it make any reference to disclaimers found in either BPI-2616 or PRO-1909. *See* CP 220. Accordingly, there was no disclaimer applicable to Mr. Quedado's implied contract claim. The facts in this case are similar to those in *Swanson*, where an employee relied upon a separate document, a "Memorandum of Working Conditions," that did not contain any disclaimer language but did provide promises as to how discipline will be imposed. The employer argued that the promises made in the Memorandum of Working Conditions were ineffective because they were subject to a disclaimer found in a separate 200 page benefits manual previously provided to the employee. The employee testified that he had only read parts of the benefits manual, and had at no time read nor was aware of any disclaimer language within the voluminous manual. The *Swanson* court ruled that the absence of a disclaimer in the Memorandum of Working Conditions, and its presence in the General Benefits Manual, were among other factors that created an issue of fact based on the employer's disclaimer. 118 Wn.2d at 534-35.

Second, for a disclaimer to be effective, it must be communicated to the employee. To be an effective communication, there must be reasonable notice to the employee that the employer is disclaiming intent to be bound by what otherwise appears to be promises of employment

conditions. *Swanson*, 118 Wn.2d at 529. Whether reasonable and effective notice had been given to Mr. Quedado regarding the disclaimer language found in either BPI-2616 or PRO-1909 is a question of fact that precluded the trial court's entry of summary judgment. Mr. Quedado's own testimony was clear – he never saw nor was aware of the disclaimer language in BPI-2616, PRO-1909, or any other Boeing policy for that matter, before he received his adverse employment action. CP 80 (Quedado Dep. at 79). Mr. Quedado also affirmed that in his three decades of service to Boeing, he had never signed a disclaimer. CP 199 (Quedado Decl. ¶ 14).

Third, even if the BPI-2616 and PRO-1909 disclaimers had been communicated to Mr. Quedado, they could be negated by inconsistent representations made by Boeing. Those inconsistent representations could be oral or written statements, or by contradictory employment practices. *Swanson*, 118 Wn.2d at 532-33; *Kuest*, 111 Wn.App. 36, 53 (question of fact whether discipline negated by employer's oral representations to employee that the disciplinary policy was to be used by employee and would be followed by the employer); *Payne*, 78 Wn.App. at 42-43 (where employer instructed employee that she "needed" to follow the progressive discipline procedure when disciplining employees in her managerial

capacity, question of fact was presented as to whether employer's instruction was inconsistent with and thereby nullified the disclaimer).

Here, Mr. Quedado testified that, in his role as a manager responsible for investigating employee misconduct and taking corrective action, he was obligated to follow both BPI-2616 and PRO-1909. Testimony by Boeing representative Thomas Hansen affirmed that human resource and employee corrective action personnel had no discretion in terms of deviating from BPI-2616 and PRO-1909 when taking disciplinary and corrective action with employees. CP 393-395. He testified that Boeing employees are to expect the BPIs to be followed. CP 395. Mr. Hansen in fact testified that, based on his own experience as a Human Resource Generalist, that he expected BPI-2616 and PRO-1909 to be followed in the event he was ever subject to employee discipline. CP 394-395. Mr. Hansen's testimony also creates an issue of fact as to whether Boeing's contradictory employment practices nullified any effective disclaimer.

C. **Whether The Promises Made By Boeing In Its Code Of Conduct And BPI-2616 And PRO-1909 Were Specific Enough Was An Issue That Could Not Be Determined On Summary Judgment.**

Independent of his implied contract claim, Mr. Quedado also asserted that Boeing policies made enforceable promises that were later

breached by respondent. To establish that the terminable at will relationship is modified by specific promises made by an employer in its policies, the employee must prove that (1) the employer's policies amount to a promise of specific treatment in specific situations, (2) the employee justifiably relied on the promises made, and (3) the employer breached the promise of specific treatment. *Thompson*, 102 Wn.2d at 233.

On summary judgment, Boeing contended that the terms contained in BPI-2616 and PRO-1909 were too general to (1) promise specific treatment in specific circumstances, and (2) create an enforceable implied contract. Under Washington law, whether an employer's policies make a promise specific enough to create an obligation to employees and justify an employee's reliance thereon is a question of fact. *Korlund v. DynCorp Tri-Cities Services, Inc.*, 121 Wn.App. 295, 326-27, 88 P.3d 966 (2004); *Drobny*, 80 Wn.App. at 101-102.

The promises made to Mr. Quedado in the Boeing Code of Conduct were specific. They assured Mr. Quedado that any disciplinary procedures instituted against him by Boeing “[w]ill (be) conducted fairly, impartially, in an ethical and proper manner, and in full compliance with all applicable laws and regulations.” CP 220. “Laws and regulations” included Boeing policies. CP 318. The Code of Conduct specified “Expected Behaviors,” mandating all employees (including Boeing HR

personnel and Mr. Quedado's managers) to conform to the following conduct when taking corrective action:

4. PROCESS AND REPORT INFORMATION  
ACCURATELY, HONESTLY, AND PROPERLY

\* \* \*

6. ADHERE TO COMPANY AGREEMENTS,  
POLICIES, AND PROCEDURES

CP 260. The language in BPI-2616 and PRO-1909 was specific and precise in terms of the investigation to be conducted in instances of alleged employee misconduct and any corrective action subsequently taken. The policies required a four (4) step process and defined the necessary elements of a fair investigation. BPI-2616 also makes clear who must participate in each of the four steps in the investigation/disciplinary process: The Human Resources Specialist, The Employee Corrective Action Coordinator, and the employee's Manager. The policy provided a corrective action matrix identifying the specific discipline applicable to specific policy violations.

In its Code of Conduct, Expected Behaviors, BPI-2616, and PRO-1909, Boeing used words such as "will," "will result," "will not," "shall," "must," "do not," "need be," "are intended," "are expected to," "adhere to," "are expected to adhere to," and "ensure." Even if language in an employer's disciplinary policy retains some discretion with the employer

by using words like “should” or “may,” such reservation does not preclude the policy from creating an enforceable promise based on other terms used or the overall context of the policy. *See, Korslund*, 121 Wn.App. at 326-27. The policy language found in the Code of Conduct, Expected Behaviors, BPI-2616, and PRO-1909, coupled with the testimony of Mr. Quedado and Boeing witnesses Hansen and Miller, established the existence of material fact questions as to whether Boeing’s promises were sufficiently specific, thereby precluding summary judgment.

**D. There Were Questions Of Fact As To Whether Mr. Quedado Could Justifiably Rely On Promises Made In BPI-2616 And PRO-1909.**

Boeing asserted that Mr. Quedado could not prove the second element of his promise of specific treatment claim, justifiable reliance, because he had not read BPI-2616 and PRO-1909 before receiving his CAM. Specifically reading word-for-word an employer’s policy is not a requirement under Washington law to establish justifiable reliance. An employee seeking to enforce promises found in an employer’s policy must only at a minimum present evidence that she or he was aware of them prior to the adverse employment action violating the policies. *Bulman v. Safeway, Inc.*, 144 Wn. 2d 335, 354, 27 P.3d 1172 (2001).

In *Korslund*, the defendants in that case raised a similar argument as Boeing. The defendant employer asserted that the justifiable reliance

element for a promise of specific treatment claim could not be established where the plaintiff employees admitted they were only “vaguely aware” of the policy documents at issue. 121 Wn.App. at 327. The *Korlund* court disagreed, finding evidence that the employees’ awareness of the policies from various sources, including discussions with other co-workers, e-mail communications, and notices in company newsletters, was sufficient to create a factual question as to their justifiable reliance precluding summary judgment. *Id.*

Mr. Quedado conceded he had not read BPI-2616 or PRO-1909 before receiving his corrective action. But the evidence establishes that Mr. Quedado had both substantial awareness and understanding of the provisions of Boeing employment policies, including PRO-1909 and BPI-2616, before he was demoted. His awareness and understanding was based upon management training he had received; interaction with human resource personnel while in management; and active participation in corrective action proceedings with Boeing HR personnel conducted in accordance with BPI-2616 and PRO-1909. This evidence precluded summary judgment as a matter of law on the issue of justifiable reliance.

E. **It Remains A Question Of Fact As To The Propriety Of Boeing's Investigation Into Mr. Quedado's Alleged Misconduct.**

Boeing also argued that even if it was wrong in the disciplinary action taken against Mr. Quedado, it is immune from liability so long as it can demonstrate it conducted a fair investigation and a good faith belief that there was misconduct on the part of Mr. Quedado. CP 27. This is not an issue that could be resolved on summary judgment. The propriety of Boeing's investigation and resulting disciplinary action involves questions of fact. Boeing must prove that it conducted an adequate investigation consistent with its policies before imposing discipline upon Mr. Quedado, and in good faith concluded that appellant had engaged in misconduct. *Gaglidari v. Denny's Restaurants, Inc.*, 117 Wn.2d 426, 815 P.2d 1362 (1991).

Based on the record before the Court, there are issues of material fact as to whether Boeing even conducted a reasonable investigation into the charges against Mr. Quedado; that it had a good faith belief that misconduct had actually occurred; or that the corrective action complied with the BPI-2616 and PRO-1909 directives that discipline be applied uniformly and consistently. Reasonable inferences from the record indicate that the disciplinary action was actually pretextual, given the attempts of Mr. Quedado's managers to remove him from management

well before the investigation by Ms. Lackie even began. The fact that the disciplinary action was determined by Mr. Quedado's manager (a fact he denies) and not Boeing's Human Resource personnel, strongly indicates that the employment action against Mr. Quedado was in bad faith. Based on the record, Boeing witnesses are inconsistent as to what was reported and not reported to Ms. Lackie during the course of her investigation. Their credibility remains an issue, particularly where BPI-2616 itself requires investigations to be based on facts, not opinions or hearsay. CP 234. PRO-1909 is to the same effect. CP 251.

