

Employment Practices *Update*

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Enforcing Policies and Procedures: *Actions speak louder than words*

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What are the real benefits to an emergency service organization (ESO) for developing and implementing written policies and procedures? Do policies and procedures help or hurt an ESO in the event of litigation?

ESO leaders may hear conflicting messages from attorneys, human resources professionals and risk managers when answering the questions above. Some argue that ESOs are often exposed for inconsistent enforcement of written policies; therefore the organization would be better off not implementing written policies in the first place. However, consistent enforcement of well written policies and procedures may be the best way to protect an ESO and its members.

It is neither possible nor advisable to attempt to develop a written policy for every conceivable problem that may arise on the job. However, written policies and procedures may enable an ESO to effectively declare and support its values and objectives, as well as avoid costly and drawn out grievances and lawsuits.

Two paths that lead to liability

When it comes to written policies and procedures, there are typically two paths that may lead to liability for an ESO:

1. Not having policies and procedures (or at least an applicable policy on a significant subject); and
2. Not following written policies and procedures.

No policy or policies – Some believe that written policies lead to overreaching management inflexibility, resulting in the choice of not publishing policies. However, if an organization is silent on a particular subject it could communicate that the organization doesn't care about or view that subject as important enough to make a written policy declaration. For example, suppose an ESO didn't publish an anti-harassment and discrimination policy. It could be argued that the ESO was negligent by failing to adequately deter, identify and rectify unlawful harassment and discrimination because, in part, it didn't institute and enforce a written policy.

Failure to follow policies – An ESO can also be held liable for issuing, but not enforcing, workplace policies and procedures. For instance, an ESO can be viewed as negligent and held liable for unlawful harassment or discrimination even with the presence of a written policy prohibiting the misconduct. In reality, evidence could show that written policies were completely

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or selectively disregarded because harassment and discrimination was allowed or condoned in the work environment.

Another common pitfall involves using language that limits the organization's reasonable discretion in administering and enforcing policies and procedures. While an organization wants to standardize its business practices, there is also recognition that every situation and member of the workforce is different (e.g., individual's performance history). When attempting to gain consistency with reasonable discretion, terms like should, may, can, typically and generally are preferable to must, always, only, will and shall.

Questions for ESOs

Question No. 1 – "Is our policy and procedure manual just words on paper or is it a living and breathing document that helps the ESO fulfill its mission and objectives?" Heightened personnel awareness and consistent enforcement of a policy manual is important. ESO leaders are encouraged to carefully assess the enforcement level of its written policies and procedures. With absent policy reviews, organizations are susceptible to having published policies that are outdated or disproportionately enforced.

Analyze the accuracy of a personnel policy manual in its entirety. A policy or multiple policies that aren't followed consistently or at all, may diminish workers' confidence that other policies will be uniformly and equitably enforced.

Question No. 2 – "What policy and procedure violations lead to discipline within our ESO?" Assessing the enforcement of policies and procedures can be traced to coaching, counseling or discipline for rule violations. It is a sound risk management exercise for an ESO to track discipline within the organization to help prevent future policy violations or occurrences of misconduct. Some organizations document which policies are violated and the corresponding levels of coaching, counseling and discipline that are administered. This exercise demonstrates the ESO's commitment to uniformity and

unbiased decision making. Unlawful discrimination claims are commonly rooted in varying levels of discipline within an organization that are difficult to justify.

Develop, educate and enforce

To best protect an ESO and its members, it is recommended that written policies are collaboratively developed; education is prioritized and provided to all members; and policies are enforced consistently and equitably.

Policy and procedure development – Customize policies for each unique work environment. Consider forming a policy and procedure committee within the ESO to encourage collaborative involvement from various positions within the organization (human resources; leadership; supervisors; non-supervisors; and volunteers if applicable).

Education – A question to consider, "What fosters more consistent business practices, written policies and procedures or the training related to those policies and procedures?" Some believe training and education play a bigger role in gaining uniform business practices than the written policies themselves. But adequate training does not equate to simply distributing the policy and procedure manual. Periodic and thorough training gives life to written policies and provides ESO members the opportunity to ask questions and gain clarity about confusing subjects. Training and education gives context and depth to written policies.

Enforcement – Policies and procedures are only as good as the consistency and fairness with which they are enforced. Varying enforcement of written policies can lead to perceptions of favoritism or claims of unfair work practices, such as discrimination. A former employee may claim that the organization's rules weren't really rules at all, but only pretexts that the organization uses

to get rid of disfavored employees.

It is also sound risk management practice for an organization to document and explain situations when exceptions are made for discipline. Rather than a single person with supervisory authority making the disciplinary determination for a policy and procedure violation, it is recommended that the organization show that reasonable and controlled discretion was exercised. Discretion is controlled when the organization can demonstrate a collaborative process is in place where more than one person of authority is involved in making disciplinary decisions. More lenient or stringent determinations on discipline are more easily explained through a collaborative process within the organization.

To help ensure equitable enforcement of policies and procedures, hold periodic training that includes asking for feedback from members about what policies they feel are being enforced inconsistently and what written policies need to be developed to more accurately reflect current business

practices. Consider utilizing an anonymous survey or questionnaire to obtain unforced feedback about possible imbalanced policy enforcement and in the work environment generally.

Conclusion

Policies and procedures that are absent or

inconsistently enforced may lead to a disgruntled workforce, grievances and claims of unfair or unlawful work practices. Develop and maintain policies that accurately reflect the organization's business practices.

Incorporate a periodic policy review process to discover past practices that are out-of-date and add policies that address problems not previously anticipated. Help ensure fairness in the workplace through consistent training and enforcement.

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