



Comprehensive Guide to Human Resource Management

2-Day Course

SEMINAR WORKBOOK

PRYORITIZE LEARNING.

Ⓟ Have questions or suggestions? Interested in training? Visit pryor.com

DISCLAIMER: The principles and suggestions in this workbook and seminar are presented to apply to diverse personal and company situations. These materials and the overall seminar are for general informational and educational purposes only. The materials and the seminar, in general, are presented with the understanding that Pryor Learning is not engaged in rendering legal advice. You should always consult an attorney with any legal issues.

©2024, 2019, 2018, 2017, 2015, 2012 Pryor Learning, LLC. Registered U.S. Patent & Trademark Office and Canadian Trade-Marks office. Except for the inclusion of brief quotations in a review, no part of this book may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage and retrieval system, without permission in writing from Pryor Learning.



Table of Contents

Course Objectives	1
Module 1: The Law and Employment	2
Module 2: Discrimination and Compliance.....	3
Module 3: Recruiting, Interviewing, and Hiring	9
Module 4: After Hiring	19
Module 5: Benefits Management	22
Module 6: Best Practices in Human Resources Management	29
Module 7: Handling Employment Hot Spots	36
Module 8: Employee Discipline and Discharge.....	47
Module 9: Observing the Letter of the Law	56
Course Review.....	65
Appendix.....	67



Course Objectives

- 1.** Develop insight into federal judicial rulings, executive orders and proposed legislation in employment law and bring the organization into compliance.
- 2.** Gain an understanding of discrimination legislation, gain the ability to audit and revise existing organizational practices that could put the organization at risk.
- 3.** Develop general recruiting, interviewing, and hiring best practices that meet the organization's goals while complying with employment laws.
- 4.** Manage benefit issues and meet new requirements with confidence.
- 5.** Develop and train managers on business-wise, legally-correct front line employment practices.
- 6.** Provide a safe and healthy workplace for all employees.
- 7.** Discipline and discharge employees lawfully.
- 8.** Create documentation that supports a sound legal defense.
- 9.** Develop and maintain records that meet legal requirements.
- 10.** Confidently manage within the scope of the law.

Changes in Employment Law

As a Human Resources professional, you're on the front line in your company every day – fighting to stay focused on a moving target. It seems like employment laws are added frequently. In reality, it is not only new legislation and executive orders that you need to be aware of, but also how the courts interpret both new and existing legislation. These interpretations can change at a moment's notice and impact how you do your job.

Keep Your Company Out of Hot Water with New Employment Laws

Legislative News

NLRB and Social Media

Changes in Case Law

Discrimination in the Workplace

Discrimination in the workplace can take many forms. Discrimination can be subtle and confusing. Knowing the differences is critical to your success and the legal safety of your organization.

Affirmative Action – Executive Order 11246

The Executive Order prohibits federal contractors and federally-assisted construction contractors and subcontractors, who do over \$10,000 in government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. These companies are required to meet the following three commitments as set forth in Executive Order 11246.

Three Commitments:

- 1.** A commitment to nondiscrimination in employment practices. Failure to comply can result in cancellation of business by the government with that company.
- 2.** A commitment to no retaliation – taking adverse action against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their coworkers.
- 3.** A commitment to affirmative action to ensure equal employment opportunities for everyone. This is done by hiring, training, and advancing a relevant percentage of qualified women and minorities. Whether required or not, employers are recommended to develop a written plan outlining the processes and steps to be taken to transform intention into action.

Civil Rights Legislation

Title VII of the Civil Rights Act of 1964

1. Applies to employers with fifteen or more employees.
2. Prohibits discrimination based on race, color, sex, religion, or national origin.
3. Covers hiring, discipline, discharge, compensation, and advancement opportunities as well as other terms and conditions of employment.
4. Requires all employment actions be applied uniformly and be specifically job-related.

Civil Rights Act of 1991

1. Applies to employers with fifteen or more employees.
2. Identifies *disparate impact* and allows for the investigation and lawful challenge of a discrimination impact to employees under questionable employment practices.
3. Requires that any adverse impact be validated as job-related and consistent with *business necessity*.
4. Allows women and the disabled to claim punitive damages for discrimination.
5. Covers U.S. citizens employed at U.S. company international locations.
6. Allows for jury trials.
7. Employer has the burden of proof to show non-discriminatory practices.

How do civil rights obligations impact your organization?

Equal Pay Act

The EPA is an amendment to the Fair Labor Standards Act, designed to narrow the gap in compensation caused by sex-based discrimination. The EPA provides that employers may not pay unequal wages to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed under similar working conditions within the same establishment.

The jobs need not be identical, but they must be substantially equal. Job content, not job titles, determines whether jobs are substantially equal.

- **Skill**

Measured by factors such as the experience, ability, education, and training required to perform the job. The issue is what skills are required for the job, not what skills the individual employees may have.

- **Effort**

The amount of physical or mental exertion needed to perform the job.

- **Responsibility**

The degree of accountability required in performing the job. For example, a salesperson with the duty of determining whether to accept customers' personal checks has more responsibility than other salespeople. A minor difference in responsibility, such as turning out the lights at the end of the day, would not justify a pay differential.

- **Working Conditions**

This encompasses two factors: (1) physical surroundings like temperature, fumes, and ventilation; and (2) hazards.

- **Establishment**

The prohibition against compensation discrimination under the EPA applies only to jobs within an establishment. An establishment is a distinct physical place of business rather than an entire business consisting of several places of business. But, in some circumstances, physically separate places of business may be treated as one establishment. For example, if a central administrative unit hires employees, sets their compensation, and assigns them to separate work locations, the separate work sites can be considered part of one establishment.

Pay differentials are permitted when they are based on seniority, merit, quantity or quality of production, or a factor other than sex. These are known as *affirmative defenses* and it is the employer's burden to prove that they apply.

In correcting a pay differential, no employee's pay may be reduced. Instead, the pay of the lower paid employee(s) must be increased.

Age Discrimination in Employment Act (ADEA)

The ADEA prohibits discrimination against any individual 40 years of age and above on the basis of age. It also prohibits discrimination based on age against one person over 40 in favor of another person also over 40 – if the decision is made based on the age of the individual.

Danger areas for age discrimination – what’s covered, and what’s not:

1. Applies to employers engaged in interstate commerce with 20 or more employees.
2. Prohibits discrimination against any individual over 40 on the basis of age.
3. Covers employment practices such as employment recruiting, advertising, pre-employment inquiries, interviewing, hiring, terms and conditions of employment, and termination.
4. Prohibits mandatory retirement at any age (bona fide executives at least 65 years of age who meet outlined qualifications are not protected).
5. Age can be a factor of discrimination when the following exceptions apply:
 - a. BFOQ (bona fide occupational qualification) necessary to the normal operation of the company or business (very few BFOQs exist).
 - b. When observing the terms of a seniority system or employee benefit plan.
 - c. Employers may differentiate on the basis of other reasonable factors other than age.
6. Discriminated against employees may sue for monetary damages including back pay, attorney’s fees, court costs and other damages up to two times the amount of back wages due.
7. Discriminated against employees may request a jury trial.
8. Of course, employers may discipline or discharge ADEA -covered employees in this protected class for cause.
9. The Older Workers Benefit Protection Act (OWBPA) expanded coverage to ADEA protected employees who provide knowing releases of liability in exchange for consideration (something additional and of value), in compliance with timeframes and for a mass layoff, with knowledge of the ages of their co-worker comparators.

Americans With Disabilities Act (ADA) as Amended (ADAAA)

Prohibits employment discrimination against qualified individuals with disabilities.

The Facts

1. Applies to employers with more than fifteen employees.
2. Prohibits discrimination of disabled persons.
3. Requires employers to differentiate between *essential* and *non-essential* job functions, and not to penalize a disabled worker only unable to perform non-essential functions or able to perform essential function with a reasonable accommodation.
4. Employers must make *reasonable accommodation* when necessary to remove workplace barriers.

Reasonable Accommodation

- Identify the essential functions of the job -- both mental and physical.
- Establish whether or not the disability prevents an otherwise qualified job applicant from performing the job.
- Discuss possible reasonable accommodations with employee/applicant.
- Decide which, if any, accommodations address the issues.
- If multiple solutions, select the most effective. Offer an accommodation which reasonably addresses the issues.

Considerations

- Actual vs. perceived disabilities
- Web page compliance
- Blind or hearing-impaired job applicants
- When to require medical certification, make inquiries, and document
- Job or duty reassignment
- Genetic testing – can you or can't you?
- Disabled employees seeking early social security qualification
- Hostile work environment applied to disabilities

2

Discrimination and Compliance

 EXERCISE

Application in Action

Answer the following true or false:

Question	True	False
1. Title VII provides for the protection of disabled workers.	<input type="checkbox"/>	<input type="checkbox"/>
2. Under ADA, employees must provide doctor certification verifying a disability as a qualified disability.	<input type="checkbox"/>	<input type="checkbox"/>
3. Title VII protects against the discrimination of an employee based on his or her sexual preference.	<input type="checkbox"/>	<input type="checkbox"/>
4. Reasonable accommodation is primarily based on financial considerations.	<input type="checkbox"/>	<input type="checkbox"/>
5. ADEA prohibits discrimination based on age against employees and job applicants 40 years of age or older.	<input type="checkbox"/>	<input type="checkbox"/>
6. Trials heard by jury usually favor the employer.	<input type="checkbox"/>	<input type="checkbox"/>
7. A salaried restaurant manager is not eligible for overtime pay.	<input type="checkbox"/>	<input type="checkbox"/>
8. Military duty cannot be counted towards family and medical leave.	<input type="checkbox"/>	<input type="checkbox"/>
9. You can require employees to end a second part-time job while on FMLA leave from your company.	<input type="checkbox"/>	<input type="checkbox"/>
10. Wage discrimination based upon sex is unlawful; wage discrimination based upon race is permitted.	<input type="checkbox"/>	<input type="checkbox"/>

Safe Recruiting

Are you treating all applicants equally – asking the same baseline questions to all and probing their responses? Do your recruiting processes or application forms subtly discriminate? There are hundreds of gray areas in the hiring process and so much to know.

Sidestep recruiting hot spots that could cost your company

- Recruit and advertise with multiple sources.
- Do not rely solely on social media for recruiting.
- Monitor recruitment methods for disparate impact.
- Don't rely on referral and walk-in applications as the primary source of the application pool.

Recruiting with Social Media

Advantages:

- It is easier to recruit passive job applicants who might not be reachable by traditional recruiting methods.
- It is less expensive than traditional recruiting methods.
- It increases the employer brand and recognition.
- You can better target a specific job level to recruit or contact.
- Can target job candidates with a very specific set of skills.
- Automated tools are available to assist in social media recruiting.

Don't get in trouble with social media recruiting:

- Avoid assessing candidates based on information found on social media networking sites.
- Avoid even the appearance of discrimination.

