

EMPLOYMENT LAWS, POLICY AND PRACTICE

Key Concepts and Issues in Legal Responsibilities For Front-Line Managers and Supervisors

While it is virtually impossible for any employer to eliminate all potential employment litigation, a number of managers and supervisors increase the risk of employment-related claims by committing mistakes that could easily have been prevented by training to avoid such legal landmines as:

- Inappropriate or Inconsistent Application of Policy
- Failure to Consult Human Resources
- Inappropriate Electronic Messages
- Unintended Violation of Law or Policy
- Failure to Maintain Confidentiality
- Neglecting the Affirmative Duty to Act
- Tolerating a Hostile Work Environment

LEGAL LANDMINES FOR MANAGERS AND SUPERVISORS

Employers throughout the United States are faced with rapid and increasing changes and developments in the area of employment law. Currently there are staggering numbers of employment-related claims being filed in state and federal courts, and with various administrative agencies. Such claims can often result in tremendous employer liability as well as substantial legal expense, causing employers to settle cases that may seem almost frivolous in order to avoid the risk and expense of employment litigation. For the manager and/or supervisor involved, such claims can be extremely upsetting, stressful, and embarrassing. For the employer, the real cost of litigation goes well beyond attorney fees and any settlements paid – the cost of lost productivity and lowered morale are debilitating.

It is virtually impossible for any employer to eliminate all potential employment litigation, but you can minimize the likelihood of these claims by eliminating common mistakes that could have easily been prevented by training for managers and supervisors.

Some reports indicate that one in five team leaders or front-line managers can expect to be named in some form of employment-related charge or litigation. At least half of this litigation could be eliminated if the above landmines were avoided.

The nine video segments show how easy it is for people with good management skills to overlook important management responsibilities. After watching each of the segments, focus on actions that the manager might have taken to avert some of these problems. Positive conduct is suggested throughout the video; however, awareness of the problem is the shortest road to avoiding the problem in the first place – stepping across the landmine.

LANDMINE # 1: Failure to Document

- What has to be in your notes or report for proper performance documentation?
- What other actions should the manager in this film have taken besides filling out an incident report?

LANDMINE # 2: Failure to Train

- What can you do / should you do when employees miss a required training session?
- How can you document that an employee has done a required training at home on his or her own time?
- Are you currently facing any problems in getting your employees to do required training?
- Have you documented that an employee had the opportunity for training but declined?

LANDMINE # 3: Failure to Keep Evidence

- What kinds of evidence are there for documenting and proving performance problems?
- What methods could you use to keep notes about performance issues that would assure the likelihood that you have them later if you should need them?
- How do you preserve copies of this evidence and how long should it be retained?

LANDMINE # 4: Grade Inflation

- What's the best way to prevent grade inflation in a performance review?
- What kinds of evidence reduce the subjectivity of an evaluation?

LANDMINE # 5: Failure to Consult Human Resources

- What would make you hesitant to call human resources about a particular performance problem you're having with an employee?
- Reflecting on the vignette in the video, when do you think human resources should have been called in, and what for?
- Should you have confidential discussions with employees that would not be shared with human resources? What problems could this create?

LANDMINE # 6: Inappropriate Electronic Messages

- Does this point surprise anyone?
- How can you make sure this doesn't trip you up?
- What concerns does this raise with respect to inappropriate use of the Internet?

LANDMINE # 7: Inconsistent Treatment

- Why is it hard to be absolutely fair and objective in the treatment of the different employees who work for you?
- How can you check yourself on this when you are doing performance appraisals or creating an incident report?

LANDMINE # 8: Inappropriate Talk About Ex-Employees

- Is there anyone with whom you can discuss a termination or other disciplinary action?
- When if you don't use the person's name? Can you discuss the termination by simply describing the situation, but omitting the person's name?

LANDMINE # 9: Uncontrolled References

- What if you write a letter of reference without using company letterhead or your title? Is it OK to write it on a personal basis and not reference the organization?
- What do you say to a faithful employee who asks for references on leaving a job – especially if he or she is leaving because of a downsizing or reorganization and you regret losing the employee?
- Are there any circumstances under which you should write a letter of reference for a terminated employee?
- Is it safer to talk on the phone, but refuse to write a letter?