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Employment Law Compliance for Nonprofit Organizations

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Agenda

- Expectations for Supervisors
- Hiring Principles/ Recruitment/Selection
- Performance Management
- No Harassment
- Americans with Disabilities Act (ADA)
- Preventing Termination Liability

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Objectives

- Increase awareness of legal obligations related to supervising
- Discuss best practices and ways to prevent liability
- Opportunity to ask questions and share experiences

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Pretest: How much do you know about employment law?



Top Ten Expectations for Supervisors

1. Full support of equal employment opportunity – no discrimination based on race, sex, age, national origin, disability, or other protected categories



Expectations for Supervisors

2. Behave Ethically



Expectations for Supervisors

- 3. Substantive fairness in all employment decisions
 - Good, legitimate reasons for all hiring, discipline, performance reviews, and terminations



Expectations for Supervisors

- 4. Procedural fairness in carrying out employment decisions
 - Carry out the decisions with respect



Expectations for Supervisors

- 5. Consistency in how you treat employees
 - Inconsistency in your discipline and in your performance standards creates low morale, decreases productivity and leads to lawsuits



Expectations for Supervisors

6. Comply with and enforce the No Harassment Policy
 - Understand and enforce the policy completely
 - Report any possible violations to the appropriate person for handling
 - Set the standard by your own conduct
 - Never retaliate



Expectations for Supervisors

7. Support diversity
 - We want all employees to be successful and enjoy work, regardless of background
 - Organizations that are diverse are more successful, primarily because they benefit from different viewpoints and perspectives
 - Fairly reflect our community



Expectations for Supervisors

8. Hold employees accountable for poor performance and misconduct



Expectations for Supervisors

9. Document, document, document
- Document exceptional and unsatisfactory performance/conduct on an ongoing, regular basis



Expectations for Supervisors

10. Maintain 24-hour per day professionalism
- Don't lose your cool
 - Don't provoke employees with your own bad behavior
 - Avoid abusive and demeaning conduct



Employee Selection/Recruitment



Employment Law Compliance: Hiring

- Select the best qualified applicant for the job



Hiring Principles

- To the extent you participate in the hiring process by interviewing applicants, you should focus on job-related questions
- You should not ask any questions that reflect bias based on race, sex, age, or other protected categories



Hiring Principles

- Sometimes interviewers forget to stick to job-related questions. Instead, they ask questions that may reflect bias, such as:
 - How many children do you have?
 - When did you graduate from high school?
 - Can you travel even though you have three children?
 - What church do you go to?
 - At your age, you aren't interested in an entry level job, are you?
 - Are you dating anyone in this area?



Hiring Principles

Rhonda Smith
Chicago, Illinois

Job Experience

----- *Blonde.*
----- *attractive*

Education *25, 120*

----- *no kids*

Interests

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Hiring Principles

- Do not ask any medical questions during the interview process, or at any time before an offer is made
 - An employer may not conduct medical exams or ask medical questions prior to giving a conditional offer of employment
 - We can ask applicants whether they can perform specific job tasks, but we cannot ask if they have medical conditions that prevent them from performing a job task

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Quiz

- Are the following interview questions legal?
 - How many days were you sick last year?
 - This job requires repetitive wrist motions. Do you have any condition that would prevent you from doing this?
 - Have you ever been in a drug or alcohol rehabilitation program?

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Quiz

- Are the following interview questions legal?
 - Are you able to carry 40-pound loads 50 feet, 10 times per hour?
 - What medications are you taking?
 - Can you demonstrate how you will perform this production line task?



Notes and Documentation: Why Write, When to Write, and What to Write



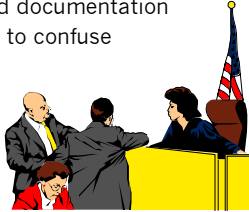
Introduction

- Notes and documentation are the keys to improving employee performance, to making difficult decisions regarding employees, including termination decisions, and to preventing and defending legal actions successfully when brought against the organization by former and current employees



Why Write

- Memory; Credibility; Fairness
 - Speculation and faulty memories can replace fact when documentation is absent
 - Courts and administrative decisionmakers are impressed with good documentation
 - Notes are more difficult to confuse than witnesses



