

Best Practices for Drafting Handbook Policies

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Topics to Cover

- ▶ Drafting policies that are clear & concise
- ▶ Compensatory Time & Hourly Work
- ▶ FMLA and Reasonable Accommodations under ADA & PWFA/PUMP
- ▶ Managing the nightmare of social media
- ▶ Discrimination is more than just race
- ▶ Alcohol and Legal/Illegal Drugs in the workplace
- ▶ Setting clear direction for discipline & termination

The goals of employee handbooks...

- ▶ Put employees on notice of their rights and responsibilities
- ▶ Provide guidance to supervisors to ensure consistency
- ▶ Help defend agency against lawsuits by employees

- ▶ Don't have policies that aren't followed
- ▶ Don't use flowery statements
- ▶ Don't be too long

- ▶ **Maintain at-will employment!**



Compensatory Time & Hours Worked

- ▶ Clearly state that all hours worked over 40 per week will be paid at time and a half.
 - ▶ Public Employers may provide compensatory time (240 hours maximum accrued, so only 160 OT hours worked)
- ▶ Prohibit work “off the clock”
- ▶ *Timekeeping Policy*: All employees must record the time they arrive and depart each day. Each employee is responsible for their own recordkeeping. If an employee forgets to clock in or out, they must immediately notify their supervisor so that their time may be accurately recorded. **No one is allowed to clock in or out for another employee.**

Sick, Vacation & Other Paid Time Off

- ▶ Make sure your policy defines:
 - ▶ Accrual rate
 - ▶ Caps
 - ▶ Carryover
 - ▶ Leave increments
 - ▶ Permitted Uses & Documentation
- ▶ What happens to PTO when an employee leaves the agency?
 - ▶ Leaving on good terms (2 weeks notice) vs. Involuntary Termination
- ▶ Severance pay? (usually reserved for contract employees)



Family Medical Leave Act (FMLA)

- ▶ FMLA applies to all public agencies (regardless of the number of employees)
- ▶ Provides 12 weeks of unpaid, job-protected leave per year, for:
 - ▶ Birth & care of a newborn child (may include pregnancy)
 - ▶ Placement of a child from foster care or adoption
 - ▶ Serious medical condition of one's self or immediate family member
- ▶ Does your policy... **(FMLA policy is required in handbooks!)**
 - ▶ Require notice in writing (who is eligible, amount of leave, reasons...)
 - ▶ Define when the twelve month period runs? (fixed year, hiring anniv.?)
 - ▶ Ensure health insurance continues or require using PTO
 - ▶ Require employees to certify they are fit to return?

ADA Accommodations

- ▶ Protects employees with disabilities
- ▶ Essential job functions
- ▶ Reasonable accommodations can include:
 - ▶ Modifying equipment or devices to allow disabled person to do the job
 - ▶ Job restructuring, part-time or modified schedules
 - ▶ Adjusting policies or trainings
- ▶ When is documentation requested (inquiry to be job related)
- ▶ Determining what is reasonable requires dialogue
- ▶ Do not require a request process more onerous than the law!



Reasonable Accommodations in Pregnancy (PWFA & PUMP)

- ▶ Only applies to public employers with more than 15 employees
- ▶ Some standard accommodations that are *per se* reasonable:
 - ▶ Ability to sit or drink water
 - ▶ Receive closer parking
 - ▶ Work flexible hours
 - ▶ Receive appropriately sized uniforms
 - ▶ Receive additional break time
- ▶ FLSA requires reasonable break time & place to express milk (not a bathroom).



Sample Accommodation Policy

Smith County 911 reasonable accommodates employees and applicants with disabilities (including temporary disabilities and disabilities due to pregnancy, childbirth and related medical conditions), those who are pregnant, those with sincerely held religious beliefs, and those who have been victims of domestic violence, stalking or sex offenses in accordance with applicable law. If an employee suffers from a disability, is pregnant, is a victim of domestic violence, stalking or sex offenses, or has a sincerely held religious belief, that interferes with the employee's ability to perform their job, the employee should contact the Administrative Director, so that Smith County 911 may *engage in a cooperative dialogue/interactive process to determine whether a reasonable accommodation may be available and appropriate* under the circumstances. Smith County 911 will respond to any such requests for a reasonable accommodation within a reasonable period of time.

Social Media policies...

- ▶ Nothing said on the Internet is private (or temporary)
- ▶ Broad restrictions on social media postings are likely unlawful
- ▶ Balancing “bad press” about the agency with the public’s right to know about government functions
- ▶ Do your employees identify themselves as telecommunicators on their social media?
- ▶ Consider how interactions with other agencies could be impacted (impaired working relationships)



Discrimination is More than Race

- ▶ Transgendered employees (2012) and sexual orientation (2015) are both protected under federal law as “sex discrimination”
- ▶ When listing protected classes, always include “other basis prohibited by local, state or federal law” to ensure you stay up to date.
 - ▶ **Update Equal Opportunity Posters**
- ▶ CROWN Acts
- ▶ Policies should have a reporting procedure for harassment/discrimination (options to report to?)
- ▶ No retaliation for good faith reporting
- ▶ Don't limit to sexual harassment



Sample Harassment Policy

Smith County 911 will not tolerate harassment on the basis of sex, sexual orientation, race, color, national origin, disability, religion, age, veteran's status, or **any other basis protected by local, state or federal law**. These categories are referred to in this policy as "protected classes." All persons who work at the Smith County 911 have a responsibility to help maintain a work environment that is free from all forms of harassment. **Any employee with knowledge of the existence of such harassment should report it immediately to their supervisor, to the training officer, or to the agency administrator.**

Harassment is prohibited in any location that can reasonable be regarded as an extension of the workplace, such as any emergency scene, an off-site social agency function, or any other location where agency business is being conducted and discussed. **Unlawful harassment made by employees toward fellow employees or any emergency service partners on social media is likewise prohibited.**

Alcohol & (Illegal & Legal) Drugs

- ▶ Compliance with Drug Free Workplace Act (federal law)
 - ▶ Prohibit all use/possession/distribution in the workplace
- ▶ Treating mind-altering substances similarly
- ▶ May require employees to disclose mind-altering prescriptions (not a HIPAA/ADA violation)
- ▶ Considering accommodations for Medical marijuana users
 - ▶ Testing procedure for medical users (documentation if suspected under the influence on the job)
- ▶ Consequences of violations



Progressive Discipline & Termination

- ▶ Two schools of thought:
 - ▶ Formal step system (Progressive)
 - ▶ Discretionary system
- ▶ When is an investigation required?
 - ▶ Always hear both sides (written statements)
- ▶ Include statement on all disciplinary documents:
 - ▶ *Further infractions can lead to discipline, up to and including termination.*



Other policies to consider including...

- ▶ Cell phone use policy (no photographs, recording, etc.)
 - ▶ Maintenance/Ownership of company cell phones (photos, text messages, etc)
- ▶ Outside employment (other jobs?)
- ▶ Accepting Gifts, Gratuities & Favors
- ▶ No-Fraternization policy



It's Not in the Handbook...

- ▶ Confidentiality Agreement
- ▶ Conflict of Interest Agreement
- ▶ Exclusivity of Employment Agreement
- ▶ Expectations for Continuing Training



Questions?



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