The credibility of Boeing's witnesses in and of itself also creates issues of fact precluding summary judgment. *Morinaga v. Vue*, 85 Wn. App. 822, 935 P.2d 637 (1997); *Gingrich v. Unigard Security Ins.-Co.*, 57 Wn. App. 424, 788 P.2d 1096 (1990). For example, Boeing filed declarations from two key witnesses who were later deposed, Pete Masten and Tom Hansen. Both witnesses testified that statements made in their declarations were inaccurate, or conflicted with their deposition testimony. CP 425-429, 436-443 (Masten Dep. 8:20-9:8, 30:18-32:6; 136:20-143:6); CP386-390 (Hansen Dep. 50:25-54:4). Further, Mr. Totman's testimony that he had nothing to do with the demotion decision is contradicted by Mr. Miller's testimony, in which he testified that it was Mr. Quedado's **Manager** who decided the corrective action would be demotion.

**VII. CONCLUSION**

For the foregoing reasons, the trial court improperly granted summary judgment in favor of Boeing. The ruling should be reversed, and this case remanded.

RESPECTFULLY SUBMITTED on June 21<sup>st</sup>, 2011.

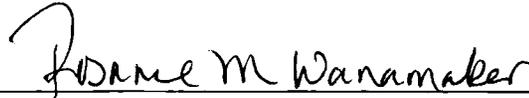
CABLE LANGENBACH KINERK &  
BAUER, LLP

By   
\_\_\_\_\_  
Bryan P. Coluccio, WSBA 12609  
*Attorneys for Plaintiff/Appellant*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 24, 2011, I caused the foregoing document to be served on the following counsel of record, via hand delivery:

James Sanders  
Perkins Coie LLP  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099

A handwritten signature in cursive script that reads "Rosanne M. Wanamaker". The signature is written in black ink and is positioned above a horizontal line.

Rosanne M. Wanamaker, Legal Secretary



Office of Internal Governance  
Ethics and Business Conduct

**Boeing Code of Conduct**

The Boeing Code of Conduct outlines expected behaviors for all Boeing employees. Boeing will conduct its business fairly, impartially, in an ethical and proper manner, and in full compliance with all applicable laws and regulations. In conducting its business, integrity must underlie all company relationships, including those with customers, suppliers, communities and among employees. The highest standards of ethical business conduct are required of Boeing employees in the performance of their company responsibilities. Employees will not engage in conduct or activity that may raise questions as to the company's honesty, impartiality, reputation or otherwise cause embarrassment to the company.

Employees will ensure that:

- They do not engage in any activity that might create a conflict of interest for the company or for themselves individually.
- They do not take advantage of their Boeing position to seek personal gain through the inappropriate use of Boeing or non-public information or abuse of their position. This includes not engaging in insider trading.
- They will follow all restrictions on use and disclosure of information. This includes following all requirements for protecting Boeing information and ensuring that non-Boeing proprietary information is used and disclosed only as authorized by the owner of the information or as otherwise permitted by law.
- They observe that fair dealing is the foundation for all of our transactions and interactions.
- They will protect all company, customer and supplier assets and use them only for appropriate company approved activities.
- Without exception, they will comply with all applicable laws, rules and regulations.
- They will promptly report any illegal or unethical conduct to management or other appropriate authorities (i.e., Ethics, Law, Security, EEO).

Every employee has the responsibility to ask questions, seek guidance and report suspected violations of this Code of Conduct. Retaliation against employees who come forward to raise genuine concerns will not be tolerated.

I have read the Boeing Code of Conduct and I do certify that:

- I understand the Boeing Code of Conduct.
- To the best of my knowledge, I am in compliance with the Boeing Code of Conduct.
- I will continue to comply with the Boeing Code of Conduct.

Reynold J Quedado

Employee Name (Print or Type)

*Reynold J Quedado*  
Employee Signature

96401

BEMS ID Number

1/7/06

Date Signed

CoC:2006

F70088 Rev A (2005/Electronic Variant)



96401

BOE/QUEDADO 0072

<http://webapp1.web.boeing.com/codeofconduct/sign2.asp?bems=96401>

1/4/2006

**BPI-2616**  
**Issue Date**  
April 11, 2006

## Employee Corrective Action Guidelines

### Purpose/Summary

This process instruction is designed to provide a tool that will assist the manager and the Human Resources organization in identifying the severity of various Expected Behaviors (reference Exhibit A) violations and determining the appropriate Employee Corrective Action (ECA) given the specific facts of incidents. It is expected that these guidelines will be used in conjunction with procedure PRO-1909, "Administration of Employee Corrective Action."

Corrective action affecting employees represented by a collective bargaining agreement will be administered in accordance with the terms of the collective bargaining agreement.

This process instruction does not constitute a contract or contractual obligation; and the company reserves the right, in its sole discretion, to amend, modify, or discontinue its use without prior notice, notwithstanding any person's acts, omissions, or statements to the contrary.

This process instruction applies to all segments of The Boeing Company.

Employees in countries other than the United States will be governed by this process instruction, with appropriate adjustments, if necessary, to accommodate local legal or contractual requirements.

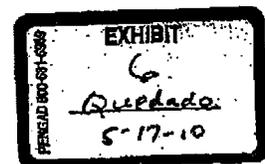
### Supersedes

June 8, 2004

### Applies To

All Boeing

Page 1 of 22



Policy and Procedure System contains the most current version of this writing. Uncontrolled when printed.

BOE/QUEDADO 0437

**Roles Affected**

Human Resources Generalist (HRG), Employee Corrective Action (ECA)  
Coordinator, Manager

**Maintained By**

Boeing Corporate, Human Resources, Global Diversity and Employee Rights

**Authority Reference**

Procedure PRO-1909, "Administration of Employee Corrective Action"

**Approved By**

Rick Stephens  
Senior Vice President, Human Resources and Administration

**Summary of Changes to the Title Page**

The Issue Date, Purpose/Summary, Supersedes, Maintained By, and Approved By information have changed. Otherwise, this is a major revision.

**A. Scope**

1. Corrective action shall be taken when an employee engages in conduct contrary to the Boeing Code of Conduct or reasonable commonsense rules of conduct.
2. The following guidelines and the attached matrix were prepared to assist the user in identifying the severity of various conduct violations and determining the appropriate Employee Corrective Action (ECA) given the specific facts. It is expected that these guidelines will be used in conjunction with procedure PRO-1909, "Administration of Employee Corrective Action." Generally, management should follow a progressive ECA path; however, some acts of unacceptable conduct are so serious as to warrant severe corrective action upon the first known offense. These guidelines are not all-inclusive with respect to the possible types of violations that may occur.

**B. Process Steps**

These guidelines must be applied consistently throughout the workplace. The corrective action processes described in this procedure are intended to correct unacceptable conduct and to avoid its repetition. Emphasis is placed on holding

the employee accountable for his or her actions in a manner consistent with the company's values and expectations. Each incident must be evaluated on the facts after a thorough investigation of the circumstances in the specific case.

In order to do this evaluation, the following steps need to be performed.

**1. Step 1 Investigate**

**Role(s):** Human Resources Generalist, Employee Corrective Action Coordinator, Manager

Ensure that a thorough investigation has been conducted and all relevant facts and data have been gathered. Investigations include:

- Gathering facts, as opposed to opinions or hearsay.
- Interviewing all material parties involved and documenting the information received.
- Weighing evidence appropriately and reviewing the employee's work and ECA history.

Investigations should be concluded as promptly as practicable, since critical information or relevant data may be lost or forgotten. Some investigations may require support from Equal Employment Opportunity (EEO), Corporate Investigations, Ethics and Business Conduct, Law, or other appropriate entities. Documentation should be handled in accordance with procedure PRO-2227, "Information Protection."

When conducting an investigation, consider such things as (but not limited to):

- Was there a violation of the Boeing Code of Conduct in accordance with procedure PRO-1909, "Administration of Employee Corrective Action?"
- Who was involved?
- What was the date and time the incident occurred?
- Where did the incident or violation occur?
- How did it occur? What were the circumstances?
- Were there any witnesses, and if so, what do they have to say?
- What is the alleged violator's side of the story?
- Was there any damage to or effect on property or people?

- What was the impact on company business?  
(e.g., quality, cost, delivery, safety, morale, reputation)
- Were any other persons involved?
- Were there aggravating or mitigating factors?
- Has there been a pattern of inappropriate behavior?
- Were drugs or alcohol involved?
- Has the employee been previously trained, coached, and/or counseled?
- Has the employee been involved in similar behaviors, had complaints filed or have investigations been conducted in the past?

**2. Step 2 Review Investigation Findings**

**Role(s):** Human Resources Generalist, Employee Corrective Action Coordinator, Manager

After the investigation is complete, review the facts and findings of the investigation using the Expected Behaviors Guide and Violation Matrix for Employee Corrective Action (reference Exhibit A). Determine what the expected level of ECA should be and proceed to Step 3 of the ECA process for final determination.

**2.1 Progressive Employee Corrective Action**

Progressive corrective action is increasingly severe corrective measures taken for subsequent offenses of the same or similar type. When an employee has an active corrective action on file, and subsequent misconduct of a similar type under one of the seven (7) Expected Behaviors occurs, then a progressive step of corrective action must be issued. Misconduct of a similar type means that an active employee corrective action on file and the subsequent ECA violation are both within the same Expected Behavior category.

The following corrective action violations are exceptions to the practice of progressive corrective action within a specific expected conduct standard.

**a. Attendance and Performance Issues Corrective Action Issues**

Attendance issues are progressive only within their respective violation codes. This means that Attendance is progressive only within the Attendance violation code and not with any other Expected Behavior category 3 violations.

Work performance issues are progressive only within their respective violation codes. This means that Work Performance is progressive only within the Work Performance violation code and not with any other Expected Behavior category 3 violations.

**b. Generally Unacceptable Corrective Action Issues**

When an employee has three (3) or more active employee corrective action memos that are not similar (under more than one (1) of the seven (7) Expected Behavior (reference Exhibit A) categories), the violation "Generally Unacceptable Conduct and/or Behavior" (Employee Issue Tracking System (EITS) Code 3O) can be initiated. However, EITS Code 3O cannot be initiated by violations for attendance or for work performance issues that have not progressed beyond written documentation.