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Why Write



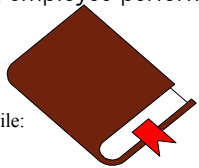
- Documentation helps credibility
 - Provides “visible” support to testimony
 - Prevents later “he said, she said” arguments
 - Demonstrates to employees commitment to fair employment practices
- Fairness
 - Notes and records can establish fair treatment, particularly when the employee acknowledges receipt (e.g. warnings, reviews), and the employee does not respond

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When to Write

- Documentation must be kept for all employees
 - Do not “target” an employee with documentation. You must be consistent in documenting employee performance issues



Joe Smith's File:

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When to Write

- Performance/work problems
 - Actions taken regarding employee performance or work issues should be in writing
 - Counseling sessions
 - Warnings
 - Unacceptable performance
 - Leave requests
 - Suspensions
 - Terminations



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When to Write

- Documentation must be contemporaneous
 - You cannot go back and “create” reports on an incident or event.
- Events, Conversations, Facts
 - Any incident or event that might lead to litigation or an adverse employment action should, if possible, be noted
 - Good performance as well as bad performance issues should be noted for later reviews



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When to Write

- Events, Conversations, Facts
 - Notes of facts that do not result in employment actions need not be kept in the personnel file
 - Medical information should not be kept in the personnel file
 - All notes and other documents should be dated
 - Notes should contain facts (what was seen, what was said, what happened, who did what)




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When to Write

- Events, Conversations, Facts
- If action is taken, what was done should be stated
 - If action was taken, the written record should be given to the employee and he or she should acknowledge receipt
 - Check to make sure that notes are consistent with the decision




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When to Write

- Documentation Reminders:
 - There are no “off the record” notes or conversations
 - “Shadow files” are not a safe harbor
 - All computer files are written documents
 - E-mails are written documents


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What Not to Write and What Not to Keep

- Do **not** write conclusions
- Do **not** write assumptions
- Do **not** write speculation
- Do **not** use adjectives
- Do **not** use hearsay
- Do **not** write down thoughts or surmise

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What Not to Write and What Not to Keep

- Do **not** save drafts or copies
- Do **not** save notes of conversations with lawyers unless they are clearly marked as “attorney-client privilege”
- Do **not** save notes of conversations with managers or supervisors, unless there is a clear reason



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What to Write

- The date of the event
- The date the employee is counseled
- Clearly describe the event for which employee is being criticized:
Who? What? When?
Where? Why? Result?
- Identify all witnesses to event



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What to Write

- Describe the investigation
- Describe the proposed response
- Refer to violation of personnel policies
- Identify the penalties or discipline
- Identify the consequences for future violations



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How could this document be improved?

Rose Jones met with us to report that an incident involving two co-workers was bothering her. I could tell she was very upset, which is very unusual for Rose. She was crying so much I could barely understand what she was trying to tell me. She said that she overheard Joe tell another worker that he did not like working around blacks and that he hoped there were no blacks in his son's class. Rose said the other worker shrugged his shoulders but didn't say anything back. I told Rose that making racist comments like Joe did is a violation of company policy. I told Rose that I would investigate as soon as I had a chance. I think I recall Joe's older supervisor saying Joe said something like that several years ago. After Rose left, I called the company attorney, Ann Freed's, who told me to talk with everyone who might have heard the comment as soon as possible.



Performance Management and Corrective Discipline



Discipline

- Based on behavior, not personalities
- Productive employees dislike seeing non-productive employees not disciplined
- CONCLUSION: Nothing requires you to accept poor quality/poor quantity of work from any employee
 - Be reasonable, flexible and patient, but do not accept persistent poor performance.



