MANAGEMENT BRIEF

For Managers, Supervisors, and Lead Workers

Presented by Poms & Associates Brokers LLC



YOUR LEGAL DUTIES & RESPONSIBILITIES AS A MANAGEMENT-LEVEL EMPLOYEE:



The "Doctrine of Agency," Your Affirmative Duty to Act, and Constructive Knowledge/Notice of When to Act

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In a legal context, a manager or supervisor is generally defined as a person empowered by an employer to take "tangible employment actions," such as hiring, firing, promoting, or disciplining. Their duties bridge the gap between upper management and frontline staff, primarily focusing on ensuring compliance with labor laws and maintaining a safe, productive work environment. Of note, in some states (including New Mexico), "lead" workers are also considered to be management employees in the law.

KEY LEGAL DUTIES AND RESPONSIBILITIES OF MANAGEMENT EMPLOYEES

Management employees have specific legal duties and responsibilities to protect the employees, the organization, and themselves from possible liability exposure:

- **Following and Enforcing Law, Regulations, and Other Legal Requirements:** You have a duty to consistently apply, uphold, and enforce law and regulations including laws at the federal, state, and local levels , (OSHA, ADA, FMLA, Title VI, etc.), and any third-party requirements, regulations, etc. (*e.g., licensing or certifying bodies*)
- **Following and Enforcing all Employer Policies, SOPs, Work Rules, CBAs, etcetera:** You have a duty to uphold and enforce all organizational policies, work rules, protocols, and other guidance *as they are written* – no unauthorized workarounds! If a policy isn't working for you – consult HR to see if it can be changed, or if a supplemental work rule can be issued – must be based on business necessity.
- **Preventing Discrimination & Harassment:** You must treat employees fairly, consistently, and equitably regardless of protected characteristics (race, gender, religion, etc.). Supervisors have a "duty to prevent" and must immediately address any discriminatory, harassing, or bullying behavior as soon as you become aware of or suspect it.
- **Wage and Hour Compliance:** Ensuring non-exempt employees are paid at least the minimum wage and receiving overtime pay for hours over 40 in a workweek is a critical legal responsibility.
- **Leave and Accommodations:** Supervisors must recognize and refer requests for **FMLA** (Family and Medical Leave Act) to HR and participate in the "interactive process" to provide reasonable accommodations for employees with disabilities under the **ADA**.
- **Personnel Management:** Beyond legal compliance, supervisors manage the day-to-day functions of their team, including making informed, lawful decisions regarding hiring, firing, disciplining, and promoting staff. You are also responsible for setting clear performance standards and expectations, conducting timely, constructive performance reviews, and providing both positive and constructive feedback. Other legal duties include:
  - **Address Employee Performance/Behavior/Conduct Problems in a Timely Manner**: Don't wait to address and work with employees to correct problems. Be fair to the employee as you work with the employee to correct problems, properly document what's been done, and report to HR as appropriate.
  - **Workflow Coordination:** Assigning tasks based on employee skills, setting deadlines, and monitoring progress to meet organizational goals.
  - **Conflict Resolution:** Acting as a mediator for internal disputes and handling formal employee grievances or complaints.
  - **Mentorship and Training:** Onboarding new hires and identifying professional development opportunities for existing staff to foster career growth.

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- **Workplace Safety (OSHA Compliance):** Supervisors are legally required to provide a hazard-free environment, ensure the use of Personal Protective Equipment (PPE), and conduct safety training. They must also investigate and report workplace accidents promptly, identify and communicate workplace hazards to staff, inspect work areas and equipment regularly, and ensure compliance with safety law, regulations, and policy.

THE "DOCTRINE OF AGENCY" – YOU ARE AN "AGENT" OF THE EMPLOYER

In the eyes of the law, ***you are the employer!*** As a member of management, the "**Doctrine of Agency**" under the law sees your actions or your failure to act when required (negligence) as a manager, supervisor, or lead worker as actions of the employer, or negligence of the employer to fulfill its legal duty under the law. You have personal responsibility and liability to uphold the "Duty of Care."

- You risk personal liability exposure if you engage in acts that violate law or policy – "vicarious liability"
- You risk personal liability exposure if you fail to perform and fulfill your "affirmative legal duties"

An example of "failure to act" is if a supervisor doesn't forward an employee's complaint of harassment to human resources, the employer *and the supervisor* may be held responsible.

You can also be held accountable/liable for employees' actions if you fail to take adequate steps to prevent legal violations. For example, if an employee engages in discriminatory behavior and the manager fails to address the issue, the manager may be found liable for the employee's actions.

KEY ASPECTS OF THE MANAGER'S "AFFIRMATIVE LEGAL DUTY TO ACT"

A supervisor's "**affirmative legal duty to act**" arises from their role as a proactive "**agent" of the employer** and is a legal and ethical obligation requiring them to take immediate, proactive steps to stop, prevent, and report unlawful workplace conduct, such as harassment, discrimination, or safety hazards and violations, as soon as they know or should have known about it - regardless of whether a formal complaint has been filed.

- Once a supervisor becomes aware of a workplace issue (such as harassment, discrimination, unsafe conditions, or the need for leave) through "**direct notice**," informal channels, or through "**constructive notice**" (*also known as "constructive knowledge"*)- they are legally obligated to take action to address it.
- Inaction or delays in reporting, even if unintentional, can impute liability directly to the employer. They must intervene, document incidents, and report to HR immediately to prevent further harm.

Failure to intervene, report to HR, or take corrective steps can result in personal liability or impute liability to the employer. Actionable steps by the manager or supervisor include:

- **Stop it immediately**: If you witness harassment or a safety hazard, intervene on the spot.
- **Report immediately**: Inform HR or designated officials right away, regardless of how you found out.
- **Intervene Early**: Supervisors should not wait for an official complaint; they must challenge inappropriate behavior or hazards as soon as they observe them.
- **Document !!!** Keep detailed records of the incident, conversations, and actions taken to address the issue.
- **Proactive Monitoring**: They must monitor the work environment for signs of unlawful discrimination or harassment, even if no formal complaint has been filed.

CONSTRUCTIVE NOTICE OR CONSTRUCTIVE KNOWLEDGE:



When does the employer ("agents" of the employer) receive notice of something that incurs their affirmative legal duty to act?

- **Direct (or Actual) Notice** is the explicit, documented communication of a fact (e.g., the need for an ADA accommodation, harassment complaint, safety violation) to the employer.
- **Constructive Notice (or Knowledge)** is a legal presumption that an employer should know a fact – that is, knowledge which a person or entity (1) is presumed (or duty bound) to acquire by making normal and reasonable inquiries; or (2) should have known, as a reasonable person would have, even if they have no direct or actual knowledge of it.

Having constructive notice is the threshold that must be reached for the employer ("agent") to incur the "affirmative legal duty to act." If an "agent of the employer" fails to act upon having either direct or constructive notice constitutes negligence, opening the door to liability exposure for the employer and for the individual "agent."

The threshold that must be met for you to have constructive notice or knowledge is very, very low:

Do you have *REASON TO BELIEVE* that there *MAY BE A PROBLEM OR ISSUE* that requires your attention, or that requires you to take action?

That is the point at which a management-level employee incurs their affirmative legal duty to act.

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