

Training Plan for Newly Elected Officials

Lines of Business: General Liability, Public Officials Liability

Suggested Program Elements:

1. Management Statement:

- Assign Training Responsibilities and Accountability
- Establish inclusiveness of program

2. Employment Training:

- "At-Will" Employment Doctrine
- Federal and State Anti-Discrimination Laws
- Tort and "Common Law" Doctrines Bearing upon Termination
- Potential Personal Liability
- Potential Legal Exposure
- Sexual Harassment
- Age Discrimination
- Severance Obligations
- The Hiring Process
- Employee Evaluation and Disciplinary Matters
- State statutes and Employment Law

3. Board Practice Training:

- Informed and regular review of financial statements
- Regular attendance at board meetings
- Boards role in personnel situations
- Avoid conflicts of Interest

Program Activities Calendar:

- Training after elections for new officials
- Annual re-training
- Annual Audits of HR Policy and Procedure Manual
- Annual records compliance review

Web Site Links:

- U.S. Small Business Administration
<http://www.sba.gov>

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Employment Practices Checklist – You should have all bullet points at a minimum (see attached)

Currently legislative and judicial actions have almost completely eroded the immunities once available to public entities. With the erosion of the “governmental immunity” doctrine in many states the increased need for public officials’ liability coverage has occurred. Claims occurring include wrongful termination, sexual or other harassment, racial or age discrimination, violation of the Americans with Disabilities Act (ADA), failure to hire, failure to promote, Title VII, Equal Employment Opportunity Statute, the Age Discrimination Act, Improper administration of Federal Grants, Inequitable assessment of taxes, Improper Zoning approvals or denials, Improper training or Supervision of employees, Improper treatment of suspects and criminals, and many other arenas for the plaintiff’s attorneys. Officers and directors owe three basic fiduciary duties to a nonprofit organization:

- The duty of obedience
- The duty of loyalty
- The duty of care

1. Introduction

2. Potential Liabilities for Employment-Related Exposures

- The “At-Will” Employment Doctrine
- Federal and State Anti-Discrimination Laws
- Tort and “Common Law” Doctrines Bearing upon Termination
- Potential Personal Liability
- Potential Legal Exposure, Damages, and Costs from Employment-Related Claims and Lawsuits
- Attorney’s Fees in Employment Litigation

3. The Issue of Sexual Harassment

4. Special Problems and Statutes Relating to Layoffs and Termination’s

- Age Discrimination Problems
- Offering Releases to Older Workers
- Severance Obligations

5. The Hiring Process

- Job Applications and Interviewing
- Testing of Applicants
- Proper Documentation of the Employment Relationship

6. Employment Orientation and Education

- The Role of Personnel Policies and the Essentials of any Employee Handbook
- Training Executive Directors and Supervisors
- Dissemination of Personnel Policies and Employee Handbooks
- Ban the word “permanent.”

7. Employee Evaluation and Disciplinary Matters

- Conduct candid, thorough annual reviews
- Imposing Disciplinary Measures
- Make a prompt, thorough investigation of allegations of harassment or discrimination
- Termination Guidelines
- Handling Fair Terminations

- Seek legal advice before taking an employment action

8. State statutes and Employment Law

- Wage and Hour Laws
- Laws Regarding Unions
- Immigration Laws
- Family and Medical Leave of Absence Laws
- Health and Safety Laws
- Employee Benefits Laws and Cobra
- Affirmative Action Laws

9. Board Practices:

- Informed and regular review of financial statements
- Regular attendance at board meetings
- Clear understanding of the board's role in personnel situations
- Avoid conflicts of Interest

EMPLOYMENT PRACTICES CHECKLIST

Employers who have a good handle on employment practices loss control should be able to answer "yes" to all of the following questions.

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HIRING

Are you using an employment application that complies with the ADA, ADEA, Title VII and state law?

Does every new employee fill out and sign an application?

Does your employment application make it clear that employees are hired on an at-will basis?

Does your employment application state that it will be active for a fixed period of time and that at the end of the period the applicant must file a new application if he or she desires further consideration?

Have you instructed your managers to personally call the applicant's previous supervisors for a reference and are they actually doing this?

Do you have an I-9 form for every employee hired since 1986, and do you have copies of supporting documents? Also, are you using the proper I-9 form and are the forms being filled out completely and properly certified?

Do you make a MVR check on applicants who will be driving vehicles on company business?

Do you make a criminal records check on applicants for sensitive positions or where required by state law?

Do you run a credit check on applicants? If so, do you give them proper notice of it?

Do you use a 90-day introductory (rather than probationary) period?

