ALLIANCE OF SCHOOLS FOR COOPERATIVE INSURANCE PROGRAMS

ASCIP

Employment Practices Risk Management Guide

Introduction

The area of employment law is constantly changing and is fertile ground for litigation. Claim prevention begins with the knowledge to make the right employment decisions through the various employment practices phases: recruitment, hiring, discipline, and termination.

These guidelines were developed to assist districts in implementing appropriate procedures to seek to mitigate employment practices claims. They are intended to provide tools to assist districts with employment practices matters and were developed with federal laws in mind that govern recruitment, hiring, discipline, and termination.

NOTE: These guidelines are not intended to serve as, or provide, legal advice. Due to the nature of this topic, legal counsel should be consulted to address any questions regarding the information contained in these guidelines.

Employment Recruitment and Hiring Best Practices

One of the most important decisions for an employer is hiring good employees. Creating a consistent hiring process will help streamline this task. The process is comprised of several elements:

1. Job descriptions.
2. Posting and advertising for the position.
3. Job application.
4. Screening of applicants.
5. Interview process.
6. Conditional job offer.
7. Background investigation.

I. JOB DESCRIPTIONS

A written job description serves as a tool to advertise, attract, and screen potential candidates. It assists in determining training, safety, and essential functions for that position. At a minimum, a job description includes the following:

- "Essential functions" of the job.
- Knowledge, skills, and abilities required for the job.
- Minimum educational requirements.
- Preferred educational requirements.
- Minimum experience.
- Preferred experience.
- Necessary licenses, certifications.
- Physical performance or agility requirements.
- Tools, devices, and aids needed for the job.
- Environment in which the job is performed.

A key to quality job descriptions is its accuracy. This may require regular auditing of the necessary duties and revising the description accordingly to keep them current. Additionally, a job description could be used in court to defend or support employment decisions pertaining to applicant selection or current employees holding the position.

An important aspect of the job description is the identification of the essential functions of the job. This will assist the district when engaging in the reasonable accommodation process, as required under the Americans with Disabilities Act (ADA). Some tips to remember when reviewing the job descriptions for accuracy:

- Job functions should be necessary and required to perform the job.
- Determine the frequency of, and the amount of time to perform, the task.
- Determine the consequences of not performing the functions; will nonperformance be detrimental to the employer's operations or result in severe consequences?
- Determine if the job duties can be redesigned or performed in another way.
- Determine if the task is transferrable to another employee.

II. POSTING AND ADVERTISING FOR THE POSITION

The District's Employer handbooks, personnel policies, and applicable collective bargaining agreements should be consulted when deciding on posting and advertising a position. For example, some collective bargaining agreements may require internal posting prior to public advertising. Areas of recruitment should be evaluated, as it is important to recruit from various geographical areas to attract a diverse range of candidates.

III. THE APPLICATION

The job application is the first piece of information received from a potential candidate. The application collects relevant information that will assist with screening and determining whether the applicant is a qualified candidate. The application should not solicit information beyond what is needed to make an employment decision. The application should be nondiscriminatory and must not solicit information that would elicit prohibited details under anti-discrimination and harassment laws. For example, the application should not solicit information regarding age, race, marital status, religion, pregnancy status, or other categories protected under Title VII.

The job application should include the applicant's certification that all information in the application is true and correct to the best of the applicant's knowledge and that withholding pertinent information or submitting false or misleading information on the application or any time during the hiring process constitutes valid grounds for disqualification from the employment process and may lead to immediate dismissal from employment.

IV. SCREENING OF APPLICANTS

After receipt of the applications, the screening process ensues to select the applicants that meet the minimum qualifications for the position. The screener may review the application and the job description to eliminate unqualified applicants.

V. INTERVIEWING APPLICANTS

Interviews provide an opportunity to discover more about the applicant's skill, personality, and general compatibility and suitability for the position. The interview also serves as an opportunity to learn more about the applicant's qualifications.

The anti-discrimination laws prohibit inquiries that solicit information with respect to race, including hair texture and protective hairstyles such as braids, locks and twists, religious creed, color, national origin, ancestry, genetic information, physical disability, mental disability, medical condition, marital status, sex (pregnancy, childbirth, or pregnancy related medical conditions), age, sexual orientation, or military and veteran status, including a perception that the person is associated with a person who has, or is perceived to have, any of these characteristics.

There are questions that might elicit such information and could result in liability for the employer. Therefore, questions should be asked in such a way that pertinent information is provided without eliciting information that conflicts with anti-discrimination and harassment laws.

It is suggested for legal counsel to review proposed interview questions beforehand and to adhere to an established list of standard interview questions based on the specific needs of the position. Interviewers should be trained regarding the specific needs, duties, and requirements for the position, and the types of questions that are legally prohibited by reference to the above guidelines of unacceptable questions.

A table of acceptable and unacceptable interview questions may be found in Exhibit 3. Please note that this table is not a comprehensive list of prohibited questions.

VI. BACKGROUND INVESTIGATIONS

The background investigation is part of the applicant screening due diligence. This is an important tool to determine whether the applicant's representation of his/her qualifications, certifications, references, and background is appropriate for the position. A typical background investigation would include verifying the educational and licensing and/or certification requirements, confirming an applicant's employment history, and checking references and qualifications. Consent, in the form of a signed release, should be obtained from the applicant to conduct a background check.

The types of background checks include, but are not limited to, the following:

- Educational degrees
- Technical schools
- Licensing bureaus
- Personal references

- Credit checks for those positions that involve financial or accounting responsibilities.
- Driving history
- Criminal

If conducting criminal background checks, it is important to be aware of the various laws that relate to the background check process. For example, the Equal Employment Opportunity Commission has investigated whether criminal background checks have a "disparate impact" on protected class members under Title VII.

VII. MEDICAL EXAMINATIONS

Pre-employment medical exams may be conducted after a job offer has been extended and only if the medical examination is given to all employees within the job classification. Applicants should not be asked to disclose personal medical information, nor should the medical exam be administered without the applicant having successfully completed all the non-medical stages of the hiring process (initial screening, interviews, background checks).

An offer of employment may be withdrawn based on the results of the medical exam only if:

- the applicant is unable to perform the essential functions of the job with reasonable accommodation,
- no reasonable accommodation exists, or
- the applicant poses a direct threat to the health or safety in the workplace and no reasonable accommodation would eliminate this risk or reduce it to an acceptable level.

VIII. EMPLOYEE VERSUS INDEPENDENT CONTRACTOR STATUS

When "on-boarding" a worker, the employer must properly classify the worker as either an employee or an independent contractor. The classification of the worker is critical due to the employment and labor laws associated with being an employee. However, the relationship between the employer and an independent contractor is that of an outside business provider, therefore employment and labor laws would not apply.

On January 1, 2020, AB 5 went into effect. The new legislation adds Section 2750.3 to the California Labor Code, amends Sections 606.5 and 621 of the Unemployment Insurance Code, and amends Section 3351 of the California Labor Code. AB 5 codified and clarified a California Supreme Court case, *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903.

AB 5 implements a more definitive system to help employers understand what type of worker qualifies as an independent contractor. The test they established is referred to as

the ABC contractor test because it sets three criteria that must be met in order for an employer to legally categorize a worker as an independent contractor. AB 5 *presumes* that all workers engaged to provide services for the District are employees of the District be unless ***all three*** of the following can be shown:

(A) The person is free from the control and direction of the District in connection with the performance of the work, both under the contract for the performance of the work and in fact;

(B) The person performs work that is outside the usual course of the District's business; and

(C) The person is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed.

Except in limited occupations, certain limited contracts for professional services, and certain business-to-business relationships, a worker can only be classified as an independent contractor if the ABC Test is fully satisfied.

How to understand the ABC Test:

(A) Prong A of the test involves the right to control. Prong A of this test deals with the right of the hiring entity to exercise the type and degree of control over a worker which the hiring entity typically exercises over its employees.

(B) Prong B: Work outside the usual course of business. The second prong requires the worker to perform work outside of the usual course of the District's activities. The bottom line question is whether the worker can reasonably be viewed as providing services to the District in a role that is comparable to an employee's role, rather than that of a traditional independent contractor's role. Workers who provide services within the usual course of a hiring entity's business are likely to be perceived as working within the business rather than working within the worker's own independent business and are therefore most likely to be deemed employees. Satisfying the second prong can be a great challenge for employers because it is unclear what the terms "usual course" and "business" mean.[1]

(C) Prong C – The independent business. Under this prong, if the worker independently decides to set up his or her own business to perform the services being provided to the hiring entity, it is highly likely that the worker can be classified as an independent contractor. The hiring entity must, however, be able to substantiate that the worker has established an independent business. A sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation status; the holding of a license; and advertising and routinely offering

1 Courts analyzing this "B" prong have considered whether the individual services are necessary or merely incidental to the hiring entity's business, based on (i) a common sense observation of the nature of the entity's business; or (ii) an analysis of whether, in economic terms, the individual's work was necessary to the business' success. Courts have also considered whether the hiring entity continuously uses the individual's services, and how the hiring entity describes its business (on websites and in advertisements, for example). See Vasquez v. Jan-Pro Franchising International, Inc. (923 F.3d 575, 597 (9th Cir. 2019).

services to the public or other potential customers are all indicia of an independent business.