**3. Step 3 Make ECA Decision**

**Role(s):** Human Resources Generalist, Employee Corrective Action Coordinator, Manager

Review the decision from Step 2 concerning the misconduct and use the following mitigating and aggravating factors that may influence the ECA decision:

- Employee's active ECA history.
- Employee's length of company service (longer service may mitigate the level of corrective action).
- Employee's job-related training and/or experience.
- Effect of employee's action or inaction on the company or others.
- Impact on the company's business (quality, cost, delivery, safety, morale, reputation).
- Any act deemed illegal.
- Any act that is a violation of a government regulatory compliance requirement.
- Voluntary disclosure prior to discovery.
- Concealment or destruction of information.
- Passage of time between violation and discovery.
- Employee's awareness or access regarding company communication, training, coaching, and/or counseling on company expectations.

- Proposed ECA is generally consistent with similar cases.
- Management is held to a higher standard and may receive more severe corrective action, depending on the issues.

### **3.1 Management Request for Review of ECA Determination**

A request for review of ECA determinations may be made when an employee's management disagrees with the level of corrective action that was decided upon by using this process guideline, procedure PRO-1909, "Administration of Employee Corrective Action" and/or Business Process Instruction BPI-3946, "Employee Corrective Action Review Boards." This request for review must detail factual information that the manager believes would either mitigate or aggravate the level of ECA, and should not contain opinions or personal information not directly related to the employee's condition of employment. Refer to BPI-3946, section D.11 for more information on how to initiate this request.

### **4. Step 4 Issue ECA**

**Role(s):** Human Resources Generalist, Employee Corrective Action Coordinator, Manager

Managers must coordinate with the Human Resources organization before issuing any ECA.

Manager issues ECA to employee and monitors compliance.

Ensure that the record is properly annotated in EITS by the end of shift of the day the ECA was issued.

Send the corrective action memo and supporting documentation to Human Resources Services Central Records. The documentation will be scanned and stored in the Personnel Records Link (PRL), an electronic records management application.

### **C. Acronyms**

CAM – Corrective Action Memo

ECA – Employee Corrective Action

EEO – Equal Employment Opportunity

EITS – Employee Issue Tracking System

**D. Definitions**

The definitions of the terms used in this process instruction are for purposes of this process instruction only and have no effect on the meaning of the same or similar terms used in other documents.

**1. Aggravating Factors**

Situation or conditions that may increase the level of employee corrective action.

**2. Company Premises and/or Workplace**

May be any location, including a virtual or telecommuting location, either permanent or temporary, where an employee performs any work-related duty. This includes, but is not limited to, travel on company business, company buildings and their surrounding perimeters, including the parking lots, field, or other authorized work locations; and company vehicles or vehicles used in the course of business.

**3. Illegal Drugs**

Any drug that is not legally obtainable or that is legally obtainable but has not been legally obtained. The term includes prescribed drugs not legally obtained and prescribed drugs not being used for prescribed purposes. This includes, but is not limited to, such drugs as marijuana, opiates, cocaine, amphetamines, and phencyclidine (PCP).

**4. Mitigating Factors**

Situations or conditions that may decrease the level of employee corrective action.

**E. Additional References**

POL-2, "Ethical Business Conduct"

POL-5, "Equal Employment Opportunity"

PRO-3, "Ethics and Business Conduct Program"

PRO-6, "Offering of Business Courtesies"

PRO-7, "Conflict of Interest"

PRO-8, "Acceptance of Business Courtesies"

PRO-10, "Proper Use of Company, Customer, and Supplier Resources"

PRO-31, "Labor Reporting Practices and Employee Responsibilities"

PRO-33, "Business Travel and Business Expense Reimbursement"

PRO-57, "Boeing Use of Web Technology"

- PRO-70, "Procurement Integrity and Restrictions on Proposal Team Assignments"
- PRO-195, "Work Shifts and Schedules"
- PRO-232, "Purchasing Cards"
- PRO-388, "Drug and Alcohol Free Workplace Program"
- PRO-515, "Learning Together Program"
- PRO-1870, "Threat Management"
- PRO-1874, "Leave of Absence"
- PRO-2106, "Employee Timekeeping System (ETS)"
- PRO-2227, "Information Protection"
- PRO-2525, "Safety, Health, and Environmental Action Request (SHEAR) Process"
- PRO-2779, "Employee Identification Badges"
- PRO-2783, "Control of Photographic Devices on Company Property"
- PRO-2821, "Security and Fire Protection"
- PRO-3286, "Safety and Health Plan - Philadelphia"
- PRO-4017, "Corporate Travel and Business Expense Card"
- PRO-4332, "Workplace Harassment"
- PRO-4333, "Sexual Harassment"
- PRO-6102, "Firearms and Other Prohibited Weapons"

**EXHIBIT A**

**Expected Behaviors Guide and Violation Matrix  
for Employee Corrective Action**

Use this tool to review the facts and findings of the investigation with the relevant categories of misconduct identified below. Determine how egregious the misconduct was and what the appropriate level of employee corrective action (ECA) should be.

**Consider multiple violations** – once an initial determination has been made, return to Step 3 of the ECA process for final determination.

The mitigating and aggravating factors included in the matrix below are not all-inclusive with respect to the possible types of violations that may occur.

<b>1. TREAT OTHERS AND EXPECT TO BE TREATED WITH RESPECT, DIGNITY, AND TRUST.</b>				
<b>VIOLATION</b>	<b>EITS Code</b>	<b>Reference</b>	<b>Definition and ECA Level</b>	<b>Mitigating and Aggravating Factors that may increase or decrease initial ECA determination</b>
Coercing Others	1H		Pressuring or influencing others against their will. Usually results in a written warning.	Mitigating Factors: none presently identified. Aggravating Factors: for personal benefit or gain, use of position or authority.
EEO Violations Must Be Investigated by a Certified EEO Investigator or Designee	1B	<u>PRO-4332</u> <u>PRO-783</u>	<b>HARASSMENT POLICY (EEO – EXCLUDING SEXUAL)</b> Verbal, written, graphic or visual communication or physical conduct that shows hostility or aversion toward an individual (or group) because of his, her, or their protected status or otherwise unreasonably interferes with the performance of work, creates a hostile or intimidating work environment, or adversely affects employment opportunities. Usually results in time off from work (For Non-EEO Harassment refer to 1K)	Mitigating Factors: single incident and not directed at a person, no offensive intent, minimal impact. Aggravating Factors: actions are persistent, repeated, or malicious, significant impact, harm or disruption.
	1M	<u>PRO-4333</u>	<b>HARASSMENT POLICY (EEO SEXUAL ONLY)</b> Sexual harassment: Unwelcome sexual advances, requests for sexual favors or other verbal or physical acts of a sexual or gender-based nature when:	

			<p>1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;</p> <p>2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or</p> <p>Usually results in discharge</p>	<p>Mitigating Factors: none presently identified</p> <p>Aggravating Factors: none presently identified</p>
			<p>3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating or hostile working environment.</p> <p>Usually results in time off from work</p> <p>Gender Sensitivity Training Required</p>	<p>Mitigating Factors: single incident and not directed at a person, no offensive intent, minimal impact</p> <p>Aggravating Factors: actions are persistent, repeated, or malicious, significant impact, harm or disruption, using position of authority</p>
			<p>4. Repeated advances for a social or personal relationship that is absent of overt or implied sexual intent.</p> <p>Usually results in a written warning.</p>	<p>Mitigating Factors: single incident and not directed at a person, minimal impact.</p> <p>Aggravating Factors: actions are malicious, significant impact, harm or disruption, using position of authority</p>
	1N	<u>PRO-4333</u>	<p><b>TOUCHING (EEO)</b></p> <p>Unwanted physical contact of a sexual nature.</p> <p>Usually results in time off from work</p> <p>Gender Sensitivity Training Required</p>	<p>Mitigating Factors: none presently identified</p> <p>Aggravating Factors: actions are persistent, repeated, or malicious, significant impact, harm or disruption, intentional touching in a sexual manner</p>
	1O	<u>POL-5</u>	<p><b>DISCRIMINATION (EEO)</b></p> <p>Adverse decisions in any terms and conditions of employment, including recruiting, hiring, transfers, promotions, terminations, compensation and benefits based on any of the following factors is prohibited: race, color, religion, national origin, gender, sexual orientation, age, physical or mental disability, or veteran status. (Applies to applicants as well as employees)</p> <p>Usually results in time off from work</p>	<p>Mitigating Factors: none presently identified</p> <p>Aggravating Factors: actions are persistent, repeated, or malicious, significant impact, harm or disruption, using position of authority</p>
	1P	<u>POL-5</u> <u>PRO-4332</u> <u>PRO-4333</u> <u>PRO-1870</u>	<p><b>RETALIATION (EEO)</b></p> <p>Retaliation, adverse actions against a person who has made an EEO complaint, participated in an EEO investigation, or given information regarding possible violations of EEO policy.</p> <p>Usually results in time off from work</p>	<p>Mitigating Factors: non-egregious or minimal impact.</p> <p>Aggravating Factors: actions are egregious, persistent, repeated, or malicious, significant impact, harm or disruption, using position of authority.</p>

