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The Just Culture Algorithm™ v3.1

Threshold Investigation

- **What happened?**

- **What normally happens?**

- **What does procedure require? (if applicable)**

- **Why did it happen?**

- **How was the organization managing the risk?**

Did an employee put an organizational interest or value in harm's way?

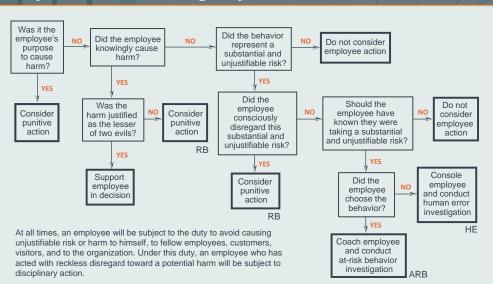- Potential or actual harm to persons
- Potential or actual harm to property

Did the employee breach a duty to follow a procedural rule in a system designed by the employer?

- Rule specifies *how* to perform the job
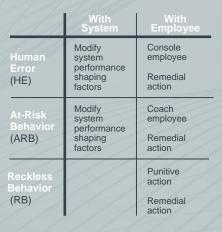- System largely controlled by employer

Did the employee breach a duty to produce an outcome?

- Rule specifies the outcome to be achieved
- System largely controlled by employee
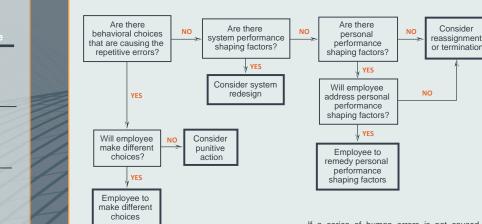
✳ *If unsure, default to duty to follow a procedural rule*

Duty to Avoid Causing Unjustifiable Risk or Harm

Was it the employee's purpose to cause harm? — NO → Did the employee knowingly cause harm? — NO → Did the behavior represent a substantial and unjustifiable risk? — NO → Do not consider employee action

Was it the employee's purpose to cause harm? — YES → Was the harm justified as the lesser of two evils? — NO → Consider punitive action — RB
Was the harm justified as the lesser of two evils? — YES → Support employee in decision

Did the employee knowingly cause harm? — YES → Consider punitive action — RB

Did the behavior represent a substantial and unjustifiable risk? — YES → Did the employee consciously disregard this substantial and unjustifiable risk? — NO → Should the employee have known they were taking a substantial and unjustifiable risk? — NO → Do not consider employee action

Did the employee consciously disregard this substantial and unjustifiable risk? — YES → Consider punitive action — RB

Should the employee have known they were taking a substantial and unjustifiable risk? — YES → Did the employee choose the behavior? — NO → Console employee and conduct human error investigation — HE

Did the employee choose the behavior? — YES → Coach employee and conduct at-risk behavior investigation — ARB

At all times, an employee will be subject to the duty to avoid causing unjustifiable risk or harm to himself, to fellow employees, customers, visitors, and to the organization. Under this duty, an employee who has acted with reckless disregard toward a potential harm will be subject to disciplinary action.

Actions

	With System	With Employee
Human Error (HE)	Modify system performance shaping factors	Console employee / Remedial action
At-Risk Behavior (ARB)	Modify system performance shaping factors	Coach employee / Remedial action
Reckless Behavior (RB)		Punitive action / Remedial action

Repetitive Human Errors

Are there behavioral choices that are causing the repetitive errors? — NO → Are there system performance shaping factors? — NO → Are there personal performance shaping factors? — NO → Consider reassignment or termination

Are there behavioral choices that are causing the repetitive errors? — YES → Will employee make different choices? — NO → Consider punitive action
Will employee make different choices? — YES → Employee to make different choices

Are there system performance shaping factors? — YES → Consider system redesign

Are there personal performance shaping factors? — YES → Will employee address personal performance shaping factors? — NO
Will employee address personal performance shaping factors? — YES → Employee to remedy personal performance shaping factors

If a series of human errors is not caused by system performance shaping factors, and is not correctable by changes in work choices or remedial education/training, the employee is put on notice that further errors may result in disciplinary action.