Discipline

- (Usually) to correct not punish, and therefore, progressive
- Look forward in discipline ("here's what you must do in the future to improve or correct" and be clear about expectations) not only backward ("here's your penalty for what you did.")
- Based on evidence not suspicion
- Based on clearly documented and properly communicated prior discipline



Discipline

- Why?
 - Bad for everyone, benefits no one (except the poor performer)
 - An insult to the great majority of employees who perform properly
 - Will be interpreted as the base level for acceptable performance and disciplining anyone above that level will lead to difficult discrimination problems
 - The greatest opportunity to improve departmental/corporate performance is to raise poor performers to higher levels

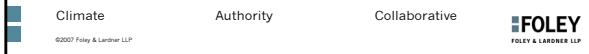


Using Corrective Discipline

Step 1: Make Discipline the Process, Not the End Result

Traditional Discipline vs. Corrective Action

<u>Element</u>	<u>Traditional</u>	<u>Corrective Action</u>
Goal	Compliance with Rule	Improve Performance
Focus	Employee's Failure	Correcting the Problem
Responsibility	Supervisor	Employee
Time Frame	Past	Future
Communication	At the Employee	With the Employee
Direction Mode	Parent-Child	Adult-Adult
Process	Punishment	Coaching
Climate	Authority	Collaborative



Using Corrective Discipline

- * **Step 1:** Make Discipline the Process, Not the End Result
- * **Step 2:** Identify Your Expectations Through Progressive Discipline
- * **Step 3:** Demonstrate a Pattern of Improving or Declining Performance
- * **Step 4:** Remove Doubt About the Next Step
- * **Step 5:** Base Termination Decisions on Progressive Discipline

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Role in Discipline

- Options
 - Investigator of facts/document provider
 - Employee advocate/employee prosecutor
 - Management implementer
 - Assurer of consistency/uniformity
 - Protector of the business plan/business principles
 - Technical support only
- What is your role?
- What should it be?
- What would you like it to be?

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Performance Counseling and Performance Plans

Performance Reviews

- Do reviews on time. Late or missed reviews hurt morale and cause legal problems.
- They shouldn't take the place of day-to-day counseling.
- Use them as a reward, not just a sword.

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Performance Counseling and Performance Plans

Performance Reviews

- Don't be afraid to be truthful. If there are problems, discuss them. A cautious, inaccurate review is worse than no review.
- Make sure the words you use accurately describe performance.
- Numerical rankings are useful.



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Performance Counseling and Performance Plans

Performance Reviews

- Evaluate in a limited number of categories. Provide a numerical ranking and a comment in each category
- Be as objective as possible. Avoid speculation and commentary about the reasons for the performance problems
- Some subjective evaluation is fine
- Have the employee sign and date evaluation



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Performance Counseling Through Performance Improvement Plan

- Determine whether employee's performance warrants use of improvement plan
- Select the length of plan (30, 60, 90 days) most appropriate for position
- In memorandum, specify recent examples of unsatisfactory performance



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Performance Counseling Through Performance Improvement Plan

- Set specific objectives. Make certain the objectives are reasonable
- Keep examples of employee's work product during the performance improvement period
- Determine whether the failure to meet all objectives will result in termination, or whether "substantial progress" may result in extended grace period



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Discussion Questions



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Situation 1 – “Eruption”

- You are a manager. One of your employees has just called you a “dumb ass” in front of several other employees. The reason he did this was because you just accused him of being absent from his work station and told him you'd been looking for him for the last 20 minutes. You have had “absence from the work station” problems with him before and have given him an oral warning for it.
- What do you do about this?



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Situation 2 – “Meltdown”

- Monique has been employed as an account manager for ten years. You have supervised her for four years. For the first eight years of her employment she generally received performance ratings of “Meets Expectations.” In her two most recent reviews, however, she received a rating of “Performance Minimally Acceptable.” She received her last review three months ago, but in the time since that review, Monique’s performance has dropped off the table. Now she is not meeting deadlines, and the quality of her work is terrible.
- What is your plan to deal with Monique?



Situation 3 – “Help Needed”

- **Part 1:** Sheila has been employed as a receptionist for two years. Her performance has been poor; she snaps at visitors, is not very helpful to callers, and often makes mistakes in taking messages. Her first review reflected some, but not all, of these problems. She received a rating of “Performance Minimally Acceptable.” In her second review you now rate her at the lowest level: “Below Standards.” You have collected over a dozen examples of her mistakes.
- Can you fire Sheila?
- Would your answer be different if she had been there three months?
- Twenty years?



Situation 3 – “Help Needed”

- **Part 2:** Same situation as above, except you have convinced the supervisor to put Sheila on a 30-day performance improvement plan instead of removing her outright. Halfway through the 30-day period, Sheila reports to you that she is an alcoholic and needs help.
- What do you do?