There are exceptions to the ABC Test. As stated above, certain workers in certain specified occupations do not need to satisfy the ABC Test to be regarded as independent contractors. These occupations include, without limitation, physicians and surgeons, dentists, podiatrists, psychologists, veterinarians, lawyers, accountants, and certain other professionals not likely relevant to the District. Though workers in these occupations do not need to satisfy the ABC Test to qualify as independent contractors, these workers must still satisfy the more traditional multi-factor common law tests for evaluating whether one amounts to an independent contractor or an employee. This traditional 11-factor test is set forth in a California Supreme Court decision, *Borello & Sons v. Department of Industrial Relations*, 48 Cal.3d 341 (1989). The *Borello* test centers on whether the hiring entity has control over the means and manner of performing the contracted work, but also involves secondary factors that, when considered together, allow for a determination that an independent contractor or employment relationship is established as a matter of economic reality.[2]

The ABC Test does not apply to certain categories of workers providing services under professional service contracts such as graphic artists, grant writers, human resources administrators, photographers, writers, creative marketing professionals, and certain other professionals not likely relevant to the District. However, to qualify as an independent contractor, such a worker must still satisfy the *Borrello* common law test and must also (a) maintain a business location (that may be the worker's residence) which is separate from the District; (b) hold a business license and any professional license or permit required for the person to practice his or her profession; (c) have the ability to set or negotiate rates; (d) have the ability to set hours of work outside of completion dates and reasonable business hours; (e) be customarily engaged in the same type of work for other entities or the worker holds him or herself out to potential customers as available to perform the same type of work; and (f) customarily and regularly exercises discretion and independent judgment in the performance of the service.

The business-to-business contracting exception:

Another exception to the ABC Test is business-to-business contracting relationships. This means, a relationship in which a business such as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation contracts to provide services to the District. In this situation, the *Borello* test applies and an independent contractor relationship will be found only if the contracting business entity is (a) free of the District's control and direction in

[2] The eleven secondary factors are: (1) whether the worker is engaged in an occupation or business distinct from the principal (if so, then the less like an employee); (2) whether the work is part of the regular business of the principal (if, so, then the more like an employee; (3) whether the principal or the worker supplies the instruments, tools, and the place for the person doing the work (the more worker supplies these items, the less like an employee); (4) skill required in the particular occupation (the more skills, the less like an employee); (5) type of occupation, and whether the work is usually done under the direction of the principal or by a specialist without supervision (the more specialized and in an area for which the entity does not have expertise, the less like an employee); (6) length of time for which the services are to be performed (the longer the time, the more like an employee); (7) whether payment is by time worked or by the job (by the job is more like a contractor); (8) whether the parties believe they are creating an employer/employee relationship (if so, it is more like an employee); (9) the worker's opportunity for profit or loss depending on their managerial skill(if more opportunity, then less like an employee); (10) degree of performance of the working relationship (the longer the relationship lasts, the more like an employee); and (11) the worker's investment in the equipment or materials required by their task (the more the worker uses his or her own equipment, the less like an employee).

connection with the performance of the work, both under the contract and in fact; (b) provide services directly to the District rather than to the District's customers (i.e., students); (c) performs services pursuant to a written contract; (d) has the necessary business and other licenses; (e) maintains a business location separate from the District; (f) customarily is engaged in an independently established business of the same nature as that involved in the work performed for the District; (g) actually contracts with other businesses to provide the same or similar services and maintains clientele without restrictions from the District; (h) advertises and holds itself out to the public as available to provide services the same as or similar to those provided by the District; (i) provide its own tools, vehicles, and equipment to perform services; (j) is able to negotiate its own rates; (k) consistent with the nature of the work, is able to set its own hours and the location of the work; and (l) is performing the type of work for which a license from the Contractor State License Board is required.

In analyzing whether a worker is an employee or an independent contractor, it is suggested that the District review all current independent contractors and consulting arrangements to determine whether the ABC Test is satisfied, and if not, whether one of the above reference exceptions applies and the associated requirements are met. Depending on the outcome of the analysis, independent contractors may need to be reclassified as employees forthwith.

Before on-boarding a worker, three questions consistent with the ABC Test will need to be asked to determine whether a worker is an independent contractor or an employee. The three questions are:

(A) Will the prospective independent contractor be free from the control and direction of the District in connection with the performance of the work, both under the contract of the performance of the work and in fact?

(B) Will the prospective independent contractor perform work that is outside the usual course of the District's business?

(C) Is the prospective independent contractor customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed?

If the answer to any of these questions is no, the worker will not qualify as an independent contractor unless he or she fits within one of the exceptions described above and satisfies the associated requirements.

Employment Retention Best Practices

I. FITNESS FOR DUTY EXAMS

Fitness for duty examinations are occasionally required to determine whether an employee is able to perform the essential functions of the job. Federal and state laws impose restrictions on such exams and permit these exams under the following circumstances:

- Fitness for duty examinations for current employees are permissible as soon as the employer has a reasonable belief, based on objective factors, that the employee's ability to perform the essential functions of the job are impaired by a medical condition, or the employee poses a direct threat due to a medical condition.
- When responding to an employee's request for a reasonable accommodation and the disability or need for accommodation is not known or obvious.

Factors to Consider when Determining the Appropriateness of a Fitness for Duty Exam

Factors to considered to assess whether information learned from another person is enough to justify an examination of an employee:

- The relationship of the person to the employee about whom the information it is being provided;
- The seriousness of the medical condition;
- The possible motivation of the person providing the information;
- How the person learned about the information (i.e., directly from the employee whose medical condition is in question or from someone else); and
- Any other evidence the employer has that bears on the reliability of the information provided.

The licensed health care professional that performs the evaluation should issue a written report containing the following:

- A conclusion regarding the employee's fitness for duty;
- A description of the nature and extent of any functional limitations on the employee's ability to perform the job;
- A description of the expected duration of each functional limitation.

If the health care professional evaluation concludes that the employee is not able to perform the essential functions of the job, the District should work with the employee to determine if a reasonable accommodation is appropriate to the extent required by law. The evaluation results should be treated as confidential and kept in a file separate from the employee's personnel file.

II. DRUG TESTING

It is inappropriate for employees to report to work while under the influence of illegal drugs or alcohol as it poses a safety risk to themselves and to others. Employees may be asked to submit to a drug and alcohol test if the employee's supervisor or other person has reasonable suspicion to believe, based on objective factors, that the employee's ability to perform the functions of the job is impaired or presents a safety and/or security risk. Employees suspected of working while under the influence of illegal drugs or alcohol, including marijuana, should be placed on paid administrative leave until the test results from the testing facility are received and the investigation is completed.

Reasonable suspicion objective factors can include, but are not limited to, the following[3]:

- Employee's appearance
- Behavior
- Odor of alcohol
- Blood-shot eyes
- Unsteady walking or movement
- Slurred speech
- Engages in safety violations at work
- Accidents involving employer's property
- Physical altercation
- Unusual behavior
- Verbal altercation
- Possession of alcohol or illegal drugs

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Best practices for conducting drug and/or alcohol testing include:

- Policy development and adoption
- Testing conducted by an independent facility licensed by the State of California

[3] The law does not require the employee to possess all the above factors as each situation is assessed on a case-by-case basis

- Obtaining the employee's written consent prior to testing
- Testing is paid in full by the District
- Employees are paid at their regular rate for time spent submitting to a test
- Records are confidential and maintained separately from the employee's personnel file
- Depending on the circumstances of the test, employees testing positive are subject to discipline, up to and including immediate termination of employment
- Depending on the circumstances, employees who fail to comply with any part of the testing process after being directed to do so by the employer can also be subjected to discipline, up to and including immediate termination of employment

III. THE REASONABLE ACCOMMODATION PROCESS

The California Fair Employment and Housing Act (FEHA) and the Americans with Disabilities Act (ADA) prohibit discrimination on a multitude of protected categories, including disabilities and perceived disabilities. The purpose of FEHA is to provide remedies to eliminate any type of discrimination on this basis. The courts are constantly expanding the scope of what constitutes a disability under the law.

Under FEHA, discrimination is prohibited over medical conditions such as, cancer, genetic characteristics, physiological and anatomical conditions, and conditions that would limit an employee's ability to participate in major life activities, such as working. The law also protects those who have chronic or episodic conditions such as hepatitis, epilepsy, seizure disorder, diabetes, and heart disease.

A. Accommodating Employees with Disabilities

The law requires the District to make a good faith and reasonable effort to accommodate an employee in performing the essential functions of the job. This obligation requires reasonably accommodating for the known disabilities, unless doing so would result in an undue hardship to the District's operations. As such, the District has an affirmative duty to accommodate their employees. In deciding on the accommodation, the District should consider the employee's preference; although ultimately, the District makes the final decision on the accommodation selected. As the interactive process is conducted it is important that each meeting is documented. Exhibit 6 includes a Reasonable Accommodation and Interactive Process Checklist, and although no specific format is required, Exhibit 7 is a sample template to document the interactive meeting.

The question that arises is how the employer knows there is a need for an accommodation. Under the ADA, the employer must initiate this process if:

- an employee asks for a reasonable accommodation,
- the District becomes aware of the need for the accommodation,

- the District becomes aware of the possible need for an accommodation because the employee has exhausted his/her leave of absence under the employer's leave policy or Family Medical Leave Act, or
- the employee or employee's health care provider states that a further accommodation is necessary for recuperation or to allow the employee to perform the essential functions of the job.

