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Employment Practices UPDATE



Alert for Supervisors: Liability Risks for Personnel Matters

Remember, you can supervise only one person and place the ESO at the same level of exposure to liability as the top administrator can.

Who poses the greatest liability risk for your Emergency Services Organization (ESO) in regard to employment practices or personnel relations issues? There is no question that those with supervisory authority pose the greatest threat for civil liability for your ESO. Why is this the case?

Supervisors, managers, administrators, and chief officers are granted authority to impact coworkers' jobs or positions within your ESO. In our legal system, such authority is given tremendous respect and responsibility. Supervisors' actions are carefully scrutinized when they handle sensitive personnel matters like workplace harassment and discrimination, evaluate performance, determine whether discipline or termination is appropriate, or conduct investigations of workplace wrongdoing.

This article examines the responsibilities placed on those with supervisory authority and what your ESO can do to help ensure they are prepared to handle complex personnel matters. It is not the goal for every person with supervisory responsibilities to be an expert in employment or personnel law or to be regarded as a human resources professional. However, it is very likely that one day a supervisor from your ESO will be defending his or her actions on the witness stand or in a deposition — being grilled by opposing legal counsel.

Why Supervisors Pose Risks

You do not have to be the top administrator to create liability for your ESO. In fact, top

administrators are often the last to know of a personnel problem within the organization. Instead, front-line supervisors and managers are typically the first to know about personnel problems or workplace wrongdoing. ESOs generally have various station houses or facilities; thus top administrators don't have daily interactions with the majority of the workforce. Consequently, this detached operational structure places even more responsibility on ESO front-line supervisors to legally handle personnel matters.

Anyone with supervisory authority can be viewed as acting as an agent on behalf of the ESO. This legal "agency principle" means that a supervisor's actions or failure to act can put the ESO on the hook for liability. Once a supervisor is put on notice of workplace wrongdoing, the ESO is most likely considered to be on notice at that point. So the front-line supervisor being on notice may be the equivalent of the lead administrator being put on notice at that same time.

Remember, you can supervise only one person and place the ESO at the same level of exposure to liability as the top administrator can. This fact should encourage training and education for supervisory personnel at all levels within your ESO.

Harassment and Discrimination Risks

Your ESO is required legally to take steps to prevent workplace harassment and discrimination, properly respond to allegations, and prevent future occurrences. Your ESO can most limit its risk for

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liability for harassment and discrimination claims by periodically educating those with supervisory authority.

The worst offender – Your ESO is at great risk for liability if a person with supervisory responsibilities is the worst offender. Supervisors within the emergency services industry are expected to behave as ethical leaders, setting a positive example. Thus, it is viewed as particularly offensive if a supervisor at any level participates in behavior that is demeaning or discriminatory in regard to coworkers' gender, race, color, national origin, age, religion, disability or other legally protected class status.

Quid Pro Quo – An ESO may be held automatically or strictly liable for what is traditionally known as quid pro quo sexual harassment — when a supervisor demands sexual relations or favors in exchange for a promotion or keeping a job. In litigation, your ESO will be examined to determine whether it met its legal obligation to educate supervisors on what constitutes sexual or other forms of harassment, in an effort to prevent such wrongdoing.

Hostile Work Environment – The most common form of unlawful harassment involves a hostile work environment that was allegedly allowed to foster within an ESO. Protected class status is the basis for the harassment. For instance, a member of your ESO may be subjected to an unlawful hostile work environment because she is a female, a particular race, color, ethnicity, or religion.

ESO supervisors must not tolerate behavior that could be considered as creating or contributing to a hostile work environment. If a supervisor participates in the teasing, taunting, mistreatment, jokes, innuendoes, or other inappropriate comments, your ESO could very well be held liable for allowing a

hostile work environment to foster. For any scenario where a supervisor, manager or administrator does not actively participate in the conduct or conversation, but otherwise allows or condones misbehavior, your ESO may still be held civilly liable. Once again, it is crucial for your ESO to demonstrate it took every reasonable measure to educate those granted supervisory authority, in an effort to prevent a hostile work environment.



Your ESO will be best protected if investigations are facilitated by those with experience in handling complaints.

Conducting Investigations –

Select members of your ESO should be designated as internal investigators for harassment and discrimination complaints. All supervisors should funnel allegations to these designated

investigators. ESOs often get into trouble when front-line supervisors or managers think they can or should handle complaints. Instead, your ESO and its members will be best protected if investigations are facilitated by those with experience and/or training in handling complaints.

Lack of Education and Training for Supervisors on Personnel Matters

Overall, ESOs are outstanding at providing training and education to their members on operational and safety issues. There is a real lack of consistent and comprehensive training provided,

however, for supervisors on how to handle personnel issues. In addition to the need for training for harassment and discrimination liability concerns, supervisors at all levels should receive training on conducting performance evaluations as well as disciplinary matters.

Performance Evaluations – Very few ESO supervisors or administrators have received formal instruction on conducting fair and uniform performance evaluations for subordinates. Accurate and detailed performance evaluations can help an ESO in the event of a wrongful termination lawsuit, because the ESO will be asked to defend its decision to terminate its

employee. Proof of training helps demonstrate supervisors are consistent in evaluating all personnel according to the ESO's standards and criterion. Without uniform training, it is easier to argue that a particular supervisor targeted an employee by using poor evaluations as a weapon to discharge an employee or force him out of the organization.

Discipline – It is also rare for an ESO to train those with supervisory authority on how to fairly and legally determine and administer discipline. ESOs often face lawsuits alleging that a member was unfairly disciplined. Without a formal training program for those tasked with making disciplinary decisions, it will be hard for an ESO to prove its disciplinary practices were unbiased and consistent.

Conclusion

In the event of a harassment, discrimination, or wrongful termination lawsuit, it is a guarantee that supervisors at various levels within your ESO will be called to the witness stand or deposition table. You are encouraged to prepare your supervisors, managers, and administrators well before that day arrives.

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