

Employment Practices Liability Self-Assessment

The following questionnaire may be used by entities to help assess the strengths and weaknesses of their employment practices policies. After completing this checklist, entities can share the results with their legal counsel to develop a plan to address deficiencies in their employment practices compliance program.

Section I - General Information

Yes No

1. Do you have a person dedicated exclusively to personnel issues?
2. Has a qualified employment practices attorney, consultant or human resources professional assessed or audited your written personnel policies/programs?
3. Does your entity routinely hold employee meetings to reaffirm your policies for workplace wrongdoing?
4. Are posters conspicuously displayed explaining state and federal employment laws?

Section II - Hiring/Application

Yes No

1. Is there more than one individual who interviews and selects employees/volunteers?
2. Is a completed employment application required?
3. Are job/position descriptions given to applicants?
4. Are reference and background checks completed?

Section III - Written Personnel Policies/Guidelines

A. Personnel Manual

Yes No

1. Is your employment manual distributed to each employee/volunteer?
2. Are the personnel policies regarding workplace wrongdoing and internal reporting procedures easily identifiable in the employment manual?
3. Do you require employees/volunteers to sign a form acknowledging their receipt and understanding of the manual to be kept in their personnel file?

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B. Table I - Personnel Policies and Reporting Procedures

Do you have written personnel policies that cover the following:

Yes No

- a. Employment orientation
- b. Internal reporting/Grievance procedures
- c. Equal Employment Opportunity (EEO)/Anti-discrimination*
- d. Sexual harassment
- e. Retaliation prevention
- f. Employment at-will statement (if applicable)
- g. Violence/Threats of violence
- h. Family and medical leave
- i. Drug and alcohol use/abuse
- j. Background/Reference checks
- k. Telephone and electronic communications systems*
- l. Pregnancy discrimination
- m. Social media
- n. HIPPA/PHI

C. Individual Policies

Use the following questions to evaluate each individual personnel policy.

Yes No

- 1. Is the language easy to understand?
- 2. Is there a statement addressing the range of disciplinary actions for wrongdoing?
- 3. Is there an investigation procedure stated or referenced?
- 4. Is there a discipline procedure stated or referenced?
- 5. Is there a statement that wrongdoing will cease?
- 6. Are the accuser, accused and others directly concerned kept informed?
- 7. Is there a retaliation prevention statement?
- 8. Is there a statement of false allegations?
- 9. Is there a statement that indicates the policy is applicable during any business-related activity?
- 10. Is there a confidentiality statement?
- 11. Do internal reporting procedures accompany each policy and are they easily identifiable?
- 12. Are there several safe avenues of internal reporting available?
- 13. Is there a statement specifying that confrontation is not required?
- 14. Is there a requirement that the accused not be part of the investigation team?
- 15. Is there a third-party reporting procedure?

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Section IV - Sexual Harassment Policy

Does this policy include:

Yes No

1. A definition of sexual harassment?
2. Examples of what may constitute sexual harassment, such as the following?
 - a. Unwelcome sexual advances or requests for sexual favors
 - b. Verbal or physical conduct of a sexual nature that adversely affects the employee's employment/position terms or conditions
 - c. Expressed or implied offers of any business-related (i.e., raises or promotions) or non-business related benefits (i.e., gifts or trips) in exchange for sexual favors
 - d. Threatening or taking adverse work-related action against an employee because that employee denied sexual advances or a request for sexual favors
3. A statement that same gender harassments prohibited?
4. A statement that third-party harassment is prohibited?
5. A reporting procedure?

Section V - Equal Employment Opportunity/Anti-Discrimination Policy

Does this policy include:

Yes No

1. All types of unlawful discrimination, including
 - a. Race
 - b. Color
 - c. Religion
 - d. Gender/ sex
 - e. Age
 - f. National origin
 - g. Veteran status
 - h. Disability
2. An equal employment opportunity statement?
3. A statement that employment decisions are based solely on position-related qualifications and abilities?
4. A reporting procedure?

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Section VI - Substance Abuse

Does this policy address/include:

Yes No

1. Controlled substances?
2. Prescription drugs?
3. A list of sources for assistance provided?
4. Reporting procedures that accompany the policy?

