



# Employment Law for Supervisors

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Keys to Leadership Success

Hire ❖ Develop ❖ Retain

# Employment Law for Supervisors

Welcome to live on-line learning.

Every day supervisors deal with human resource situations that if not handled responsibly and legally can result in consequences, penalties and lawsuits. Regardless of your experience as a supervisor, you can always benefit from learning more about essential employment law.

Through a combination of learning activities that include a team game to test your legal knowledge, group discussion, and practical do's & don't guidelines, this course will help you:

- Stay out of legal trouble with tips on interviewing
- Treat employees fairly by following anti-discrimination/-harassment laws
- Avoid misunderstandings on legal rules of compensation
- Follow fair discipline techniques and legal rules on firing

Today's instruction and learning materials are intended as practical guides and reference tools. Every reasonable effort was made to ensure that the information provided is useful, accurate and current. There is, however, no guarantee that the interpretation of the laws presented here will always be appropriate for your questions and situations. Always consult your HR representative or other professional advisors to discuss the facts and circumstances of your situation.



## Round 1 – Hiring and Interviewing

**Directions:** When instructed to do so, answer these questions with your assigned team. When time is called, select a spokesperson to share and explain your team's answers. Points will then be awarded by your "Game Host" for each correct answer. Write it on the line following each question. Then, total your points at the end of the round.

1. Circle the legally safe question(s) that you can ask a candidate during an interview: \_\_\_\_\_
  - A. *What does your spouse do for a living?*
  - B. *Have you ever been arrested?*
  - C. *Do you have child care arrangements?*
  - D. *Are you a U.S. citizen?*
  - E. None of the above
  
2. True or False – This is a legally sound question to ask: *“Assuming we do everything we can to adapt the job to your situation, do you have any impairment - physical, mental, or medical - that would interfere with your ability to perform the job for which you've applied?”* \_\_\_\_\_
  
3. Circle any question below that's legally safe to ask a job candidate. \_\_\_\_\_
  - A. When do you think you'll retire?
  - B. Is English your second language?
  - C. Do you have any religious beliefs that prevent you from working on Saturdays or Sundays?
  - D. Our employees must be over the age of 18. If hired, can you provide proof that you meet this requirement?
  
4. True or False - In trying to make an applicant feel comfortable, you begin the interview with some idle chitchat. You ask , *“What type of name is Wachinski?”* You decide not to hire this candidate. He/she can later claim discrimination. \_\_\_\_\_



5. An extremely obese man applies for a job. He's qualified, but grossly overweight. You're not sure if he could fit in a regular office chair. What would you say or do? \_\_\_\_\_

- A. Consider him as a candidate for the position.
- B. Thank him for applying, but do not consider him due to his size.
- C. Recognize his obese condition is covered under Americans with Disabilities Act.

6. During an interview, a candidate whom you think would be perfect for the job, asked about your organization's recent reduction in workforce. He/she seemed concerned about job security. What will you tell him/her? \_\_\_\_\_

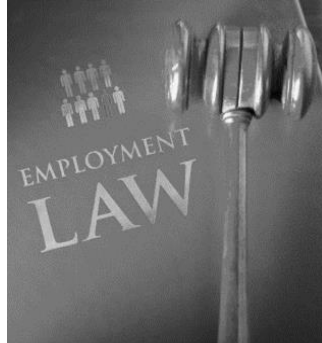
- A. You will be with us as long as you do your job.
- B. Our company is a place where you can stay and grow.
- C. You will not be let go without just cause.
- D. None of the above.

7. True or False – By law, you can check references only after a job offer has been made. \_\_\_\_\_

**Total Points** \_\_\_\_\_



## Tips To Keep You Out of Legal Trouble When Interviewing:



- Be prepared - Make sure your \_\_\_\_\_ are up to date and define the job accurately.
- Make sure you provide a \_\_\_\_\_ picture of the job – the good aspects and the challenges they will face.
- Make sure everyone gets \_\_\_\_\_ from the questions you ask, to the tests you give, to the number of references you check.
- Make sure what you ask, say, do, or write down is \_\_\_\_\_.