	1Q	<p><u>PRO-784</u>  <u>PRO-2313</u>  <u>PRO-2368</u>  <u>PRO-5837</u></p>	<p><b>ACCOMMODATION</b>            Failure to adhere to the policy of the company to provide reasonable accommodations to qualified individuals with a disability who are applicants or employees, and who can perform the essential functions of their job, with or without accommodation, without direct threat or undue hardship.            Usually results in a written warning.</p>	<p>Mitigating Factors: none presently identified            Aggravating Factors: actions are persistent, repeated, or malicious, significant impact, harm or disruption.</p>
Fighting	1D	<u>PRO-1870</u>	<p>Aggressive physical contact such as hitting, biting, or punching.            Usually results in discharge.</p>	<p>Mitigating Factors: ability to retreat or escape was not an option, scuffling, shoving, or pushing.            Aggravating Factors: none presently identified.</p>
Harassment (Non-EEO)	1K	<u>PRO-1870</u>	<p>Verbal, written, graphic, or visual communication or physical conduct that shows hostility or aversion toward an individual (or group), is disruptive, or otherwise unreasonably interferes with the performance of work or the work environment.            Usually results in a written warning.</p>	<p>Mitigating Factors: none presently identified.            Aggravating Factors: actions are persistent, repeated, or malicious, depictions of death or violent physical injury.</p>
Inappropriate Language Discussion	1E		<p>Language that is uncivil, insulting, vile, or obscene while in conversation with another person.            Usually results in a written warning.</p>	<p>Mitigating Factors: language (including expletives) that is used while not in conversation with or about another person.            Aggravating Factors: directed name-calling and conversations that are confrontational or combative.</p>
Intimidation of Others	1I	<u>PRO-1870</u>	<p>An action or behavior that causes a person to be fearful for his or her well-being, personal safety, or condition of employment.            Usually results in a written warning.</p>	<p>Mitigating Factors: none presently identified.            Aggravating Factors: misuse of authority, bullying, or threatening behavior.</p>
Offensive Non-Work-Related Materials	1G	<p><u>PRO-10</u>  <u>PRO-57</u></p>	<p>Text, images, communications, or materials that are derogatory or demean any group or individual through humor, opinion, or innuendo            Usually results in a written warning.            (Refer to EEO Violations if applicable)            (For nudity and pornography, see 1C).</p>	<p>Mitigating Factors: single incident with no exposure.            Aggravating Factors: repetitive misuse over a prolonged period, repeated or forced exposure to an unwilling person, material generated by hate groups, or portray hate crimes or depictions of death or violent physical injury, images of children.</p>
Physical Contact (Non-EEO)	1L		<p>Unwanted, unnecessary, and non-aggressive touching of an employee that has not reached the threshold of a fight.            Usually results in a written warning.</p>	<p>Mitigating Factors: none presently identified.            Aggravating Factors: spitting directed on or towards others, attempt to control or detain, intimidation.</p>
Pranks and Hoaxes	1J		<p>A non-EEO related action, behavior or circumstance that causes disruption in the workplace.            Usually results in a written warning.</p>	<p>Mitigating Factors: none presently identified.            Aggravating Factors: premeditated, causes a significant disruption, results in damage or injury.</p>

Retaliation (Non-EEO)	1R	<u>POL-2</u> <u>PRO-3</u> <u>POL-5</u> <u>PRO-780</u> <u>PRO-4332</u> <u>PRO-4333</u> <u>BPI-3751</u>	Adverse action(s) against a person who has made or is perceived to have made a complaint, participated in an investigation, given information regarding possible violations of company policy, or reported an alleged wrongdoing through formal channels. May include but is not limited to, actual or threatened bypassing for promotion, denial of salary increase, reduced opportunity for overtime, reduction in retention rating, reassignment to lesser activities, corrective action, suspension, or harassment. Usually results in time off from work.	Mitigating Factors: non-agreeous or minimal impact, refusing to work with or discuss company business. Aggravating Factors: Legal violation or negative impact on the business, actions are egregous, persistent, repeated, or malicious, significant impact, harm or disruption, using position of authority.
Sexually Related Material (Including Pornography)	1C	<u>POL-5</u> <u>PRO-10</u> <u>PRO-57</u> <u>End User Computing Security Manual</u>	Text, images, communications, or materials, in any format that portrays nudity, pornography, images of nude or partially clothed persons displayed in sexual poses or sexual acts, or sexually provocative material. Usually results in time off from work.	Mitigating Factors: single incident, no exposure to others. Aggravating Factors: sexual images of children, engaging in sexual acts.
Statements (to or about any Employee, Customers, Suppliers, the Company or its Products)	1F		Communication that is derogatory, demeaning, vicious, or profane to or about any employee, customer, suppliers, the company, or product through humor, opinion, or innuendo (non-EEO). Usually results in a written warning.	Mitigating Factors: none presently identified. Aggravating Factors: malicious, significant harm.
Threats	1A	<u>PRO-1870</u>	Any communication, including body language, that involves a threat to harm and may cause fear for the safety, health, or well-being of others or property. Must involve Corporate Investigations and site Threat Management Team if available. Usually results in time off from work.	Mitigating Factors: none presently identified. Aggravating Factors: possession of a weapon; physical contact; premeditated, directed specific threat to harm.
<b>2. PROTECT THE ASSETS OF BOEING, AND ASSETS ENTRUSTED TO BOEING, AGAINST DAMAGE, LOSS, MISUES, AND/OR THEFT.</b>				
<b>VIOLATION</b>	<b>EITS Code</b>	<b>Reference</b>	<b>Definition and ECA Level</b>	<b>Mitigating and Aggravating Factors that may increase or decrease initial ECA determination</b>
Creating an Unacceptable Liability	2F		Any action or lack of action that has the potential to cause a financial or legal liability for the company. Management failure to take action when action is appropriate. Usually results in time off from work.	Mitigating Factors: minimal liability. Aggravating Factors: significant liability.
Damage, Destruction, or Loss to Property	2D		Any action or lack of action that results in damage, defacement, loss, or destruction to company, customer, supplier property, product, or information or employee property. Usually results in time off from work.	Mitigating Factors: minimal impact, accidental. Aggravating Factors: willful, premeditation, sabotage, concealment.



BUSINESS PROCESS INSTRUCTION BPI-2616

Misuse of Company Computing Equipment or Systems (Internet and E-Mail) (Non-Sexual)	2G	<u>POL-5</u> <u>PRO-10</u> <u>PRO-57</u> <u>End User Computing Security Manual</u>	Any unapproved use of company computing resources for purposes not related to the business of the company; includes Internet and e-mail. Usually results in verbal warning. (For Sexually Related Material see 1C) (For Misuse of Company Time see 3F)	Mitigating Factors: none presently identified. Aggravating Factors: chain letters, personal profit, excessive activity or amount of data volume
Misuse of Property, Information, or Resources of Others, Company, Customer, Competitor, or Supplier	2E	<u>PRO-10</u> <u>PRO-70</u> <u>PRO-98</u> <u>PRO-2227</u>	Failure to safeguard or the unapproved use of the property, information or resources of the Company, its employees, customers, suppliers, or competitors for purposes not related to the business of the company. Usually results in a verbal warning. (For Misuse of Company Time, see 3F)	Mitigating Factors: none presently identified. Aggravating Factors: personal profit, excessive activity or data volume, acts involving community funds or personal belongings, classified material or deliberate acts that violate security rules that would subject classified information (and/or company proprietary information, Boeing Limited, or Legally Privileged) to the risk of compromise..
Possession of Property or Resources of Others, Company, Customer, Competitor, or Supplier	2A	<u>PRO-10</u> <u>PRO-70</u>	Unauthorized possession of property or resources of another employee, company, customer, competitor, or supplier; includes having unauthorized custody of materials, equipment, and information belonging to Boeing, other Boeing employees or Boeing suppliers, competitors, or customers. Usually results in time off from work.	Mitigating Factors: inadvertent possession. Aggravating Factors: personal profit, repetitive acts involving community funds or personal belongings, competitor-sensitive information.
Protection of Property, Information, or Resources of Others, Company, Customer, Competitor, or Supplier	2H	<u>Boeing Security Manual</u> <u>PRO-41</u> <u>PRO-70</u> <u>PRO-98</u> <u>PRO-2227</u>	Failure to protect property, information or resources of the company, its employees, customers, suppliers, competitors, or others. Failure to report known security violations. Usually results in a written warning.	Mitigating Factors: single incident with minimal impact. Aggravating Factors: acts that violate security rules that would subject company proprietary information, Boeing Limited, or Legally Privileged to the risk of compromise; loss of a laptop containing unencrypted sensitive information.
Sabotage	2C		Any act of attempted or actual sabotage that damages or disrupts company property, information, or resources of the company, customers, or suppliers. Results in discharge.	Mitigating Factors: none presently identified. Aggravating Factors: none presently identified.
Theft	2B		Theft includes the unauthorized removal and possession of property or resources of another employee, company, customer, competitor, or supplier. Usually results in discharge.	Mitigating Factors: petty theft. Aggravating Factors: none presently identified.
<b>3. PRODUCE, DESIGN, AND SUPPORT OUR PRODUCTS AND SERVICES IN A MANNER THAT PROMOTES THE INTERESTS OF BOEING, ITS EMPLOYEES, CUSTOMERS, AND SUPPLIERS.</b>				
<b>VIOLATION</b>	<b>EITS Code</b>	<b>Reference</b>	<b>Definition and ECA Level</b>	<b>Mitigating and Aggravating Factors that may increase or decrease initial ECA determination</b>

Absence Without Notice, AWOL	3L	<u>Refer to Site ECA Focal</u>	Controlled by site practices.	Refer to site practices.
Attendance	3M	<u>Refer to Site ECA Focal</u>	Controlled by site attendance guidelines. (Refer to section 2.1.a – page 6)	Refer to site practices.
Commonsense Rules of Conduct	3N		Actions or behaviors that are not addressed elsewhere in this guideline, but are inconsistent with ordinary, reasonable, commonsense expected standards of conduct. Corrective action should reflect the impact it had on the company or individuals. Usually results in a written warning.	Mitigating Factors: no impact to property, product, or others. Aggravating Factors: harm to persons (emotional or physical), damage to the product or property or to Boeing's reputation.
Conducting a Personal Business – Running a Business	3I	<u>PRO-10</u>	Personal outside business interests on company time or property, or with company resources. Usually results in time off from work.	Mitigating Factors: isolated incidents that have little or no impact on the company, express or implied management authorization. Aggravating Factors: personal gain, impact on the business, excessive company time or resources used, any business that creates a conflict of interest.
Defective work product or output	3R		Specific failure to perform or provide a product / service due to carelessness, inattention, lack of interest or prioritization – employee is qualified and capable Usually results in a written warning.	Mitigating factors: none presently identified Aggravating factors: deliberate disregard for process, procedure, or instruction
Failure to Comply	3E		Failing to follow instructions, perform designated work, or act or cease to act after being instructed or reminded. Usually results in a written warning.	Mitigating Factors: none presently identified. Aggravating Factors: disrupts production, argumentative to management (refusal, refer to 3D).
Failure to Observe Established Work Schedule	3H	<u>PRO-195</u>	Unauthorized deviation from established shift, lunch, or break schedule. Usually results in a verbal warning.	Mitigating Factors: none presently identified. Aggravating Factors: repetitive occurrences after warning, excessive work time lost.
Generally Unacceptable Conduct and/or Behavior	3O		Multiple active corrective actions (none of which in and of itself results in discharge). Usually results in time off from work. (Refer to section 2.1.b – page 6)	Mitigating Factors: none presently identified. Aggravating Factors: seriousness of active ECA in conjunction with current incident.
Horseplay	3B		Physically active behavior that results in disruption or has the potential to create an unsafe workplace. Usually results in a written warning. (For injury to employees or others, see 5C) (For damage to or destruction of property, see 2D)	Mitigating Factors: none presently identified. Aggravating Factors: results in damage to property, equipment, information, or resources of the company, customers, or suppliers

