EVERY SUPERVISOR IS PART OF HR
HELPING TO DELIVER ON THE POWER OF BEING UNDERSTOOD

CFMA Lone Star Conference
2018

Agenda & Learning Objectives

The Human Resources environment is never static. Almost everyday we are challenged with a employee situations that if not handled adequately could be costly.

In this session, we will:
• Identify the areas where supervisors could create HR compliance issues;
• Discuss the key employment laws and regulations all supervisors need to know; and,
• Strategies for necessary training

WHERE SUPERVISORS COULD CREATE HR COMPLIANCE ISSUES
**Scenario 1—Interviews**

Supervisor: “Do you have a drivers’ license?”
Candidate: “No. I have a medical condition that prevents me from driving.”
Supervisor: “So what’s the condition?”
Candidate: “In the last 3 months I had a mild seizure.”
Supervisor: “Sorry man, we can’t hire you, it’s too dangerous.”

**The Result:**
- The candidate wasn’t hired.
- The candidate filed a claim of discrimination with the EEOC and the employer was required to either:
  1. Offer him employment
  2. Pay back/lost wages

**Scenario 1—Interviews—What Went Wrong?**

1. What does the job description say? Is driving an essential function of the job (not driving to and from work)?
2. Was the candidate provided a copy of the job description and asked if they can perform the essential functions of the job?
3. Don’t ask about medical conditions and if the candidate volunteers the information—disregard it!

Violation of the American’s with Disabilities Act

**Scenario 2—Hire**

Supervisor: “Don’t forget to bring your drivers’ license and social security card or your green card with you on your first day.”
Hire: “I don’t have ‘papers.’”
Supervisor: “No worries, go down to this place and let them know I sent you and they’ll make you a green card and get you a social security number.”

**The Result:**
- The new hire started work.
- Immigration Customs Enforcement performed an I-9 audit.
- Audit found a high number of “suspect” documents and launched an investigation.
- 10% of the workforce was required to be terminated.
- The supervisor faced criminal charges for immigration fraud that included a $1 million penalty.
Scenario 2—Interviews—What Went Wrong?

1. Employers cannot designate which documents an employee can produce for completing an I-9 (they must provide them options as shown on the I-9 document list).
2. Requiring a candidate who is not a U.S. citizen to bring a specific document is a form of discrimination.
3. Knowingly employing undocumented workers is a felony.

Violation of the Immigration Reform and Control Act (ICRA)

Scenario 3—Pay

Supervisor: “I know it’s 3:30, but I need you to stay and finish up what you’re working on. I’m going to clock you out at 3:30, because we can’t have any overtime, but I’ll let you have time off next week.”

Laborer: “You’re supposed to pay me for the OT. You’ve done this to me the last 5 weeks and you haven’t given me any time off.”

Supervisor: “Do you want to keep your job? I told you I’d give you time off next week.”

The Result:
- The candidate quit.
- He filed a wage and hour claim with the Department of Labor (DOL) and produced his own record of hours he’d worked and not been paid for.
- The DOL looked at all the laborers within the entire company and determined:
  1. DOL found that this was a common practice and on average each laborer was owed 1.5x regular wages for 2.5 hours weekly.
  2. The DOL determined this was a “willful” violation and looked back 3 years.
  3. Seven laborers, over three years = 2,520 hours of unpaid OT at an average OT rate of $19.50/hour = $49,140.

Scenario 3—Pay—What Went Wrong?

1. Private industry CANNOT use comp time.
2. Hours worked must be compensated.
3. Can’t retaliate against an employee who complains about a wage and hour violation.
4. If you don’t have records to prove hours worked, employee’s word/records will prevail.
5. The lookback for violations will be a minimum of 2 years.

Violation of the Fair Labor Standards Act, potentially Texas Pay Day Law
Scenario 4—Leave (employer with more than 50 employees)

Employee: “My wife and I are having a baby and I want to take off a week.”
Supervisor: “We are too busy, I’ll let you have a day, and that’s it.”
Employee: “I thought you had to let me have time off for this stuff.”
Supervisor: “No that’s just for women.”

The Result:
- Employee ends up taking 3 days off (but does call in).
- Upon his return, the supervisor fires him.
- Employee files for unemployment and informs TWC of reason he was terminated.
- TWC assists employee in connecting with EEOC to file a complaint.
- Company receives notice of complaint.