## Round 2 – Workplace Harassment and Discrimination

Sexual harassment and discrimination continue to be issues in today's workplaces. Supervisors need to understand when it is occurring and what to do about it.

**Directions:** Circle "True" or "False" for your answer to each statement, or circle the letter(s) of the best answer(s) in multiple choice questions.

1. True or False – If an employee complains about a co-worker giving her hugs at work, you are not required to do anything about it since hugs are not the kind of touching that can violate any law or an organization's harassment policy. \_\_\_\_\_
2. True or False – You got the Swimsuit Edition of Sports Illustrated for your birthday and decided to decorate your office/work area with a few of the pictures. These pictures may be a form of sexual harassment. \_\_\_\_\_
3. True or False – One of your male employees asks one of your female employees for a date. The female is annoyed and says she is being harassed. This would be considered sexual harassment. \_\_\_\_\_
4. What if it's one person's word against another and there are no witnesses to the alleged harassment? You would: \_\_\_\_\_
  - A. Investigate and wait to see if someone else makes a complaint.
  - B. Remind the alleged harasser of the law and any company policy. Then, document the discussion in their file.
  - C. Tell them to stop it or they will both be terminated.
  - D. None of the above
5. True or False - Questions, jokes and comments can be sexually harassing even if there has been no touching. \_\_\_\_\_



6. Jason has a social network site and sends email message reminders at work to his coworkers to check it out. Ashleigh, one of Jason's coworkers, mentions this to you. She says sometimes his site includes sexually explicit photos and crude humor. She also has seen other employees mentioned in it which could be offensive to them. Can you do anything about this? \_\_\_\_\_
- A. Yes – this needs to be reported and investigated.
  - B. No – nothing much you can do.
  - C. Wait until someone mentioned in the blog complains.
  - D. Only thing to do is tell Jason to stop sending email messages at work.
7. True or False - Brooke says she prays during her break to save the souls of her coworkers who have sinned, have sex before marriage or have an alternative life style. This could violate an organization's harassment policy or could be a claim for sexual or religious harassment. \_\_\_\_\_
8. True or False - A manager yells at, intimidates and embarrasses employees who are late for work. This qualifies as unlawful workplace harassment. \_\_\_\_\_
9. Martha, a member of your staff, usually organizes office parties, but not this time. A female coworker and her female partner have announced that they are adopting a baby. Martha, who is homophobic and highly religious, complained that according to the Bible it's wrong and she does not want anything to do with gay adoptions and will not be a part of this shower. You were told that it caused a lot of problems in the office while you were away on business. Now that you're back, things have calmed down and other staff members are planning the shower at an off-site location. What should you do, if anything, at this point? \_\_\_\_\_
- A. Even though the shower is not at work you should ask employees to participate.
  - B. The shower has disrupted the workplace. Address the offensive comments made.
  - C. Since this is not a work place event and things have calmed down, no need to get involved unless it heats up again.
  - D. You should not intervene. The differences were handled without you having to get involved.



