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Municipal Clerks and Treasurers Institute

Fundamentals of Human Resources Management

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Disclaimer

- This presentation in no way covers all employment issues your town or city will face. I have attempted to list those issues that our clients face most frequently.

Pop Quiz

- True or False:
 - South Carolina is an “at will” state
 - True. 49 states, including South Carolina, are “at will” states.

At Will Employment

- At Will Employment means, essentially, that either the employer or the employee may end the employment relationship without giving either notice or reason.
- What employees aren't at will?
 - Employees who have a contract of employment for a definite period of time
 - Employees who cannot be terminated without cause

Pop Quiz

- True or False:
 - When employees are “at will” it means that they can be terminated for any reason.
 - False. An at will employee may be terminated for any reason or no reason, BUT NOT AN ILLEGAL REASON

Potentially Illegal Reasons

- Motivated by discriminatory intent based on a protected category
- Participating in a workplace investigation
- Reporting for jury duty
- Making an OSHA (Occupational Safety and Health Administration) complaint
- Refusing to perform illegal activities
- Requesting reasonable accommodation for a disability
- Taking legally protected leave (Family Medical Leave Act)
- Being a whistleblower regarding unsafe or illegal activity at the place of employment
- Filing a discrimination, wage, or harassment suit
- Complaining about wages, overtime, or the working environment

Federal Anti-Discrimination Laws

- Title VII of Civil Rights Act of 1964
 - Race
 - Sex (including sexual orientation, gender identity and pregnancy)
 - Religion
 - Color
 - National origin

Federal Anti-Discrimination Laws

- Title VII (cont'd.)
 - Hiring
 - Terms and conditions of employment
 - Discipline & discharge
 - Anti-retaliation
- Policy – no discrimination
 - no harassment

Federal Anti-Discrimination Laws

- Age Discrimination in Employment Act (ADEA)
 - ≥40 years
- Americans With Disabilities Act (ADA)
 - Reasonable accommodation
 - Interactive process
- Pregnant Workers Fairness Act (PFWA)
- Genetic Information (GINA)

Harassment

- What is unlawful harassment?
 1. Verbal, nonverbal or physical conduct
 2. That denigrates, belittles, or puts down an individual or shows hostility, distaste, or aversion toward an individual based on his or her:

Harassment (cont.)

- race
- color
- religion
- sex (including sexual orientation, gender identity and pregnancy)
- national origin
- age (40 or older)
- disability

Let's play: Is it UNLAWFUL harassment?!!!!



Question # 1

I'm a huge Gamecock fan. My coworker's office looks like this:



Question # 2

I'm of Pakistani origin, and every time I see my coworker he says:



Question #3

I don't celebrate Halloween for religious reasons, because I think it promotes paganism and devil-worship. Here is what I see when I walk into work all of October:



Question # 4

My boss constantly makes fun of lazy millennial "snowflakes" who get offended by everything, are addicted to their phones, and think the world owes them something. This is my friends and I:



The most common form of harassment

• What is the most common and well-known type of harassment?

– Sexual harassment



Sexual Harassment

• Sexual harassment is a form of discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, career; or
- Submission to or rejection of such conduct is used as a basis for career or employment decision; or
- Such conduct has the purpose or effect of interfering with an individual's work performance, or creates an intimidating, hostile or offensive work environment.

Examples of Sexual Harassment

- Verbal Sexual Harassment
 - Obscenities; vulgarities; sexual epithets
 - Off-color jokes; notes; letters
 - Sexual comments; talking about sex
- Non-Verbal Sexual Harassment
 - Lewd gestures
 - Inappropriate noises and sounds
- Physical sexual harassment
 - Touching a person inappropriately or in an unwelcome way
 - shoulder rubs; hugs; arm around shoulder


Retaliation

- Harassment because of opposition to other unlawful conduct is also illegal.
- Harassment because of participation in an investigation into other unlawful conduct is also illegal.

Other Federal Laws

- Family and Medical Leave Act (FMLA)
 - Employee must have worked at least one year and 1250+ hours in the preceding twelve months
 - Employee receives 12 workweeks of leave in a rolling twelve-month period
 - Provisions for military purposes

FMLA and ADA Overlap



FMLA and ADA Overlap

- Employers must provide leave if it is a reasonable accommodation under the ADA
- How much leave is reasonable?
 - Probably not more than six months
 - Must be for a definite amount of time

One More Consideration: Workers' Compensation



Other Federal Laws

- Fair Labor Standards Act (FLSA)
 - Exclusions/Exemptions
 - Record Keeping
 - Overtime
 - Minimum Wage

State Laws

- Wage Payment Act -- § 41-10-10 et seq.
 - Notice of hours, wages, deductions, and place of payment
 - Pay according to notice
 - 7 days written notice of changes

State Laws

- Disclaimer (Handbooks are not contracts) § 41-1-110
 - Page 1 of handbook, employee manual
 - ALL CAPITAL LETTERS AND UNDERLINED
 - Signed by employee
- If you need a handbook: MASC website

State Laws

- Workers' Compensation Anti-Retaliation §41-1-80

- Use of Tobacco § 41-1-85
 - Use outside workplace cannot be basis of personnel action

- Political affiliation § 16-17-560

State Laws

- The South Carolina Pregnancy Accommodations Act § 1-13-10 to -110
 - extend discrimination protections and reasonable accommodations to "women affected by pregnancy, childbirth, or related medical conditions."
 - covered employers must provide written notice of the right to be free from discrimination for medical needs arising from pregnancy, childbirth, or related medical conditions. This notice must be given to all new employees at the commencement of employment and should have been given to all existing employees as of September 14, 2018.

State Laws

- The South Carolina Lactation Support Act § 41-1-130
 - provide a room or other location (other than a toilet stall) for an employee to express milk
 - does not require an employer to provide break time if doing so would create an undue hardship on the operations of the employer
 - makes it unlawful for an employer to discriminate against an employee for choosing to express breast milk in the workplace

Fringe Benefits

- Mandatory
 - Insurance
 - State Retirement
 - Worker’s Compensation
 - Unemployment Compensation
 - Reservist’s Pay

Fringe Benefits

- Optional & Conditional (no law requires)
 - Vacation & Sick Leave PTO option
 - Holiday Pay
 - Jury Duty
 - Funeral/Bereavement

Discipline

- Forms of Discipline – do not promise “progressive”
 - Oral
 - Written
 - Suspension
 - Loss of leave
 - Discharge
- Signing Reprimands – require

Termination

- No Surprise Rule
- Termination Conference/Resignation
- Grievance Procedure Act
 - Not required to have grievance procedure but if you do, it must comply with the Act



Questions?
