

Train Your Managers On the Basics of Employment Laws: A Priority in 2008

Federal and state employment laws govern all employment actions from hiring to firing. And the fact is, most EEOC charges, wrongful termination lawsuits and other complaints of harassment or discrimination are the result of the actions or lack of appropriate action of front-line and middle-level managers. It is not the Human Resource Department that creates problems within an organization. It is those that manage and direct employees on a daily basis -- your management team.

So it behooves all employers to train managers on the basics of federal and state employment laws not only for awareness but also to ensure compliance. The following list has been developed by the SESCO staff based upon day-to-day phone calls with clients as well as representing clients before State Human Rights and the EEOC in defending claims of discrimination.

- 1. Discrimination** – Title VII of the Civil Rights Act of 1964 (and practically all states) prohibits employers from discriminating in hiring, firing, compensation and other employment factors based upon a person's race, religion, sex or national origin. Additionally, many states have implemented additional factors such as marital status, veteran status, sexual orientation and others.

Training: Managers and supervisors must understand Title VII as well as state prohibitions. An excellent way to inform not only managers and supervisors but all within the organization, is through appropriate handbook policies to include a customized EEOC statement reflecting not only federal but also state prohibitions.

- 2. Overtime Violations** – The Fair Labor Standards Act (FLSA) is the nation's main compensation law. Not only does it set forth minimum wage standards (many states also have their own minimum wage standards) but also regulates compensable time (working time) as well as overtime.

Training: Managers need to understand the basics of the Fair Labor Standards Act to include what is compensable time (working time), how to monitor and edit time records, what is authorized or unauthorized overtime based upon the Act and other important regulations so that managers and supervisors are not inappropriately working or authorizing work creating back wage liability.

- 3. Family and Medical Leave Act** – The Family and Medical Leave Act (FMLA) states that eligible employees can take up to 12 weeks per year of unpaid, job protected time off for personal or family medical reasons as well as for the birth or adoption of a child.

Training: It is critical that managers and supervisors understand FMLA provisions so that they can properly communicate employee absences to the HR Department to ensure that the appropriate paper-work and systems are engaged to manage and comply with FMLA. Without such understanding and cooperation, the Family and Medical Leave Act becomes very cumbersome to comply and manage.

- 4. Age Discrimination** – The Age Discrimination in Employment Act (ADEA) prohibits employers from discriminating in any way against applicants or employees older than 40. There is no age cap for retirement or forced separation.

Training: Managers must understand the basics of age discrimination and always consider when taking employment action with one who is 40 or older to be cautious and challenge the action for age discrimination. Note: When separating employees over 40 through retirement, severance or even forced separation with a payment for consideration, severance agreements and releases must contain

information on the Age Discrimination in Employment Act. SESCO prepares these releases for clients.

- 5. Disability Discrimination** – The Americans with Disabilities Act (ADA) prohibits discrimination based upon employees with disabilities as defined. It also requires reasonable accommodation for those who have requested an accommodation or cannot perform the essential functions of the job.

Training: Never immediately reject applicants because you think their disability would prevent them from doing a good job. Also, when an employee apparently needs an accommodation, consider job transfers to an open position. The ADA requires preferential treatment for those with a disability needing an accommodation for an open position which is a lateral transfer. Also during the interviewing process, do not ask questions that would reveal an applicant's medical condition or disability.

- 6. Military Leave** – The Uniform Services Employment and Reemployment Rights Act (USERRA) makes it illegal to discriminate against an employee who volunteers or has been called to active military duty. When reservists return from active duty tours of less than five (5) years, employers must reemploy them to their old jobs or an equal job.

Training: Managers should never challenge a returning reservists bid to get his/her old job back; courts typically side with employees in USERRA disputes.

- 7. Workplace Safety** – The Occupational Safety and Health Act (OSHA) requires employers to operate businesses free from recognized hazards.

Training: It is critical that a safety procedures manual be developed and implemented and all managers and employees be trained on job hazards and good, safe working habits. OSHA is a very aggressive compliance agency and fines can result in the tens of thousands of dollars. Additionally, when employees are injured, not only do you face OSHA action, but also workers' compensation cost.

- 8. Immigration** – The Immigration Reform and Control Act (IRCA) makes it illegal to hire illegal aliens. Employers must identify workplace eligibility for all hires by completing I-9 forms.

Training: Managers should know that it is illegal to discriminate against illegal aliens be it harassment or sub minimum pay – even if the illegal immigrant is hired inadvertently. Also, English Only policies have been challenged where speaking and communicating clearly in English is not required by the position. Handbooks should contain policies as relates to English only requirements as well as required I-9 documentation.

About the Author – SESCO Management Consultants is retained by the National Funeral Directors Association to provide results-oriented human resource consulting services to members. The service provides for a free "hotline" to discuss day-to-day employment issues such as policy development, employee challenges such as disciplinary, terminations or workers' compensation, compensation, compliance to federal and state employment regulations, family and team challenges and many other management and human resource matters.