Situation 3 – “Help Needed”

- **Part 3:** Same situation as above, except Sheila does not report her drinking problem until after she unsuccessfully completes the 30-day period and you call her in to terminate her.
- What do you do?



No Harassment



Training Objectives

- Understand and recognize what types of behavior may violate a No Harassment policy.
- Know how to deal with behavior that may violate the policy.
- Identify your role in preventing discrimination or harassment.
- Understand the fundamentals of your responsibilities with respect to harassment complaints.



No Harassment

- The policy is not just a response to legal issues.
 - Rather, it is based on values, and a belief that all employees deserve to be treated with respect in the workplace.
- This is a policy that must be taken very seriously



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No Harassment Policy

- Harassment based on race, sex, sexual orientation, age, religion, national origin, and disability is prohibited
- The question is whether conduct is unwelcome (This is different from voluntary participation)
- If conduct involves race or sex, and it is unwelcome, you are in big trouble
- Anyone who violates the policy will be disciplined up to and including discharge



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If conduct is offensive and unwelcome, and it relates to sex, race, or other protected categories, it almost certainly violates the no harassment policy



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No Harassment

- Under the law, offensive comments or conduct only create a hostile environment if they are severe and pervasive
 - Stray or isolated remarks generally do not create an unlawful hostile environment
- Most No Harassment policies prohibit even isolated, stray conduct or comments if they are offensive



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Liability Issues

- An employer is liable for the harassment of an employee by a coworker, vendor, customer, etc. if the employer (through its agents) knows or should have known of the conduct and fails to take immediate and appropriate corrective action.
- It is essential that all management and supervisory personnel report possible harassment that they observe or learn about through any means



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Before Discrimination or Harassment Occurs

- Enforce and Reinforce the No Discrimination/Harassment Policy
 - Train all employees
 - Supervisors/managers must:
 - be trained to recognize discrimination and harassment and to take appropriate action
 - properly document
 - conduct accurate performance reviews



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What will an organization do when it receives a complaint?

- Promptly investigate
- If there is a violation of the policy, prompt disciplinary action, that will stop the conduct
- Remind all involved of the importance of confidentiality
- Remind all involved that retaliation for making a complaint is prohibited and is itself a violation of the policy



What kind of conduct violates the No Harassment Policy?



Hostile Work Environment

- Sexual or racial remarks, innuendoes and jokes
- Repeated requests to start a personal relationship
- Profanity that is sexual or racial
- Use of terms that are considered derogatory to one sex or race
- Physical contact
- Sexual gestures
- Display of sexually oriented materials
- Offensive or intimidating conduct directed at employee due to the employee's gender or race



E-mail and the Internet

- E-mail or Internet material related to sex and race can create a hostile environment
- Do not access/send/print sexual or racial materials on e-mail or the Internet while at work, on business travel or using the organization's computer resources



Examples of Sexual Harassment

- Male employees joke that a female looks like she did not get much sleep the night before
- Employee is the office "clown" who regularly tells sexual jokes to other employees
- Reading pornographic magazines while on break
- Photographs of nude and scantily clad women under the glass on an employee's desk



Examples of Sexual Harassment

- Male employees discuss their sexual prowess within earshot of a female employee
- A female employee asks a male employee if he is "getting enough" from his girlfriend
- A female supervisor tells a male subordinate that he shouldn't keep wasting his time with his current girlfriend
- A male employee telling a female employee that it drives him "crazy" when she wears a certain dress



Examples of Sexual Harassment



- A male employee routinely tells a female employee “you know I love you”
- An employee wears a polo shirt to work with tiny cartoon animals having sex
- On a business trip, a male employee tells a female employee that he likes to cheat on his wife



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Examples of Sexual Harassment

- Supervisor making fun of homosexual employee by flipping wrist, lisping, and telling jokes about homosexuals
- Female employee caressing a male coworker’s shoulders, pinching his arms, and patting his backside
- Male employee e-mails a female coworker a series of sexually explicit pictures involving men, women, and animals
- A male employee pulls his chair up against a female employee’s chair so their legs are touching when they meet to discuss work matters