**GOOD TO KNOW****Replace the Aging Workforce without Breaking the Law****Make Your Company One of the “Top Places to Work”**

1. Survey to stay on top of perceived benefits.
2. Provide no-cost enticements such as flex-time and work from home options.
3. Budget for training and development.
4. Provide a tuition reimbursement plan – and create a culture where employees can advance or take on new responsibilities suited to new training and skills.
5. Create a culture of reward and recognition.

Audit Applications and Job Descriptions

How discrimination-proof are your job application forms? Application forms can be a subtle form of discrimination. In addition, job descriptions can also subtly discriminate.

Application Guidelines

1. Use one standard application.
2. Eliminate references to protected classes.
3. Know your state's Ban the Box law.

Job Descriptions: The Company's Most Powerful Hiring Tool

Recruiting and getting the most qualified applicants is challenging. The first step is to have a job description that accurately reflects what the requirements and details of the job are. Use this information to design recruiting advertisements, interview applicants, and make a hiring decision that will result in the most qualified applicant for the job.

1. Determine job-related criteria.
2. Examine essential job functions. Screen them for adverse impact.
3. List job experience and knowledge in order of requirement.

Interviewing Guidelines

The interview process can be a minefield filled with opportunities for discrimination. Advance preparation and consistency in the process are the best defense strategies.

Interview Questions

- | |
|---|
| 1. Behavior-based
a. Technical
b. Knowledge |
| 2. Open-ended |
| 3. Closed-ended |
| 4. Probing |
| 5. Hypothetical |

Construct Lawful Interview Questions

Question the necessity for questions related to the following topics:

• Age	• Military experience
• Citizenship and national origin	• Physical appearance
• Police records	• Marital status
• Disabilities	• Children
• Language	• Religion

Consider the information you really need and ask that question instead.

Example:

Instead of Asking	Ask
What language do you speak at home?	We have many customers who speak in a language other than English. What languages do you speak?
I noticed you limp – do you have a problem walking?	This job requires employees to rapidly walk throughout this large store to assist customers. Will you be able to do that?

SUCCESS TIP

Hint: Don't even come close to asking questions related to protected class status. Instead, get the information you need about the **business results** expected from **all** employees. Not only is that legally-sound, it is business-wise.

3

Recruiting, Interviewing, and Hiring

Do's and Don'ts for the Interview Process

Do	Don't
Listen with courtesy. Interrupt only if the applicant gets off the subject or rambles.	Interrupt the applicant if they are answering a question with relevant information.
Ask questions related to the applicant's experience and knowledge to perform a specific job.	Ask questions unrelated to the job in question or the organization.
Treat all applicants with respect.	Talk down to the applicant.
Use industry-neutral language.	Assume the applicant is familiar with technical language.
Show interest and listen.	Disagree or overly-agree.
Allocate the same amount of time for each interview.	Consult the clock frequently.
Schedule time and meet in private.	Allow outside interruptions.

Test Applicants Legally

Make the Hiring Decision

The hiring decision is fraught with potential legal pitfalls. It is imperative that the right steps are taken to ensure the most suited, or best, candidate is selected for the job.

Qualified vs. Best-Suited Applicant

The Legal Landmine of Employee Contractual Commitments

- At-will (Hint: It is not a stand-alone defense; it explains why an employer did not follow the organization's rules blindly or as though they are contractual).
- Avoid contractual wording



GOOD TO KNOW

Why Non-Compete Agreements Aren't Holding Up In Court

Making the Selection

1. Match the job criteria to the candidate's tangible and intangible qualities.
2. Use a checklist and a comparison grid.
3. Meet with all involved in the selection.
- 4.
- 5.

Reference and Background Checks: Legally Get Information

Reference checks:

1. Ask candidates to establish the initial contact for a reference check.
2. Require the candidate to provide a signed statement of intent.
3. Schedule appointments.
4. When speaking with a reference, provide relevant information and the purpose of the call and information about your organization.
5. Ask yes/no and either/or questions.
6. Don't check references unless ready to make an offer.
7. Take notes.

Background checks:

1. When is it necessary?
2. Observe privacy issues and Consumer Credit Reporting Reform Act.
3. Use an outside vendor.
4. Identify job-related criteria to search for.

Make the offer:

- Observe candidate privacy and contact discreetly.
- Provide a written offer summary. (Careful: At Will employment issues)
- Set an acceptance deadline and signature.
- Decide on a salary range for negotiation.
- Never send an offer letter to a person's current place of employment.

Notify others:

3

Recruiting, Interviewing, and Hiring

Avoid Reverse Discrimination

Charges of reverse discrimination can be brought when a non-minority is denied equal opportunity because of preference or favoritism given to minorities or women. Most commonly, this will occur when an affirmative action program comes into play. Employers, however, have more latitude in employment decisions than most realize.

Protect the Organization

Do:	Do not:
• Conduct a business analysis showing the rationale for the decision.	• Use different performance standards for diverse applicants and employees.
• Develop a sound basis for determining that affirmative action is appropriate.	• Exclude diverse employees from training opportunities.
	• Set quotas.
	• Bypass qualification criteria in decision making.

3

Recruiting, Interviewing, and Hiring

 EXERCISE**Application in Action****Interview Question Quiz**

Review the following questions and indicate if the question is unacceptable in any form or reword the question to be acceptable.

Question	Reworded or Indicate If Unacceptable
1. What is your birth date?	
2. Where were you born?	
3. Have you ever served in the armed forces of any country?	
4. What clubs or organizations do you belong to?	
5. Are you a high school graduate?	
6. Do you have children?	
7. What is your native language?	
8. Have you ever been arrested?	
9. Do you have any limitations that would prevent you from performing the functions of this job?	
10. Do you have any religious beliefs that would prevent you from working on a Saturday or Sunday?	

3

Recruiting, Interviewing, and Hiring

 EXERCISE

Objectives Achieved

Question	Answer
1. Have you ever been the recipient of discrimination at work?	
2. How did it make you feel? Did it impact your work performance?	
3. How would you have handled the situation differently now?	
4. Provide two new recruiting sources you could use to increase your job candidate pool.	a. b.
5. List three new tools you will use when making future hiring decisions.	a. b. c.
6. Write an example of a behavior-based interview question you will use to gather additional information from job candidates.	

Labor and Employment

Labor and Employment Standards

The Fair Labor and Standards Act (FLSA) was enacted in 1938 and designed to establish fair labor standards in employment for all employers and protect all employees.

Information about who may be eligible for overtime pay under FLSA rules:

- Only non-exempt workers are eligible for overtime pay.
- An employee is exempt if they meet all three tests:

Salary level test

The employee is paid at least \$ _____ per year (\$ _____ per week).

Salary basis test

The employee has a “guaranteed minimum” pay that is not reduced if he/she works fewer than the normal number of hours.

Duties test

Job duties qualify as professional, managerial, or administrative.

Understanding and Calculating Overtime

- Overtime pay depends upon the employee’s regular rate of pay.
- Regular rate of pay includes all forms of remuneration.
- The method to calculate overtime pay is to divide the total pay by total hours worked for the workweek, and then pay one-half of the resulting regular rate for each overtime hour worked. This applies to all but straight hourly pay or straight 40-hour per week salaries.



GOOD TO KNOW

Visit the FLSA Overtime Calculator Advisor:

<http://www.dol.gov/elaws/otcalculator.htm>

Manage Contract Labor

The FLSA protects *employees* only; contract workers/independent contractors are not covered by its provisions. Among other things, it means that contract labor is not entitled to certain employee protections such as overtime when they work more than 40 hours in a workweek.

Classifying Contractors – Are They Or Not?

Clarifying Question	Yes	No
1. Does the employer have the right to control when, where, and how the worker does the job?	<input type="checkbox"/>	<input type="checkbox"/>
2. Is there a continuing relationship between the worker and the employer?	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the employer set the hours of work and the duration of the job?	<input type="checkbox"/>	<input type="checkbox"/>
4. Does the employer, not the worker, furnish the tools, materials, and equipment?	<input type="checkbox"/>	<input type="checkbox"/>
5. Is the work performed on employer premises?	<input type="checkbox"/>	<input type="checkbox"/>
6. Does the work require a high level of specialized skill or expertise?	<input type="checkbox"/>	<input type="checkbox"/>
7. Is the worker paid by the hour, week, or by the month?	<input type="checkbox"/>	<input type="checkbox"/>
8. Does the worker hire and pay assistants or other workers classified to be employed by the employer or on the employer's behalf?	<input type="checkbox"/>	<input type="checkbox"/>
9. Does the employer have the right to assign additional projects to the worker?	<input type="checkbox"/>	<input type="checkbox"/>
10. Is the worker considered to be an employee of the employer for tax purposes?	<input type="checkbox"/>	<input type="checkbox"/>
11. Can the employer discharge the worker?	<input type="checkbox"/>	<input type="checkbox"/>
12. Is the work performed by the worker a part of the regular business of the employer?	<input type="checkbox"/>	<input type="checkbox"/>
13. Does the employer provide the worker with benefits?	<input type="checkbox"/>	<input type="checkbox"/>
14. Is the worker engaged in his or her own distinct business?	<input type="checkbox"/>	<input type="checkbox"/>
15. Does the employer or the worker believe they are in an employer-employee relationship?	<input type="checkbox"/>	<input type="checkbox"/>

The Six Factors in Classifying a Contractor

1. Opportunity for profit or loss depending on managerial skill;
2. investments by the worker and the potential employer;
3. degree of permanence of the work relationship;
4. nature and degree of control;
5. extent to which the work performed is an integral part of the potential employer's business; and
6. skill and initiative.

 **HOT TIPS****Tips For Legally Managing Contract Labor**

1. Require a contractual agreement for working relationship.
2. Write out checks to the business name, not the individual name.
3. Issue the Form 1099 to the business name of the independent contractor and FEIN number (NOT a W-4).
4. Ask the contractor to provide 1099 forms from other companies worked for and keep in the contractor's file.
5. Ask for proof of the contractor's independent business identity.
6. Do not require independent contractors to wear the company uniform unless for security or safety reasons.
7. Pay independent contractors by the job – not by the hour.
8. Do not give an independent contractor a training manual or require them to participate in “training” for the organization.
- 9.
- 10.
- 11.
- 12.

Work with Internationals, Part-Time, and Seasonal Employees

- Provide employee handbook and training information.
- Require and keep on file working documentation.
- Set hours of employment and length of employment at the beginning of the working relationship.
- Hire, evaluate, discipline, and discharge as you would other employees.

Family Medical Leave Act (FMLA)

The FMLA establishes the minimum standards for employment that balances workplace demands with the needs of families.