The employee's obligations as part of this accommodation process include:

- initiate the process by asking for a reasonable accommodation,
- cooperate in good faith by providing medical documentation when his/her disability or need for accommodation is not obvious and engaging in the interactive process with the employer.

If the employee provides insufficient documentation, the District should explain why the employee's documentation is insufficient. The employee must be provided an opportunity to supply the missing information. If the documentation is still insufficient, the employee may be asked to participate in a Fitness for Duty Exam to determine the nature, severity, and duration of the employee's impairment, the activities the impairment limits, and the extent to which the impairment limits the employee's abilities to perform the activities. Exhibit 8 is a sample "Medical Inquiry Form In Response To A Request for ADA Accommodation."

B. Types of Accommodations

Selecting the right accommodation is determined on a case-by-case basis, depending on the employee's functional limitations and the individual circumstances of the employer. Under FEHA, the regulations provide a non-exhaustive list of possible accommodations:

- Making facilities readily accessible and useable by disabled individuals
- Job restructuring
- Offering part-time or modified work schedules
- Reassignment to a vacant position
- Acquiring or modifying equipment or devices
- Adjusting or modifying examinations, training materials, or policies
- Providing qualified readers or interpreters
- Allowing assistive animals on the worksite
- Altering when and/or how an essential function is performed
- Modifying supervisory methods
- Providing additional training

- Allowing an employee to work from home
- Providing paid or unpaid leave for treatment or recovery
- Other similar accommodations for individuals with disabilities

C. Assistive Animals as an Accommodation

FEHA provide for assistive animals at the workplace as a reasonable accommodation [California Code of Regulations Section 11065(p)(2)(B)]. Assistive animals can include guide dogs, service dogs, or animals that provide emotional or other support to the disabled person, including those suffering from traumatic brain injuries and mental disabilities, such as major depression [California Code of Regulations Section 11065(a)(1)].

The employee may be required to produce a letter from a healthcare provider indicating that the employee has a disability and to explain why the assistive animal is needed in the workplace. The employee may be required to provide confirmation that the animal is free from disease, offensive odors, displays habits appropriate to the work environment, does not engage in behavior that endangers the health and safety of the disabled individual or others in the workplace, is properly vaccinated to the extent required by law, and is trained to help with the employee's disability [California Code of Regulations Sections 11065(a)(2), 11069(e)].

Under Title III of the ADA, a service animal is defined as having been trained to perform a task(s) for the person with a disability, and is limited to a dog or a miniature horse. Under the ADA, the definition of "service animals" is limited and narrower than California law. Exhibit 4 includes frequently asked questions, a checklist of questions considered allowable about service animals, and additional information about FEHA.

D. Leaves of Absences as an Accommodation

In general, after the exhaustion of all paid and statutory leaves of absences, a finite leave of absence may be considered as a reasonable accommodation if the employee will be able to resume his or her duties upon conclusion of the leave. However, it may not be reasonable to require the employer to hold the position indefinitely for the employee's medical condition to be corrected, or to allow the employee to fully recover.

There is no minimum under the ADA as to the fixed duration of the leave of absence. Therefore, caution should be exercised in analyzing any request for a leave of absence on a case-by-case basis.

E. Reassignment as an Accommodation

Reassignment to a vacant position may also be a reasonable accommodation even if the position pays less than what the employee is currently earning if the employee can no longer perform the current job. However, the employer is not mandated under the ADA to promote or create a new position to accommodate a disabled employee.

IV. SEXUAL HARASSMENT PREVENTION

Sexual harassment in the workplace is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964 and California's Fair Employment and Housing Act. Sexual harassment refers to both unwelcome sexual advances, or other visual, verbal, or physical conduct of a sexual nature and actions that create an intimidating, hostile, or offensive work environment based on an employee's sex. Under California law, the offensive conduct need not be motivated by sexual desire, but may be based upon an employee's actual or perceived sex or gender-identity, actual or perceived sexual orientation, and/or pregnancy, childbirth, or related medical conditions. This definition includes many forms of offensive behavior and includes gender-based harassment of a person of the same sex as the harasser, and actions that subject co-workers to a hostile work environment.

A. Types of Harassment

In addition to identifying the most obvious forms of sexual harassment, there are also subtle forms of harassment that may occur and could result in a potential claim. For example, it is quite common that managers and co-workers engage in subtle forms of favoritism among its subordinates. However, if the favoritism is based upon the granting of sexual favors, or the supervisor favors one gender over the other, this could constitute sexual harassment and give rise to a claim. The following is a partial list of prohibited behavior:

- Visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters.
- Verbal conduct: making or using derogatory comments, epithets, slurs and jokes. Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual.
- Physical conduct: touching, assault, impeding or blocking movements.
- Offering employment benefits in exchange for sexual favors.
- Making or threatening retaliatory action after receiving a negative response to sexual advances.
- Establishing different types of dress and grooming standards for men and women employees.
- Treating employees based on sexual stereotypes

B. California and Federal Law

California law requires an employer having five (5) or more employees to provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees

in California within six months of their assumption of a position. This training must be provided once every two years. The training provided must include:

- The definition of sexual harassment under the Fair Employment and Housing Act and Title VII of the federal Civil Rights Act of 1964;
- The statutes and case-law prohibiting and preventing sexual harassment;
- The types of conduct that can be sexual harassment;
- The remedies available for victims of sexual harassment;
- Strategies to prevent sexual harassment;
- Supervisors' obligation to report harassment;
- Practical examples of harassment;
- The limited confidentiality of the complaint process;
- Resources for victims of sexual harassment, including to whom they should report it;
- How employers must correct harassing behavior;
- What to do if a supervisor is personally accused of harassment;
- The elements of an effective anti-harassment policy and how to use it;
- "Abusive conduct" under Government Code section 12950.1, subdivision (g)(2).
- Discuss harassment based on gender identity, gender expression, and sexual orientation, which shall include practical examples inclusive of harassment based on gender identity, gender expression, and sexual orientation.

Along with recognition, supervisors should understand how to respond to these incidents. In response to harassment claims, part of the employer's obligation is to conduct a prompt internal investigation to determine whether the complaint has merit and to take proactive steps to prevent the incidents from reoccurring.

In addition, federal and state laws have expanded the different forms of sex discrimination such as sexual identity discrimination, sexual orientation discrimination, and discrimination against transgender employees and applicants. Therefore, it is important that all supervisors be trained in sexual harassment prevention as subtle remarks and inadvertent incidents could give rise to a claim. All employers should have a sexual and unlawful harassment policy that includes procedures for filing complaints of harassment. Exhibit 9 provides a sample policy.

V. CONDUCTING INTERNAL INVESTIGATIONS

While some investigations are mandated under federal and state laws, such as Title VII and the California Fair Employment and Housing Act (FEHA), some internal investigations are necessary to discover information with respect to the alleged complaint. A well-done, thorough

and unbiased investigation will determine if the complaint is supported by facts. An investigation may also be useful in preventing problems from growing or reoccurring and in some instances, to prevent external investigations by governmental authorities or other interested stakeholders, such as parents and special interest groups. The following are some reasons why an investigation may be need:

- Complaints of harassment, discrimination, and/or retaliation
- Misconduct
- Theft
- Bullying
- Drug and alcohol use in violation of a drug and alcohol abuse, including use of marijuana
- Safety violations
- Harm to property
- Deficient performance

The goal of the investigation is to use the findings of facts to resolve issues as they present themselves in the workplace. The key to a solid investigation is objectivity by the investigator. The investigator must not be prejudiced or biased with respect to the complainant or the witnesses involved. If an internal investigator has a relationship with any of the witnesses, the complainant, or the accused, the employer should consider retaining an outside investigator to maintain objectivity.

The investigator's role is to review documents, interview witnesses, and conduct independent research to verify the complaint. The investigator will need to engage in a variety of techniques such as:

- Interviewing employees, students, parents, and outside parties
- Reviewing documents provided by the employer
- Searches of computers, desks, voicemails, and emails
- Reviewing or taking photographs
- Soliciting assistance from third parties, such as law enforcement or legal counsel
- Understanding or learning the subject matter of the employee's duties

Before engaging in an investigation, the investigator should know the applicable federal, state, and local laws, as well as work policies and applicable collective bargaining agreements. If the subject matter is legally or factually complex, delegating the investigation to an attorney or other outside professional may be appropriate.

The following are six (6) tips for conducting internal investigations:

1. Thoroughly review the complaint and identify all possible witnesses.

When starting the investigation, it is important to have a thorough understanding of the scope and parameters of the investigation. Furthermore, it is important to stay focused on the actual allegations and what the investigator needs to research in verifying the complaint.

2. Gather sufficient facts from the concerned employee (complainant).

Interviewing the complaining employee is a critical element to the investigation process. When conducting the interview, it is important that the investigator informs the complaining employee that the employer does not permit any retaliation in any way and the complaining employee needs to keep the investigation confidential. The most important goal of this interview is to get to the facts: WHO, WHAT, WHERE, WHEN, and WHY. The interview will assist in identifying additional witnesses, documents that may support the complainant's allegations, and the whereabouts of the documents.

3. Stay organized.

A good investigation requires a high degree of organization. Develop a plan before conducting interviews. Determine who needs to be interviewed and why that person's interview is necessary as it relates to the complaint. Understand the applicable policies, laws, or rules that have been violated. Keep the objective of the investigation in mind throughout the process.