Insubordination (Gross)	3D		Refusing or failing to follow a management directive to act or cease to act, after being ordered to do so. The employee must be given time to comply and warned that the failure to comply will result in discharge. Normally, another company representative should witness this process. Results in discharge.	Mitigating Factors: none presently identified. Aggravating Factors: none identified.
Interfering With Production	3A		An activity or behavior that detracts from the business of the company or disrupts the productivity of other employees, or results in a compliance violation not related to safety and health. Usually results in a written warning.	Mitigating Factors: none presently identified. Aggravating Factors: significant business or operational impact.
Leaving Company Premises Without Notification	3J		Unauthorized time away from company premises and/or workplace. Usually results in time off from work.	Mitigating Factors: none presently identified. Aggravating Factors: repeated events, extended or excessive period of time, significant business or operational impact.
Out of Work Area	3P		Unauthorized time away from work area that is observable or confirmed by data. Usually results in a written warning.	Mitigating Factors: none presently identified. Aggravating Factors: excessive time away, intentional concealment.
Misuse of Company Time (Stealing Time)	3F	PRO-10	Company time spent on non work related activities or any activity that is not supportive of the work assignment. Usually results in written warning.	Mitigating Factors: none presently identified. Aggravating Factors: repetitive, extended or excessive incidents, measurable impact to work performance.
Performance Issues	3Q	(refer to section 2.1.a – page 6)	Ongoing, unsuccessful achievement of management's performance expectations over a period of time. Usually results in a written warning and performance improvement plan. Failure to successfully complete performance improvement plan will result in further corrective action up to and including discharge.	Mitigating factors: none presently identified. Aggravating factors: none presently identified
Poor Housekeeping	3K	Refer to applicable site procedures	Can vary from simple clutter to harm of product due to foreign object damage or debris (FOD); hygiene issues. Usually results in a written warning.	Mitigating Factors: tasks related to routine cleaning of work area. Aggravating Factors: careless or unsafe housekeeping that creates a risk of, or causes, property or product damage (2D), personal injury (5C), rework, production disruption, or safety of flight.
Sleeping	3C		Sleeping on company premises, in the work area or at workstation, past break times, on company time. Usually results in a written warning.	Mitigating Factors: none presently identified. Aggravating Factors: leaving work area, concealed sleeping, nesting (usually results in discharge).

PRO-1909  
Issue Date  
April 11, 2006

## Administration of Employee Corrective Action

### Purpose/Summary

This procedure describes corrective action measures and outlines the overall responsibilities of operating organizations, managers, Human Resources, and Corporate Investigations in the corrective action process.

Corrective action affecting employees represented by a collective bargaining agreement will be administered in accordance with the terms of the collective bargaining agreement.

For salaried employees, unacceptable work progress and performance, although a violation of the Boeing Code of Conduct, may be handled in accordance with separate procedures.

This procedure does not constitute a contract or contractual obligation, and the company reserves the right, in its sole discretion, to amend, modify, or discontinue its use without prior notice, notwithstanding any person's acts, omissions, or statements to the contrary.

This procedure applies to all segments of The Boeing Company.

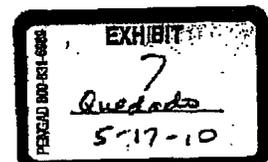
Employees in countries other than the United States will be governed by this procedure, with appropriate adjustments, if necessary, to accommodate local legal or contractual requirements.

### Supersedes

June 8, 2004

### Applies To

All Boeing



Page 1 of 14

Policy and Procedure System contains the most current version of this writing. Uncontrolled when printed.

BOE/QUEDADO 0459

**Maintained By**

Boeing Corporate, Human Resources, Global Diversity and Employee Rights

**Authority Reference**

Policy POL-3, "People"

**Approved By**

Rick Stephens  
Senior Vice President, Human Resources and Administration

**Summary of Changes to the Title Page**

The issue date, Supersedes, Maintained By, and Approved By information have changed. Otherwise this is a major revision.

**1. Introduction**

- A. The corrective action processes described in this procedure are intended to correct unacceptable conduct and to avoid its repetition.
- B. Corrective action shall be taken when an employee engages in a practice that is inconsistent with the published Boeing Code of Conduct (reference Exhibit A), U.S. Government security requirements, or ordinary, reasonable, commonsense rules of conduct.
- C. Management has the primary responsibility for administering corrective action. The Human Resources organization will provide guidance, consultation, and information in support of the process.
- D. In matters relating to ethical misconduct, the company Ethics and Business Conduct organization shall be consulted before the closure of any investigation or administration of any corrective action.
- E. In matters concerning individuals in countries outside the United States, several issues must be considered before the administration of Employee Corrective Action (ECA). Refer to Exhibit C for guidance.

**2. Requirements**

- A. Some acts of unacceptable conduct are so serious as to warrant severe corrective action upon the first known offense. For these, job reclassification, reassignment, time off from work, or discharge may be appropriate even though no prior warning has been given. Other less

serious situations will normally be handled under the concept of progressive corrective action; that is, increasingly severe corrective measures will be applied for subsequent violations.

- B. While some latitude is permitted in determining the level of corrective action appropriate to the circumstances, the intent is that a relatively uniform corrective action process for similar offenses will be applied enterprise-wide. Use the matrix in Business Process Instruction BPI-2616, "Employee Corrective Action Guidelines," for assistance in identifying the severity of various rule violations and determining the appropriate level of ECA.
- C. The Boeing Code of Conduct (reference Exhibit A) should be conspicuously posted in each business unit facility including subsidiaries and business segment sites that have adopted it, and it is expected that each newly hired employee will be provided a copy during new employee processing.
- D. Suspected criminal violations shall be reported to Corporate Investigations immediately so that a determination of whether the offense warrants the notification of appropriate law enforcement agencies can be made.
- E. A request for review of ECA determinations may be made when an employee's management disagrees with the level of corrective action that was decided upon by using this process guideline and Business Process Instruction BPI-2616, "Employee Corrective Action Guidelines." This request for review must detail factual information that the manager believes would either mitigate or aggravate the level of ECA, and should not contain opinions or personal information not directly related to the employee's condition of employment. Refer to Business Process Instruction BPI-3946, "Employee Corrective Action Review Boards," Section D.11 for more information on how to initiate this request.

### 3. Procedures for Administering Corrective Action

#### A. Overview

- 1. Corrective actions taken by management are normally to be governed by progressive corrective action (increasingly severe corrective measures for subsequent offenses of the same or similar type). This process can include the following measures:
  - a. Verbal counseling.
  - b. Written documentation.
  - c. Time Off From Work.

- d. Other corrective actions (e.g., job reclassification, downgrade, reassignment, Employee Assistance Program referral).

If an employee is downgraded out of a management position as part of the corrective action, the employee must wait a minimum of one (1) year before he/she may be considered for promotion back into a management position.

- e. Discharge.

2. The above corrective actions should be taken and documented by management according to the following guidelines:
  - a. Be consistent -- apply the same documentation guidelines to everyone in the group.
  - b. Document facts only -- personal feelings, reactions, opinions, and analysis should be left out of documentation.
  - c. Be complete -- documentation should be clear and provide all the relevant information.
  - d. File the document -- send the corrective action memo and supporting documentation to Human Resources Services Central Records. The documentation will be scanned and stored in the Personnel Records Link (PRL), an electronic records management application.
3. It is not always necessary for the corrective action process to commence with a verbal warning or include every step. The corrective action process may begin with a written warning and proceed to more severe measures for subsequent violations. For acts warranting severe corrective action, particularly those that are intentional or serious, such measures as job reclassification, reassignment, time off from work, or discharge may be appropriate even though the employee has no previous record of corrective action.

**Note:** Management employees are held to a higher standard of conduct and may be subject to more severe levels of corrective action.

**B. Verbal Counseling**

1. For certain minor rule violations a documented discussion will serve the objective of this procedure.
2. In the verbal counseling step, management has the opportunity to discuss the issue with the employee in an attempt to correct the

unacceptable conduct before it is repeated, or rises to a level requiring more severe corrective action.

**C. Written Documentation**

1. Written documentation involves preparing and issuing a CAM. The CAM must be created in the Employee Issues Tracking System (EITS).
2. A CAM shall be given to employees when they violate the Expected Conduct standards, and when corrective action more severe than verbal counseling is warranted.
3. Management must notify the Human Resources organization for assistance before issuing a CAM.

**D. Time Off From Work**

1. Conditions

a. An employee shall receive time off from work when:

- (1) The seriousness of the violation warrants more than written documentation, but less than discharge, or
- (2) It becomes advisable to remove an employee from company premises until a final decision is reached regarding appropriate action.

**Note:** An employee should be removed from work immediately, pending further investigation, when, in the opinion of management, there is concern for, or danger to, persons, property, or company interests.

b. Time off from work of exempt employees is to be carried out in a manner that maintains the employee's exempt status under the Fair Labor Standards Act or applicable state labor laws. At present, the following six (6) states either have laws that prohibit employers from suspending exempt employees for less than a workweek (= five (5) workdays) or have regulatory agencies that interpret those laws in this manner:

Alaska  
California  
Connecticut  
Montana  
Oregon  
Washington

All other states permit employers to suspend exempt employees for less than a workweek without putting the exempt status at risk.

