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Training supervisors to lead without liability

Frontline supervisors and team leads play a key role in developing good employees and managing workforce issues. They are the first line of defense for problems with morale, harassment, productivity, safety, policy compliance, and other workplace concerns. Also, many supervisors are assigned tasks with significant legal implications, such as interviewing and hiring new employees, handling timekeeping and payroll issues, responding to leaves of absence and vacation requests, providing performance reviews, and making discipline and termination decisions. Yet despite these wide-ranging management duties, supervisors often lack the training and knowledge to know the legal and practical consequences of their actions.



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and actions of the company, at least when it comes to assigning legal liability. Employment laws create a variety of pitfalls where even relatively minor decisions by a supervisor can create significant liability risk. Imagine a supervisor who is asked by an employee to take time off because his child is home sick with pneumonia. If the supervisor fails to recognize that this request may qualify for Family and Medical Leave

Act (FMLA) leave, assumes the employee's stay-at-home spouse can take care of the kid and denies the request, the company may face liability for an FMLA interference claim. Or consider a supervisor who asks his non-exempt employees for volunteers to stay late to clean up after an office party as "off-the-clock" time. He's just opened the door to a wage claim against the company for unpaid wages, with potential overtime liability.

Supervisors and managers also may be personally liable under some employment laws. For example, the federal Fair Labor Standards Act (FLSA) governing minimum wage and overtime pay, and the FMLA governing job-protected time off for certain covered reasons; both contain provisions that permit

Liability for supervisor actions and decisions

Generally, the knowledge and actions of a supervisor are the knowledge

See **Business Solutions**, 20

BUSINESS SOLUTIONS

CORRECTIONS

Last month's Business Solutions article, "10 reasons why your social media may not be working" by Rose Caiazzo of Rose Consulting, LLC unfortunately had the wrong photo. This is Rose Caiazzo, and we apologize for the error.

We want to get things right. If you spot an error, please let our editor, MJ Clark, know by phone, 307-332-0433, or email, MJClark@WyomingBusinessReport.com.



Marc Pagani Photography



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Business Solutions from 4

supervisor liability. Consequently, both the company and its supervisors have a vested interest in making sure front-line supervisors understand employee rights and employer obligations.

Train supervisors regularly to encourage compliance

All new supervisors should be trained on company policies and employment laws before they start managing employees. Supervisors need to understand that their actions in their new job have a different level of legal significance. Also, don't assume that just because someone has worked at your company for a long time that he or she will automatically know how to comply with legal obligations when promoted to a supervisory position. Similarly, being a supervisor at another company does not ensure that an individual will understand your policies, your workforce issues, and how the laws apply to your company, so include compliance training for all new supervisors.

Schedule annual refresher training for all existing supervisors as well. Changes in employment laws, such as new OSHA electronic reporting rules or new executive orders related to federal contractors, might affect how supervisors maintain records or handle employment decisions, so they must be kept abreast of legal changes. Also, you should train your supervisors on any changes in your policies or practices so that all decision-makers understand and are operating under the same set of policies.

Essential training topics

So what are the essential topics for supervisor compliance training? Here are the top five topics that you should tailor to your supervisors based on your organization and their assigned duties.

1. Interviewing and hiring

Supervisors who are given the opportunity (or responsibility) of reviewing job applications and resumes, interviewing candidates, and making hiring recommendations or job offers,

Supervisors need to understand that their actions in their new job have a different level of legal significance.

should be trained on important do's and don'ts. These include:

- Recognizing potential red flags on an application, such as unanswered questions, large gaps in employment, etc.
- Avoiding discriminatory interview questions, such as those related to age, religion, physical limitations, child-care, ethnicity, etc.
- If background checks are used, steps to take before rejecting a candidate based on an arrest or conviction record that is not job-related.
- When making a job offer, reinforcing that employment is at-will, and no promises or guarantees are made, and properly communicating contingencies like a background check, physical exam, drug test, or other pre-employment criteria.

2. Knowing company policies and legal liabilities

Train your supervisors on recognizing which company policies are applicable in various employment scenarios, and why you have those policies. Then, instruct your supervisors on how to enforce your policies in a consistent, uniform, non-discriminatory manner, and when to get help from others in the company. Also, explain how their supervisory role is critical in ensuring that your company complies with applicable employment laws so that they understand the potential liability that can be created from their actions. Key topics should include:

- Equal employment opportunity – how it applies to hiring, training, promotion, etc.
- Inappropriate behavior by supervisors – provide specific examples of supervisor conduct or decisions that

can lead to company liability, such as excluding female employees from certain job opportunities, name-calling/harassment, failing to stop others from harassing employees, and personal relationships with subordinates, etc.

- Proper timekeeping and pay issues – prohibiting “off-the-clock” work, need for accurate time records, how to handle unapproved overtime, etc.
- Workplace safety rules – how to enforce them, report injuries and illnesses, etc.

3. Avoiding harassment, discrimination, and retaliation

Retaliation claims remain the most frequently alleged employment charge filed with the EEOC each year. Therefore, supervisors should be well trained on recognizing and responding to potential retaliation situations, as well as avoiding any underlying harassment and discrimination issues. Training should address:

- Discrimination and harassment – how to prevent it, what to do if observed, and how to address situations under company reporting and investigation policies.
- Retaliation – what triggers protections against retaliation, how to handle discipline after an employee has engaged in protected conduct, etc.

4. Addressing leaves and accommodations

Supervisors must be trained to recognize when an employee's request may trigger leave under the FMLA or a reasonable accommodation under the Americans With Disabilities Act (ADA) or Title VII. If your supervisors also administer such leaves and accommodations, provide advanced training on all FMLA notification requirements and the interactive accommodation process. At a minimum, training should address:

- Family and Medical Leave Act (FMLA) and other medical leaves – recognizing requests for FMLA leave, limits on contacting the employee's health care provider, restrictions on reaching out to the employee while out on leave, etc.
- Reasonable accommodations – what may be required for disability and

religious accommodations, how to handle accommodation requests, etc.

5. Proper documentation and retention of records

A key duty of supervisors is to properly document workplace issues and the enforcement of company policies. But many supervisors are never trained on how to do that. They are thrown into a supervisory role with access to a myriad of HR forms and left to their own devices to complete them. Or, they are asked to conduct interviews, performance evaluations, and discipline meetings without being trained on what to (and not to) write down. Training on documentation skills should include:

- Make records at the time of, or shortly following, the event – don't wait weeks or months.
 - Focus on the facts, not generalizations, subjective comments or embellishments.
 - Clearly state performance expectations.
 - Avoid potentially discriminatory statements.
 - Cite specific company policies, as applicable.
 - Set specific deadlines for follow-up.
- Be sure to include training on where each type of document should be kept (e.g., personnel file, training file, confidential medical file, etc.) and for how long.

Make training sessions practical

Successful training should offer practical, example-driven situations with plenty of time for supervisors to ask questions in a non-intimidating learning environment. Training time now will pay enormous dividends down the road in better decision-making by supervisors resulting in fewer employment claims by employees.

Brad Cave is a partner at Holland & Hart LLP in Cheyenne. He helps employers find the right solutions to their legal employment challenges and believes in the value of training supervisors as a proactive measure to help mitigate liability for employment claims. Brad may be reached at BCave@hollandhart.com or 307-778-4210.

HALLADAY