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Employment Practices UPDATE

Technology Creates Exposure to Personnel-Related Litigation

Who could have imagined that technological advancements would drastically heighten exposure to personnel-related litigation for Emergency Services Organizations (ESOs)? The availability of computers, Internet, e-mail, television and cell phones increases the number of costly lawsuits facing ESOs. Hostile work environment claims today often include elements of technology. ESOs frequently are forced to address its members' inappropriate utilization of technology, resulting in discipline such as suspension, demotion and termination. What steps can your ESO take to prevent technology abuses and reduce exposure to personnel-related claims?

Establishing a harassment-free culture

Who doesn't appreciate a funny "dirty joke" every now and then? Isn't comic relief necessary for ESOs that face life and death issues in their normal business operations? As a leader of an ESO, it may be difficult to balance the perceived need for "innocent" joking and banter with the business realities of litigation exposure for "allowing" harassment or discrimination to occur. As public service organizations, ESOs are held to a strict standard of prohibiting workplace harassment.

Internet and e-mail

A sexual harassment hostile environment claim could uncover members (employees or volunteers) accessing the Internet or e-mail to

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disseminate inappropriate jokes, pictures, or websites. According to the Federal Bureau of Investigation, 78% of employers found that some employees had abused Internet privileges, such as by downloading pornography.

Television in 2004

Unlike most businesses, watching television while on shift at an ESO may be a common activity. Cable and regular broadcast television programming in 2004 is certainly different than the "Andy Griffith" or "Leave it to Beaver" generation. Some ESO members, due to moral and / or religious convictions, may be offended by commonplace programming that includes controversial issues such as sex, race, profanity, and sexual orientation. ESO leaders are responsible for regulating the work environment such that television viewing does not cross the often subjective "line" of being considered unreasonably offensive, thus contributing to a hostile work environment.

Policy development and review

ESOs are under a duty to implement written policies and procedures designed to provide a workplace free from harassment and discrimination. It is smart risk management to develop or update your ESO's policy governing all electronic communications, and this article analyzes key policy components. Retained legal counsel, specializing in employment and labor law, should review and approve any policy language prior to implementation.

Harassment prevention

All ESOs should clearly communicate that electronic communication systems are not to be used in any way that may be disruptive, offensive to others, or harmful to morale.

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We welcome comments, suggestions and questions from our readers.

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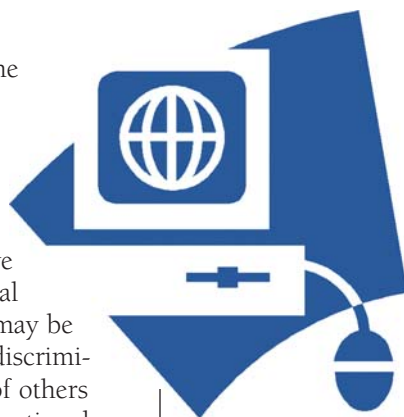
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A policy should prohibit the display or transmission of sexually explicit images, messages, cartoons, or any transmission or use of communications that contain profane or offensive language, ethnic slurs, racial epithets, or anything that may be construed as harassment, discrimination, or disparagement of others based on their race, color, national origin, gender, age, disability, religion, sexual orientation, or political beliefs. Computer software programs may also be purchased to help filter inappropriate subject matter.

Right to review

Granting ESO members access to electronic communications systems while on the job is a privilege and not a right. Availability of technology at work is designed to enhance business practices, rather than decrease productivity and increase legal liability. While ESO members have a reasonable expectation of personal privacy at work, ESOs must communicate that these privacy interests are limited while conducting ESO business, on ESO property, or using ESO-owned equipment.

Policies should indicate that all computer files, including e-mails sent or received, are considered and treated as if they are business-related information. The policy should also reflect that the ESO not only has the capability, but reserves the right, with or without notice, to access, monitor, review, copy, and / or delete any computer files, including e-mail sent or received, and all web site communications and / or transactions. A recent survey conducted by SHRM and the West Group revealed that 75% of businesses monitor Internet usage, 63% monitor e-mail, and 40% monitor telephone calls. Retained legal counsel should assist an ESO in developing a form for members to sign acknowledging their understanding of the



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parameters of the electronic communications systems policy and the ESO's ability to monitor their usage.

Personal use

Many ESOs allow incidental personal use of electronic communications systems. However, most organizations find it difficult to prohibit all personal use. A March 2003 study by the International Data Corporation found that 30 to 40% of Internet surfing during regular work hours is not work related. Some ESOs prohibit personal use or completely deny access to Internet or e-mail to limit liability and avoid decreased productivity.

Members' personal computers and equipment

A growing number of ESO members are bringing their personal laptop computers and cell phone/digital cameras onto ESO property. ESOs should inform its members that its policy regulations apply equally to ESO-owned or personally-owned equipment while conducting ESO business or on ESO property. An ESO may face exposure to hostile work environment claims due to sexually related materials found on a personal laptop, or a member taking photographs of others with a combination cell phone/digital camera without

permission. Some organizations have unfortunately been forced to ban members from bringing their personal equipment to work, because of past problems or a desire to reduce liability risk.

Reporting procedure

For reporting policy violations, ESOs should make several avenues of internal complaint available to their members. Policies addressing harassment or discrimination, including those governing electronic communications, should articulate that an alleged victim of harassment or discrimination is not required to confront the person who violated policy or is closely associated with the person who is the source of the problem. Instead, the member may utilize any of the other various avenues of internal complaint.

Discipline

Penalties for those who violate policy and engage in harassing, discriminatory or other inappropriate behavior typically would follow a progressive disciplinary process. However, in some circumstances, a first violation may be severe enough that termination may be the most appropriate finding. Disciplinary consequences should be included in any written policy and administered uniformly.

Training

Once instituted, ESOs should train their members on the electronic communications systems policy. Living in the information age, it is crucial to clearly define the parameters of utilizing technology while on the job.

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