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# *HONING YOUR EPL SUPERPOWERS... A FEW WORDS OF WISDOM FOR C-SUITE EXECUTIVES*

Presented by: Jennifer Shaw, Esq.

425 University Avenue, Suite 200  
Sacramento, California 95825  
Telephone: 916.640.2240  
Facsimile: 916.640.2241  
<http://shawlawgroup.com>



# Topics for Today

- Best practices for hiring, corrective action, and termination
- EEO compliance
- Best practices for medical leaves of absence/reasonable accommodations

# Best Practices for Hiring, Termination, and Corrective Action

# Hiring

- Determine the need
- Develop hiring criteria
- Advertise
- Conduct interviews
- Choosing the “most-qualified” candidate
- Ensure everyone is on board
- Spot-check Human Resources
- Don’t ask for favors
- Consistency is about process and not result
- What does “at-will” employment really mean?

# Corrective Actions

- You must treat every employee fairly and consistently
- Result is not the issue; focus on the process
- Protect your investment; be clear about expectations from the start
- Don't let things go too long; it can be a long downhill slide without intervention
- Documentation can help you or hang you!
- What about employee evaluations?
- Ensure Human Resources can adequately explain the decision
- Empower supervisors and managers to make appropriate decisions
- Don't be overly involved in the process

# Termination

- What is “wrongful termination”?
- The value of collaboration
- Reducing the risk
- Common termination mistakes
- It’s the last resort
- “Progressive discipline” often not appropriate for conduct issues
- Keep tight lid on the process
- Only get involved if necessary

# EEO Compliance

# Preventing Discrimination, Harassment, and Retaliation

- Comply with your EEO policies and the law
- Understand and respect the internal complaint process
- Take responsibility for your actions/conduct
- Be a “leader”



# The Standard for Workplace Conduct: Respect and Professionalism

*Creating a safe and comfortable workplace for everyone is not only a legal necessity, it's the right thing to do.*

# What Is Discrimination?

- A personnel decision
- Motivated by an employee's protected status
- For which there is no legitimate business reason

# 12 Protected Characteristics We All Have

- Race
- Color
- Ancestry
- National origin
- Genetic characteristics
- Sex
- Gender identity
- Gender expression
- Sexual orientation
- Marital status
- Political affiliation
- Religion

# And Five More We May Have...

- Age (if 40 or over)
- Mental disability
- Physical disability
- Medical condition (including pregnancy, childbirth and breastfeeding)
- Military/veteran status

# Conduct That May Violate Harassment Prevention Policies

Inappropriate verbal, physical, or visual conduct based on or related to a protected characteristic

- Could be a one-time incident (“zero-tolerance”)
- Anyone has the right to make a complaint, even if they are not the target of the inappropriate conduct

# Context Is Everything

- It is impossible to create a complete list of workplace “Do’s” and “Don’ts”
- Consider the impact to a reasonable person in the workplace (not intent!)

# Two Categories of Unlawful Harassment

- **“Hostile Work Environment”**

Conduct that:

- Is related to a protected category;
- Is unwelcome by the employee;
- Is objectively and subjectively offensive; and
- Makes it more difficult to do the job

# Two Categories of Unlawful Harassment (cont.)

- **“Quid Pro Quo”**
  - Demand for sexual favor(s);
  - Tangible job detriment or benefit; and
  - Carried out



# Gender Issues and Sexual Harassment

- There is a difference under California law among:
  - Sex
  - Gender identity
  - Gender expression
  - Sexual orientation
- Individuals may have different perspectives about these characteristics, but that does not change the protections required under the law

# Avoiding Workplace Harassment

- Embrace diversity and inclusion
- Be an Upstander, not a Bystander
- Make sure everyone has the opportunity to be heard and respected
- Focus on the power of words
- Promptly, thoroughly, and fairly investigate complaints

# What Is Retaliation?

- Negative treatment
- Directed at an employee
- Because of that employee's "protected activity"

# Examples of Protected Activity

- Threatening to file or filing an EEO complaint
- Participating in an interview, investigation, hearing, trial, or other proceeding
- Requesting a reasonable accommodation for religion or disability

# The Internal EEO Complaint Process

- Reporting options
- No need to follow the chain-of-command
- No such thing as an “off-the-record” complaint
- Disclosure only on a “need-to-know” basis

# Appropriate Response to Workplace EEO Issues

- Remain fair and impartial
- Report the basic facts immediately (15 minutes is ideal!)
- Exercise discretion

# 10 Things to Keep in Mind

1. Mutual respect
2. "Platinum Rule" (not the "Golden Rule")
3. Respect your EEO policies
4. Intent is not required for an EEO policy violation; it's all about impact
5. It's not where you are, but who you are with
6. No such thing as "off-the-record" complaints
7. "Get-out-of-your-chair"
8. Beware of employee-on-employee retaliation
9. Managing is not retaliation
10. Everything you need to know you learned in kindergarten

# Best Practices for Medical Leaves of Absence and Reasonable Accommodations



# Key Accommodation/Leave Laws

- PDL
- FMLA/CFRA
- New Parent Bonding
- ADA/FEHA
- Local laws (e.g., San Francisco Paid Parental Leave Ordinance)

# Best Practices

- Don't play doctor
- Ensure Human Resources is skilled in these areas
- Consider committees to review leave and accommodation practices
- No favors!

# Questions/Comments

# Thank You!



**425 University Avenue, Suite 200  
Sacramento, California 95825  
Telephone: 916.640.2240  
Facsimile: 916.640.2241**

**71 Stevenson Street, 4th Floor  
San Francisco, California 94105  
Telephone: 415.983.5960  
Facsimile: 415.983.5963**

**Email: [info@shawlawgroup.com](mailto:info@shawlawgroup.com)  
Website: <http://shawlawgroup.com>**