Actions

	With System	With Employee
Repetitive Errors	Modify system performance shaping factors	Employee to address personal performance shaping factors / Employee to make better behavioral choices

Duty to Follow a Procedural Rule
(system largely controlled by the employer)

Note: This test applies when the employee works within a system and is responsible for being a reliable component within that system.

Was the duty to follow a rule known to the employee? — YES → Was it possible to follow the rule? — YES → Did the employee knowingly violate the rule? — YES → Did the social benefit exceed the risk? — NO → Did the employee have a good faith but mistaken belief that the violation was insignificant or justified? — NO → Consider punitive action — RB

Was the duty to follow a rule known to the employee? — NO → Investigate circumstances leading to failure to know of duty — HE

Was it possible to follow the rule? — NO → Investigate circumstances leading to impossibility

Did the employee knowingly violate the rule? — NO → Console employee and conduct human error investigation

Did the social benefit exceed the risk? — YES → Support employee for decision to violate rule

Did the employee have a good faith but mistaken belief that the violation was insignificant or justified? — YES → Coach employee and conduct at-risk behavior investigation — ARB
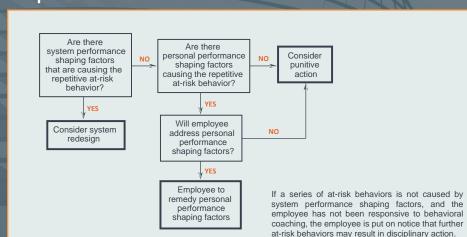
Where working under a duty to follow a procedural rule within a system, an employee will be subject to disciplinary action when they have acted with reckless disregard toward the risk associated with non-compliance.

◢ *Burden of production falls on employee*

Actions

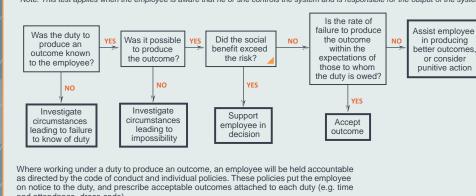|	With System	With Employee
Human Error (HE)	Modify system performance shaping factors	Console employee / Remedial action
At-Risk Behavior (ARB)	Modify system performance shaping factors	Coach employee / Remedial action
Reckless Behavior (RB)		Punitive action / Remedial action

Repetitive At-Risk Behaviors

Are there system performance shaping factors that are causing the repetitive at-risk behavior? — NO → Are there personal performance shaping factors causing the repetitive at-risk behavior? — NO → Consider punitive action

Are there system performance shaping factors that are causing the repetitive at-risk behavior? — YES → Consider system redesign

Are there personal performance shaping factors causing the repetitive at-risk behavior? — YES → Will employee address personal performance shaping factors? — NO
Will employee address personal performance shaping factors? — YES → Employee to remedy personal performance shaping factors

If a series of at-risk behaviors is not caused by system performance shaping factors, and the employee has not been responsive to behavioral coaching, the employee is put on notice that further at-risk behaviors may result in disciplinary action.

Actions

	With System	With Employee
Repetitive At-Risk Behaviors	Modify system performance shaping factors	Employee to address personal performance shaping factors / Employee to make better behavioral choices

Duty to Produce an Outcome
(system largely controlled by the employee)

Note: This test applies when the employee is aware that he or she controls the system and is responsible for the output of the system.

Was the duty to produce an outcome known to the employee? — YES → Was it possible to produce the outcome? — YES → Did the social benefit exceed the risk? — NO → Is the rate of failure to produce the outcome within the expectations of those to whom the duty is owed? — NO → Assist employee in producing better outcomes, or consider punitive action

Was the duty to produce an outcome known to the employee? — NO → Investigate circumstances leading to failure to know of duty

Was it possible to produce the outcome? — NO → Investigate circumstances leading to impossibility

Did the social benefit exceed the risk? — YES → Support employee in decision

Is the rate of failure to produce the outcome within the expectations of those to whom the duty is owed? — YES → Accept outcome

Where working under a duty to produce an outcome, an employee will be held accountable as directed by the code of conduct and individual policies. These policies put the employee on notice to the duty, and prescribe acceptable outcomes attached to each duty (e.g. time and attendance, dress code).

