MANAGE YOUR EMPLOYEES OR GET OUT OF THE WAY!
Presented to South Carolina Association of Residential Care Homes
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Agenda For Today

1. A Brief Review of Employment Law, the Structure of Employment Claims, and the Legal Process

2. Ten Pointers for Personnel Management Techniques to Minimize Employment Claims

One quick diversion for home care operators...

The D.C. Court of Appeals ruled on August 21 that the US Department of Labor’s ("DOL") Final Rule on the Application of the Fair Labor Standards Act to Domestic Service (the "Final Rule") is valid, because it is "grounded in a reasonable interpretation of the statute (FLSA) and is neither arbitrary nor capricious." Under the Final Rule, home care agency workers are no longer covered by the FLSA's companionship services exemption or its live-in domestic worker exemption. This decision is of serious concern to the home care industry. Whether the decision will be appealed to the U.S. Supreme Court remains to be seen.
Employment Claims: Why Care?

- Jury Trials
- Compensatory Damages
- Punitive Damages
- Damage Caps $50,000 to $300,000
- Publicity
- Personal liability
- **Drains focus**

Employment Law: Sources and Structure of Federal Discrimination Claims

- Sources: Federal anti-discrimination statutes
  - Title VII of the Civil Rights Act of 1964 & the Civil Rights Acts of 1866 and 1871: Race, color, religion, sex, national origin
  - Age Discrimination in Employment Act
  - Americans with Disabilities Act
  - Genetic Information Non-Discrimination Act
  - National Labor Relations Act: (Section 7) – Rights of employees to engage in "protected concerted activity"
- Structure of claims and procedure
Employment Law: Federal Law Concerning Employee Wages and Leaves

• Fair Labor Standards Act overtime requirements and exemptions

• Family Medical Leave Act

• Military leave under the Uniformed Services Employment and Re-employment Rights Act (“USERRA”)  

Structure of an Employment Case

• It is unlawful for an employer to refuse to hire or discharge any individual or otherwise to discriminate against any individual because of their race, color, religion, sex or national origin.

  • Disparate Treatment
  • Disparate Impact
  • Harassment
    • Quid pro quo
    • Hostile work environment
  • Retaliation

• Direct Evidence

• Circumstantial Evidence
  • Prima Facie Case
  • Legitimate, Non-Discriminatory Reason
  • Prove “Pretext” by a Preponderance of the Evidence
Three Rules to Memorize:

1. Do not discriminate against or harass anyone based on their sex, pregnancy, race, color, age, disability, religion, national origin, citizenship or any other protected status.

2. Report all acts of perceived discrimination or harassment to an appropriate member of management immediately in accordance with Company policies and procedures.

3. In the eyes of the law, YOU are the Company and the Company is YOU.

Preventing Violations

• Non-Discrimination Policies and Practices

• Harassment Policies

• Documentation and Consistent Enforcement of Rules

• Active, Responsible, Respectful Management
How Do I Put These Preventative Measures into Practice?

Ten Pointers for Preventing Lawsuits

1. “Hope” is Not a Strategy
2. Earn Respect
3. No Surprises
4. Be Prepared
5. No “BS”
6. The Perception of Fairness
7. Know When to Walk Away....
8. Investigate Employee Concerns Properly
9. Walk a Mile in Their Shoes
10. Don’t be Afraid to Ask for Help.
FIRST POINTER: Hope Is Not a Strategy

SECOND POINTER: Earn Respect

- Set an Example
- Confront Difficult Situations Head-On
- Discipline Appropriately
- Don’t Procrastinate
THIRD POINTER: No Surprises

- Articulate Your Expectations
- Give Constructive Feedback
- Give an Honest and Specific Performance Review
- Spell Out the Consequences of Future Poor Performance

FOURTH POINTER: Be Prepared

- Communicate Properly
- Document, Document, Document
- Do Your Homework
FIFTH POINTER: No “BS”

- Don’t Sugarcoat the Truth
- Pass the “Smell Test”
- Don’t Act on Emotion

SIXTH POINTER: The Perception of Fairness

- Be Consistent
- Don’t Play Favorites
SEVENTH POINTER: Know When to Walk Away and Know When to Run

• Timing Matters
• Safety First

EIGHTH POINTER: Investigate Employee Concerns Properly

• Investigate All Complaints
• Take the “Constant Complainer” Seriously
• Respect Employee’s Privacy
• Communicate the Results
NINTH POINTER: Walk a Mile in Their Shoes

- Embrace Diversity
- Respect Employees’ Privacy
- Some Employees Assume the Worst

TENTH POINTER: Don’t Be Afraid to Ask for Help

- Ask Questions
- Ask for Help
- Ask Human Resources
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