10. Eric, a part-time employee, has worked for you for about month. He tells you he's having problems with a particular customer who becomes verbally abusive and critical of his foreign accent. What should you do? \_\_\_\_\_
- A. When possible, have someone else work with the customer.
  - B. Take the complaint seriously even though this is a part-time employee.
  - C. Take no action; this is life.
11. True or False - Scott, one of your employees, complains about a coworker who wears a cross to work every day. Scott is not religious and says the cross is offensive to him. This is a form of harassment. You should tell the employee with the cross to conceal it while at work. \_\_\_\_\_
12. Harassment can occur when someone engages in conduct that is: \_\_\_\_\_
- A. Unwelcome
  - B. Offensive to a reasonable person
  - C. Severe or pervasive
  - D. Related to a protected class/group
  - E. All of the above
13. True or False - A young employee jokes around with an older coworker calling him "old as dirt". When the older coworker has trouble learning new software, the younger employee says, "You can't teach an old dog new tricks. Give it up old timer." The older coworker laughs along with him. This kind of simple teasing is okay. \_\_\_\_\_
14. It is illegal to discriminate at work on the basis of a worker's disability. The Americans with Disabilities Act protects qualified workers with disabilities. Circle every ADA covered disability listed below: \_\_\_\_\_
- A. Pregnancy
  - B. Cerebral palsy
  - C. Kleptomania
  - D. Alcoholism
- Total Points** \_\_\_\_\_





## Do's and Don'ts

- Since employers are automatically liable for sexual harassment by supervisors, don't give your employees a reason to claim "\_\_\_\_\_ sexual harassment."
- Don't ignore harassment\_\_\_\_\_.
- Don't engage in sexual relationships with your\_\_\_\_\_.
- Do make sure all of your employees know about (and understand) your organization's anti-sexual harassment and anti-discrimination \_\_\_\_\_ and \_\_\_\_\_ procedure.

## Steps to Take When an Employee Complains of Sexual Harassment

- ✓ Determine immediately if it is necessary to separate the alleged victim from the accused
- ✓ Promptly ask questions about what happened and listen without interruption
- ✓ Take accurate notes
- ✓ Inform HR of the situation and follow their instruction
- ✓ Ensure confidentiality to the extent possible
- ✓ Review your anti-retaliation policy with each employee

**It's Not Just Sexual Harassment** - Harassing individuals because of their race, color, religion, national origin, disability, or age is discrimination and is also illegal.

Examples:

- Racially derogatory words
- Offensive gestures or pictures of a certain race
- Negative comments about a person's religious beliefs
- Negative comments that stereotype an employee's national origin
- Intimidating remarks about a person's mental or physical disabilities



## Round 3 – Legal Rules for Compensation Basics

Employees are paid for their labor. As simple as that seems, it can get confusing. While not every supervisor needs to know everything in this round, it helps to have some basic understanding of the legal rules for approving employee work including overtime, flextime, etc.

**Directions** -Circle “True” or “False” or the letter(s) of multiple-choice answer(s).

1. True or False – A manager can change an employee's time card/sheet and deny payment of overtime for work not authorized. \_\_\_\_\_
2. True or False – Brad, a non-exempt employee, worked an extra hour today. Instead of paying him overtime, his supervisor offers him an hour off tomorrow, commonly referred to as “comp” time. This is illegal. \_\_\_\_\_
3. True or False – Flextime is permissible by law when an employer allows employees to work a regular 8-hour day or 40-hour week, but doesn't require all the work to be done during normal business hours. \_\_\_\_\_
4. True or False - If your company allows one employee to work a flexible schedule, it must allow all employees to do it, too. \_\_\_\_\_
5. Under federal law, nonexempt employees are to be paid when: \_\_\_\_\_
  - A. Checking text messages while waiting for a meeting to begin.
  - B. Covering the phones while eating lunch.
  - C. Completing a crossword puzzle while waiting for equipment to be fixed that the employee uses.
  - D. All of the above.
  - E. None of the above.
6. True or False - Yesterday one of your non-exempt employees got into a little car accident. He was only late 30 minutes, but it'll ruin his perfect on-time attendance for the year. Co-workers covered for him, so everything got done. And he came in early the next day. So, he actually did work the right number of hours. Since he made up the missed time, you tell him to just report his time like he started and ended on time. \_\_\_\_\_