4. Determine if interim action is necessary pending the outcome of the investigation.

For example, if the complaint involves bullying, health or safety risks, or harassment, the employer may want to separate the accused from the victim. This is to help facilitate the investigation, not for disciplinary reasons, and to prevent continuing harm pending the outcome of the investigation.

5. Meet with the accused employee to solicit his/her side of the story.

Once sufficient facts regarding the complaint have been gathered, the investigator will have to meet with the accused to get his/her side of the story. Prepare an outline related to each issue and plan the questions. Begin the interview with very general questions such as, "What is your work experience like with the [complainant]?" Use open-ended questions to solicit necessary information. Then move to specific follow-up questions and listen very carefully to the answers. Prepare to be flexible in the types of questions to ask. The goal is to solicit information from the witness; therefore, confrontational questions should be avoided to prevent the witness from assuming a defensive position.

6. Make findings of facts.

Each fact should be supported by either witness testimony or by documentation obtained during the investigation. The ultimate fact-finding is whether there were any violations of policies, guidelines, or internal rules. If the investigation concludes there was a violation, then the employer should consider the appropriateness of discipline.

VI. LEAVES OF ABSENCES

The application of the multitude of leaves of absences under both federal, state, local statutes, collective bargaining agreements, and Board policy is vast, and the application of all these sections must be carefully considered when evaluating leaves of absence.

The federal Family and Medical Leave Act of 1993 (FMLA) and the California Family Rights Act of 1993 (CFRA) provide eligible employees with a leave of absence with the right to be restored to the same or similar position upon completion of the leave. Permitted reasons for a leave are:

1. The employee's own serious health condition that renders the employee unable to perform the essential functions of the position;
2. A serious health condition of a spouse, registered domestic partner, son, daughter, or parent;
3. The birth of a son or daughter or to care for such a child; or
4. The placement of a son or daughter with the employee for adoption or foster care.

In most circumstances, the employee's entitlement to leave under FMLA and/or CFRA often overlap. For an employee to be eligible for FMLA/CFRA leave, the employee must meet the following conditions:

1. Has been employed with the employer for at least 12 months;
2. Has been employed for at least 1250 hours of service during the 12-month period that immediately precedes the start of the leave; and
3. Is employed at a worksite where the employer employs at least 50 employees within 75 miles of that worksite.

Eligible employees are entitled to twelve (12) workweeks of leave, in a 12-month "leave year", for certain purposes as defined under FMLA/CFRA. In addition, family members of persons injured in military service may take up to 26 workweeks of "service member family leave" in a 12-month period minus other FMLA leave already taken to care for injured or ill service members. The employer may decide what constitutes the "leave year", which may be defined as:

- a calendar year,
- any defined 12-month period,

- the 12-month period measured forward from the time leave is taken, or
- a “rolling” 12-month period that is measured backwards from the time the employee uses the leave.

FMLA/CFRA leave is unpaid but the employee may elect to use accrued paid time off to substitute for any portion of the unpaid FMLA/CFRA leave. The employer may also require the employee to:

- to produce a medical certification to verify the existence of a “serious health condition” as a condition to granting FMLA/CFRA leave.
- use paid leave during FMLA/CFRA leave to the same extent that the employee has the right to use the accrued leave of absence concurrently with FMLA/CFRA leave.

At the end of the leave, the employer must reinstate the employee to the same or equivalent job, with limited exceptions. The employer must maintain the health benefits for the employee on leave on the same basis as if the employee was actively employed with the employer.

In addition to leave under FMLA and CFRA, female employees may take up to four (4) months of leave for pregnancy under the Pregnancy Disability Leave Law (PDLL). An employee may take PDLL leave for the following reasons:

1. Pregnancy;
2. Childbirth; and
3. Any related medical conditions due to the pregnancy, otherwise known as a pregnancy disability.

PDLL leave is unpaid unless the employee elects to use paid time off. At the end of the leave, the employee must be reinstated to the same position. Please note that once the employee concludes her pregnancy disability leave under PDLL, she may still have a full 12 workweeks of CFRA leave available for purposes of bonding with a newborn child. Any leave of absence for pregnancy-related conditions may not be counted against an employee’s leave of absence rights under the CFRA, but such leave may be counted against the leave of absence rights under the FMLA.

Policies and Procedures

I. THE EMPLOYEE HANDBOOK AND/OR PERSONNEL POLICIES

The employer's handbook and/or personnel policies set forth the basic expectations employers have of employees and serve as a communication device to inform employees of work expectations. They are useful when applied consistently and fairly. It is important for all employees to receive a copy of the handbook and/or personnel policies and sign an acknowledgement he/she received and read the policies and subsequent revisions. The signed acknowledgement should be maintained by the employer. In litigation, the courts will consider whether a supervisor's employment practices are consistent with the rules and policies in the handbook. Inconsistency in application could give rise or an inference to a claim of discrimination. Legal counsel should be involved when policies are developed, implemented and revised.

II. PERFORMANCE EVALUATIONS

Performance evaluations are designed to review performance standards and provide employees with feedback and assistance in meeting the employer's expectations. Advantages of performance evaluations include:

- Assist in creating an environment where supervisors are treating employees fairly.
- Helps the employer establish performance objectives and goals for the employee.
- When done properly, provides notice to employees of their performance deficiencies.
- Aids in the defense of an employment litigation matter as it provides written record of the employee's performance issues.

Performance evaluations should be completed accurately, in a timely fashion, and consistent with any collective bargaining agreement or personnel rules. Supervisors should document both the positive and negative aspects of the employee's work. A well-documented performance evaluation should provide support for promotions, discipline, or termination, and may make a difference between winning and losing a lawsuit.

The following is a suggested checklist for conducting performance evaluations:

1. Set an appropriate atmosphere for the evaluation.
    - Area of the evaluation is uncluttered, clean, well-organized and free of distractions.
    - Cell phones, pagers, telephones are turned off or in silent mode.
    - Maintain an attitude of optimism, stay positive and focused on the employee.

2. Be specific with comments.

   - Thank the employee for setting aside the time for the performance evaluation.
   - Start with strong attributes of the employee's performance and give credit where credit is due.
   - Discuss employee's performance and performance deficiencies in a factual and non-critical manner.
   - Discuss how the employee can improve in the areas that need improvement.
   - Focus on the goals and mission of the organization and how the employee's contributions fit within the overall goals and mission.

3. Listen to the employee.

   - Provide opportunity for the employee to speak freely, candidly, openly.
   - Show empathy to the employee's challenges.
   - Allow the employee to express his or her emotions, challenges, frustration.
   - Acknowledge the employee's challenges, frustration.
   - Avoid appearing judgmental or making judgmental statements.
   - Discuss with the employee an action plan on how to improve his or her performance.

4. Follow up afterwards.

   - Discuss with the employee a follow up plan on how to improve the employee's performance.
   - Discuss and set specific goals and objectives.
   - Arrange a future follow up date, if appropriate.
   - Thank the employee again for participating in the performance evaluation.
   - Have the employee sign the evaluation.

III. EMPLOYEE DISCIPLINE

Disciplining an employee effectively can reduce the potential for an employment liability claim if administered consistently with the applicable collective bargaining agreement, handbook and/or personnel policies. When administering employee discipline, the supervisor focuses on the employee's actual job performance, work expectations, and impact the employee's conduct has to the organization. Discipline can take many forms, and the severity of the discipline should

be proportionate to the misconduct or performance deficiency. Prior to issuing any discipline, the supervisor should consult with Human Resources to seek to confirm that the discipline comports with the employer's guidelines.

The following forms of progressive discipline are stated in order of least to greatest:[4]

1. Oral counseling
2. Verbal counseling
3. Documented verbal counseling
4. Written counseling/reprimand
5. Suspension
6. Demotion
7. Termination

In deciding the level of appropriate discipline, the following guidelines should be considered:

1. Determine whether the performance deficiencies are a result of a lack of training.
2. Assess whether the anticipated discipline is comparable to the discipline meted out to other employees similarly situated, based on the totality of the employee's work history and other employees that have engaged in similar conduct.
3 Review the collective bargaining agreement, handbook and/or personnel policies to determine whether a violation of a provision has occurred.
4 Investigate to determine whether the employee engaged in the conduct warranting the discipline.
5 Check whether there is sufficient documentation to support discipline of a suspension or greater.
6. Discuss the anticipated discipline with Human Resources or counsel beforehand.
7. Before administering discipline, review the employee's personnel file and assess whether there is any prior discipline of a similar matter. If so, consider whether the anticipated discipline will rectify the performance.
8. When meeting with the employee to discuss the anticipated discipline, focus on the behavior, not the employee.
9. Advise the employee of the specific policy, collective bargaining agreement, handbook provision and/or personnel policy(ies) that was/were violated and the

[4] A Performance Improvement Plan may be issued in conjunction with any of the above.

conduct of the employee. Discuss how the conduct negatively affects the work environment.

10. Advise the employee of the employer's expectations and what is required to improve performance. Advise the employee that any further repeat violations may result in additional discipline, up to and including termination.

11. Document the meeting and place in the employee's personnel file. If the discipline was based on a performance issue, the supervisor should follow up with the employee and offer training, guidance, or assistance to help the employee improve. Advise the employee that any further repeat violations may result in additional discipline, up to and including termination.

When efforts to correct a performance problem through discipline fail, termination may be appropriate. It is critical to comply with all procedural requirements before taking any action to terminate an employee. A mistake on procedural grounds can be costly and could void the termination.