The Facts

1. Entitles employees to take protected unpaid leave of up to 12 weeks in a 12-month period for medical reasons, the birth or adoption of a child, care of a child, spouse, or parent who has a serious health condition, and any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty."
- OR**
2. Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness who is the spouse, son, daughter, parent, or next of kin to the employee (military caregiver leave).
 3. Applies to employers of 50 or more employees within a 75-mile radius of the work site.
 4. Employee must have been employed by the employer for at least 12 months (need not be continuous) and have worked at least 1,250 hours during the previous 12-month period.

Considerations

1. Recordkeeping and reporting
2. Continuous versus intermittent versus reduced-schedule leaves
2. Medical certifications and Fitness For Duty certification
3. Return to work and reinstatement to previous or *equivalent* job

Issues in Health Insurance

Even as insurance gets more expensive for organizations to provide, more questions arise about what's covered, who's covered, and whether or not your organization is getting enough for the high premiums paid. It's up to you to know what to do and how to balance organization expenses against employee engagement – and benefits are a key element of employee job satisfaction.

(The Health Insurance Portability and Accountability Act) – New Issues

Electronic Delivery of Benefit Plan Information

- Safe harbor includes electronic delivery of plan information to sites beyond the workplace rather than worksite locations.
- Also covers beneficiaries and others entitled to disclosure of information.
- Recipients do not have to be able to readily convert furnished documents to paper form when sent by electronic form.
- Safe harbor does not apply to disclosures required by the IRS.
- Safe harbor also does not cover ERISA-required communications other than plan disclosures.
- Transmission system must be “reasonably calculated” to result in actual receipt and protect the confidentiality of personal information.

Domestic Partner Qualification and Benefits Eligibility

Administer COBRA Benefits

Health insurance your company is required to provide by law

Passed in 1986, the Consolidated Omnibus Budget Reconciliation Act (COBRA) provides certain former employees, retirees, spouses, former spouses, and dependent children the right to temporary continuation of health coverage at group rates.

Requirements:

- Employers are not required to pay the matching portion of the premiums.
- Employees must notify plan administrators of a “qualifying event” within 30 days of when it occurs.
- Employers must send plan participants and beneficiaries an election notice not later than 14 days after the plan administrator receives notice of the qualifying event.
- The individual has 60 days to decide whether to elect COBRA continuation coverage and 45 days after electing coverage to pay the initial premium.

Questions:

1. What are the responsibilities if a former employee is late with COBRA payments?
2. How are COBRA benefits handled when an employee divorces?
3. How does COBRA interact when employees go on FMLA or military leave?

Untangle Worker's Compensation

When must an accident be considered a Worker's Compensation claim?

1. If an employer-employee relationship exists.
2. The injury occurred during the Course of Employment (COE).
3. The injury resulted from the conditions of employment.

Tips for coordinating short and long-term disability with ADA, FMLA, and Worker's Compensation

- Examine every condition and qualifying event individually to determine coverage.
- FMLA: consider "serious health condition" vs. a "disability."
- Identify whether a "serious health condition" and an injury or illness is considered to be a "disability" under ADA.
- Only require medical exams and certifications if they are "job related and consistent with business necessity."
- Who conducts the medical exam (the employee's physician or the employer's physician) will depend on the type of injury and whether or not it is a Worker's Compensation injury.
- Always follow the law which provides the employee with the greatest protection. (Example: *FMLA and Light Duty*).

Other issues to consider:

- Return to work
- Hardship and "reasonable accommodation"
- Confidentiality of medical records
- Amount of leave time provided
- Whether or not the leave is paid or unpaid

Manage Accountability and Distribution of Non-salary Benefits

Identify Whether the Following Are Taxable Benefits:

1. Bonuses
2. Gifts
3. Educational assistance
4. Allowances and reimbursements
5. Employer-provided vehicles
6. Insurance and long-term coverage



IRS Ruling Regarding Cafeteria Benefit Plans

Federal Guidelines for Disabled Employees Seeking Early Social Security Qualification

- Employee must be unable to work or adjust to other work because of medical condition.
- Disability must last or be expected to last for at least one year or to result in death.
-

Work with Flextime and Off-Site Work Options

Consider the Benefits

- Extended hours
- Relatively low-cost
- Reduced absenteeism
- Increased morale
- Expands recruitment options
- Powerful recruiting tool
- Reduces office space needs (off-site work)
-
-

Challenges

- Develop systems and accountability to monitor results-based performance
- Discipline is more difficult to monitor
- Schedule point-of-contact time to build and maintain relationships
-
-

 CASE STUDIES

Application in Action

Case Study #1:

The Employee Who Takes Sick Leave to Work for His Brother

Your company has designated sick and vacation leave. You have discovered that Mike, a production assistant, has taken sick leave to work for his brother's company. You suspect this is not the first time. When you talk to Mike, he points out that the employee handbook does not specifically define the situations considered to be sick leave and that he believes his use of this time to be reasonable.

What can you do?

Case Study #2:

The Assistant Who Takes Bereavement Leave for Her Neighbor's Cousin

Marsha has called in and notified you that she will be out for the next three days because Sadie, a very close friend and her neighbor's cousin was murdered over the weekend. Your bereavement policy, while not defined in the employee handbook, is to allow up to four days for the death of an immediate family member. Special consideration has been given when the death is someone extremely close to the employee. In those situations, company practice has been to allow time off to attend the funeral. Further, in the event of a non-family member's death, if the employee was responsible for making funeral and final arrangements, the full four days off was granted.

In Marsha's case, she is asking for the full four days due to the trauma of the death (she did not, however, witness the murder).

What do you do?

Organizational Development and Training

Coaching to help employees build leadership skills should be used at all levels of the organization. Strong leadership builds better performance and results, a higher level of organizational commitment, and increased productivity.

Leadership Skill-Building for Managers and Supervisors

- Value integrity and ethics
- Partner with others and the team
- Provide strong affirmations
- Identify core essentials
- What about personality tests?
- Recognize leadership training as an ongoing process

Which HR Functions Should You Consider Outsourcing?

Outsource detail functions:

1. Recruitment
2. Benefits
3. Payroll administration
4. Training
- 5.
- 6.

Functions that Should Never Be Outsourced:

- Employee performance appraisals
- Discipline
- Discharge
-
-

Change and Crisis Management

Key to managing through change and crisis is keeping employees informed and involved. When employees are left out of the communication loop, insecurity and dissension evolve.

Avoid Mushroom Management

1. Recognize that good communication equals higher retention.
2. Provide regular updates.
3. Communicate changing news and critical events as they happen or as quickly as possible.
4. Explain the details.
5. Do not resist change – model how to handle and manage it.
6. Do not communicate on a hierarchial basis.
7. Ask for input.
8. Do an emotional barometer check.
- 9.
- 10.

Handle Employee Grief When Coworkers Are Downsized

1. Meet with surviving employees and explain circumstances of the downsizing.
2. Stress organizational commitment to those employees downsized and those remaining.
3. Anticipate survivor anxiety and employee fear of being the next to go.
- 4.
- 5.

Handle Adversarial and Emotionally Charged Situations

- When downsizing or restructuring, hold a department or company-wide meeting (depending on the level of impact).
- When an employee has been let go for cause, notify and inform the remaining coworkers of the termination without revealing the specific details and observing privacy rights of the terminated employee.
- Answer employee questions about work reallocation/process change and meet individually to ease fears and concerns.
- Anticipate resistance to change by developing a written implementation process in advance.
-

Arbitration Agreements – Avoid Having a Favorable Decision Thrown Out:

Improve Employee Relations, Morale, and Retention

In a recent survey, 69% of employees surveyed indicated they would like to see their superiors be “better at communicating.” Whether it is communicating good news, bad news, instruction, or building relationships, the burden of effective communication falls to Human Resources, supervisors and managers.

Essential Communication Skills

1. Listening
2. Observation
3. Inflection, intonation
4. Modeling
5. Organization
6. Sincerity
7. Action
8. Follow-through
- 9.
- 10.

Improve Employee Retention and Morale

1. Improve the access to HR staff.
2. Make time.
3. Provide timely and accurate answers to employee questions.
4. Fully communicate policies and procedures.
5. Administer and enforce policies, procedures, and benefits consistently.
6. Set an example.
- 7.
- 8.

Consider the Following Issues:

- Company dress codes.
- Working hours and flexibility in report times.
- Bereavement support and leave time.
- The advantages of bonus time off instead of a monetary reward, especially during lean times.
-
-

 **EXERCISE****Application in Action****Questions and Situations to Consider**

In small groups, select one of the questions and construct a response. Indicate factors or issues to be considered that could impact or change your response.

1. "I don't want to be a salaried employee. Why can't I stay hourly? You're cheating me out of overtime pay."
2. "Mary's cousin works here. Why won't you hire my husband?"
3. "Does our insurance cover my step-children?"
4. "Can I take a week of next year's vacation this year?"

 **EXERCISE**
Objectives Achieved

Question	Answer
<p>1. Think of a time when you terminated an employee. How did you handle communicating it to the rest of the workforce? What worked well? What would you have done differently?</p>	
<p>2. What process does your company have in place to handle a death within the workforce?</p>	<p>a.</p> <p>b.</p> <p>c.</p>
<p>3. List three things you will do to improve communications with others at work.</p>	
<p>4. Have you ever had an adversarial confrontation with an employee or coworker? How did it feel? What could you have done differently?</p>	

Educate Managers on Legally Safe Practices

It is important to stress that not only can the actions of Human Resources and other managers or supervisors result in liability for the organization, individuals can be held personally liable as well.

Who Can Be Held Liable?

- Corporate management
- Managers or supervisors directly involved through their actions or inaction
- Human Resources professionals
-



What Is The Cost?

Best Practices that Can Minimize Legal Threat

1. Consistency in enforcement
2. Objective documentation
3. Holding a firm line
4. Identifying when to seek guidance instead of forging forward
5. Using a witness
6. Keeping clear files and records

Implement Diversity Training

Diversity training, while a key tool in building a healthy corporate culture and discouraging harassing behavior, can be fraught with potential dangers. Consider carefully how the training will be structured and administered.

The Latest Thinking on Company-Wide Diversity Training

What to avoid:

- Training focused to a defined group
- Assimilation training
- Training exercises with a “How does it feel?” context
- Training in an emotionally charged situation
- Blame and shame

What to include:

- A review of legally-required or unacceptable behaviors
- Suggestions for respectful and inclusive substitute behaviors
- Cultural diversity appreciation strategies
- Cultural communication challenges.
- Topic training on harassment
- Topic training focused on gender issues
- A review of organization policies and procedures, including how to file a complaint
- Disability education
- Unconscious bias awareness
-

Reduce Your Company's Liability for Workplace Violence

Understand and limit your organization's liability related to workplace violence and security measures.

Under the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act (OSHA), employers are required to provide employees with a place of employment that is free from recognizable hazards that are causing or likely to cause death or serious harm to employees. This includes taking action in situations where violence is known to exist or reasonably recognized as a risk to protect employees accordingly. Employers who fail to do so can be given an OSHA citation, whether or not an incident occurs.