7. How many hours must an employee work to be considered "full time" by federal law? \_\_\_\_\_
- A. 20 hours a week
  - B. More than 20 hours a week
  - C. More than 20 hours per week for 3 consecutive months
  - D. There is no federal law that defines "full time" work
8. True or False - A supervisor has been asked to reduce labor costs and control overtime. He holds an after-hours, unpaid meeting with his employees at a local restaurant. He tells them about new restrictions on hours and encourages them to pitch in and help turn the organization around. He doesn't actually say that employees should work off the clock but some employees feel that is probably what he meant. The supervisor has done nothing illegal. \_\_\_\_\_
9. True or False – A supervisor has been having issues with employees not clocking-in. Writing them up has not helped. So, she announced that starting with the next pay period employees will have their pay docked, or she will refuse to pay them for a day when they don't clock-in. This is legal. \_\_\_\_\_

**Total Points** \_\_\_\_\_





## Supervisor Compensation Guidelines

1. Review your organization's policies about \_\_\_\_\_.
2. Tell employees about the importance of \_\_\_\_\_ work as scheduled.
3. Tell employees the process for getting \_\_\_\_\_ to work \_\_\_\_\_ normally scheduled hours.
4. Tell employees that \_\_\_\_\_ work is prohibited and do not suggest that it is expected or desired.
5. Tell non-exempt employees on vacation, leave, or suspension not to \_\_\_\_\_ if they are contacted about work issues, they should report their time.

In December 2006, Wal-Mart was ordered by a Pennsylvania jury to pay more than \$78 million in damages to 170,000 employees for not getting paid when they worked through their breaks and off the clock. The plaintiffs' attorneys argued that this violated Wal-Mart's own policies and the state's law on payment of wages and overtime. Wal-Mart argued that employees were encouraged to take breaks and that it should not be held responsible if some employees chose to work instead. The jury was not convinced.

The judge ordered Wal-Mart to pay \$62 million in penalties and \$50 million to the employee's attorneys for a total of \$187 million.



## Round 4 – Discipline, Documentation and Termination

Despite your efforts and positive intentions, performance problems will still happen. This is when you must be ready to take appropriate action.

**Directions:** Circle "True" or "False" for your answer to each statement, or circle the best choice(s) for multiple-choice questions. Be prepared to justify your answers. Each correct answer in this final round is worth double points.

1. The purpose of progressive discipline is to: \_\_\_\_\_
  - A. Punish wrong doers to show them who is boss.
  - B. Correct problems and unwanted behavior.
  - C. Keep employees informed of performance or behavior problems and when their jobs are at risk.
  - D. Send a message to all employees that they risk losing their jobs unless they do as you say.
  
2. True or False – Depending on the severity of the situation, different progressive disciplinary stages/steps may be skipped or repeated. \_\_\_\_\_
  
3. Joe, a long-term employee who just turned 65, is having trouble learning the new computer software. You guess that people Joe's age simply are not that computer savvy. You don't want to do anything unlawful, but you can't ignore his problem either. What can you do? Circle all your choices. \_\_\_\_\_
  - A. Ask him what he thinks the problem is.
  - B. Tell him his mistakes are causing the organization to lose customers.
  - C. Tell him he's protected from being let go under the Age Discrimination in Employment Act.
  - D. Consider retraining him or assigning him to a mentor.
  
4. Circle the statement(s) below that can be legally documented. \_\_\_\_\_
  - A. *He's not getting his reports in on time.*
  - B. *She has a bad attitude.*
  - C. *His production is 10% below the standard output.*
  - D. *She's not motivated.*



5. True or False – Disciplinary meetings should include an opportunity for the employee to tell his or her side of the story. \_\_\_\_\_
6. True or False – A disciplinary meeting should explain the next potential step in progressive discipline if there's no improvement. \_\_\_\_\_
7. To legally fire an employee for insubordination, you should be able to show that: \_\_\_\_\_
- A. The insubordination was intentional.
  - B. The worker understood your orders.
  - C. The employee was required to comply.
  - D. All the above.
8. True or False – Helpful documentation to back up your decision to fire an employee could include performance appraisals, reports of poor performance or unacceptable behavior, coaching/improvement plans and records of disciplinary action. \_\_\_\_\_
9. Alternatives to termination include: \_\_\_\_\_
- A. Further training
  - B. Transfer/reassignment
  - C. Counseling
  - D. All of the above
10. True or False – Even when the reason for a termination clear cut and well documented, the way it is handled can lead to legal difficulties. \_\_\_\_\_

