



Safe Schools Agenda

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___ Site Administrators
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A monthly service provided to help you with your efforts to make your school safe for students, staff and the public

Update on EPL – Employment Practices Liability

To put it simply, EPL claims arise when the civil and contractual rights of employees are violated. Risk managers, administrators and supervisors have the duty to understand the statutes and employment agreements that grant these civil rights, and act in accordance with their spirit and intent. Especially in today's environment of limited resources for schools, it can be expected that there will be an increase in separations and terminations of employees, giving rise to EPL claims. Reviewing your Human Resources policies and procedures, staff training and insurance coverage is a prudent exercise.

What are the "civil rights" that are potential sources of EPL claims? Many are embodied in the following federal statutes:

- ★ ADEA – Age Discrimination in Employment Act. (Prohibits discrimination against employees 40 years of age or older.)
- ★ ADA – Americans with Disabilities Act. (Prohibits discrimination on the basis of physical or mental disabilities.)
- ★ Civil Rights Act of 1866. (Prohibits discrimination on the basis of race or national origin.)
- ★ Civil Rights Act of 1871. (Prohibits employers from depriving employees of their civil rights under the U.S. Constitution and other federal laws.)
- ★ Civil Rights Act of 1964. (Prohibits discrimination in employment based on race, color, national origin, religion and sex.)

- ★ Drug Free Workplace Act. (Requires employers to establish a workplace drug awareness program and notify employees that drug use is prohibited in the workplace.)
- ★ FLSA – Fair Labor Standards Act. (Establishes a federal minimum wage and conditions for overtime pay.)
- ★ FMLA – Family Medical Leave Act. (Requires employers with more than 50 employees to provide up to 12 weeks of unpaid leave to care for a spouse, child, or self in the event of a birth, adoption, or a serious health condition.)
- ★ Pregnancy Discrimination Act. (Prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions.)
- ★ Rehabilitation Act of 1973. (Prohibits government employers from discriminating against individuals with disabilities.)
- ★ Vocational Rehabilitation Act (Requires employers to take affirmative action to employ individuals with disabilities.)

Liability can arise from any of these federal statutes. In addition, each state has statutes governing the employment relationship, and your collective bargaining contracts provide other employment rights.

If the list of ways that the civil and employment rights of employees can be violated seems overwhelming, the alternative is exposure to lawsuits that require administrators to spend

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enormous amounts of time in interrogations, depositions and filling out of forms. EPL claims affect the climate and productivity of the entire organization as resentment spreads among administrators and staff members.

EPL claims are expensive in dollar terms, too, running into millions of dollars to cover expenses, compensatory (indemnity) damages and non-compensatory damages for pain and suffering and punitive damages. Ultimately, EPL claims can adversely affect future insurance premiums or even the availability of coverage.

Exposure to potential EPL claims starts with the hiring process. Take the time to thoroughly evaluate the needs of the organization for every opening, as well as the candidates for the position. Prepare a written, detailed job description, in consultation with the supervisors and staff members who will be working with the successful candidate. Make sure that everyone who will be involved with the screening process is in agreement with the profile that you are looking for. Prepare written interview questions that reflect the profile and establish a formal procedure for interviews. Consult with your labor attorney to ensure compliance with the EEOC's Uniform Guidelines on Employee Selection Procedures, or contact the U.S. Department of Labor for "Compliance Assistance" at www.dol.gov.

For each position, consider whether you need to supplement the job interview with testing. If physical strength or coordination is required, conduct a field test, which has been carefully developed to represent the essential physical functions of the job. Bear in mind that the Americans with Disabilities Act requires that reasonable accommodations be given to a candidate with a disability. There are tests available, which assess intelligence, integrity and personality profiles. Such testing has been rare in the public sector, but it has been found to

significantly reduce turnover and improve productivity in the private sector. The American Management Association reported that 69% of firms used job skills testing, 43% used basic skills testing and 33% used some form of psychological testing.

If you embark on a pre-employment testing program, be sure to:

- ☑ Make sure that the test is tailored to the essential functions of the job. (The importance of a detailed job description)
- ☑ Treat applicants uniformly. Do not single out an applicant for testing which is not required of the other applicants for the same position.
- ☑ Consult with your attorney to avoid potential legal pitfalls of adverse impact under Title VII of the Civil Rights Act of 1964 or violation of EEOC guidelines.

Check references thoroughly. Contact more than one former supervisor. Find out why the applicant left his/her previous position(s). Beware of neutral references. Conduct a thorough background check, and use a common application form that requests all the information you need in order to be thorough. Beware of unsigned applications, applicants who will not sign consent for background screening, blanks on criminal questions, gaps in employment history, insufficient information on former employers or the reason(s) for leaving those jobs and the missing names of former supervisors.

The best way to avoid having ineffective tenured staff members is to avoid hiring them. State and national courts have defined public employment as a property right, the removal of which triggers constitutional protections. Know how to be effective without violating those protections.

Next month: EPL Claims arise frequently from termination of employees.

Happy New Year!