Employer Protections:

- From outside vendors and customers
- From other employees
- Physical dangers and risks

Steps to Protect Your Company and Employees from Workplace Violence

1. Screen employees thoroughly.
2. Develop, distribute, and implement a zero tolerance policy on workplace violence.
3. Provide means for anonymous reporting of suspected violations or concerns.
4. Educate employees.
5. Create a threat assessment and first response team.
6. Review security processes and protections.
7. Prohibit former employees from entering the workplace freely.
8. Provide management training on respectful termination processes. Require an HR representative to be present at all terminations.
9. Involve and inform local law enforcement.
- 10.
- 11.

Hint: Know your state law about forbidding possession of firearms on the company's property, including vehicles.

What Is Workplace Violence?

- Threatening behavior
- Verbal abuse
- Physical assault
- Psychological assault
- Harassment

Identify the Potentially Violent Employee:

• Male, between 25 and 45 years old	• Highly stressed, at work and at home
• Loner, shy or introverted	• May have made threats of suicide
• Unstable family background	• History of or currently using drugs or alcohol
• Makes threats toward others or the organization	• Has demonstrated violent or aggressive behavior
• Fixation on/easy access to weapons	

Reduce the Odds for High Exposure Employees:

1. Provide a trigger or alarm.
2. Physically reconfigure the workspace to limit customer or vendor access.
- 3.

In the Moment: What to Do When a Violent Incident Occurs

- An employee threatens with a weapon
- An incident of domestic violence moves into the workplace
- Two or more employees begin verbally arguing
- An employee physically attacks you or another employee
- Bullying and incivility – the insidious buildup to violence

Actions:

1. Call for assistance if possible.
2. Speak slowly, keep the emotional tone low.
3. Call the person by name.
4. Listen; let them vent.
5. Maintain eye contact.

After the Storm: Gathering Evidence and Testimony

- Interview witnesses
- Ask the who, what, when, where, and why questions. Avoid why questions since they move from observable data to guesses, suppositions and inferences.
- Identify root cause(s)
- Make a formal report and document the employee file
- Take termination action, if applicable

Overcome Substance Abuse, Drugs, and Alcohol Use in the Workplace

Testing – What’s Legal and What’s Not

- Publish a policy, testing plan, and the procedures. Distribute to employees.
- You can drug test pre-employment if applied uniformly and consistently to every applicant for specific jobs.
- Testing for cause is lawful.
- Random testing is accepted under most state laws; check your state’s laws for requirements or prohibitions.
- All suspected violations must be enforced consistently.
- Do NOT test select groups “randomly.”
- Do NOT test “periodically.”
-
-

ADA protections of substance abusers and how not to put your company at risk:

- Former drug and alcohol abusers are covered under the ADA.
- Provide relief under an Employee Assistance Plan or develop a Performance Improvement Plan that outlines the conditions of continued employment while the ADA-covered employee is in treatment.
- Current drug or alcohol users are not ADA-covered and can be dismissed for cause.

Minimize All Forms of Workplace Harassment

Harassment in the workplace can take many forms; sexual harassment, harassment based on other protected classes such as race, religion, and disability.

How the EEOC Defines a “Hostile Work Environment”

- It is considered to be regular and ongoing.
- “Unreasonable interferes” with job performance or creates an “intimidating, hostile, or offensive” environment.
- Can take the form of unwanted physical contact, offensive language or intimidation, gestures, jokes, pictures, written intimidation, and nonverbal behaviors.
- Test determined by what a “reasonable person” would consider offensive.

What the Court Says About Victims of Harassment and Adverse Employment Actions

- Harsh penalties are applied to companies found guilty.
- Proven victims are provided monetary relief, back pay, and reinstatement if applicable.

Handle Allegation of Front Line Manager Harassment

The company does not have to have knowledge of the harassment by a manager to be held responsible.

- When harassment is claimed, investigate immediately.
- Keep an open ear and probe when suspicious activity takes place, especially retaliatory actions.

Limit Liability When Customers and Vendors Harass Your Employees

- If it is harassment by a vendor, notify the employing company immediately.
- Investigate the claim thoroughly.
- Prohibit vendor access to your facility, if necessary.
- Document your findings and actions taken.

Train Managers to Spot and Handle Harassment

1. Employee becomes defensive or withdrawn.
2. Employee has increased absenteeism.
3. Trends appear in hiring, promotions, and terminations.
4. Always require an exit interview when an employee leaves, regardless of whether it was a voluntary exit or not.
5. Train managers to identify the difference between appropriate and inappropriate statements and behaviors.
6. Train managers and supervisors on how to fulfill their responsibilities.

Successfully and Tactfully Investigate Sexual Harassment Claims

- Meet with the victim and gather testimony and specific facts.
- Ask the complainant what action they want taken.
- Tell the complainant that an investigation will follow, but assure discretion, privacy, and that no adverse employment actions will occur.
- Do not guarantee confidentiality.
- Document information from the meeting.
- Meet with the accused and address the issue immediately.
- Ask specific questions and gather information.
- Emphasize complainant privacy rights and no retaliation mandates.
- Document what occurred, not the intent.
- Gather witness testimony and document observations and facts.
-

Observe and Protect Employee's Right to Privacy

Virtually all aspects of HR and management practices can impact employee privacy rights. Whether it is hiring, performance appraisals, quality control, or references, actions managers take have the potential to violate an employee's right to privacy.

Consider the Following Questions:

1. Can we install a security camera in the supply closet? Someone's taking supplies.
2. Can we monitor email, voice mail, and telephone calls?
3. Can I legally search an employee's desk or locker?
4. How can I give references without being at risk?
5. When doing background and reference checks, how far can I go?

Areas of Caution

- Interviewing and obtaining references
- Drug testing
- Medical information
- Performance feedback.
- Monitoring
- Providing references
-

 **CASE STUDIES****Application in Action****Case Study #1:****The Warehouse Employee Who Smells Like Marijuana**

Connor Stiles works the night shift in the warehouse. On more than one occasion, you have noted a scent when around him that smells like marijuana. Your company does have a random drug testing policy, but when Connor was tested, his results came back negative. Connor's work does not seem to be impaired; in fact, his performance reviews have been exceptional.

What is the company's liability? How do you approach this situation and what do you do?

Case Study #2:**The Department that Makes Beer Available at 5:00 p.m.**

The Client Accounts division is a tight knit group that socializes together frequently. Yesterday, as you left work, you saw several employees from the division gathered around the car of Stimpson Gardner, the manager of the division. They were drinking beer that had come from a cooler in the trunk of Gardner's car. Apparently, the group was celebrating a major account and this was a common ritual.

What is the company's liability? What stand should you take on behalf of the company?

Case Study #3:**The Manager Who Shares an Employee's Secret in the Break Room**

Claire manages the Customer Service division and Amy Defencamp is a customer service representative. Recently, Amy told Claire of a situation where she had felt intimidated and harassed by two other female employees. You find out about this only because Claire was overheard in the employee break room talking with another manager about the issue.

What is the company's liability? What are the issues? How do you handle this situation tactfully?

 **EXERCISE**
Objectives Achieved

Question	Answer
<p>1. What are two techniques you can use when confronted with a violent employee or coworker?</p>	<p>a.</p> <p>b.</p>
<p>2. List five characteristics of a potentially violent person.</p>	<p>a</p> <p>b.</p> <p>c.</p> <p>d.</p> <p>e.</p>
<p>3. Think of a time when you experienced or witnessed a hostile work environment. What could you have done differently?</p>	
<p>4. What is your company's policy regarding employee privacy issues? What areas are you not observing? In what areas do you have more freedom than originally thought?</p>	
<p>5. What is your company's current procedure for reporting an incident of harassment or a hostile work environment? Does it protect the reporting employee? Does it protect the accused? Does it falsely promise confidentiality? If needed, how will you revise the procedure to further protect the company from liability?</p>	

Conduct Safe Performance Appraisals

Conducting performance appraisals is a task many managers and supervisors find to be exhausting, and, as a result, they are often postponed or avoided completely. However, a sound performance appraisal that is documented carefully can be one of the best legal defenses and form of protection a company can have.

Getting Manager and Supervisor Buy-In

1. Make it easy. Consider quarterly appraisals that cover a shorter period and take less time.
2. Set time limits on the appraisal.
3. Require the employee to self-appraise in advance.
4. Set goals and objectives annually, with performance appraisals used as a progress check.



360 Degree Feedback and Performance Appraisal – Good or Bad?

8

Employee Discipline and Discharge

The Do's and Don'ts of Performance Appraisals

Do	Don't
Use goals and objective agenda.	Discuss only accomplishments and performance issues.
Identify achievements and set new performance goals.	Conduct infrequently.
Set appointments.	Get off schedule and make employees wait.
Provide constructive criticism.	Use it as, or allow it to be an opportunity to vent.
Provide ongoing feedback – not just at performance appraisal time.	Deliver performance review surprises.
Require employee active participation and input.	Limit employee participation.
Base assessment on ongoing performance of the employee.	Assess the employee based on overall performance instead of considering each goal and objective individually.
Use objective evaluation criteria.	Allow personal bias to slant the assessment.
Provide adequate time for each assessment.	Use a different format for different employees.

Manage Progressive and Constructive Discipline

Coaching Strategies and Techniques to Improve Job Performance

Discipline without Punishment

1. Review the company expectations.
2. Identify the gap.
3. Talk with and listen to the employee.
4. Mutually develop an improvement plan.
5. Provide support, respect, and guidance.
6. Follow the process consistently.
 - a. Verbal warning
 - b. First written warning
 - c. Second written warning
 - d. Suspension without pay
 - e. Discharge

Know for sure that your organization's disciplinary actions are not discriminating.

- Discipline consistently.
- Follow the letter of the law.
- Provide feedback and support to all employees.
- Examine precedent.

Inconsistency!

The Subtle Way Your Organization Can Be Guilty of Discrimination in Disciplinary Actions

Document Disciplinary Actions to Protect Your Company

1. Identify the performance issue or policy violation using facts.
2. Detail the disciplinary conversation with the employee and state the specific action taken at that time.
3. Describe step-by-step actions the employee is to take to correct the problem.
4. Define the consequences that will occur if the employee does – or does not – correct the behavior or performance issue.
5. Document to the file immediately.
6. Provide a copy of the file documentation to the employee. Require the employee to sign and date it, acknowledging the issue was discussed and the documentation received. If the employee refuses to sign (even including an opportunity to write “I read this and don’t agree with it,”), ask another member of management to witness the conversation: “Manager X gave employee Y this warning and employee Y refused to sign it. Manager Z, Time and Date.”
7. Note back to the file the results of the performance improvement plan.
- 8.
- 9.