Are you drug-testing all applicants? If so, is your testing in accordance with State and DOT requirements?

Do you require your managers to make a written evaluation of new employees prior to the end of their introductory period?

Do you have an employee handbook that spells out your benefits and policies, but explicitly states it is not a contract and may be revised at any time? If so, have you reviewed it within the last two years?

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TERMINATION

Do you require at least one written warning before terminating an employee for poor job performance, as opposed to a discharge for a disciplinary offense?

Do you have a policy that the responsible department managers may not terminate employees without approval or review?

Do you interview all employees who quit and require them to submit a resignation statement in which they spell out all of their reasons for resigning? Does a responsible senior manager review every employee discharge to insure that company policies have been followed and applied consistently?

Is every involuntary termination case fully documented?

Do you contest all unemployment compensation claims when the discharge is for cause?

WAGE & HOUR COMPLIANCE

Have you within the last twelve months reviewed the job duties of every employee who is not receiving overtime pay to be sure that each such employee is, in fact, exempt from overtime?

Do you have accurate time cards from every employee who is not a bona fide executive, administrative or professional employee?

Do non-exempt employees receive overtime on their bonuses, commission and other payments in addition to their regular hourly wage?

Do you have someone in payroll that knows how to properly handle garnishments?

Are you certain that you do not employ anyone under the age of 18? If you do, are you sure that they do not drive vehicles off your premises or work around dangerous equipment?

If you make deductions from your employees' pay, are they in accordance with state restrictions?

If you pay at the minimum wage, have you checked to see whether the State's minimum wage is higher than the federal?

HARASSMENT

Do you have a no-harassment policy posted that addresses all forms of harassment (i.e., including racial, ethnic, sexual, national origin, religion and state law categories)? If so, does it contain a specific procedure to follow to report harassment problems?

Do you have your employees and managers sign a copy of this policy that contains a provision that the signatory has read, understands and agrees with the policy?

Have you trained your managers concerning harassment and how to handle complaint investigations? Do you conduct periodic refresher training for new managers?

Have you investigated every harassment claim? Have you documented the results of these investigations?

AMERICANS WITH DISABILITIES ACT COMPLIANCE

Have you made your facilities accessible to disabled applicants and customers?

Do you have separate personnel files for medical information as required by the ADA?

Have you trained your managers who do the hiring for the company about the ADA and what the law requires of them?

If you use pre-employment medical exams, does your physician know the actual physical and mental requirements of each job at the company? (Remember, you cannot require an exam until you make a conditional offer of employment.)

Have you written job descriptions for all positions that specifically describe the physical and mental skills required for each such position?

FAMILY & MEDICAL LEAVE ACT (AND STATE LAW PARENTAL LEAVE) COMPLIANCE

Are you displaying the Family and Medical Leave Act poster?

Have you developed a Family and Medical Leave policy? Do you have a Parental Leave policy (under state law)?

Is your personnel department familiar with the requirements of the law with respect to insurance, reinstatement, medical reports, etc.?

Does your employee handbook contain a Family Leave provision and a Parental Leave position?

Do you know which specific notices you must provide under the circumstances and within the proper time frames?

ERISA AND COBRA COMPLIANCE

Do you have a complete and up-to-date COBRA notice? If so, do you send it to the employee and spouse? Do you send it to terminated employees via certified mail?

Have your retirement plan provider and medical insurer each certified in writing to you that the design and administration of their plans complies with all relevant State and Federal anti-discrimination laws (especially Title VII, the ADA and ADEA)?

OSHA

Do you have a written chemical Hazard Communication program? Are you training all new employees? Do you have documentation to prove this?

Do you have a tag-out/lock-out program to prevent accidents while equipment is being repaired?

Have you determined whether you may be required to develop a hearing conservation program? Have you developed such a program?

If you are not within two minutes of a hospital, have you trained employees in first-aid procedures and provided training to such persons in how to deal with potential blood-borne pathogens?

Have you instructed supervisors on how to avoid retaliation or the appearance of it with respect to employees who allege and/or report OSHA violations?

POSTERS

Do you have the five required federal posters properly displayed (Title VII, Wage/Hour [FLSA], OSHA, Polygraph and FMLA)?

Do you have all required State posters properly displayed (e.g., workers compensation, wage and hour, anti-discrimination laws, etc.)?

SUPERVISORY TRAINING

Have you conducted supervisory training programs to insure that your supervisors and managers are aware of the potential legal implication of their statements and actions with respect to employees?

Do you provide any specific training regarding sexual harassment and other forms of hostile work environment?