Scenario 4—Leave-What Went Wrong?

1. If employee has worked at least 1,250 hours in previous 12 months, they would be eligible for up to 12 weeks of job-protected unpaid leave for birth of the child.
2. Appropriate notices not provided to employee.
3. Employee wins unemployment case.
4. Company settles EEOC complaint and required to pay settlement to employee.

Violation of the Family Medical Leave Act

Scenario 5—Final Pay

Employee has quit without notice and not returned some equipment but has indicated he will drop it by.
Final checks are always “hard checks” and given to supervisor to give to employee.
Employee comes on payday to pick up check and employer says “I’m holding your check until you return or property.”

The Result:
- Employee files claim with TWC.
- TWC requires statement to be completed and returned.
- TWC orders immediate payment of final check.
Scenario 5—Final Pay—What Went Wrong?

1. If equipment is issued to employees, ensure there is a signed statement authorizing deduction from final pay (remember that this cannot take a non-exempt employee below minimum wage).

2. Ensure pay is delivered to employee on promised pay day. 

Violation of Texas Pay Day Law and potentially FLSA

Key Employment Regulations All Supervisors Need to Know

• Discrimination (Title VII, Americans With Disabilities Act, Immigration Control and Reform Act, Pregnancy Discrimination Act, Age Discrimination Act, Age Discrimination in Employment Act)
  - What questions can and can't be asked in an interview
  - The essential functions of roles they supervise and interview for and why concerns of self-disclosed disabilities should be escalated to HR
  - "Ban the Box"
  - Why you can deny employment when someone indicates their inability to work scheduled days for religious reasons
  - Why you can't selectively "test" candidates

• Hiring Processes (Immigration Reform and Control Act, Fair Credit Reporting Act)
  - Why we can't require an employee to be a U.S. citizen
  - What has to be communicated to an employee if a background check comes back with issues
  - Accurate reporting of the first day of week for pay
Key Employment Regulations All Supervisors
Need to Know

• Regulations regarding pay and hours worked
  (Fair Labor Standards Act, Texas Pay Day Law,
  Equal Pay Act,)
  - Employees can NEVER work off the clock
  - Why employees who effectively perform the same work
    have to be paid the same
  - Why it is crucial to follow documented leave policies
    (and not allow time off that either looks like hours
    worked or awarding paid time off to someone who isn’t
    eligible or taken all their paid leave)
  - Why some employees have to be “hourly” and can’t be
    salaried
  - Why hours have to be accurately reported
  - Why pay has to be delivered on time

Key Employment Regulations All Supervisors
Need to Know

• Regulations regarding required and protected leave,
  company leave policies and procedures, and local sick
  leave ordinances (Family and Medical Leave,
  Americans with Disabilities Act, Austin SLO,
  San Antonio SLO)
  - Directing employees to HR when they ask for 3 or more days
    of leave related to their own medical condition or that of
    family; birth, placement/adoption of child
  - Documenting leaves and tardies timely and reporting to HR
  - Why leading with “no” or threatening job loss for time off
    requests isn’t usually the right answer
  - “Light” duty for personal injuries may be required under ADA
  - Why you shouldn’t diagnose an employee’s condition
  - Why in Austin and San Antonio, you can’t require an employee
    who is taking sick time to find their own replacement

Key Employment Regulations All Supervisors
Need to Know

• Discrimination and an employee’s right to
  “complain” (Title VII of the Civil Rights Act,
  National Labor Relations Act, EEOC)
  - “I want to talk to you about something, but I don’t
    want you to do anything about it”
  - Why any complaint where harassment and/or
    discrimination is mentioned, the seriousness and
    proper reporting
  - Why religion should never be discussed at work
  - Why employees have the right to complain about
    bad supervisors, pay and benefits
  - What happens when supervisors get it wrong
Strategies for Training

- Understand key policies and procedures found in the employee handbook
- Fundamental understanding of key laws
- Understanding when HR should be notified
- Understanding when employees should be directed to HR
- Knowledgeable Supervisor

Timing of Training

- At time of hire
- When being promoted
- Annually
- When an issue occurs
- When new laws pass and/or handbook is updated/edited