Exhibit 10 contains some practical tips for those who are brand new to supervision.

CONCLUSION

Employment laws are vast and complex. These guidelines only serve as an introduction to this complicated landscape. As with any legal situation, please consult with your legal counsel for guidance to your specific situation.

Exhibit 1– Federal Laws – Recruitment, Hiring, Discipline, and Terminations

I. TITLE VII – CIVIL RIGHTS OF 1964 AND CIVIL RIGHTS ACT OF 1991

Title VII prohibits discrimination in recruitment, hiring, discipline, and termination based on certain protected categories:

- Race/Color
- National Origin
- Gender (including same sex harassment)
- Religion

Title VII makes it illegal to discriminate against someone based on the protected categories stated above. This law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. This law applies when making decisions with respect to the recruitment and hiring of applicants, and the disciplining and termination of employees.

II. THE PREGNANCY DISCRIMINATION ACT

This law amended Title VII to make it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. This law also makes it illegal to retaliate against the person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

III. THE EQUAL PAY ACT OF 1963

This law makes it illegal to pay different wages to men and women if they perform equal work in the same workplace. The law also makes it illegal to retaliate against the person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

IV. AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 (ADEA)

Age discrimination involves treating someone less favorably because of his/her age. The ADEA forbids discrimination against people who are age 40 or older, but it does not protect workers under the age of 40. The ADEA forbids discrimination when it comes to any aspect of

employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, and any other term or condition of employment. It also makes it unlawful to harass a person because of his/her age. Examples of age discrimination/harassment can include:

- Offensive remarks about a person's age.
- Giving an older worker less desirable work assignments due to his/her age.
- Denying fringe benefits and perks due to the person's age.

V. THE AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

This law makes it illegal to discriminate against a person with a disability and requires employers to reasonably accommodate the known physical or mental limitations of a qualified individual with the disability, unless doing so would impose an undue hardship on the operations of the employer. The law also makes it illegal to retaliate against the person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Disability discrimination occurs when an employer treats a qualified individual with a disability unfavorably because of that disability or because the employee is believed to have a physical or mental impairment. The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, and any other term or condition of employment.

The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability unless it would cause an undue hardship. A reasonable accommodation is any change in the work environment to help the person with the disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment. For example, it could mean making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hearing impaired.

VI. THE GENETIC INFORMATION NON-DISCRIMINATION ACT OF 2008 (GINA)

This law makes it illegal to discriminate against employees or applicants because of genetic information. Genetic information includes an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members. The law also makes it illegal to retaliate against the person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Exhibit 2 - Prohibited Employment Practices

The federal laws previously described prohibit certain types of employment practices that relate to the protected category of individuals relating to race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. The following information provides an overview of prohibited activity associated with common employment practices:

I. JOB ADVERTISEMENTS

It would be illegal for an employer to publish a job advertisement that shows a preference or discourages someone from applying for a job because of his/her race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, genetic information or other protected categories under federal, state and local laws. For example, a job advertisement that only sought "females" or "recent college graduates" because this would discourage men and people over 40 from applying for those positions.

II. RECRUITMENT

It would be illegal for an employer to recruit new employees in a way that discriminates against them because of their race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, genetic information, or other protected category under federal, state and local laws. For example, a recruitment plan based solely on word of mouth by a mostly Asian workforce may violate the law if the result is almost all new hires are Asian.

III. APPLICATION AND HIRING

It would be illegal for an employer to discriminate against a job applicant, and base hiring decisions, because of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, genetic information, or other protected categories under federal, state and local laws. If a job applicant with a disability needs an accommodation to apply for a job, the employer is required to provide the accommodation unless it would cause an undue hardship.

IV. JOB ASSIGNMENTS AND PROMOTIONS

It would be illegal for an employer to make decisions about job assignments and promotions based on an employee's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, genetic information or other protected categories under federal, state and local laws. For example, an employer may not give preference to employees of a specific race while making job assignments and may not segregate employees based on any of these protected categories. Along similar lines, an employer may not make promotional decisions based on stereotypes and assumptions about a person's race, color, religion, sex

(including pregnancy), national origin, age (40 or older), disability, genetic information or other protected categories under federal, state and local laws.

V. PAY AND BENEFITS

It would be illegal for an employer to discriminate against an employee in the payment of wages or employee benefits based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, genetic information or other protected categories under federal, state, and local laws. Employee benefits include sick and vacation leave, insurance, access to overtime, and retirement programs. For example, an employer may not pay African-American workers less than Hispanic workers due to their national origin, and men and women in the same workplace must be given equal pay for equal work.

VI. DISCIPLINE AND DISCHARGE

It would be illegal for an employer to consider a person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, genetic information or other protected categories under federal, state, and local laws when making employment related decisions about administering discipline or discharge. For example, if two employees commit a similar offense, an employer may not discipline them differently because of these protected categories. Along similar lines, when deciding on layoffs, an employer may not choose the older worker simply due to the worker's age.

VII. HARASSMENT

It will be illegal to harass an employee because of the employee's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, genetic information or other protected categories under federal, state, and local laws. It would also be illegal to harass somebody because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Harassment can take many forms in the workplace. Typical examples include slurs, graffiti, offensive or derogatory comments, or other types of verbal or physical conduct. Sexual harassment can also include unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature. While the law does not prohibit horseplay, offhanded comments, even if isolated, can become illegal if it is so frequent or severe that it creates a hostile or offensive work environment.

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, a subordinate, or someone who is not an employee of the employer, such as a student, parent, or vendor.

Exhibit 3 – Acceptable and Unacceptable Interview Questions

TOPIC	ACCEPTABLE	UNACCEPTABLE
Employee Name	"Have you ever used another name?"	"What is your maiden name?" "Is it Miss or Mrs.?" "What is the origin of your name?" "What does your name mean in your native language?"
Age	"If you are hired, can you show proof of your age?" "Are you over 18 years of age?" "If you are under 18, can you, after employment, provide a work permit?"	"What is your date of birth?" "When were you born?" "How old are you?" Any questions that imply a preference for younger persons or applicants under the age of 40.
Education	"What subjects did you enjoy in school?" "What did you select as your major and why?" "Did your education help prepare you for this position and if so, how?" "Where did you attend college or graduate school?"	Questions regarding dates of attendance or completion of elementary or high school. "Do you still owe any student loans?"
National Origin, Birthplace and Citizenship	"Are you authorized to work in the United States? If hired, you will be required to submit verification of your legal right to work in the U.S." (It is important that all applicants are asked this question, not merely those who appear to be from a foreign origin.) "What languages do you read, speak or write?" (Provided that a language other than English is required for the position the applicant seeks.) "Are you prevented from being employed in the United States because of your Visa or immigration status?"	"Can you produce naturalization or alien registration information or documents?" (Impermissible prior to an employment offer.) "Where were you born?" (Any questions regarding the birthplace of the applicant's spouse, parents or other relatives should not be asked.) Any questions concerning nationality, lineage, ancestry, national origin, descent, or parentage of the applicant or his or her parents or spouse. "What is your native language?"

TOPIC	ACCEPTABLE	UNACCEPTABLE
		"How did you acquire the ability to read, write or speak a foreign language?"
Sex, Sexual Orientation, Family and Marital Status	The name and address of a parent or guardian if the applicant is a minor. The name and address of a person to be notified in the event of an emergency. Questions regarding having any relatives employed with the employer.	Any questions that indicate or refer to the applicant's sex, gender identity or proof of gender. Questions that indicate the applicant's marital status, domestic partnership status, name of the applicant's spouse or domestic partner or what the spouse or domestic partner does for a living or his or her salary. Questions regarding the number and ages of the applicant's children or dependents or questions regarding childcare. Questions regarding pregnancy, childbearing, plans for becoming pregnant or birth control. Questions regarding the spouse, domestic partner, relatives or children of the applicant. Questions regarding the applicant's sexual orientation.
Race and Color		Questions regarding the applicant's race or color. Questions regarding the applicant's complexion or color of skin, hair and eyes. Asking the applicant to attach a photograph to the application.
Physical or Mental Condition or Disability, Genetic Information	"Can you perform the essential functions of the job for which you are applying, with or without reasonable accommodation?" (Provide the applicant with a copy of the job description.) "Please describe or demonstrate how you would perform the essential functions of the job for which you are applying?" "Can you meet the attendance requirements of the job?"	Questions regarding the applicant's general medical condition, state of health or illness, or amount of sick time or medical leave taken at applicant's prior job. Questions about the existence, nature or severity of a disability. Questions about the receipt of workers' compensation or filing of claims.

TOPIC	ACCEPTABLE	UNACCEPTABLE
	Questions regarding the current or recent use of illegal drugs. An employment offer contingent on the applicant's passing a job-related physical examination.	Questions regarding the receipt of disability benefits or filing of claims. "Do you have any physical handicaps or disabilities?" "Do you have AIDS/HIV?" "What prescription drugs are you currently taking?" Questions regarding past addictions. Questions about an applicant's alcohol use or participation in an alcohol rehabilitation program. Questions regarding family medical history or requests to submit to genetic tests.
Religion	A statement of the days, hours, or shifts to be worked in the position sought. "Are you available to work weekends?" (Assuming the job so requires.)	Any questions regarding the applicant's religion, church or place of worship. "What religious days do you observe?" "Does your religion prevent you from working weekends or holidays?"
Physical Description	A statement that a photograph may be required after employment.	Questions about applicant's height or weight. Requiring applicant to attach a photograph to application.
Military Service	"Have you served in the U.S. Military?" Questions regarding relevant skills acquired during the applicant's U.S. military service that are related to the job for which the applicant is applying.	"What type of discharge did you receive from the U.S. military service?" "Can you provide discharge papers?" Questions regarding service in a foreign military service. "Do you have any obligations to the military for training or reserve status?"
Organizations and Activities	"Please list job related organizations, clubs, professional societies, or other associations to which you belong, omitting those that indicate race, religion, national origin, sex or age."	"List all organizations, clubs, societies and lodges to which you belong?"