- c. Such action may be taken independent of, or in conjunction with, other corrective action measures.
2. Procedure
    - a. Notify the Human Resources organization for assistance prior to an employee receiving time off from work or being removed from work pending investigation.
    - b. Initiate a CAM as specified in section 4 of this procedure.
    - c. Retrieve the employee's company identification badge, laptop, and cell phone.
    - d. Escort the employee off company premises.
- E. Other Corrective Action/Job Reclassification or Reassignment
1. Job reclassification (downgrade or reassignment) may be appropriate when an employee cannot be depended on to properly exercise the degree of latitude or independent judgment required by the employee's current job classification. Such action may be taken independently of, or in conjunction with, other corrective action measures.
  2. Procedure
    - a. Notify the Human Resources organization to obtain concurrence before taking any further action.
    - b. Initiate a CAM as specified in section 4 of this procedure.
    - c. If an employee is removed (through downgrade, reclassification, or reassignment) from a management position as part of the corrective action, the employee must wait a minimum of one (1) year before he or she may be considered for promotion back into a management position.
- F. Discharge
1. Discharge is appropriate when other efforts at corrective action fail or when the seriousness of the violation or problem warrants it.
  2. Procedure
    - a. Notify the Human Resources organization to obtain concurrence before taking any further action.

- b. Initiate a corrective action memo as specified in section 4 of this procedure.
- c. Prepare termination documentation with the assistance of the Human Resources organization.
- d. Ensure that the termination process is completed, including retrieval of company identification badges, accounting for all company property assigned to the employee (e.g., keys and travel card), and completing a termination checklist.
- e. Escort the employee off company premises.

#### **4. Corrective Action Memo (CAM)**

- A. The CAM is used to formally notify an employee of:
  1. The nature or level of corrective action.
  2. An area of management concern.
  3. The action(s) required by that employee to solve the problem.
  4. The consequences of not solving the problem.
- B. A corrective action memo must be issued whenever corrective action is administered except for verbal counseling (reference section 3.B. of this procedure).
- C. Follow these steps when preparing and issuing a CAM:
  1. Clearly state the nature or level of action being taken and the unacceptable conduct in detail.
  2. Describe previous corrective actions, if any, taken by management to correct the conduct (e.g., verbal counseling or previous CAMs).
  3. Where discharge is not administered, identify the corrective action required by the employee to solve the unacceptable conduct.
  4. Review the memo and obtain concurrence from the Human Resources organization before issuing it to the employee.
  5. Where discharge is not administered, advise the employee that failure to demonstrate an immediate and sustained correction of unacceptable conduct will result in further corrective action, up to and including discharge.
  6. Give the employee an opportunity to comment on and sign the corrective action memo, acknowledging receipt.

7. If the employee declines to sign the CAM, note this in the "Employee Signature" section.
  8. Provide the employee with the original CAM.
  9. Ensure that the ECA record is properly annotated in EITS by the end of shift of the day the corrective action was issued.
  10. Send the CAM and supporting documentation to Human Resources Services' Central Records. The documentation will be scanned and stored in the PRL, an electronic records management application.
- D. When a CAM is in active status, it may be used for progressive discipline if the employee subsequently engages in behavior that was the same as or similar to the behavior that caused the original memo to be issued.

The duration of the CAM will be in an active status in accordance with the schedule indicated below, provided the employee is not subsequently issued additional corrective action within the referenced time frame for violations listed under the same Expected Behaviors category (reference Exhibit B).

The company also reserves the right to extend the duration of the active status of the CAM for certain egregious violations, such as safety, security, Equal Employment Opportunity (EEO), or those of a violent nature. Leave of absence time does not count towards the completion of the periods referenced below.

1. Written documentation: 12 months
  2. Time off from work: 12 months
  3. Other (such as downgrade, job reclassification, or reassignment): 12 months
  4. Discharge.
- E. CAMs will be purged per the Master Records Retention Schedule unless additional violations for the same or similar type of offense have occurred, or a legal hold is in-place.

## 5. Responsibilities

- A. Each business unit is expected to implement this procedure in such a manner as to ensure that managers
1. Understand their prime role in achieving compliance by their employees with the Boeing Code of Conduct (reference Exhibit. A

and form F70086), Expected Behaviors (reference Exhibit B), and other ordinary, reasonable, common sense rules of conduct.

2. Obtain guidance from the Human Resources organization for unusual or difficult situations, and to review corrective action memos, time off from work, job reclassifications, and discharges with the Human Resources organization before final action to ensure compliance with company policy, state, and federal laws, agency regulations, and contractual agreements.
3. Notify Corporate Investigations immediately when
  - a. A criminal act or security infraction is suspected.
  - b. Conditions or events adversely affect the best interest of the company (e.g., production, costs, reputation in the community, or safety of employees and products).
  - c. Other situations arise when notification is deemed appropriate.

**Note:** When possible, notify Corporate Investigations before the employee is aware that the violation has been detected in order to facilitate the investigation and advise the Human Resources organization that you have notified Corporate Investigations.

4. Initiate corrective actions consistent with guidelines set forth in this procedure and Business Process Instruction BPI-2616, "Employee Corrective Action Guidelines."
5. Establish a Human Resources organization focal point to serve as a coordinator in reviewing unusual or difficult corrective situations.

#### B. Managers

1. Ensure that employees have the information necessary to understand and comply with their obligation to follow the Boeing Code of Conduct (reference Exhibit A and form F70086), Expected Behaviors (reference Exhibit B), safeguard classified information, and maintain reasonable, commonsense rules of conduct.
2. Initiate corrective actions consistent with guidelines set forth in this procedure and Business Process Instruction BPI-2616, "Employee Corrective Action Guidelines."
3. Review CAMs with the Human Resources organization before administering action.
4. Obtain guidance from the Human Resources organization regarding unusual or potentially precedent-setting situations.

5. Obtain guidance from the Human Resources organization in instances in which communicating a particular corrective action to a work group may be warranted.
6. Participate in Employee Corrective Action Review Boards (ECARBs) consistent with the guidelines set forth in this procedure and Business Process Instruction BPI-3946, "Employee Corrective Action Review Boards."

C. Human Resources Organization

1. Ensure that the Boeing Code of Conduct (reference Exhibit A and form F70086) and Expected Behaviors (reference Exhibit B) is posted in a conspicuous place in each Boeing facility.
2. Through employment offices, furnish each new employee with a copy of the Boeing Code of Conduct (reference Exhibit A and form F70086) and Expected Behaviors (reference Exhibit B).
3. Initiate corrective actions consistent with guidelines set forth in this procedure and Business Process Instruction BPI-2616, "Employee Corrective Action Guidelines."
4. Before a CAM is issued to the employee:
  - a. Review with the appropriate coordinator any potentially precedent-setting cases and all cases involving time off from work, job reclassification, or discharge that are not progressive steps of corrective action.

**Note:** This review is intended to ensure compliance with company policies, state and federal laws, agency regulations, and contractual obligations. It is also intended to ensure that actions taken are consistent with those taken previously for similar infractions.
  - b. Review all CAMs with the manager.
  - c. Notify the line organization of any contractual complications, potential legal concerns, or inconsistencies in corrective actions.
5. Ensure managers are familiar with the contents of this procedure and the proper handling of cases.
6. Before taking action on any corrective action case that is unusual or potentially precedent setting, consult with the site corrective action coordinator or the appropriate Employee/Labor Relations representative.

7. Coordinate with other organizations to ensure that relatively uniform action is taken when a violation involves employees from more than one (1) organization.
  8. Notify Corporate Investigations of actions taken in cases in which a security report was issued.
  9. Participate in Employee Corrective Action Review Boards (ECARBs) consistent with the guidelines set forth in this procedure and Business Process Instruction BPI-3946, "Employee Corrective Action Review Boards."
  10. Extend the expiration date in EITS for a prior CAM being used for progressive corrective action.
- D. Human Resources Services Central Records**
1. Manage the storage and retrieval of CAMs and supporting documentation.
  2. Purge CAMs per the Master Records Retention Schedule, unless additional violations for the same or similar type of offense have occurred, or a legal hold is in-place.
- E. Boeing Corporate, Human Resources, Global Diversity and Employee Rights**
1. Interpret this procedure as required.
  2. Initiate action necessary to keep this procedure up to date.
  3. Approve deviations to this procedure.

**EXHIBIT A  
(Sheet 1 of 1)****BOEING CODE OF CONDUCT**

The Boeing Code of Conduct outlines Expected Behaviors for all Boeing employees. Boeing will conduct its business fairly, impartially, in an ethical and proper manner, and in full compliance with applicable laws and regulations. In conducting its business, integrity must underlie all company relationships, including those with customers, suppliers, communities, and among employees. The highest standards of ethical business conduct are required of Boeing employees in the performance of their company responsibilities. Employees will not engage in conduct or activity that may raise questions as to the company's honesty, impartiality, reputation, or otherwise cause embarrassment to the company.

Employees will ensure that

- They do not engage in any activity that might create a conflict of interest for the company or for themselves individually.
- They do not take advantage of their Boeing position to seek personal gain through the inappropriate use of Boeing or nonpublic information or abuse of their position. This includes not engaging in insider trading.
- They will follow all restrictions on use and disclosure of information. This includes following all requirements for protecting Boeing information and ensuring that non-Boeing proprietary information is used and disclosed only as authorized by the owner of the information or as otherwise permitted by law.
- They observe that fair dealing is the foundation for all of our transactions and interactions.
- They will protect all company, customer, and supplier assets and use them only for appropriate company approved activities.
- Without exception, they will comply with all applicable laws, rules, and regulations.
- They will promptly report any illegal or unethical conduct to management or other appropriate authorities (i.e., Ethics, Law, Corporate Investigations, EEO).

**Every employee has the responsibility to ask questions, seek guidance and report suspected violations of this Code of Conduct. Retaliation against employees who come forward to raise genuine concerns will not be tolerated.**

**EXHIBIT B  
(Sheet 1 of 1)****EXPECTED BEHAVIORS**

All employees are expected to adhere to the Boeing Code of Conduct. Infractions of the Code of Conduct will result in appropriate corrective action, up to and including discharge.

To facilitate the process of determining consistent and appropriate corrective action, as described in Business Process Instruction BPI-2616, "Employee Corrective Action Guidelines," the following general categories of expected behaviors have been identified.