Termination Guidelines that Hold Up in Court

Accusations of wrongful discharge land many employers in court. Regardless of whether or not you have an “at-will” policy (Note: all U.S. states provide for At-Will employment with the exception of Montana), employers cannot depend on this doctrine to protect the company from charges of discrimination or unfair treatment related to termination. Fighting these charges is costly – it is better to avoid them completely, if possible.

Sidestep Charges of Wrongful Discharge

1. Treat the employee fairly and with dignity.
2. Use a witness.
3. Only terminate for violation of a policy or if the employee has been counseled consistently with past company practices for performance issues.
4. Begin by stating the reason for the termination.
5. Provide documentation to the employee.
6. Document the termination meeting.
7. Provide the employee with separation related paperwork at the termination meeting.
8. Escort the employee from the workplace, but discreetly.
9. Protect confidentiality even when you are not required to do so – respect the employee’s privacy.
- 10.

 **SUCCESS TIPS****Quick Tips**

- Do not apologize.
- Follow policies and procedures.
- Document!
- Act consistently.
- Treat the employee with dignity and respect.

Unemployment Compensation – What You Can Expect

- You cannot prohibit the employee from filing for unemployment compensation.
- Unless an employee voluntarily resigns, most states will award unemployment compensation absent employee misconduct.
- If an employee is asked to resign and does so, fight unemployment claims carefully – many states consider this to be conversion of a resignation into a termination. The employee could also claim coercion and file unlawful discharge. Hint: consider a separation agreement which provides sufficient consideration to support a voluntary resignation.
- When terminating for cause, you can inform the employee that you will fight the claim and provide the necessary documentation to support your position.

Avoid Having an Arbitration Agreement Thrown Out of Court

- If you require mandatory arbitration of workplace disputes, create a separate agreement; do not tie it to the terms of a non-contractual employee handbook which supports At Will employment.
 - Courts have held a handbook disclaimer retaining the employer's right to modify the handbook provisions at its sole discretion defeats a mandatory arbitration provision.
- Use language in the arbitration agreement that binds the employer and employee to the agreement equally.

Avoid RIF Litigation

A Reduction in Force can help an organization experiencing financial difficulties. Litigation can arise, eliminating financial gains, if downsized employees feel they were discriminated against or if the organization did not follow the required processes for a reduction in force.

Implement a Reduction in Force Safely and Legally

1. Keep performance documentation.
2. Offer the same severance package and training opportunities as offered to other non-protected employees holding a similar job and with equal seniority.
3. Layered decision-making (multiple people scrutinizing the process) when considering who to layoff/retain often provides the most impartial and best business choices.
4. Require layoff recommendations from front line managers to be based on business-related factors, including performance and seniority.
5. Examine the population slated for layoff to assess disparate treatment and adverse impact on protected groups.
6. Allow employees to take early retirement if eligible.

How WARN (Worker Adjustment and Retraining Notification Act) Affects Your Company's Responsibilities if You Downsize

- Requires employers of 100 or more employees to provide notification to employees 60 calendar days in advance of plant closings and mass layoffs if a reduction in force equals at least 33% of the active employees and at least 50 employees.
- Employers must provide the notice on the established schedule and with the required elements as outlined in the Act. Failure to do so allows employees to initiate civil actions against the employer.


CASE STUDIES
Application in Action
Case Study:
The Account Executive Who Is Always Late To Work

Karsten Nichols is a senior account executive. Over the past four weeks she has been 15 minutes or more late to work 11 times. While the company has a policy on attendance and punctuality, Tom, the manager in the Customer Accounts division allows the account executives some flexibility when arriving and leaving work. He says this is necessary since they work odd hours and that it improves overall morale. However, Karsten seems to be taking advantage of the flexibility, and other employees have complained.

How would you recommend Tom handle the situation?

Test Your Knowledge Quiz

Can You or Can't You?	Yes	No
Require employees to attend diversity training?	<input type="checkbox"/>	<input type="checkbox"/>
Suspend an employee without pay pending the outcome of an investigation for sexual harassment?	<input type="checkbox"/>	<input type="checkbox"/>
Terminate an employee for drinking alcohol at lunch?	<input type="checkbox"/>	<input type="checkbox"/>
Discipline an employee for gossiping about another employee's lifestyle?	<input type="checkbox"/>	<input type="checkbox"/>
Terminate an employee for displaying religious items in their personal workspace?	<input type="checkbox"/>	<input type="checkbox"/>
Search an employee's desk and workspace randomly?	<input type="checkbox"/>	<input type="checkbox"/>

 EXERCISE

Objectives Achieved

Question	Answer
1. How often do you conduct performance appraisals? Is it often enough? How could you provide employees with performance	
2. Do you currently use a witness when terminating an employee? What are the advantages/disadvantages of using a witness?	
3. List the steps of progressive discipline.	
4. Provide two examples of situations in which immediate termination would be recommended.	a. b.
5. What forms of documentation should you collect from an exiting or terminated employee? List three.	a b. c.

Keep Legally Safe Documentation

Knowing what documentation to provide when required by the courts, what to keep, and what to destroy is critical to the company's legal protection.

Elements of Good Documentation:

1. Objective
2. Factual
3. Relevant
4. Complete records (no incomplete or blank forms)
5. First-hand testimony or accounting
6. Dated and signed

The Danger of Building a File or Paper Trail

Lampley v. Onyx Acceptance Corp., 7th Circuit Court of Appeals, No. 02-3201, (2003)

What to destroy:

- Documents dated beyond record keeping requirement period
- Inaccurate or false information
-
-

How You Keep Documentation and Files Is Just as Important as What You Keep — Keep Separate Files

- Confidential file
- Personnel file
- Benefits file
- Medical
- Payroll file

Record Keeping and Reporting Requirements

Record Type and Retention Period	Legislation and Retention Period
<p>Payroll Records</p> <p>Records containing name, address, date of birth, occupation, pay rate, and compensation</p> <p>Retention: 3 years</p>	<p>Fair Labor Standards Act (FLSA)</p> <p>Child Labor Law</p> <p>Equal Pay Act</p> <p>Age Discrimination in Employment Act (ADEA)</p>
<p>Certificates, agreements, contracts, plans</p> <p>Sales and expense records</p> <p>Retention: 3 years</p>	<p>FLSA</p>
<p>Employment earnings records, timesheets, wage tables, work schedules, established hours</p> <p>Retention: 2 years</p>	<p>FLSA</p> <p>Equal Pay Act</p>
<p>Personnel or employment records, job applications, descriptions, records related to failure or refusal to hire, promotions, demotions, recalls, transfers, layoff, or termination, rates of pay and selection for training or apprenticeship</p> <p>Retention:</p> <p>ADEA – one year</p> <p>Title VII – six months from date of record or action</p> <p>Executive Order 11246 – period not specified</p>	<p>ADEA</p> <p>Title VII</p> <p>Executive Order 11246</p>
<p>Work schedules, established hours, and days of employment</p> <p>Wage rate tables for piece rates or other applicable rates</p> <p>Retention: 2 years</p>	<p>FLSA</p>
<p>Order, shipping, billing records, customer orders, invoices, delivery records, bills of lading, and customer billings</p> <p>Retention: 2 years</p>	<p>FLSA</p>

Record Type and Retention Period	Legislation and Retention Period
Certificates of age Retention: Until employment termination	Fair Labor Standards Act of 1938 (FLSA) Child Labor Law
Written training agreements Retention: Duration of training program	FLSA Child Labor Law
Records of wage additions or deductions Retention: 2 years	FLSA
Recruitment advertisements Employment agency or union job orders for recruitment Retention: 1 year	Age Discrimination in Employment Act of 1967 (ADEA)
Employment tests Results of physical exams used regarding personnel actions Retention: 1 year	ADEA
Pre-employment records for temporary positions Retention: 90 days	ADEA
EEO-1 Employer Information Report Retention: Indefinitely	Title VII of the Civil Rights Act of 1964
Written affirmative action plans (including EEO required records on testing, validation of tests, and results) Retention: Not specified – keep indefinitely	Executive Order 11246
Records of complaints and actions taken Retention: Executive Order 11246 – not specified Rehabilitation Act of 1973 – 1 year Vietnam Era Veterans Readjustment Act – 1 year	Executive Order 11246 Rehabilitation Act of 1973 Vietnam Era Veterans Readjustment Act of 1974
Occupational injuries, illnesses, and fatalities including annual summary and record in detail Retention: 5 years	Occupational Safety and Health Act of 1970 (OSHA)

Record Type and Retention Period	Legislation and Retention Period
<p>Plan descriptions, annual reports, and summary annual reports (records of disclosure)</p> <p>Retention: 6 years after filing date of report</p>	<p>Employee Retirement Income Security Act of 1974 (ERISA)</p>
<p>Documents and records regarding employment and advancement of the handicapped, veterans, and veterans of the Vietnam era</p> <p>Retention:</p> <p>Rehabilitation Act of 1973 – not specified</p> <p>Americans With Disabilities Act – 1 year</p> <p>Vietnam Era Veterans Readjustment Act – 1 year after final payment under federal contract</p>	<p>Rehabilitation Act of 1973</p> <p>Americans With Disabilities Act of 1990 (ADA) As Amended</p> <p>Vietnam Era Veterans Readjustment Act</p>
<p>Basic payroll and identifying employee data, records of FMLA leave taken by FMLA-eligible employees, hours of FMLA leave taken if less than one full day, copies of employee notices of leave and written notices given to employees, premium payments made by an employee for health insurance or other benefits during leave, dispute records, benefit plans, policies, and practices regarding taking of paid and unpaid leave</p> <p>Retention: 3 years</p>	<p>Family Medical Leave Act of 1993 (FMLA)</p>
<p>Designation of privacy officer and contact person, policies and procedures regarding the use and disclosure of protected health information, notice of privacy practices, employee training materials, signed authorizations, records of disclosures of protected information, individual complaints, records of sanctions, plan documents and sponsor certifications.</p> <p>Retention: 6 years from the date created or last in effect, whichever is later</p>	<p>Health Insurance Portability and Accountability Act of 1996 (HIPAA)</p>
<p>I-9 Form</p> <p>Retention: 3 years after date of hire or one year after employment is terminated</p>	<p>Immigration Reform and Control Act of 1986 (IRCA)</p>

Review Employee Handbooks for Consistency with Changes in Employment Law

How the Courts View an Employee Handbook

- Contractual agreement
 - Written
 - Implied
- Disclaimer effectiveness
- Management and employee source of information that outlines working conditions and expectations

Provide Employee Updates to Changes in Policies and Procedures without Rewriting Your Entire Handbook

1. Use a three-ring binder and provide replacement pages for those portions of the handbook revised.
2. Date and provide a version number for each revised page.
3. Include a summary memo outlining the highlights, purpose, and expectations for the revised policy or procedure.
4. Consider electronic distribution and update format.
 - a. Review privacy issues – password protect the files when distributed.
 - b. Implement a notification of receipt by electronic return mail.
5. Require a signed acknowledgement of receipt of the initial handbook and changes as distributed.
6. Provide awareness information and training.