TOPIC	ACCEPTABLE	UNACCEPTABLE
	"Do you enjoy being active in community affairs?"	
References	"By whom were you referred to a position?" The names of persons willing to provide professional or character references for the applicant.	Questions of an applicant's former employers or acquaintances that elicit information about the applicant's race, religion, national origin, physical or mental disability or condition, marital or domestic partner status, age, sex, or sexual orientation.
Miscellaneous		Questions regarding past or current membership in a Union. Questions concerning the applicant's feelings about being represented by a Union. Questions about the applicant's previous filing of charges or complaints with federal or state equal employment agencies or other labor law enforcement agencies.

Exhibit 4 – Service Animals – Frequently Asked Questions

1. Why does the ADA definition of service animal list only dogs and miniature horses?

Effective March 15, 2011, the Department of Justice limited the definition of a service animal to dogs and miniature horses under Titles II and III of the ADA. "Other species of animals, whether wild or domestic, trained or untrained, are not service animals" for the purposes of the ADA. *Reference: 28 C.F.R. §§ 35.104 & 35.136.*

2. If the service animal has an accident, who is responsible for cleaning up?

The handler is generally responsible for the care and supervision of his/her service animal while on public property, including the cleanup and removal of animal excrement. However, if the handler is unable to address the issue, due to his/her disability or a medical emergency, then the public entity/employer may be required to assist with cleaning up as an accommodation to the individual. If accidents occur frequently, a service animal that is not housebroken may be excluded. *References: 28 C.F.R. § 35.136(e); Alboniga v. Sch. Bd. of Broward Cty. Fla., 87 F. Supp. 3d 1319, 1342-44 (S.D. Fla. 2015); 28 C.F.R. § 35.136(b)(2).*

3. If another person is allergic to the service animal, can the service animal be excluded from the property?

No, allergies and fear of dogs are not valid reasons for denying access or refusing service to individuals with service animals. When a person with allergies, and a person who uses a service animal, must spend time in the same room or facility (e.g., classroom or cafeteria), both should be accommodated by assigning them, if possible, to different locations within the room, or different rooms within the facility, or even different times to use the facilities. Be careful not to place either individual in a remote area or in isolation. *Reference: DOJ, "Service Animals," https://www.ada.gov/service_animals_2010.htm.*

4. Should the school district/employer notify other students/parents/employees that a service animal will be on campus?

It is always prudent to notify all members in the school community/workplace about the presence of a service animal to determine whether a person has any known allergies, asthma, or other health condition that may be aggravated by the animal's presence. If a parent/guardian/employee notifies the school/employer that his/her own/child's health may be aggravated by the animal's presence, the school/employer should respond appropriately to protect the student/employee from exposure to the service animal.

5. What if the service animal is for emotional support or comfort?

Although a school district/employer does not have to accommodate an animal that provides only emotional support or comfort, a district/employer should consider convening in the IEP or 504 process for students, or interactive process for employees, to determine whether an accommodation is necessary. Through either process, if use of a service or comfort animal is recommended, then the district/employer should comply.

Exhibit 5 – Service Animals – Allowable Questions

I. THE AMERICANS WITH DISABILITIES ACT (TITLES II and III)

Purpose: To eliminate discrimination in public places and services by imposing an obligation on entities to accommodate service or assistance animals for members of the public.

Service Animal Definition: Any guide dog, signal dog, or miniature horse, trained to provide assistance to an individual with a disability. All other animals do not qualify as a service animal under the ADA.

Allowable Questions:

A. When[5] it is NOT obvious what service the animal provides:

- Is the service animal required because of a disability?
- What work or task has the animal been trained to perform?

B. Supplemental questions to determine whether the entity must accommodate the animal:

- Does the animal pose a direct threat to the health or safety of others?
- Can the owner effectively control the animal?
- Is the animal housebroken?
- Is the service animal's rabies vaccination current?

C. Supplemental questions for a miniature horse:

- Can the facility accommodate the miniature horse's type, size, and weight?
- Will the miniature horse's presence compromise legitimate safety requirements necessary for the safe operation of the facility?

D. OFF LIMITS:

- Nature or extent of individual's disability
- Documentation of service animal training, licensing, or certification
- Medical documentation for disability
- Demonstration of the service animal's ability to perform task

[5] When it is **readily apparent** that the service animal is performing a task (e.g. guide dog for a person who is blind), a business may NOT ask these two questions.

II. FAIR EMPLOYMENT & HOUSING ACT

Purpose: To eliminate discrimination in the workplace by requiring employers engage in an "interactive process" to accommodate an employee's disability.

Assistance Animal Definition: An animal that works, provides assistance, or performs tasks for the benefit of an individual with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of an individual's disability.

Minimum Standards: An employer may set MINIMUM STANDARDS for assistance animals. The minimum standards may include.

- Requesting medical documentation from a health care provider stating the nature of the disability and an explanation regarding the need for the assistive animal.
- Challenging whether animal meets minimum standards.
- Requiring an annual recertification of employee's need for assistance animal.

Allowable Questions:

- Is the assistance animal:
    - housebroken?
    - free from offensive odors?
    - trained to provide assistance for the employee's disability?
    - a danger to the health and safety of the individual with a disability or others in the workplace?
- Is the requested accommodation reasonable?
- Is the request effective? Will this requested accommodation effectively allow the employee to perform the essential functions of his or her job?
- Does the request impose an undue hardship? This analysis requires that employers weigh issues such as whether the animal will be disruptive to the workplace.

Exhibit 6 - Reasonable Accommodation and Interactive Process Checklist

The basis for this process is the EEOC Policy on Reasonable Accommodation

STEP 1: Manager or Supervisor informs HR within 2 business days of their knowledge that they have becomes aware of a possible need for accommodation or disability issue because:

- ❑ the employee requests an accommodation to perform the essential functions of the job or to gain access to the workplace.
- ❑ an applicant with a disability needs an accommodation to have an equal opportunity to compete for a job.
- ❑ an employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g., details, trainings, office-sponsored events).
- ❑ the manager/supervisor becomes aware of the need for an accommodation through observation or through a third party.
- ❑ the manager/supervisor becomes aware of the possible need for an accommodation because the employee with a disability has exhausted workers' compensation leave, CFRA/FMLA leave, or other federal, state or employer covered leave, but the employee or his or her health care provider indicates that further accommodation is still necessary.

STEP 2: HR initiates interactive process with employee in a timely manner.

- ❑ HR confidentially consults with employee to identify job-related limitations, if any (do not discuss where others may overhear the conversation).
- ❑ HR asks employee for reasonable medical documentation of functional limitations from medical provider, unless limitations are obvious or already known (Request completion of Form if needed). *NOTE: Under no circumstance should the District ask the employee to disclose the nature of the disability or information on the underlying cause such as unrelated documentation, including, in most circumstances, an employee's complete medical records, because those records may contain information unrelated to the need for accommodation.* The supervisor should NEVER speak with the employee's health care provider unless

the employee provides written permission to the employer to do so.

- ❑ If information provided by the employee is unclear, HR identifies the issues that need clarification, specifies what further information is needed, and allows the employee a reasonable time to provide the supplemental information.

STEP 3: HR works with supervisor to analyze employee's job to identify essential functions of the job.

- ❑ HR reviews the job description with the supervisor to determine which functions are essential to the job and which are non-essential.
- ❑ Take notes to confirm that agreement.

STEP 4: HR meets with supervisor and employee to brainstorm options

- ❑ Using the information provided by the employee's medical provider and the annotated job description, HR meets with both the supervisor and the employee to identify and research possible reasonable accommodations and assess the effectiveness each would have in enabling the employee to perform the essential functions of the position or to enjoy equivalent benefits and privileges of employment compared to non-disabled employees.
- ❑ If reassignment to an alternate position is considered as a possible accommodation, HR may ask the employee to provide information about his or her educational qualifications and work experience that may help HR find a suitable alternative position for the employee.

STEP 5: HR meets with supervisor to select feasible option

- ❑ HR and supervisor should consider the preference of the employee, but the District has the right to implement a reasonable accommodation that is effective in allowing the employee to perform the essential functions of the position.
- ❑ While there are some things that are not considered reasonable accommodations (e.g., removal of an essential job function or personal use items such as a hearing aid that is needed on and off the job), reasonable accommodations can cover most things that enable an individual to apply for a job, perform a job, or have equal access to the workplace and employee benefits such as kitchens, parking lots, and office events.
- ❑ Common types of accommodations include:
    - modifying work schedules or supervisory methods
    - granting breaks or providing leave
    - altering how or when job duties are performed

- removing and/or substituting a marginal function
- moving to different office space
- making changes in workplace policies
- providing assistive technology, including information technology and communications equipment or specially designed furniture
- providing staff assistant to enable employees to perform their job functions, where the accommodation cannot be provided by current staff (removing an architectural barrier, including reconfiguring the work space)
- providing accessible parking
- providing materials in alternative formats (e.g., Braille, large print)
- providing a reassignment to another job

STEP 6: Supervisor and HR meet with employee to discuss implementation steps of selected accommodation

- ❑ HR and Supervisor describe the selected Accommodation to the employee, process and specific timeframe for implementation.