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Examples of Harassment Based on Race

- Supervisor threatening African-American male for dating a Caucasian woman
- Questioning an employee of Colombian heritage about her “drug ties”
- Calling a Chinese employee by an offensive term and mocking her accent
- Asking an African-American employee if he would like to “caddy” at the golf course this weekend
- Leaving a noose on an African-American employee’s desk



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Examples of Harassment Based on Race

- Calling an African-American employee “boy”
- Carving the initials KKK on a work locker
- Wearing a T-shirt to work with a swastika on it
- Calling employees racial names
- Telling racial jokes
- Making derogatory comments about minorities



Examples of Disability Harassment

- Commenting about an employee who had polio that “he walks like that even when he is sober”
- Telling an employee she should be grateful for the job transfer made because of her “supposed” illness
- A supervisor asking a disabled employee if he intends to “milk” his condition
- Coworkers staring and making fun of an employee’s medical condition
- Writing derogatory comments on confidential medical records and circulating them to coworkers



To Summarize

- Same race, same sex harassment is prohibited by the policy
- Anyone, male or female, African-American or white, can be a harasser
- Anyone, male or female, African-American or white, can be a victim of harassment
- Anyone who harasses puts his or her job on the line by engaging in prohibited conduct



Scope of the Policy

- The No Harassment Policy applies to visitors, customers, vendors
- They violate the policy if they harass you (if they do, report it)
- You violate the policy if you harass them



Practical Guidance

- Respect the rights of your coworkers
- Practice 24-hour a day professionalism in the office and towards your coworkers
- Understand that “meaning no harm” doesn’t save you
- Don’t be a toucher/hugger, or someone who makes sexual or racial comments
- Understand the commitment to a workplace free of harassment



Disabled Employees



Employment Law Compliance and Disabled Employees

- Americans with Disabilities Act (ADA)
Applies to employers with 15 or more employees
 - Federal law – applies nationwide
- Wisconsin Fair Employment Act (WFEA)
applies if you have one employee
 - Has become much more restrictive than federal law



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Employment Law Compliance and Disabled Employees

- The ADA in one sentence
 - An employer may not discriminate against a qualified individual with a disability who, with or without a reasonable accommodation, can perform the essential functions of a job



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Disabled Employees

- Supervisors need to know:
 - The types of conditions that are covered by the law
 - The obligations imposed by the ADA and the WFEA
 - About the obligation to reasonably accommodate individuals with disabilities
 - To maintain confidentiality regarding medical information



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Disabled Employees- WFEA

- Key concepts
 - A disability is a physical or mental impairment that makes achievement unusually difficult or limits the capacity to work.
 - An individual with a record of a disability or who is regarded as having a disability is also protected.



Scope of Protection

- Both WFEA and ADA protect persons with disabilities against discrimination in:
 - Recruitment and hiring
 - Job Assignments
 - Pay
 - Leave or benefits
 - Promotion
 - Licensing or union membership
 - Training
 - Lay-off and firing
 - Other employment related decisions



Summary of Differences: Duty to Accommodate

- | | |
|--|--|
| ■ WFEA | ■ ADA |
| - Must reasonably accommodate an individual's disability unless it would impose a hardship | ■ Must provide a reasonable accommodation to allow a disabled individual to perform the essential functions of the job unless doing so creates an undue hardship |
| - Wis. Stats. 111.35(1)(b) | |



Similar Sounding Requirements Are Interpreted Differently

- WFEA
 - Almost any accommodation needs to be considered
 - No per se unreasonable accommodation
 - Employer does not need to grant an accommodation if it can factually prove it will create a hardship on business



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Disabled Employees

- What may reasonable accommodation include?
 - Job restructuring
 - Reassignment to a vacant position
 - Leave time
 - Equipment/modification of work station
 - Flexible or adjusted work schedules
 - Training/job safety education



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WFEA Accommodation Analysis

- Two steps:
 - 1. Does accommodation effectively allow person to perform the job related responsibilities of the job
 - 2. Does proposed accommodation impose a hardship
- Result:
 - WFEA may require any modification or adjustment to a job, the work environment or how things are done unless a hardship to the business occurs.