Define Terms of Use for Social Media

1. Accountability
2. Usage at Work
3. Confidentiality
4. Monitoring
5. NLRB Disclaimer

Quick policy and procedure review:

1. Clear language
2. Policy defined
3. Procedure explained step-by-step
4. Expectations in writing
5. Results for non-compliance given
- 6.

Keep policies and procedures up-to-date:

1. Review federal, state and local issues
2. Research and update semi-annually
3. Examine case law
4. Use on-line and outside resources to keep informed regarding immediate changes

**Address Sensitive Policies with Caution**

Domestic partner benefits	Privacy
Nepotism	Identity theft
Smoking	Drug testing
Dress codes	

Prepare for Court

What Can You Expect When Working with an Attorney?

1. Initial interrogatories
2. Witness testimony and depositions
3. Documentation file and evidence review
- 4.

Mind Your Ps and Qs

- Paperwork
- Preparation
- Perseverance
- Patience

When Called into Court – Guidelines for Giving Testimony

1. Know what to expect – prepare in advance with your attorney.
2. Review evidence and documentation in advance to refresh your memory.
3. Answer all questions clearly and succinctly.
4. Ask for clarification of a question if you do not understand the intent or meaning.
5. Only provide the information requested. Do not volunteer additional information.
6. Stop speaking when an objection is made. Listen closely to the grounds for the objection made by the attorney – it will clue you about your answer. Example: Asked and Answered (they're double checking!)
- 7.

 EXERCISE

Application in Action

Test Your Knowledge

Question	True	False
1. The best documentation includes facts and second-hand testimony.	<input type="checkbox"/>	<input type="checkbox"/>
2. When called to give testimony, it is best to provide as much information as possible in your statement.	<input type="checkbox"/>	<input type="checkbox"/>
3. Good documentation must always be dated and signed.	<input type="checkbox"/>	<input type="checkbox"/>
4. It is better to have a written policy and not follow it part of the time than to not have a written policy at all.	<input type="checkbox"/>	<input type="checkbox"/>
5. The following is an example of objective documentation: Maria fell off the stepladder and had alcohol on her breath.	<input type="checkbox"/>	<input type="checkbox"/>

 **EXERCISE**
Objectives Achieved

Question	Answer
1. When was the last time the company policies and procedures were reviewed and revised?	
2. List the four policies that should be reviewed and revised (if necessary) annually.	a. b. c. d.
3. Does your employee handbook include an employee-at-will statement? Should it?	
4. Do your employee personnel files include benefit or medical information?	
5. How accessible are your personnel files? What can you do to protect them and restrict access?	
6. Think of a time you terminated an employee but were not comfortable with the decision. If called into court, could you have provided documentation to support your decision?	
7. What records are you retaining that you can dispose of?	
8. Do you have a stand-alone policy on mandatory arbitration with signed receipts from employees?	



Question	Answer
1. Employment legislation provides protection from discrimination on the basis of many factors. What is NOT protected?	<input type="checkbox"/> a. Race <input type="checkbox"/> b. Disability <input type="checkbox"/> c. Religion <input type="checkbox"/> d. Sexual orientation <input type="checkbox"/> e. All of the above are protected
2. Managers and supervisors carry a personal liability for actions taken in the workplace that can total up to:	<input type="checkbox"/> a. \$10,000 <input type="checkbox"/> b. \$50,000 <input type="checkbox"/> c. \$100,000 <input type="checkbox"/> d. \$500,000 <input type="checkbox"/> e. 10% of the manager's lifetime income
3. Violent or abusive behavior in the workplace impacts the organization in a number of ways. What specific results can occur should the behavior go unchecked?	
4. What is the single practice that most easily puts an organization at high liability for legal risk?	
5. When confronted by an outraged employee, what response should you use?	<input type="checkbox"/> a. Sit silently with arms crossed and wait for him/her to finish. <input type="checkbox"/> b. Ask the employee to lower his/her voice and continue. <input type="checkbox"/> c. Count to 10 and then respond. <input type="checkbox"/> d. Speak in a low tone of voice and answer firmly. <input type="checkbox"/> e. None of the above.
6. What is a "hostile work environment"?	
7. When reviewing an employee file, you can post-document a file noting disciplinary actions and behavior problems.	<input type="checkbox"/> a. True <input type="checkbox"/> b. False
8. List three benefits of an employee self-evaluation:	a. b. c.
9. Under the OSHA General Duty clause, an employer can be cited for a violation related to employment practices. Which of the following is an OSHA violation?	<input type="checkbox"/> a. Discrimination in recruiting and hiring <input type="checkbox"/> b. Failure to provide a safe workplace <input type="checkbox"/> c. Unlawful termination <input type="checkbox"/> d. Harassment in the workplace <input type="checkbox"/> e. None of the above
10. List the five elements of effective documentation:	a. b. c. d. e.



Form Examples

Appendix 1 – MLA Rights Poster Department of Labor WH Form 1420

EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

LEAVE ENTITLEMENTS

Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within 1 year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

BENEFITS & PROTECTIONS

ELIGIBILITY REQUIREMENTS

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

*Special "hours of service" requirements apply to airline flight crew employees.

REQUESTING LEAVE

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

EMPLOYER RESPONSIBILITIES


Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

ENFORCEMENT

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

For additional information or to file a complaint:
1-866-4-USWAGE
 (1-866-487-9243) TTY: 1-877-889-5627
www.dol.gov/whd 
 U.S. Department of Labor | Wage and Hour Division

WH-1420 REV 04/16

<https://www.dol.gov/whd/regs/compliance/posters/fmla.htm>

Appendix 2 – FMLA Notice of Rights and Responsibilities Department of Labor WH Form 381

Notice of Eligibility and Rights & Responsibilities (Family and Medical Leave Act)

U.S. Department of Labor
Wage and Hour Division



OMB Control Number: 1235-0003
Expires: 5/31/2018

In general, to be eligible an employee must have worked for an employer for at least 12 months, meet the hours of service requirement in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form by employers is optional, a fully completed Form WHI-381 provides employees with the information required by 29 C.F.R. § 825.300(b), which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by 29 C.F.R. § 825.300(b), (c).

(Part A – NOTICE OF ELIGIBILITY)

TO: _____
Employee

FROM: _____
Employer Representative

DATE: _____

On _____, you informed us that you needed leave beginning on _____ for:

- _____ The birth of a child, or placement of a child with you for adoption or foster care;
- _____ Your own serious health condition;
- _____ Because you are needed to care for your _____ spouse; _____ child; _____ parent due to his/her serious health condition.
- _____ Because of a qualifying exigency arising out of the fact that your _____ spouse; _____ son or daughter; _____ parent is on covered active duty or call to covered active duty status with the Armed Forces.
- _____ Because you are the _____ spouse; _____ son or daughter; _____ parent; _____ next of kin of a covered servicemember with a serious injury or illness.

This Notice is to inform you that you:

- _____ Are eligible for FMLA leave (See Part B below for Rights and Responsibilities)
- _____ Are **not** eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):
 - _____ You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately _____ months towards this requirement.
 - _____ You have not met the FMLA's hours of service requirement.
 - _____ You do not work and/or report to a site with 50 or more employees within 75-miles.

If you have any questions, contact _____ or view the FMLA poster located in _____.

(PART B-RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA LEAVE)

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by _____. (If a certification is requested, employers must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances.) If sufficient information is not provided in a timely manner, your leave may be denied.

- _____ Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request **is not** enclosed.
- _____ Sufficient documentation to establish the required relationship between you and your family member.
- _____ Other information needed (such as documentation for military family leave): _____

Page 1 No additional information requested COUNTER ON NEXT PAGE Form WHI-381 Revised February 2013

<https://www.dol.gov/whd/forms/index.htm>



Appendix 3 – FMLA Designation Notice Department of Labor WH Form 382

Designation Notice (Family and Medical Leave Act)

U.S. Department of Labor Wage and Hour Division

Leave covered under the Family and Medical Leave Act (FMLA) must be designated as FMLA-protected and the employer must determine the amount of leave that will be counted against the employee's FMLA leave entitlement.

To: _____ Date: _____

We have reviewed your request for leave under the FMLA and any supporting documentation that you have provided. Your FMLA leave request is approved. All leave taken for this reason will be designated as FMLA.

The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are initially unknown. Based on the information you have provided to date, we are providing the following amount of time that will be counted against your leave entitlement:

Provided there is no deviation from your anticipated leave schedule, the following number of hours, counted against your leave entitlement: _____ Because the leave you will need will be unscheduled, it is not possible to provide the hours, days, or against your FMLA entitlement at this time.

Please be advised (check if applicable): You have requested to use paid leave during your FMLA leave. Any paid leave taken for this reason will be counted against your FMLA leave entitlement.

We are requiring you to substitute or use paid leave during your FMLA leave. You will be required to present a fitness-for-duty certificate to be restored to employment. If such certificate is not attached, the fitness-for-duty certification must address your ability to perform your essential job functions.

Additional information is needed to determine if your FMLA leave request can be approved: The certification you have provided is not complete and sufficient to determine whether the FMLA request is approved. You must provide the following information no later than _____ (Provide at least seven calendar days before the date of your leave.)

Appendix 4 – Certification of Qualifying Exigency for Military Family Leave Department of Labor WH Form 384

Certification of Qualifying Exigency For Military Family Leave (Family and Medical Leave Act)

U.S. Department of Labor Wage and Hour Division



OMB Control Number: 1235-0003 Expires: 5/31/2018

SECTION I: For Completion by the EMPLOYER

INSTRUCTIONS TO the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA leave due to a qualifying exigency to submit a certification. Please complete Section I before giving this form to your employee.

Employer name: _____ Contact Information: _____

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS TO the EMPLOYEE: Please complete Section II fully and completely. The FMLA permits an employer to require that you submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a qualifying exigency.

Your Name: _____ First Middle Last Name of military member on covered active duty or call to covered active duty status: _____ First Middle Last Relationship of military member to you: _____ Period of military member's covered active duty: _____

A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes written documentation confirming a military member's covered active duty or call to covered active duty status. Please check one of the following and attach the indicated document to support that the military member is on covered active duty or call to covered active duty status.

- A copy of the military member's covered active duty orders is attached. Other documentation from the military certifying that the military member is on covered active duty (or has been notified of an impending call to covered active duty) is attached. I have previously provided my employer with sufficient written documentation confirming the military member's covered active duty or call to covered active duty status.

https://www.dol.gov/whd/forms/index.htm

https://www.dol.gov/whd/forms/index.htm



Form Examples

Appendix 9 – Worker’s Compensation Poster

WORKERS' COMPENSATION



is a system of benefits provided by law to most workers who have job-related injuries or illnesses. Benefits are paid for injuries that are caused, in whole or in part, by an employee's work. This may include the aggravation of a pre-existing condition, injuries brought on by the repetitive use of a part of the body, heart attacks, or any other physical problem caused by work. Benefits are paid regardless of fault.