STEP 7: HR completes process and initiates annual review if needed

- ❑ HR documents the reasonable accommodation process using the Interactive Process Record. HR maintains medical information and/or records obtained during the interactive process on separate forms and in a confidential medical file separate from the employee's personnel file.
- ❑ HR checks in with employee and supervisor after implementation to discuss how the accommodation is working for the employee.
- ❑ For reasonable accommodations extending beyond one year, HR may ask, on a yearly basis, for medical documents substantiating the need for continued reasonable accommodations.

8/16- THRM

Exhibit 7 - Reasonable Accommodation and Interactive Process Record

Employee/Applicant Needing Accommodation		Supervisor/Hiring Manager	
Name	**Phone Number**	**Name**	**Phone Number**

How and when did the District become aware of the need for a reasonable accommodation?

What accommodation was requested by the employee or applicant?

What essential duties require accommodation?

Health care provider certification attached?

☐ Yes, additional information was needed

☐ No, the employee's disability and need for accommodation are obvious

Dates and outcome of meetings with employee?

Accommodation(s) offered to employee?

☐ Yes, accommodation was accepted ☐ Yes, but accommodation was rejected/declined

☐ Yes, but accommodation is different than the accommodation requested, *see attached explanation of how the granted accommodation differs from the requested and why the granted accommodation was chosen.*

☐ No, the disability poses a direct threat ☐ No, employee refused to provide sufficient information

☐ No, accommodation would require removal of essential function

☐ No, *see attached explanation.*

Form was completed and prepared by:

Name/Title/Signature
Date

Follow-up with the employee after trial period
(Is the accommodation sufficiently effective so that the employee may perform his/her essential functions? If not, what are the next steps?) *see attached explanation.*

Name/Title/Signature of Person Checking-in	**Date of Check-in**

Exhibit 8 - Medical Inquiry Form in Response to a Request for ADA Accommodation

Friday, February 21, 2020

Dear Medical Professional,

Your patient has indicated that he/she needs an accommodation under the Americans with Disabilities Act. Please complete this form to assist us as we engage in the interactive process to assist the employee in performing the essential functions of the position. Please answer all questions highlighted in blue.

Thank you!

District Contact Name
Title

(xxx) xxx-xxxx

A. Questions to help *determine* whether an employee has a disability.

For reasonable accommodation under the ADA, an employee has a disability if he or she has an impairment that substantially limits one or more major life activities or a record of such an impairment. The questions below may help determine whether an employee has a disability.

Does the employee have a physical or mental impairment?	**Yes** ☐	**No** ☐

If yes, answer the following questions based on what limitations the employee has when his or her condition is in an active state and what limitations the employee would have if no mitigating measures were used. Mitigating measures include things such as medication, medical supplies, equipment, hearing aids, mobility devices, the use of assistive technology, reasonable accommodations or auxiliary aids or services, prosthetics, learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, and physical therapy. Mitigating measures do not include ordinary eyeglasses or contact lenses.

Does the impairment limit a major life activity as compared to most people in the general population?	**Yes** ☐	**No** ☐

Note: *Does not need to significantly or severely restrict to meet this standard. It may be useful in appropriate cases to consider the condition under which the individual performs the major life activity; the manner in which the individual performs the major life activity; and/or the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity.*

Describe the employee's limitations when the impairment is active.

What major life activity(s) is/are affected?

❑ Bending	❑ Hearing	❑ Reaching	☐ Speaking
❑ Breathing	❑ Interacting with Others	❑ Reading	☐ Standing
❑ Caring for Self	❑ Learning	❑ Seeing	☐ Thinking
❑ Concentrating	❑ Lifting	❑ Sitting	☐ Walking
❑ Eating	❑ Performing Manual Tasks	❑ Sleeping	☐ Working
❑ Other: (describe)			

B. Questions to help determine whether an accommodation is needed.

An employee entitled to an accommodation only when the accommodation is needed because of a disability. The questions below may help determine whether the requested accommodation is needed because of the disability. **A job description is attached.**

- What limitation(s) is *interfering* with job performance or accessing a benefit of employment?

- What job function(s) or benefits of employment is the employee having trouble performing or accessing because of the limitation(s)?

- How does the employee's limitation(s) interfere with his/her ability to perform the job function(s) or access a benefit of employment?

C. Questions to help determine effective accommodation options.

If an employee has a disability and needs an accommodation because of the disability, the employer must provide a reasonable accommodation, unless the accommodation poses an undue hardship. The following questions may help determine effective accommodations:

- Do you have any *suggestions* regarding possible accommodations to improve job performance? If so, what are they?

- How would your suggestions improve the employee's job performance?

B. **Other questions or comments. *Note: DO NOT** describe the diagnosis or your patient's medical condition or disclose the specific illness.

Medical Professional's Signature ***Date***

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Exhibit 9 – Policy on Sexual and Other Unlawful Harassment

I. INTRODUCTION

The District is committed to maintaining a learning and working environment that is free from sexual and other unlawful harassment.

II. PURPOSE OF POLICY

The purpose of this policy is to (1) familiarize all employees with the definition of sexual and other unlawful harassment and the forms it can take; (2) make clear that sexual and other unlawful harassment is prohibited and will be punished; (3) inform victims of the course of action they should take to report sexual and other unlawful harassment; and (4) clarify the rights of those accused of harassment.

III. SCOPE OF POLICY

This policy applies to all employees, volunteers, interns and visitors. Persons who are not employees but perform work at the District for its benefit (such as contractors and temporary employees) are also protected and required to abide by this policy.

IV. DEFINITION OF HARASSMENT

A. Harassment is defined as any conduct, on or off campus, directed toward an individual based on sex, sexual orientation, sexual identity, race, religion, color, national origin, pregnancy, physical or mental disability, age (over 40), or any other basis protected by federal, state or local law that is sufficiently severe or pervasive to alter or interfere with an individual's work, or that creates an intimidating, hostile or offensive, educational, work or living environment.

B. Whether physical, non-verbal, or verbal conduct constitutes harassment in violation of this policy will depend upon all the circumstances involved, the context in which the conduct occurred, and the frequency, severity, and pattern of the conduct. Conduct does not constitute harassment in violation of this policy unless it occurs based on a legally protected characteristic or trait and is sufficiently severe or pervasive to alter or interfere with an individual's work, or that creates an intimidating, hostile or offensive work environment. The fact that someone did not intend to harass an individual is no defense to a complaint of harassment. Regardless of intent, it is the effect and characteristics of the behavior that determine whether the conduct constitutes harassment. Conduct alleged to constitute harassment

will be evaluated according to the objective standard of a reasonable person. Thus, conduct that is objectionable to some, but that is not severe or pervasive enough to create an objectively intimidating, hostile or offensive environment, is beyond the purview of this policy.

C. Because sexual harassment has been more thoroughly defined in the law than harassment based upon other protected categories, the following definition of sexual harassment is included in this policy.

1. Sexual harassment includes any unwelcome sexual advances, requests for sexual favors, or other unwelcome written, verbal or physical conduct of a sexual nature when:

(a) Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status or progress; and/or

(b) Submission to or rejection of the conduct by the individual is used as the basis of employment or academic decisions affecting the individual; and/or

(c) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, programs, or activities available or through the District; and/or

(d) The conduct has the purpose or effect of having a negative impact upon the individual's work performance or of creating an intimidating, hostile, or offensive work environment.

2. Sexual harassment may occur between members of the same or opposite sex. Further, harassment based on a person's sex is not limited to instances involving sexual behavior. That is, harassment based on sex may occur without sexual advances or sexual overtones when conduct is directed at individuals because of their sex. This is often referred to as sex or gender harassment and violates this policy.

V. FORMS OF HARASSMENT

Unlawful harassment can take many forms and will vary with the circumstances. Examples of harassment prohibited by this policy may include, but are not limited to: (1) verbal conduct such as epithets, derogatory jokes or comments, or slurs; (2) unwanted advances and/or propositions of a sexual nature including relationships which began as consensual but later ceased to be mutual wherein one party then harasses the other; (3) visual displays such as derogatory and/or sexually-oriented posters, photography, cartoons, or drawings not protected by policies on academic freedom and freedom of expression; (4) suggesting or implying that submission to or rejection of sexual advances will affect decisions

regarding such matters as an individual's work assignment or status, salary; (5) physical conduct including unnecessary and unwanted touching, intentionally blocking normal movement, or assault including sexual assault and rape.

VI. PROCEDURES

A. Informal Resolution Procedures

1. Individuals who believe they have been or may be the victim of sexual or other unlawful harassment (hereinafter "complainant") may choose to avail themselves of informal resolution procedures. Use of these informal procedures is not a prerequisite to the filing of a complaint under the formal procedures described below.

2. Requests for assistance under these informal procedures may be oral or written and should usually be made as soon as possible after the most recent alleged act of sexual or other unlawful harassment. Such requests should be directed to Human Resources.