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Reasonable Accommodation

- In order to satisfy our reasonable accommodation obligation, you should not jump to early conclusions. This is a process that takes hours and days, not a few minutes
- Talk to the employee, the employee's doctor, our doctor, operations people, internal and external experts



Current state of WFEA Disability Law

- Inability to do job means the employee is disabled
- Employee need not be able to perform essential functions, just some functions
- Neutral policies (no sleeping, no fault attendance) must be modified under policy of clemency and forbearance for employees seeking to address disability
- Work schedules may need to be altered
- Providing an accommodation initially may be used against you
- Hardship can only be shown when accommodation alters the business in a proven way



Disabled Employees

- Practical Tips for Supervisors
 - Involve Human Resources to help determine whether the individual may be disabled and whether they can be accommodated
 - Follow reasonable accommodation procedure
 - Make an individualized determination (don't assume what the employee can or can't do)
 - Rely on medical information, not speculation
 - Document all accommodation efforts
 - Do not refer to the employee as "disabled" or in possibly derogatory terms (e.g. a "back case," "fake injury")



Preventing Employment Law Liability



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Preventing Employment Law Liability

- Overview of 10 areas where employment-related lawsuits are likely to arise
- Suggestions to improve practices to limit your risk of being sued



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1. No Harassment Based on Protected Categories

- Discrimination is prohibited based on categories covered by state and federal law including:
 - race, color, creed
 - national origin, ancestry
 - age
 - sex
 - disability



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1. No Harassment Based on Protected Categories (cont'd)

- Zero tolerance policy
- The standard is low
 - Examples
- No organization can afford to overlook or tolerate harassment, especially by supervisors



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How Much Does it Cost to Lose one Discrimination Case?

Organization Attorneys' Fees	\$125,000
Back Wages (\$40,000 x 3)	\$120,000
Back Benefits (30% salary)	\$ 40,000
Front Pay (2 years)	\$ 80,000
Compensatory/Punitive	\$300,000
Employee Attorneys' Fees	\$125,000
Total	\$790,000

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1. No Harassment Based on Protected Categories (cont'd)

- An organization can avoid liability by showing:
 - It took reasonable care to prevent harassment
 - Training
 - Up-to-date policy
 - It has a clear complaint procedure
 - A prompt, thorough investigation and effective remedial action was undertaken

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2. Termination Without Prior Counseling

- The Problem: Managers are in a hurry to terminate poor performers
- They don't want to wait for counseling, warnings, documentation because "the business can't wait"
- This is a huge risk. Juries will perceive this as unfair



2. Termination Without Prior Counseling (cont'd)

- Evaluation of risk factors
 - High level employees
 - Those with employment contracts
 - Employees in protected classes
 - age, sex, race, disability, etc.
 - Long-service employees with "good" records
 - Terminations for unusual reasons
 - Theft, dishonesty, harassment, personality



2. Termination Without Prior Counseling (cont'd)

- Advice: Wait or be willing to fight (and pay attorney fees)
 - Follow progressive discipline in the employment handbook
 - Tell the employee in writing that his/her performance is unacceptable, and that further problems will result in termination
 - Use last chance agreements



3. Lack of Fairness

- Don't worry about "employment at will"
- Most employment cases are tried before juries
- Juries expect the employer to have good reasons for its employment decisions
- Juries expect the employer to treat employees with respect and dignity



4. E-mail, Voicemail and the Internet

- Numerous employment law issues arise from the use and misuse of computers and e-mail
 - Defamation
 - Harassment
 - Evidence of culture
 - Invasion of privacy
 - Protected concerted activity



4. E-mail, Voicemail and the Internet (cont'd)

- E-mail, voicemail and Internet use policies are a must
- Policies should include:
 - Statement that the systems belong to the organization
 - No expectation of privacy
 - Incorporates the no harassment policy
 - Organization right, but not duty, to monitor



5. Disciplining Employees for Legally Protected Absences

- The problem: The organization cannot discipline or discharge employees for absences that were, or should have been, legally protected
- Before disciplining or terminating an employee based on absences, examine those absences to make certain they are not legally protected



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6. Terminating Employees Who Have Medical Restrictions