Section VII - Violence/Threats of Violence

Does this policy include:

Yes No

1. Examples of violence and threats of violence?
 - a. Intimidation, harassment, assault, battery, stalking or conduct that causes a person to believe that he or she is under a threat of death or serious bodily injury?
 - b. Inflicting or threatening injury or damage to another person's life, health, well-being, family or property?
 - c. Possessing a firearm, explosive or other dangerous weapons on premises or using an object as a weapon?
 - d. Abusing or damaging an employee's or the entity's property?
 - e. Raising voices, using obscene or abusive language or gestures threateningly?
 - f. Joking about any of the above conduct which is prohibited?
2. A statement that violence policy violations may result in arrest and prosecution?
3. A reporting procedure?

Section VIII - Telephone and Electronic Communication Systems Policy

Does this policy include:

Yes No

1. The entity's property rights to all electronic communications?
2. The entity's right to monitor electronic communications?
3. A statement that acquisition, possession or transmission of defamatory, obscene, offensive or harassing material is strictly prohibited?
4. A statement that, upon voluntary or involuntary dismissal, employees may not take any computer-related programs, files or materials for personal possession?
5. A statement clarifying the company's "no rights to privacy" policy respecting electronic communications?
6. A reporting procedure?

Section IX - Performance Evaluations

Yes No

1. Do all supervisors in the entity utilize the same evaluation forms?
2. Are performance evaluations conducted on or around the date as set forth in the written procedures?
3. Is there a designated person within the entity that reviews all supervisors' evaluations?
4. Are supervisors evaluated, in part, upon their thorough documentation of all personnel actions and violations or entity rules and guidelines?

Section X - Disciplinary Procedures/Progressive Discipline

Yes No

1. Does your entity follow a procedure for determining whether disciplinary action is appropriate?
2. Are reprimand/warning/suspension forms uniformly and consistently utilized?
3. Do supervisors adequately document the personnel files before taking disciplinary action?
4. Does a designated person ensure that supervisors maintain proper and current records of disciplinary actions?
5. If a progressive disciplinary procedure is in place, does record keeping reflect that the entity follows it?
6. Is a written process utilized for employees to appeal disciplinary actions?

Section XI - Termination/Dismissals

Yes No

1. Are written internal procedures used to determine whether termination or dismissal is appropriate under the circumstances?
2. Is there adequate file documentation for terminations/dismissals?
3. Are there exit interviews?
4. Is there a review by legal counsel, human resources or another personnel consultant before termination?

Section XII - Internal Investigations

An entity will be judged on its internal response processes and on how fairly it treats all parties. Does the entity have a fair process in place to respond to internal complaints of workplace risk and wrongdoing? Investigations shouldn't be limited to sexual harassment allegations. Put in place investigation procedures to follow in the event of allegations of discrimination, retaliation, internal theft, violence, unsafe acts and other forms of wrongdoing.

Yes No

1. Is there a person/persons in the entity responsible for investigating allegations/incidents of workplace wrongdoing?
2. Is there an investigation team and do persons on the internal investigation/response team reflect the diversity of the workforce?
3. Are those responsible for internal investigations trained in the appropriate procedures?
4. Are non-retaliation measures taken to protect all parties involved in an investigation?

Section XIII - Training Programs

The major focus of this section is to evaluate whether your entity has taken a proactive approach in preventing and appropriately responding to workplace wrongdoing. Formalized training and educational programs demonstrate a commitment to preserve a safe and productive work environment. A formalized and periodic training plan shows reasonableness and helps refute charges of negligence. Training reveals that written personnel programs are “active,” rather than “gathering dust on the shelf.”

Yes No

1. Has your entity completed training on the following topics within the past 24 months?

- a. New employee orientation
- b. Internal reporting and grievance procedures
- c. EEO/Anti-discrimination
- d. Sexual harassment
- e. Retaliation prevention
- f. Employment at will (if applicable)
- g. Violence/Threats of violence
- h. Family and medical leave
- i. Drug and alcohol use/abuse
- j. Telephone and electronic communication systems

Topics that apply to supervisory training

- k. Hiring
- l. Reporting allegations, claims or incidents of workplace risk & wrongdoing
- m. Performance evaluations
- n. Promotion processes
- o. Disciplinary procedures
- p. Termination/dismissal
- q. Record keeping/File maintenance
- r. Background checks