3. Requests for assistance under these informal procedures will be dealt with, to the greatest extent practical and possible, on a confidential basis and disclosure of their existence will be limited to those who, in the interests of fairness and problem resolution, have an immediate need to know or as legally required. Because the District has an obligation to address sexual and other forms of unlawful harassment, it cannot guarantee that the identity of a complainant will be treated as completely confidential where it would conflict with its obligations to provide a safe or nondiscriminatory work environment.

4. Upon receipt of a request for assistance under these informal procedures, the individual requesting assistance will be counseled on options for resolving the problem and about sources of further assistance.

5. Requests for assistance may have several outcomes. The person who makes such a request may only want to discuss the matter to clarify whether sexual or other unlawful harassment may be occurring and to determine her or his options, including the pursuit of more formal action. In such situations, the person to whom the request is brought may be asked to act to see whether an informal resolution can be reached. If resolution is reached by this process, no further actions will be taken, and the matter considered closed. If the matter cannot be resolved informally, the person to whom the request was brought will assist the complainant in filing a formal complaint.

B. Formal Resolution Procedures

1. Individuals who believe they have been the victim of sexual or other unlawful harassment may file a formal complaint. Such a complaint will result in an investigation, the purpose of which shall be to determine whether a violation of this policy has occurred. An investigation may also be initiated upon the request of the District.

2. Formal complaints under this procedure should be directed to Human Resources. The complaint must be in writing and should include details concerning the conduct that gives rise to the complaint, the name of the person(s) against whom the complaint is made, and the names of witnesses.

3. The results of the investigation shall be set forth in a written report consisting of findings, conclusions and, if applicable, remedies to be provided and/or sanctions to be imposed. The complainant and the person(s) against whom the complaint is made shall be promptly notified of the outcome of the investigation and of the actions, if any, taken in connection with the complaint.

C. Respect for the Rights of the Complainant and Accused

The District recognizes the sensitive nature of harassment and harassment complaints both for the complainant and the person(s) against whom the complaint is made. All parties to the complaint should treat the matter under investigation with discretion and respect for the reputation of all parties involved.

VII. REMEDIES AND SANCTIONS

A. Remedies

Remedies may include but are not limited to offering to remove the complainant from the hostile environment (or vice versa); changes in schedules or work hours.

B. Sanctions

Persons who violate this policy will be disciplined. The form of discipline will depend on the nature of the offense. Such discipline shall be imposed pursuant to and in accordance with all applicable District rules, policies and procedures. Sanctions may include but are not limited to verbal warnings; written warnings; loss of privileges, probation; suspension; or termination of employment.

VIII. RETALIATION PROHIBITED

Retaliation against any individual for seeking assistance or bringing a harassment complaint through the processes described in this policy is strictly prohibited.

Similarly, any person who participates or cooperates in any manner in an investigation or any other aspect of the process described herein shall not be retaliated against. Retaliation is itself a violation of this policy and is a serious separate offense.

IX. FALSE ACCUSATIONS

Accusations of sexual and other unlawful harassment may have injurious, far-reaching effects on the careers and lives of accused individuals. Allegations of harassment must be made in good faith and not out of malice. Knowingly making a false allegation of harassment, whether under the informal or formal procedures of this policy, is itself a violation of this policy and a basis for disciplinary action up to and including termination of employment. Failure to prove a claim of harassment is not the equivalent of a knowingly false accusation.

X. RESPONSIBILITY

All supervisors and managers are responsible for assuring that their conduct does not violate this policy. If managers and supervisors know sexual or other unlawful harassment is occurring, receive a complaint of sexual or other unlawful harassment, or obtain other information indicating possible sexual or other unlawful harassment, they must take immediate steps to ensure that the matter is addressed. Failure to do so may result in legal liability. Managers and supervisors have the further responsibility of preventing and eliminating sexual or other unlawful harassment within the areas they supervise.

Exhibit 10 – Tips for New Supervisors

Congratulations on being promoted to supervisor! To assist with transitioning to your new role, consider the following practice tips:

Reframe Your Perspective

Your role as a supervisor will require you to think differently as to how you see your superiors, peers, and subordinates with whom you previously worked side-by-side. To succeed as a newly minted supervisor, it is important you establish the right perspective about your position.

You are now responsible for making sure your department's objectives are met and consistent with your employer's overall goals and mission. You are accountable for the results and performance of those you supervise. Furthermore, you now have the authority to direct and assess the work of employees and discipline them if necessary.

As a supervisor, you are responsible for establishing goals for your department, including objective measures in determining its success. Those you supervise will look to you for direction and guidance towards the accomplishment of these goals. You are now responsible for making sure your employees are working towards these objectives and standards.

As such, become educated about your employer's goals and mission and learn time management. Your employees, peers, and supervisors will make demands on your time. You will have to manage your time to meet the needs of all that look to you for answers and guidance. Learning to juggle the interests of all stakeholders is an important skill and key to succeed as a supervisor.

Know What is Expected of You

Now that you are managing a staff of your own, it is important to know what your employer expects from you. Knowing what is expected of you will help you determine where to devote your time and if you have the necessary skills to accomplish the goals set for you.

You may want to have a heart-to-heart discussion with your supervisor to understand the expectations of your department and from you as an individual, for example,

- Does the employer expect you to spend a part of your workday working side-by-side with your employees?
- Are you expected to dedicate your time managing and making sure your employees are doing a good job?
- Does your employer expect you to help with project management and to communicate with your supervisors on a regular basis?

Set Clear Expectations

As a supervisor, you are expected to produce results for your department. In doing so, it is important that you establish clear expectations of your employees.

Establishing objective expectations gives employees a clear direction. This will result in an objective measure of accountability and will make it easier to conduct performance evaluations.

Endeavor to establish expectations that are measurable and objective, for example,

- Does your handbook and/or personnel policies have a set standard regarding punctuality and attendance? If your policies set a specific standard, you should be consistent in applying the standard. If your policies are silent, you should set the expectations so your employees know what time they need to be ready for work.
- Do your employees know how you determine the quality and quantity of good work? If not, set expectations for your employees.

Know Your Employer's Handbook and/or Personnel Policies

It is important to know company policies inside and out. If statements are made that contradict the handbook and/or personnel policies, this may cause confusion. In addition, it could lead to potential legal liability if verbal statements contradict specific provisions of the handbook and/or personnel policies.

Know How to Communicate

Being an effective supervisor requires good communication skills. Knowing when and how to communicate is important because you provide direction. Consider whether you want to communicate your ideas in writing through a formal department memo or personally. If the communication is to an entire group, then a meeting with an accompanying memo may be appropriate. If you are addressing an individual, a face-to-face communication with a follow-up memo may be appropriate. Communicate directly whenever you can. Do not wait for rumors to circulate before informing employees of your expectations.

It is also important that you consider the timing of your communication. Communication with employees should be at an appropriate time when you have undivided attention and minimal distractions. Providing advance notice of a meeting and subject matter may be advisable so everyone may come prepared with questions.

Employees want closure. If you do not have an answer to a question, follow up with the employee once you have the information. Even if the answer is not what they want to hear, they still want confirmation you took their questions seriously and provided a response.

Be a Good Listener

Establishing yourself as a good listener will help engender the trust and respect of your employees. Employees wish to be heard and want to know their supervisor knows how they feel about their jobs and workplace in general.

As such, being a good listener begins with body language. You want to send a message through your body language that you are open to what the employee is saying, and you will consider employees' opinions. Be sensitive to non-verbal communication. Your employee is interpreting these non-verbal cues to determine if you are truly interested in what he/she has to say.

Some factors to consider:

- Are your arms crossed and folded?
- Are you distracted by cell phones and pagers?
- Do you pick up your cell phone and check emails while the employee is talking to you?
- Is a desk between you and your employee creating the impression of a barrier, or are you sitting side by side at a small desk or conference table?

Learn the Art of Effective Criticism

No one likes to hear criticism, but it is an inevitable part of a supervisor's job. As stated above, the supervisor sets the standards of expectations and performance for employees, and it is the supervisor holding employees accountable to meet those standards.

Establishing accountability requires you to inform employees of performance deficiencies. Learning the art of effective criticism will go a long way in establishing your credibility as an effective supervisor. The following tips are recommended:

- Start with positive aspects of the employee's work and reassurance these aspects are valuable to your department;
- Communicate your expectations and criticize work product, not the employee personally;
- Be specific and objective when communicating performance deficiencies;
- Restate your expectations and inform the employee of performance standards;
- Suggest ways for improvement and explore solutions with the employee.

Be prepared that the employee may be resistant to your criticism. Anticipate and prepare before the meeting how you will address resistance. Reaffirm your commitment to the set standards and schedule a follow-up meeting if necessary. Keep an open mind as to the employee's response, ideas, or suggestions. If the employee provides an explanation or suggestion, provide a timely response.

Understanding Anti-Discrimination Laws

Seek to have a basic understanding of anti-discrimination laws. Being a supervisor is a big responsibility. Determine what works for you and practice. Learning how to respond is important to maximize your employees' growth and productivity. It is recommended that new supervisors take training in the following areas:

- Introduction to Employment Law
- Sexual Harassment Prevention training
- How to Conduct Performance Evaluations
- Conducting In-House Investigations
- The Family Medical Leave Act (FMLA)/California Family Rights Act (CFRA)
- Americans with Disabilities Act (ADA)
- Understanding School Liability