

Employment Practices *Update*

Bringing important information to emergency service organizations

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Personnel Law Alert: *Lack of supervisory training can lead to liability*

Personnel or employment law is a “people problem” business. For example, it is rare for an employee to walk into a plaintiff attorney’s office and say, “I have been subjected to a hostile work environment and discriminated against by my employer, according to Title VII of the Civil Rights Act of 1964.” However, it is common for employees to walk into a plaintiff attorney’s office and say things like, “My supervisor doesn’t treat me fairly,” or “My co-workers are constantly harassing me and my supervisor hasn’t done anything to stop it.” In these circumstances, an employee may complain that his supervisor is a bully and unfair and the attorney helps convert those emotions into a lawsuit for discrimination according Title VII of the Civil Rights Act of 1964.

Supervisors influence whether a work environment is harmonious or hostile. Supervisory training is important so people problems can be solved in-house rather than the courthouse. Training those with supervisory responsibilities is pertinent in fostering a positive environment and reducing exposure to work-related litigation risks such as harassment, discrimination, retaliation and wrongful discharge/termination.

Supervisors – Eyes and ears of the organization

Supervisors are considered to be the eyes and ears of emergency service organizations (ESOs) and their actions or failure to act can put the ESO on the hook for liability. An ESO’s top administrator may be the last person to be put on notice of certain workplace behaviors. It is the supervisors who have frequent interaction with employees and/or volunteers that may have knowledge of risky workplace behaviors and the opportunity to correct such behaviors. Consider the following example:

- An ESO is served with a lawsuit filed by a former member of the organization claiming she was subjected to a hostile work environment based on sex. The former ESO member alleges she was subjected to frequent sexual

Supervisors are the key to determining whether a work environment is harmonious or hostile.

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harassment by co-workers during the last year and eventually felt like she had no other reasonable option but to quit. She claims her immediate supervisors had direct knowledge of the pervasive harassment, didn't take necessary measures to stop the misconduct and on some occasions even participated in the harassment.

When an ESO faces a lawsuit from a former or current employee or volunteer, the focus of the litigation commonly turns to the supervisors.

- Did the supervisors receive training on how to identify workplace wrongdoing and take prompt and thorough action to stop the behaviors?
- Did the supervisors participate in the alleged misconduct or otherwise allow or condone the behaviors?
- Were supervisors periodically trained on the ESO's relevant policies and reporting processes regarding misconduct, such as harassment, discrimination, retaliation, workplace violence or unethical behavior?
- Were supervisors trained to report such allegations to the appropriate ESO designees (e.g. Human Resources or top administrators)?
- Were those designated as the internal investigators of work-related conflict or wrongdoing trained on how to conduct consistent and equitable investigations?

Supervisor Training Topics

It is recommended that ESO supervisors of all levels, receive periodic training to enhance employee or personnel relations and reduce exposure to liability risks.

Topics include:

- Harassment, discrimination and retaliation prevention.
- Determining and administering equitable discipline and terminations.
- Coaching, counseling and mentoring for performance.
- Conducting performance evaluations.

- Hiring and selection practices (e.g. how to conduct insightful and legally compliant interviews).
- Ongoing documentation of personnel performance and management.
- Overview of applicable state and federal laws, such as Title VII of the Civil Rights Act of 1964; Civil Rights Act of 1991; ADA (Americans with Disabilities Act); ADEA (Age Discrimination in Employment Act); FMLA (Family and Medical Leave Act); FLSA (Fair Labor Standards Act); EPA (Equal Pay Act); PDA (Pregnancy Discrimination Act); USERRA (Uniformed Services Employment and Reemployment Rights Act); NLRA (National Labor Relations Act); IRCA (Immigration Reform and Control Act); and GINA (Genetic Information Nondiscrimination Act).

Other subjects to strengthen ESO supervisors' effectiveness include:

- Leadership
- Dealing with difficult employees/volunteers
- Conflict management
- Communication
- Team building

Training Tips on Key Issues

ESOs continue to face claims involving a hostile work environment, harassment and wrongful termination or discharge. The following tips are provided for training ESO supervisors to adhere to the law and help promote a harmonious work environment.

Hostile work environment harassment – It's important for supervisors, particularly those with immediate supervisory responsibilities, to take appropriate steps to deter, identify and rectify work-related harassment. Unlawful civil harassment or discrimination typically targets or impacts persons because of their protected class status such as race, color, gender/sex, religion/creed, disability, national origin, age, veteran's status, genetic information or sexual orientation. Be well versed on the warning signs of a hostile

environment and how to respond to known or suspected harassment or discrimination.

Training supervisors to understand what constitutes sexual harassment and how to address these risky situations, like romantic or dating relationships between co-workers. Education on taking appropriate non-retaliation measures when a romantic or dating relationship ends can be valuable.

Retaliation – The Equal Employment Opportunity Commission (EEOC) reports in 2013 there were more retaliation claims than any other individual category, including race and gender. Therefore, supervisor training should define workplace retaliation; explain how to respond when a complaint is brought to their attention; and the potential consequences of mishandling the situation.

Discipline and Termination – An ESO's risk for a lawsuit increases after an employee or volunteer is terminated. Steps supervisors took to coach, counsel and discipline the ESO member may become the focus of litigation. Understanding termination is the last resort, provide supervisors guidance on making equitable and defensible termination decisions.

Conclusion

Training on operational skills is understandably the main point of emphasis in the emergency services industry. However, do not neglect training for supervisors on personnel relations issues.

ESOs are encouraged to select a trainer or training program wisely. The work culture in the emergency services industry is unique and supervisory training should be tailored for the environment. It's important for supervisors to be armed with the knowledge needed to respond correctly to personnel problems, conflict or wrongdoing.