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## Thoughts on Developing Personnel Policies

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## Personnel Policies Can Be Useful Tools

- They also may be sources of risk and liability.
- Model policies should not be treated as written in stone.
- IMLA sample policies will provide starting points for selected policy development.
- This presentation provides some personal thoughts on the process of creating personnel policies.



## Avoid Creating Employment Contract

- If applicable, policies should be written to:
  - Preserve Employment-At-Will
  - Avoid Creating Express or Implied Contracts
  - Use Disclaimers, but Use Them Wisely
- Consider whose hands are being tied:
  - Employees
  - Supervisors
  - Managers
  - Governing Board





## At the same time, understand the effect of policies on employees

- Morale
- Enforceability
- "Do As I Say, Not as I Do"



## Thoughts on Policy Creation

- Why Adopt A Policy (e.g., Sexual Harassment)
- Prevention, Compliance, or Legal Defense?
  - Prevent harassment from occurring
  - Provide an effective, efficient and non-threatening means of reporting harassment
  - Provide an effective remedy if harassment occurs
  - Prevent retaliation
  - Prevent recurrence
  - The Pentagon Reason:
    - Be able to plead that organization had a policy!





## Policy Development Process: Moonlighting Example

Step 1. Determine Purpose of Policy
- Why Be Concerned (e.g., worker performance, safety, conflict of interest, liability)?
- Who Does Policy Cover (all employees or those delineated)?
- Types of Moonlighting That May Be Allowed, Prohibited, or Controlled/Regulated.

Step 2. Determine Manner in Which Moonlighting Will Be Regulated
- Prohibit, require prior approval, make it revocable.

Step 3. Create Language and More
- Adopt & Notify and Train Employees (& Public)



## Step 3: Creating Policy Language



- Know authority!
- Know limits to authority (e.g., CBA or statute or ?)!
- Know who has authority to adopt!
- Know procedure to adopt!
- Know other relevant policies and make it fit!
- Read it and understand it!
- Let someone else read it and (hopefully) understand it!

## Step 3 (continued)

- Read it again, and revise it!
- Know How Policy is Amended
- Know how policy is issued and implemented and enforced:
  - (Including consideration of whether it is enforceable in reality)!
- Create Training to Go with Policy!



## Once a policy is adopted, organization must do more than file it away

- Distribute policy in meaningful manner
  - Is email sufficient?
- Ensure acknowledgement of receipt of policy (and amendments, too)
- Train on policies as appropriate
- Ensure that supervisors understand and apply policy



## Yet Another Top 10 List Handbook/Policy Mistakes

- Failure to Clearly State That Handbook is Not a Contract for Employment
  - NOT JUST A DISCLAIMER!
- Missing Components from Non-Discrimination Policies (e.g., State Law Criteria, ADA Policy)
- Not Keeping Up To Date on Statutory Changes
- No Retaliation Provision in Sexual Harassment/Discrimination Policies
- No User-Friendly Complaint Mechanism in Sexual Harassment/Discrimination Policies

## Top 10 List Continued

- Not Having an FMLA policy
- Military Leave Policy Does Not Comply with USERRA
- No FLSA Safe Harbor Provision
- Impermissible Deductions from Pay
- No Receipt and Acknowledgment Form
- And a bonus #11 – Supervisors Not Adhering to or Enforcing Policies





## Questions or Comments?

*Thank you.*

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