IF YOU HAVE A WORK-RELATED INJURY OR ILLNESS, TAKE THE FOLLOWING STEPS:

- GET MEDICAL ASSISTANCE.** By law, your employer must pay for all necessary medical services required to cure or relieve the effects of the injury or illness. Where necessary, the employer must also pay for physical, mental, or vocational rehabilitation, within prescribed limits. The employee may choose two physicians, surgeons, or hospitals. If the employer notifies you that it has an approved Preferred Provider Program for workers' compensation, the PPP counts as one of your two choices of providers.
- NOTIFY YOUR EMPLOYER.** You must notify your employer of the accidental injury or illness within 45 days, either orally or in writing. To avoid possible delays, it is recommended the notice also include your name, address, telephone number, Social Security number, and a brief description of the injury or illness.
- LEARN YOUR RIGHTS.** Your employer is required by law to report accidents that result in more than three lost work days to the Workers' Compensation Commission. Once the accident is reported, you should receive a handbook that explains the law, benefits, and procedures. If you need a handbook, please call the Commission or go to the Web site. If you must lose time from work to recover from the injury or illness, you may be entitled to receive weekly payments and necessary medical care until you are able to return to work that is reasonably available to you. It is against the law for an employer to harass, discharge, refuse to rehire or in any way discriminate against an employee for exercising his or her rights under the Workers' Compensation or Occupational Diseases Acts. If you file a fraudulent claim, you may be penalized under the law.
- KEEP WITHIN THE TIME LIMITS.** Generally, claims must be filed within three years of the injury or disablement from an occupational disease, or within two years of the last workers' compensation payment, whichever is later. Claims for pneumoconiosis, radiological exposure, asbestosis, or similar diseases have special requirements. Injured workers have the right to reopen their case within 30 months after an award is made if the disability increases, but cases that are resolved by a lump-sum settlement contract approved by the Commission cannot be reopened. Only settlements approved by the Commission are binding.

For more information, go to the Illinois Workers' Compensation Commission's Web site or call any office:
Toll-free: 866/352-3033 Chicago: 312/814-6611 Peoria: 309/671-3019 Springfield: 217/785-7087
Web site: www.iwcc.il.gov Collinsville: 618/346-3450 Rockford: 815/987-7292 TDD (Deaf): 312/814-2959

BY LAW, EMPLOYERS MUST DISPLAY THIS NOTICE IN A PROMINENT PLACE IN EACH WORKPLACE AND COMPLETE THE INFORMATION BELOW.

Party handling workers' compensation claims			
Business address			
Business phone			
Effective date	Termination date		
Policy number	Employer's FEIN		

ICPN 1011 Printed by the authority of the State of Illinois.

Appendix 10 – EEOC Poster

Equal Employment Opportunity is THE LAW

Private Employers, State and Local Governments, Educational Agencies and Labor Organizations

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

GENETICS
Title I of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination on the basis of genetic information. It covers hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; information about the medical history of applicants, employees, or their family members; and requests for or receipt of genetic services by applicants, employees, or their family members.

RETALIATION
All of these Federal laws prohibit covered entities from retaliating against a person for filing a charge of discrimination or participating in a discrimination proceeding, or otherwise opposing an unlawful employment practice.

WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED
There are strict time limits for filing charges of employment discrimination. To file a charge, you must first contact the EEOC. You may also file a charge directly with a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected:
The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-649-8329 (toll-free TTY number for individuals with hearing impairments) or 1-800-649-8329 (toll-free TDD number for individuals with hearing impairments) in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at www.eeoc.gov.

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN
Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination on the basis of race, color, religion, sex, national origin, age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

DISABILITY
Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodations for the physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

AGE
The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees from discrimination on the basis of age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

SEX (WAGES)
The Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

<https://www1.eeoc.gov/employers/poster.cfm>



Appendix 11 – Sample Job Application Form

Sample Employment Application Form

PLEASE PRINT ALL INFORMATION REQUESTED EXCEPT SIGNATURE

APPLICATION FOR EMPLOYMENT

APPLICANTS MAY BE TESTED FOR ILLEGAL DRUGS

PLEASE COMPLETE PAGES 1-4. DATE _____

Name _____
Last First Middle Maiden

Present address _____
Number Street City State Zip

How long _____
 Telephone (____) _____
 Social Security No. _____ - ____ - _____

If under 18, please list age _____

Position applied for (1) _____
 and salary desired (2) _____
 (Be specific)

Days/hours available to work
 No Pref _____ Thur _____
 Mon _____ Fri _____
 Tue _____ Sat _____
 Wed _____ Sun _____

How many hours can you work weekly? _____ Can you work nights? _____

Employment desired _____ FULL-TIME ONLY _____ PART-TIME ONLY _____ FULL- OR PART-TIME

When available for work? _____

TYPE OF SCHOOL	NAME OF SCHOOL	LOCATION (Complete mailing address)	NUMBER OF YEARS COMPLETED	MAJOR & DEGREE
High School				
College				
Bus. or Trade School				
Professional School				

Appendix 12 – Sample Performance Improvement Plan

Sample Performance Improvement Plan

TO: [Employee Name]

FROM: []

SUBJECT: [30/60/90] Day Performance Improvement Plan

DATE: []

This memorandum is written as a [30/60/90] Day Performance Improvement Plan designed to focus your attention on substantially improving your performance in several key areas.

[As was discussed in your most recent performance review dated _____, you received several "1's" in key areas and an overall rating of "1" meaning you did not meet expectations.]

[Since your performance review on _____, your performance has been unsatisfactory in several respects. For example, _____.]

This being the case, I have outlined the following Performance Improvement Plan which sets forth objectives that you must accomplish in order to bring your performance up to minimal acceptable standards. The plan is as follows:

- 1.
- 2.
3. *[list fair objectives – they can be both objective and subjective – in clear terms that could reasonably be accomplished within the required time frame]*
- 4.
- 5.

You have [30/60/90] days from today to meet these objectives. I will meet with you twice over the next [30/60/90] days to discuss your progress. Our first meeting will be on _____ at _____ and the second meeting will be on _____ at _____. Both meetings will be in my office.

It is your responsibility to contact me at anytime during this time period regarding your performance and to seek assistance in removing roadblock(s) you may come up against which may impede your progress.



Form Examples

Appendix 13 – Sample Separation Agreement and Release

Disclaimer: This form is a sample that has been prepared for general informational purposes only. Nothing contained in the form is legal advice. Please seek your own legal counsel for all legal matters.

Sample Separation Agreement and Release

[Date]

Name of Employee Street Address City, State, Zip

Dear [Name of Employee]:

This letter confirms your termination as [specify title] of [Name of Company] (the "Company") effective [specify date].

Our understanding and agreement with respect to your separation is as follows:

1. Your total and final compensation from the Company shall be provided to you as follows:

- a) You will receive a lump sum payment of [specify amount] (less statutory deductions) in the form of a Company check to be sent to you Seven (7) days following the execution of this letter.
- b) You will continue to be covered under the Company's group medical, dental, vision and life insurance programs until [specify date], which expense shall be covered by the Company and you at the same proportionate rates as are being paid on the date of separation. Thereafter, you may continue to be covered under the Company's group health insurance program, at your expense, for a period of 18 months (or such longer period as may be required by law) or until you become covered by any other group health plan, whichever occurs first. This continued coverage will be subject to and in accordance with the terms of the documents governing the program.
- c) A check in the amount of [specify amount], representing all accrued but unused vacation (less statutory deductions), will be mailed to you on [specify day and date].
- d) The Company agrees to provide you with a letter of reference attached hereto.

e) Other than as set forth herein, you will not receive any compensation or benefits of any kind from the Company and you expressly acknowledge and agree that you are not entitled to any such payment or benefit, with the exception of any vested benefit to which you have or will become entitled under the [specify company] Pension Plan.

2. You understand and agree that the compensation and benefits provided for herein are being provided to you in consideration for the covenants undertaken and the releases contained in this Agreement.

3. a) You agree to accept the compensation and benefits provided for herein in full resolution and satisfaction of, and hereby IRREVOCABLY AND UNCONDITIONALLY RELEASE, REMISE AND FOREVER DISCHARGE the Company from any and all liabilities, actions, causes of action, contracts, agreements, promises, claims and demands of any kind whatsoever, in law or equity, whether known or unknown, suspected or unsuspected, fixed or contingent, apparent or concealed, which you, your heirs, executors, administrators, successors or assigns ever had, now have or hereafter can, shall or may have for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of this Agreement and Release, including, without limitation, any and all claims arising out of or relating to your employment, compensation and benefits with the Company and/or the termination thereof including, without limitation, contract claims, benefit claims, tort claims, harassment, defamation

See link for example:

<https://www.priorilegal.com/legal-forms-and-documents/separation-agreement-and-general-release>

Appendix 14 – Sample Drug and Alcohol Testing Release

Drug and/or Alcohol Testing Consent Form

Employee Agreement and Consent to Drug and/or Alcohol Testing

I hereby agree, upon a request made under the drug/alcohol testing policy of _____ (the Company), to submit to a drug or alcohol test and to furnish a sample of my urine, breath, and/or blood for analysis. I understand and agree that if I at any time refuse to submit to a drug or alcohol test under company policy, or if I otherwise fail to cooperate with the testing procedures, I will be subject to immediate termination. I further authorize and give full permission to have the Company and/or its company physician send the specimen or specimens so collected to a laboratory for a screening test for the presence of any prohibited substances under the policy, and for the laboratory or other testing facility to release any and all documentation relating to such test to the Company and/or to any governmental entity involved in a legal proceeding or investigation connected with the test. Finally, I authorize the Company to disclose any documentation relating to such test to any governmental entity involved in a legal proceeding or investigation connected with the test.

I will hold harmless the Company, its company physician, and any testing laboratory the Company might use, meaning that I will not sue or hold responsible such parties for any alleged harm to me that might result from such testing, including loss of employment or any other kind of adverse job action that might arise as a result of the drug or alcohol test, even if a Company or laboratory representative makes an error in the administration or analysis of the test or the reporting of the results. I will further hold harmless the Company, its company physician, and any testing laboratory the Company might use for any alleged harm to me that might result from the release or use of information or documentation relating to the drug or alcohol test, as long as the release or use of the information is within the scope of this policy and the procedures as explained in the paragraph above.

This policy and authorization have been explained to me in a language I understand, and I have been told that if I have any questions about the test or the policy, they will be answered.

I UNDERSTAND THAT THE COMPANY WILL REQUIRE A DRUG SCREEN TEST UNDER THIS POLICY WHENEVER I AM INVOLVED IN AN ON-THE-JOB ACCIDENT OR INJURY UNDER CIRCUMSTANCES THAT SUGGEST POSSIBLE INVOLVEMENT OR INFLUENCE OF DRUGS OR ALCOHOL IN THE ACCIDENT OR INJURY EVENT.