1. TREAT OTHERS AND EXPECT TO BE TREATED WITH RESPECT, DIGNITY, AND TRUST.
2. PROTECT THE ASSETS OF BOEING, AND ASSETS ENTRUSTED TO BOEING, AGAINST DAMAGE, LOSS, MISUSE, AND/OR THEFT.
3. PRODUCE, DESIGN, AND SUPPORT OUR PRODUCTS AND SERVICES IN A MANNER THAT PROMOTES THE INTERESTS OF BOEING, ITS EMPLOYEES, CUSTOMERS, AND SUPPLIERS.
4. PROCESS AND REPORT INFORMATION ACCURATELY, HONESTLY, AND PROPERLY.
5. BUILD AND MAINTAIN A SAFE AND HEALTHY ENVIRONMENT FOR OUR EMPLOYEES, CUSTOMERS, SUPPLIERS, AND LOCAL COMMUNITIES.
6. ADHERE TO COMPANY AGREEMENTS, POLICIES, AND PROCEDURES.
7. ABIDE BY APPLICABLE LAWS AND REGULATIONS

A more detailed listing, with examples of infractions for each of the above categories, is included in Business Process Instruction BPI-2616, "Employee Corrective Action Guidelines." Corrective action may also be taken for misconduct not specifically described in BPI-2616, but which is inconsistent with ordinary, reasonable, commonsense rules of conduct.

EXHIBIT C  
Sheet 1 of 1

### ECA GUIDELINES FOR INTERNATIONAL EMPLOYEES

The terms and conditions of employment for most of our international Boeing employees are contractual in nature, and are set forth either in collective bargaining agreements (for groups of union-represented employees) or in individual employment contracts. The collective bargaining agreements and individual employment contracts may address applicable corrective action (disciplinary) procedure. The legal systems in many countries will also restrict how or what corrective action can be administered.

Because of these variables in the international context, reviewing of cases will be done on a country-by-country and, within a particular country, on a case-by-case basis. The general approach for our international locations will be as follows:

1. Are the terms and conditions of employment for this employee governed by a contract, a collective bargaining agreement, or an individual employment contract?
2. If yes, does the contract contain provisions about employee corrective action? This may also require that past practice be taken into consideration.
3. If yes, then we will comply with the terms of the contract.
4. If no to the above questions, then there will be a review of the proposed corrective action process to confirm that it is in accordance with applicable law. Boeing Corporate, Human Resources, Global Diversity and Employee Rights and the law department will conduct this review, coordinating with their counterparts at the local site or business unit, as appropriate.
5. If applicable local law does not affect implementation of the corrective action process, we will proceed with implementation.
6. If applicable local law does affect implementation, we will modify the proposed corrective action process to comply with applicable local law.

Boeing Code of Conduct



Exhibit	38
Witness	HANSEN
Date	11-11-16
Fuelix Realtime Reporting	(206) 287 9066

# Ethics & Business Conduct

## Frequently Asked Questions

[Signing Process Questions](#) | [Content-Related Questions](#) | [International and Subsidiaries Question](#)

These Frequently Asked Questions include Q&As about signing the Code online (in English and other languages), as well as Q&As for those who do not have access to TotalAccess and need to use the paper form. Additional information for **international and subsidiary employees** is available on the Ethics Website.

If you have questions that are not addressed below about accessing the Code or the manager's tracking tools online, contact the TotalAccess Help Desk at 866-473-2016 (for TTY/TDD service call 800-755-6363).

For questions not addressed below about Code's content or who needs to sign it, please contact an **Ethics Advisor** or call the **Ethics Line** at 1-888-970-7171.

**Terminology Note:** The term "employee" refers to all Boeing employees, including Boeing subsidiaries both domestic and international. The term "non-employee" refers to all contingent labor (contract labor or industry assist individuals) but does not include technical assist, technical services or purchased services personnel.

### Signing Process Questions

**Q** Question 1: Why do we have to sign the Code of Conduct again in 2010?

**A** A commitment to our Code of Conduct is an important business practice, and everyone's participation is critical and appreciated. Many companies and parts of the government renew commitments to integrity annually, and this is a practice Boeing deploys each year. It reinforces our personal commitment to each other to keep promises, hold each other accountable and to model high ethical standards. Annual signing also provides a chance to talk about Ethics at work.

TOP

**Q** Question 2: Who must sign the Code of Conduct and why?

**A** All Boeing employees, including employees of Boeing subsidiaries, domestic and international, must sign the Code of Conduct as a standard business practice of the company. Additionally, all interns, contract labor and industry assist individuals will be asked to review, and certify (by signing) that they understand and will comply with the Boeing Code of Conduct. For definitions of "employee, contract labor and industry assist," please see <http://directory.web.boeing.com/10enduser/20apps/sql/Relationship/?pid=d.sql.relationship>.

TOP

**Q** Question 3: I am a part-time hourly employee, am I required to sign the Code of Conduct?

Yes.

TOP

**Q** Question 4: Do new employees and non-employees (contract labor/industry assist), who start late in 2009 or early in 2010, have to Code of Conduct? Don't they sign during their orientation?

**A** New employees and Contract Labor/Industry Assist starting before Dec. 31, 2009, signed the 2009 Code of Conduct during their orientation. These individuals are required to sign with their team again in 2010 to satisfy the 2010 certification requirement. Employees and Contract Labor/Industry Assist starting after Jan. 1, 2010, will sign the annual Code of Conduct during their orientation process. This fulfills the signing requirement and a second signing is not required.

TOP

**Q** Question 5: Who is not required to sign the Code of Conduct? Why?

**A** Individuals who have relationships with Boeing - including consultants, purchased services, technical services, Boeing-benefits, suppliers and customers - are not required to sign the Code because they sign through their contractual agreements with Boeing. For definiteness, those not required to sign, please see <http://directory.web.boeing.com/10enduser/20apps/sql/Relationship/?pid=d.sql.relationships>

TOP

**Q** Question 6: When does the 2010 process begin, and when does it end?

**A** The process starts Jan. 11 and ends Feb. 4, 2010. During this time, all Boeing employees and other participants must sign the 2010 Code of Conduct.

TOP

**Q** Question 7: What happens if an individual is unable to participate by Feb. 4, 2010?

**A** The requirement is for all to sign by Feb. 4, 2010, except for the circumstances below:

- **Absent from work** - If someone is on vacation, leave of absence or sick leave, their manager should explain the process and ask him/her to sign immediately upon returning to work. This also applies to all contract labor or industry assist persons who are "on-call" and not currently on assignment during the signing process.
- **People who have additional questions/concerns about signing** - Anyone who has concerns about signing the Code of Conduct should speak immediately with his/her manager. If the issue is not resolved, then the individual should talk with the **Ethics Advisor**. After issues are resolved, ask the person to sign the Code of Conduct and follow the submittal process.
- **People who challenge the process and decline to participate** - The Code of Conduct is a condition of employment. reference **PRO-1909** and **BPI 2616 Employee Corrective Action Decision Making Process** for more information regarding the progressive discipline associated with not signing the code., Exhibit A, Section 6, EITS Code, 60, Code of Conduct, "Failure to Sign Code of Conduct Certification Form," which ultimately could lead to suspension and possible discharge. Management should work with Human Resources for discipline questions and guidance.

TOP

**Q** Question 8: What if I have employees/non-employees who don't have access to TotalAccess - can they submit their original forms envelope directly to the Code of Conduct Team's mail code S290-1310?

**A** Please have them make two copies of the signed Code of Conduct, one for their manager and another for the employee. They should submit the original (see [mailing addresses](#)). Managers need to follow-up with every individual to ensure that all forms are submitted by Feb. 4, 2010. For employees/non-employees located at international sites, please refer to the [International and Subsidiary Business Process](#)

TOP



Question 9: I have TotalAccess, but I am not able to sign the Code online. What do I do?



Please contact TotalAccess for technical assistance at 866-473-2016.

TOP



Question 10: What if my signed Code will not print from TotalAccess?



Please contact TotalAccess for technical assistance at 866-473-2016.

TOP



Question 11: If the Code of Conduct prints on two pages, what do I do?



In some cases, the form may print on two pages because printing capabilities vary greatly around the company. If you encounter printing to another printer in your area or contact local computing support for assistance.

TOP



Question 12: After I electronically sign the Code of Conduct, where can I see my confirmation online?



You can see confirmation of your own electronically signed 2010 Code of Conduct on TotalAccess, on the My Career page (in the corner). It will be available throughout the year and you can print a copy if you wish. (Printing/keeping a hard copy of the electronically signed Code form is not required.)

TOP



Question 13: I don't have TotalAccess, how do I sign the Code?



For those employees without access to TotalAccess, please see the Manager's Instructions for Paper Forms for those without TotalAccess. Paper forms should be mailed to:

Inter-Company Mail:

Mailing address:

Street Address:

Code of Conduct  
S290-1310

The Boeing Company  
Code of Conduct  
P. O. Box 516,  
MC S290-1310  
St. Louis, MO  
63166-0516

The Boeing Company  
Code Of Conduct  
MC S290-1310  
325 J. S. McDonnell Blvd  
Hazelwood, MO  
63042-2513

TOP



Question 14: I am an international employee and I have TotalAccess...can I sign the Code of Conduct online in another language?



Yes. The Code of Conduct will be online in TotalAccess in the following languages: English, Mandarin, Dutch, French, German, Japanese, Russian and Spanish. If you are located outside the U.S. and the different language version do not appear in TotalAccess, please contact TotalAccess for assistance at 866-473-2016.

TOP



Question 15: I am an international employee and I do not have TotalAccess...can I sign the Code of Conduct online in another language?



No. You will need to sign a paper form. Your manager will be able to provide a form to you either through TotalAccess or through International and Subsidiary process. The paper-version of the Code of Conduct is available in the following languages: English, Mandarin, Dutch, French, German, Japanese, Russian and Spanish. The form must be signed and given to your manager and mailed by credit.

TOP



Question 16: I manage a virtual team with employees/non-employees in multiple locations. How should I fulfill my Boeing Code of Conduct responsibilities from long distance?

**A** Managers are responsible for ensuring the employees they manage sign the Code of Conduct during the certification period and discuss the Code's importance. *Note: Managers should not mail information to the homes of contingent labor employees (contract labor or industry assist individuals).*

TOP

**Q** Question 17: What if a member of my team is consulting with an **Ethics Advisor** regarding questions he/she has with the Code of Conduct and has not signed yet? Should I go ahead and submit completed forms from other team members and forward the remaining individual forms later?

**A** Yes. Please mail any paper forms as soon as they are signed and do not wait until you have 100% participation. If an individual is working with an **Ethics Advisor**, the Ethics Advisor will guide the individual's next steps.