**Total points** \_\_\_\_\_



## Lawsuits

Today's employees fight back with lawsuits if they feel mistreated or threatened. When discipline is mishandled, lawsuits most commonly filed against employers are for: \_\_\_\_\_ and \_\_\_\_\_.

## Disciplinary Action

Before taking disciplinary action ask yourself, did I...

- Communicate clear and reasonable expectations?
- Allow sufficient time and opportunity to improve (if warranted)?
- Discuss performance problems when observed?
- Document performance, discussions and agreements?
- Consult my manager or HR representative?

## Documentation

Beware - If you want to see disciplinary action taken but can't show any supporting records, you may be asking for trouble.

A blank or incomplete record tells a judge, jury, or government official that you didn't have a good reason for a disciplinary action. That makes it easier for the employee to claim that the real motive was discrimination or some other illegal reason. Thorough documentation is the key to avoiding legal repercussions.



## GLOSSARY

**bona fide occupational qualification (BFOQ)** is when a job has special requirements.

**discriminatory harassment** – When someone feels a hostile work environment has been created due to harassing words or behaviors targeted at people that belong to a protected class.

**employment at will** – This means employers have the right to discharge employees at any time and for any reason, pretty much the same as employees have the right to quit at any time and for any reason.

**Equal Pay Act** – Prohibits employers from paying employees of one sex at a lower rate than employees of the opposite sex for doing equal work.

**FLSA** – The Fair Labor Standards Act establishes minimum wage, overtime pay, record keeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. Nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour effective July 24, 2009. Overtime pay at a rate not less than one and one-half times the regular rate of pay is required after 40 hours of work in a workweek.

**hostile work environment** – According to the Civil Rights Act of 1964, specifically Title 7, is unwelcome conduct in the workplace in the form of discriminatory harassment toward one or more employees in a protected class: race, color, religion, national origin, disability, age or sex. These employees find the work environment offensive, intimidating or stressful and cannot work productively.

**non-exempt employees** – Employees who are covered by the FLSA minimum wage and overtime pay provisions, and paid on an hourly basis is usually considered to be non-exempt.

**protected class** – is a group of people who share a common characteristic and are protected by law (race, religion, pregnancy, sex, color, national origin, age and disability). Examples include, telling, listening or using obscene jokes, suggestions or gestures,

**quid pro quo** – or 'this for that'. The most obvious form of sexual harassment is where a supervisor requires some sort of a sexual trade-off from an employee for a job benefit.

**retaliation** – in the workplace means any adverse action that an employer takes against an employee because he or she complained about illegal conduct such as harassment or discrimination, or participated in an investigation about illegal workplace conduct.

**sexual harassment** – According to the Civil Rights Act of 1964, specifically Title 7, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive work environment. It's not just men harassing women. It also covers women harassing men and same sex harassment.

**The Age Discrimination in Employment Act** protects applicants and employees 40 years of age or older from discrimination on the basis of age in hiring, promotion, discharge, compensation, terms, conditions or privileges of employment.

**The Americans with Disabilities Act** protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. The law also requires that covered entities provide qualified applicants and employees with disabilities with reasonable accommodations that do not impose undue hardship.

**Title VII of the Civil Rights Act** prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex or national origin.

**Pregnancy Discrimination Act** protects applicants and employees from employment discrimination because of or based on pregnancy, childbirth, or related medical conditions in hiring, promotion, discharge, compensation, terms, conditions, or any other privileges of employment.





**Corporate Membership**

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