◢ *Burden of production falls on employee*

Actions

	With System	With Employee
Duty to Produce Outcome	Modify system performance shaping factors	Help employee produce better outcomes / Punitive action

Definitions

AT-RISK BEHAVIOR - behavioral choice that increases risk where risk is not recognized, or is mistakenly believed to be justified

COACHING - supportive discussion with the employee on the need to engage in safe behavioral choices

COUNSELING - a first step in disciplinary action; putting the employee on notice that performance is unacceptable

DISCIPLINARY ACTION - actions beyond remedial, up to and including punitive action or termination

HUMAN ERROR - inadvertently doing other than what should have been done: a slip, lapse, or mistake

IMPOSSIBILITY - condition outside of employee's control that prevents duty from being fulfilled

KNOWINGLY CAUSE HARM - having knowledge that harm is practically certain to occur

PERFORMANCE SHAPING FACTORS - attributes that impact the likelihood of human errors or behavioral drift

PUNITIVE ACTION - punitive deterrent to cause an individual or group to refrain from undesired behavioral choices

PURPOSE TO CAUSE HARM - conscious objective to cause harm

RECKLESS BEHAVIOR - behavioral choice to consciously disregard a substantial and unjustifiable risk

REMEDIAL ACTION - actions taken to aid employee including education, training, assignment to task appropriate to knowledge and skill

SUBSTANTIAL AND UNJUSTIFIABLE RISK - a behavior where the risk of harm outweighs the social benefit attached to the behavior

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INTRODUCTION

In every human enterprise, there will be times when we are asked to judge the behavior of others. The context might be that of parent/child, teacher/student, or manager/employee. How we judge, and how we allocate responsibility between the individual and the system in which they operate will ultimately dictate how well that individual and that system will perform across a variety of values – from safety to reputation, from customer satisfaction to fiscal responsibility.

Experts across many high-consequence industries, including healthcare, aviation, rail, nuclear power and emergency response, have called for a better way to manage risk and prevent adverse outcomes. We often hear of the need for a less punitive approach to errors and accidents so that those who manage and regulate within these industries can develop more open learning cultures.   Why? Our experience shows that open reporting cultures are more effective at identifying the system improvements that lead to less organizational risk.   At the same time, however, many managers in high-consequence industries continue to struggle with issues of accountability – how to hold employees accountable for their choices while at the same time encouraging an open learning culture.

Justice in the workplace is as complex as it is in society as a whole. Every human being faces overlapping duties and competing demands for their time. Generally, we want our employees to follow procedures and to make good choices that align with our shared organizational and professional values. Sometimes, however, we may want our employee to deviate from policy, perhaps to save the life of another. At other times, we may view the decision to follow a bad procedure as the reckless act. To protect the learning culture, managers must develop a strong sense of what can and should be expected of humans in the complex systems we create. Additionally, managers must have a good sense of what to do when a breach occurs. What should a manager do when an employee has not lived up to our shared values? The Just Culture Algorithm is meant to be your key to answer this question.

These tools were built through decades of research and development. The Just Culture Algorithm may look prescriptive; however, it requires that the user support a core set of beliefs around the management of organizational risk.   We must acknowledge that no system can be designed to produce perfect results – because we do not start with perfect components. In the Just Culture, we know that all humans are destined to make mistakes, and destined to drift into at-risk behavioral choices, regardless of how well the system is designed. We must view human errors and adverse events as the outcomes to be measured and monitored.   We must view the quality of the systems we design around our employees, and their safe behavioral choices within those systems as the two inputs to be managed. The keys to improved reliability are hidden in this shift of focus: from errors and outcomes, to system design and behavioral choices. The Just Culture Algorithm is designed to help make that shift – and obtain the outcomes we desire.

David Marx, JD

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outcome engineering

To order the
Just Culture Algorithm
please visit our website at:
www.justculture.org
or call: 214-778-2010

The Just Culture
ALGORITHM™

Console the Error...Coach the At-Risk...Punish the Reckless