TOP

**Q** Question 18: What if an individual has, or thinks he/she has, proprietary documents from previous employers and is unable to sign Boeing Code of Conduct?

**A** If a person feels he or she is unable to sign for this or any other reason, the manager should be informed and that person should be referred to an **Ethics Advisor** or the **Ethics Line** at 1-888-970-7171.

TOP

**Q** Question 19: What if an individual signs the Code and later is found to have violated the Boeing Code of Conduct?

**A** An employee who violates the Boeing Code of Conduct faces disciplinary action, including corrective action and possible discharge or employment per **BPI 2616 Employee Corrective Action Decision Making Process**. Non-employees who violate the Code of Conduct will be handled through appropriate company procedures.

TOP

**Q** Question 20: Should an individual print/photocopy and keep a copy of his/her signed 2010 Code of Conduct form? What should an individual do with the copies of his/her direct reports' signed paper forms?

**A** For those employees who have signed online, printing a copy of the electronically signed form (for them to keep for their records) is optional, but not necessary. For those who signed a paper form, the individual should keep a copy of his/her signed 2010 Code of Conduct form, but any original paper forms must be sent to the Code of Conduct Team (see **mailing addresses**). Managers should keep the photocopies of their direct reports' signed 2010 paper forms until the originals are recorded. After that, they can either keep or discard them.

TOP

**Q** Question 21: At Boeing, we have other certification requirements related to specific organizations or functions; i.e., Finance, Quality. Signing the Boeing Code of Conduct form replace the need to sign these other requirements?

**A** No. Employees/non-employees are certifying compliance to the Boeing Code of Conduct, and this does not replace or supersede any other requirement related to a job function or program affiliation. All certification requirements—whether contractual, regulation-based or internally driven—must be adhered to.

TOP

**Q** Question 22: What happens if an individual refuses to sign the Code of Conduct?

**A** The Code of Conduct is a condition of employment. Any employee who refuses to sign faces corrective action and possible discharge or employment per **PRO-1909** and **BPI 2616 Employee Corrective Action Decision Making Process**. Exhibit A, Section 6, EITS Code, 6O, Code of Conduct, "Failure to Sign Code of Conduct Certification Form." Non-employees who refuse to sign the Code of Conduct will be handled individually.

TOP

**Q** Question 23: How can a manager check if an individual has signed?

Managers have a special section on TotalAccess to track their employees' Code signing status. This manager's section appears in the

**A** of Conduct section on the Manager HR Services page of TotalAccess. Managers also have the ability to send reminder emails to employees from their tracking web page.

**TOP**

**Q** Question 24: What if a direct report does not appear on a manager's 2010 Code of Conduct tracking screens on TotalAccess?

**A** If an individual does not appear on a manager's tracking screens that means he/she has a different Accounting Department or HR Department code. The manager should talk with a HR representative if this occurs.

**TOP**

**Q** Question 25: I signed a paper copy of the Code during new hire orientation. Why is TotalAccess showing that I haven't signed the

**A** It can take 10-20 days for paper forms (signed during orientation) to be recorded. If you completed orientation more than 20 days ago please contact TotalAccess at 866-473-2016.

**TOP**

**Q** Question 26: Members of my team are currently out on strike. How should a manager handle this process with them?

**A** Employees should not be requested to sign the Code of Conduct while on strike. Upon their return to work, they will have 30 days to complete the signing process.

**TOP**

**Q** Question 27: I am assigned to a project and work under a different organization than my home group. Which manager is tracking my Code of Conduct completion?

**A** If your "assigned" manager is different from your "enrolled" manager, your assigned manager has the responsibility to ensure your Code of Conduct is signed.

**TOP**

**Q** Question 28: I have an employee who was hired in January 2010 and who shows up in my manager tracking as not signing online. The employee signed a Code of Conduct form during orientation so should he still sign the 2010 Code online?

**A** No. There is no need to have the new employee sign another Code because this would be a duplication of effort. Code of Conduct credit for new hires takes approximately 10-20 days after the person's start date so please anticipate a delay. If the employee completed orientation more than 20 days ago, please contact TotalAccess at 866-473-2016.

**TOP**

**Q** Question 29: How can signing the Code online with a couple mouse clicks be legally valid?

**A** Signing the Code electronically via a password-protected TotalAccess interface is considered the equivalent of a physical signature for legal purpose, and is analogous to the way many other subjects are being handled by Boeing and other employers. This enables a leaner Code of Conduct process because results show immediately, and it is also "greener" since we do not have to generate, maintain and dispose of hardcopy signed paper forms.

**TOP**

### Content-Related Questions

**Q** Question 30: Is this a new Code of Conduct for The Boeing Company?

**A** No. The 2010 Code of Conduct text is exactly the same as last year. The only difference is that employees who have TotalAccess can

**A** an electronic version of the Code online. Those employees who do not have TotalAccess will still need to sign a paper form.

TOP

**Q** Question 31: When did Boeing launch a Code of Conduct signing process?

**A** In 2004, company executives decided to establish companywide compliance with the Boeing Code of Conduct.

TOP

**Q** Question 32: Does the Code of Conduct apply during the weekend, after work or on personal time?

**A** Boeing is asking employees/non-employees to follow the Code of Conduct while at work, on company business, on company premises while representing Boeing. This includes company travel and temporary assignment outside an employee/non-employee's home location. The Code is not intended to apply to private activities, nor does the Code affect an individual's ability to exercise his/her constitutional, statutory or other protected rights.

TOP

**Q** Question 33: What is meant in the Code by "*Without exception, they will comply with all applicable laws, rules and regulations.*"?

**A** Individuals will be expected to adhere to all of the laws governing behavior at their location, whether in the United States or at an international site. Individuals can receive guidance on laws from their managers or the **Law Department**. In addition, company rules and regulations relating to the jobs performed must also be understood and followed. Company rules and regulations are outlined in our and Procedures at <http://policyplus.boeing.com/>. Individuals are also required to follow the guidelines outlined in the **Ethical Business Conduct Guidelines booklet**, which are mandatory and inclusive in the Boeing Code of Conduct.

TOP

#### International and Subsidiaries Questions

**Q** Question 34: Our subsidiary has different policies and procedures and does not follow Boeing's policies and procedures. How can the Boeing Code of Conduct doesn't conflict with our specific policies and procedures?

**A** Talk with your local Human Resource representative or your **Ethics Advisor**. They will help you to cross-reference the applicable and procedures relating to the Code of Conduct.

TOP

**Q** Question 35: I see there is a place for a BEMS ID on the Code of Conduct. What is a BEMS ID and what if I don't have one?

**A** The BEMSID is a unique employee identification number. The BEMSID helps track completions in an expedient manner while reducing risk of errors. Please use only the online personalized Code available on TotalAccess. Those who do not have a BEMSID will use form and can leave the BEMSID field blank. Legibly print your name on the form and sign and date the form (see **Manager's Instructions for Paper Forms**).

TOP

**Q** Question 36: If I don't have a BEMSID, how will you know if I have signed the Boeing Code of Conduct? How can I track my participation?

**A** Signed paper copies are retained by your manager and the original is sent to a central location for archiving and storage. Your manager is expected to report 100 percent compliance and will keep track of every employee who signs the Boeing Code of Conduct.

TOP



**Question 37:** I do not have Boeing Intranet web access. How do I access the Code?



Sites that do not have Boeing Intranet web access will be provided a CD-ROM (or an e-mail) containing Code of Conduct informat

**TOP**

Last updated: December 3, 2009

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Exhibit	39
Witness	Hansen
Date	11-11-16
Buell Realtime Reporting (206) 287-9066	



BUSINESS PROCESS INSTRUCTION BPI-2616

			<p><b>CRIMINAL ACTIVITY NOT IN THE WORKPLACE</b></p> <p>Commission of certain penal offenses for drug- or alcohol-related activity at or away from the workplace.</p> <p>Consult with Corporate ECA</p>	
Entering Restricted Areas	6N	<p>Refer to Site ECA Focal Boeing Security Manual</p>	<p>Unauthorized entry into restricted areas. Usually results in a written warning.</p>	<p>Mitigating Factors: none presently identified.</p> <p>Aggravating Factors: classified areas (6B) or persons restricted from certain areas due to export compliance.</p>
Entry Into Plant	6C		<p>Unauthorized entering or aiding others onto company property without proper authorization. Usually results in a written warning.</p>	<p>Mitigating Factors: none presently identified.</p> <p>Aggravating Factors: assisting a non-employee to gain entry onto company property without proper authorization.</p>
Ethical Misconduct	6Q	<p>PRO-7 Ethical Business Conduct Guidelines</p>	<p><b>CONFLICT OF INTEREST</b></p> <p>Engaging in any activity that might create a conflict of interest or could create the appearance of a conflict of interest.</p> <p>A conflict of interest may exist when an employee is involved in an activity or has a personal interest that might interfere with the employee's objectivity in performing company duties and responsibilities.</p> <p>Personal interests may include working relationships and/or financial interests with immediate family members, relatives, or other close personal relationships.</p> <p>Activities include outside employment in areas similar to those in which The Boeing Company is involved; outside work for customers, suppliers, vendors, or competitors of Boeing; operating as a supplier to Boeing. Holding a financial interest in a business concern that is a supplier, customer, partner, subcontractor, or competitor of the company constitutes a conflict of interest under certain conditions. Company transactions with other business entities must not be influenced by the personal interests or activities of its employees.</p> <p>Usually results in time off from work.</p>	<p>Mitigating Factors: none presently identified.</p> <p>Aggravating Factors: negatively impacts the business or the reputation of The Boeing Company.</p>
	6T	<p>POL-2 PRO-3 Ethical Business Conduct Guidelines</p>	<p><b>FAIRNESS AND FAVORITISM</b></p> <p>Failure to conduct business fairly, impartially, without favoritism, in an ethical and proper manner, and in full compliance with applicable laws and regulations.</p> <p>Failure to promptly report any illegal or unethical conduct to management or other appropriate authorities (i.e., Ethics, Law, Corporate Investigations, EEO, HR, and Corporate Audit).</p> <p>Usually results in a written warning</p>	<p>Mitigating Factors: none presently identified.</p> <p>Aggravating Factors: negative impact on the business, taking advantage of position for personal gain or abuse of position.</p>