- The problem: Managers are frustrated with dealing with employees who have medical restrictions
 - hour or work restrictions
 - lifting or bending restrictions
 - standing or sitting restrictions
 - repetitive motion restrictions



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6. Terminating Employees Who Have Medical Restrictions (cont'd)

- Not every restriction is related to an ADA disability, but many are
- Don't rush to lay off or terminate
- Make sure the organization goes through a thorough, documented accommodation process before it considers adverse action



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7. Workplace Reductions/ Restructurings That Have a Discriminatory Impact

- Develop criteria to be used in the downsizing
- Be consistent
- Carefully analyze proposed reductions to determine whether they will have a discriminatory impact
- Make certain that legitimate, believable reasons exist for each decision



8. Wage and Hour Violations

- Basic Rule: Non-exempt employees must be paid one and one-half times their regular rate for all hours worked over forty per workweek
 - Exempt employees are executive, administrative or professional employees that meet the FLSA requirements
 - Payment on a salary basis does not determine whether an employee is exempt from overtime pay



8. Wage and Hour Violations (cont'd)

- Exempt status
 - There are very specific requirements to be exempt (from overtime)
 - The organization must comply with both federal law and state law
 - If in doubt about a classification, talk to HR
 - In general, unless the person exercises independent judgment and discretion, be skeptical whether they are exempt



8. Wage and Hour Violations (cont'd)

- Meredith is a slower production worker who has been spoken to about her low productivity levels. You notice that lately she is staying at work at least half an hour after her shift ends to finish up her work. You have not approved any overtime.
 - What should you do?
 - Do you have to pay her for this work?



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8. Wage and Hour Violations (cont'd)

- Emergency calls outside workday
 - If an employee is called out on an emergency job after he/she has gone home for the day, travel time directly to a customer's site is compensable, but not travel time directly to the employer's premises. (However, consider on-call rules)



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8. Wage and Hour Violations (cont'd)

- Lunch Period
 - For a non-exempt employee, all of the following conditions must be satisfied if lunch breaks are to be unpaid:
 - Lunch period is at least 30 minutes
 - Employee must be relieved of all duties
 - Employee must be free to leave his/her post



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8. Wage and Hour Violations (cont'd)

- Should the following employee be compensated for her lunch period?
 - Sally is an administrative assistant in quality control. She chooses to sit at her desk during her 30-minute lunch period. She sometimes answers her boss's telephone and sometimes is asked to perform miscellaneous duties that only take several minutes



8. Wage and Hour Violations (cont'd)

- Meetings
 - Generally, if non-exempt employees attend organization sponsored meetings and training programs, that time is compensable unless:
 - Attendance is outside the employee's regular working hours; and
 - Attendance is voluntary; and
 - The course or meeting is not directly related to the employee's job; and
 - Employee does not perform any productive work during such attendance



8. Wage and Hour Violations (cont'd)

- Should the following employees be compensated for this time?
 - Sarah, a machine operator, volunteers to be on the plant's first responder team. So as not to conflict with the work schedule of Sarah and the other team members, the organization schedules their required training sessions for Saturday mornings



8. Wage and Hour Violations (cont'd)

- Should the following employees be compensated for this time?
 - Non-exempt employees volunteer to help with a blood drive that is taking place at the organization during their non-scheduled work hours



9. Retaliation Claims

- The problem: More and more retaliation claims are being filed
 - The number of EEOC charges alleging retaliation have doubled in recent years
- For example, “They fired me because...”:
 - I called OSHA
 - I suffered a Worker’s Compensation injury
 - I testified at an unemployment hearing
 - I was a whistle-blower
 - I talked to my coworker’s attorney



9. Retaliation Claims (cont'd)

- The solution:
 - A strong policy against retaliation
 - Train all supervisors regarding retaliation
 - Provide effective employee complaint resolution mechanisms
 - Disseminate employee complaint information on a need-to-know basis only
 - Carefully review any adverse action against employee involved in complaints



10. Defamation Claims

- The problem: Turning an otherwise defensible decision into a lawsuit
- The solution:
 - Discuss termination decisions only on a need-to-know basis
 - Allow only one spokesperson (HR) for purposes of references
 - Reference policy
 - “Personal” references?



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Review of Quiz



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The End



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