Signature of Employee

Date

Employee's Name – Printed

Date

Company Representative


Date

Note: This document is for informational purposes only and may not be appropriate for your situation. Please consult an attorney for all legal matters.

<https://www.uscis.gov/i-9>



Appendix 15 – I-9 Form



Employment Eligibility Verification
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1615-0047
Expires 06/31/2019

▶ START HERE: Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation *(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)*

Last Name (Family Name)	First Name (Given Name)	Middle Initial	Other Last Names Used (if any)
Address (Street Number and Name)		Apt. Number	City or Town
		State	ZIP Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number	Employee's E-mail Address	Employee's Telephone Number

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

1. A citizen of the United States

2. A noncitizen national of the United States (See instructions)

3. A lawful permanent resident (Alien Registration Number/USCIS Number): _____

4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): _____
Some aliens may write "N/A" in the expiration date field. (See instructions)

Aliens authorized to work must provide only one of the following document numbers to complete Form I-9: An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.

1. Alien Registration Number/USCIS Number: _____

OR

2. Form I-94 Admission Number: _____

OR

3. Foreign Passport Number: _____

Country of Issuance: _____

QR Code - Section 1
Do Not Write in This Space

Signature of Employee _____ Today's Date (mm/dd/yyyy) _____

Preparer and/or Translator Certification (check one):

I did not use a preparer or translator. A preparer(s) and/or translator(s) assisted the employee in completing Section 1.
(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator _____		Today's Date (mm/dd/yyyy) _____	
Last Name (Family Name)	First Name (Given Name)		
Address (Street Number and Name)		City or Town	State
			ZIP Code

STOP Employer Completes Next Page **STOP**

Form I-9 11/14/2016 N Page 1 of 3

Appendix 16 – Sample Acknowledgement of Receipt of Handbook

Acknowledgment of Receipt of Employee Handbook

I have my copy of the practice's personnel policies and procedures manual that outlines my privileges and obligations as an employee of the practice. I will familiarize myself with the information in this handbook. I also understand that it constitutes policies of this practice, and I will be governed by it.

Since the information in the handbook is necessarily subject to change by actions of the Board of Directors/physician(s), it is understood that changes in the policies as listed here, may be modified, superseded, or eliminated at any time. All personnel in the practice will be notified of such changes through the usual channels.

This handbook contains only general policy statements and is not to be construed as a contract or agreement with any employee. Employment is provided "at will," and the practice reserves the right to discharge an employee at any time for any reason.

Signature: _____

Date: _____



Form Examples

Appendix 17 – EEOC Discrimination Complaint Form

EEOC Form 5 (5/01)		Charge Presented to: Agency(ies) Charge No(s):	
CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		<input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	
_____ and EEOC <small>State or local Agency, if any</small>			
Name (indicate Mr., Ms., Mrs.)	Home Phone (Incl. Area Code)	Date of Birth	
Street Address City, State and ZIP Code			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name	No. Employees, Members	Phone No. (Include Area Code)	
Street Address City, State and ZIP Code			
Name	No. Employees, Members	Phone No. (Include Area Code)	
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es).)		DATE(S) DISCRIMINATION TOOK PLACE	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN		Earliest Latest	
<input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify below.)		<input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attached extra sheet(s)):			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY – When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
Date	Charging Party Signature	SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	

Appendix 18 – Sample Sexual Harassment Policy

This Policy should be on company letterhead

Sexual Harassment Policy (Sample Policy)

The (COMPANY NAME) is committed to providing a working environment free from discrimination, and to prohibit harassment of its employees and applicants, including sexual harassment. (COMPANY NAME) will implement the policy to fully comply with applicable federal, state and local laws, rules and regulations in the area of non-discrimination and harassment of employment.

Sexual harassment is defined as any unwelcome or unwanted sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature from someone in the workplace that creates discomfort and/or interferes

with the job. Conduct constitutes harassment when:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions and/or retaliation; or
- Such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Harassment due to race, religion, sex, sexual harassment, national origin, disability, age, military or veteran status will not be tolerated in the (COMPANY NAME)'s workplace. Such conduct is subject to discipline, up to and including termination.

Any employee who believes he or she is a victim of sexual harassment must immediately report any incident to the company's designated EEO Officer.

The company will not tolerate retaliation against any employee who complains of sexual harassment or provides information in connection with any such complaint.

If you have any questions regarding this policy, please contact (COMPANY'S EEO OFFICER'S NAME), EEO Officer at (PHONE NUMBER).

(Company Name) is an equal opportunity employer



Appendix 19 – Sample Reference Release Letter

(Please read the following statements, sign below, and return to the Human Resources office.)

I, _____, hereby authorize my prior employer, _____, to release any and all information relating to my employment with them to _____ (your company's name). I further release and hold harmless both _____ (prior employer) and _____ (your company's name) from any and all liability that may potentially result from the release and/or use of such information. I understand that any information released by my prior employer will be held in strictest confidence, that it will be viewed only by those involved in the hiring decision, and that neither I nor anyone else not so involved will have the right to see the information.

_____ Signature of Employee Date
_____ Employee's Name - Printed

[Note to employer - omit this before printing the form: Have the applicant fill out one of these forms for each prior employer from which you intend to seek job reference information. Using the form will make it much more likely that the prior employer will feel at liberty to release the information you request, or at least more than the usual work dates and salary confirmation that are of limited value in the hiring decision. Also keep in mind that if anyone refuses to sign such an authorization, your company would have the legal right to refuse to consider that person any further for hiring.]

Appendix 20 – Sample Termination Report

Termination Report		
Employee Name:	Title:	Term Date:
Supervisor:	Department:	
Circumstances/Reason:		
Type of termination: Voluntary Involuntary Layoff		
Eligible for rehire? Yes No If no, explain:		
Compensation dispensation:		
Salary end date:	Vacation pay due:	
Commissions due:	Bonus due:	
Severance pay:	Other:	
Benefits:		
End date:		
COBRA election? Yes No		
If yes, effective date:		Monthly payment:
Return of company property:		
Keys	Credit Cards	Company car
ID Cards	Security cards	Computer passwords
Other:		
Process followed:		
Exit interview	Signed release	COBRA communication
Notify payroll	Notify staff	
Authorized signature _____		Date _____



Form Examples

Appendix 21 – ADAA Fact Sheet

U.S. Equal Employment Opportunity Commission

Fact Sheet on the EEOC’s Final Regulations Implementing the ADAAA

The ADA Amendments Act of 2008 (ADAAA) was enacted on September 25, 2008, and became effective on January 1, 2009. The law made a number of significant changes to the definition of “disability” under the Americans with Disabilities Act (ADA). It also directed the U.S. Equal Employment Opportunity Commission (EEOC) to amend its ADA regulations to reflect the changes made by the ADAAA. The EEOC issued a Notice of Proposed Rulemaking (NPRM) on September 23, 2009. The final regulations were approved by a bipartisan vote and were published in the Federal Register on March 25, 2011.

In enacting the ADAAA, Congress made it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the statute. Congress overturned several Supreme Court decisions that Congress believed had interpreted the definition of “disability” too narrowly, resulting in a denial of protection for many individuals with impairments such as cancer, diabetes, and epilepsy. The ADAAA states that the definition of disability should be interpreted in favor of broad coverage of individuals.

The EEOC regulations implement the ADAAA – in particular, Congress’s mandate that the definition of disability be construed broadly. Following the ADAAA, the regulations keep the ADA’s definition of the term “disability” as a physical or mental impairment that substantially limits one or more major life activities; a record (or past history) of such an impairment; or being regarded as having a disability. But the regulations implement the significant changes that Congress made regarding how those terms should be interpreted.

The regulations implement Congress’s intent to set forth predictable, consistent, and workable standards by adopting “rules of construction” to use when determining if an individual is substantially limited in performing a major life activity. These rules of construction are derived directly from the statute and legislative history and include the following:

- The term “substantially limits” requires a lower degree of functional limitation than the standard previously applied by the courts. An impairment does not need to prevent or severely or significantly restrict a major life activity to be considered “substantially limiting.” Nonetheless, not every impairment will constitute a disability.
- The term “substantially limits” is to be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.
- The determination of whether an impairment substantially limits a major life activity requires an individualized assessment, as was true prior to the ADAAA.
- With one exception (“ordinary eyeglasses or contact lenses”), the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures, such as medication or hearing aids.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
- In keeping with Congress’s direction that the primary focus of the ADA is on whether discrimination occurred, the determination of disability should not require extensive analysis.

As required by the ADAAA, the regulations also make it easier for individuals to establish coverage under the “regarded as” part of the definition of “disability.” As a result of court interpretations, it had become difficult for individuals to establish coverage under the “regarded as” prong. Under the ADAAA, the focus for establishing coverage is on how a person has been treated because of a physical or mental impairment (that is not transitory and minor), rather than on what an employer may have believed about the nature of the person’s impairment.

The regulations clarify, however, that an individual must be covered under the first prong (“actual disability”) or second prong (“record of disability”) in order to qualify for a reasonable accommodation. The regulations clarify that it is generally not necessary to proceed under the first or second prong if an individual is not challenging an employer’s failure to provide a reasonable accommodation.

Appendix 22 – NLRB Poster

Employee Rights Under the National Labor Relations Act



The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity. Employees covered by the NLRA are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees’ own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities, including joining or remaining a member of a union.

Under the NLRA, it is illegal for your employer to:

- Prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.
- Threaten or coerce you in order to gain your support for the union.



Appendix 23 – Sample HIPAA Form

SAMPLE HIPAA AUTHORIZATION FORM

Disclaimer: This document is provided solely for reference purposes. Covered Entities under HIPAA are advised to refer to their Institution's Privacy Policy for specific requirements for the HIPAA Authorization.

I, _____, give permission to [Name of Institution] to:

use the following protected health information, and/or

disclose the following protected health information to:

[Name(s) of entity to receive information]

Information to be disclosed (check all that apply):

- Medical Records
- Treatment Records
- Diagnostic Records
- Other: _____

This protected health information is being used or disclosed for the following purposes:

This authorization expires [specify (1) date or (2) event that relates to the purpose of this use or disclosure].

If the person or entity receiving this information is not a health care provider or health plan covered by federal privacy regulations, the information described above may be disclosed to other individuals or institutions and no longer protected by these regulations.

You may refuse to sign this authorization. Your refusal to sign will not affect your ability to obtain treatment or payment or your eligibility for benefits.

You may inspect or copy the protected health information to be used or disclosed under this authorization. For protected health information created as part of a clinical trial, your right to access is suspended until the clinical trial is completed.

Finally, you may revoke this authorization in writing at any time by sending written notification to [Name of Privacy contact] at [office address]. Your notice will not apply to actions taken by the requesting person/entity prior to the date they receive your written request to revoke authorization.