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LABOR AND EMPLOYMENT

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INTRODUCTION

This guide provides a brief overview of key labor and employment issues that employers face in managing their workforces, with a focus on issues that may be particularly relevant for nonprofit organizations. Unless otherwise noted, the information below reflects the state of the law as of January 1, 2020. However, laws and regulations in the

labor and employment space are constantly evolving, and employer obligations under federal, state and local law can frequently change, often in substantial ways. Employers should consult counsel when appropriate to ensure their policies and practices are consistent with legal requirements.



WORKER CLASSIFICATIONS

CATEGORIES OF WORKERS

How an employer classifies its workers can have a significant impact on both the organization and individual workers. Employers are responsible for properly classifying their workers consistent with applicable federal, state and local law, and misclassification can result in substantial liability and penalties. Misclassification can also deprive workers of important rights and benefits.

Employees

Individuals are generally classified as employees when they are subject to significant oversight and control by the organization. They perform tasks required by the organization and do so in the manner the organization requires. Employees are paid wages, provided organization-sponsored benefits, issued W-2s, and the organization

Described below are five worker classifications — employees, independent contractors, volunteers, interns and trainees — along with some key factors considered when determining how to classify an individual.

withholds the full amount of the workers' income taxes and a portion of their Medicare and social security taxes. Employees are economically dependent on their employers. Employees are protected by and subject to applicable federal, state and local employment laws.



Independent Contractors

An independent contractor is a worker who contracts with individuals or entities to provide services in exchange for compensation. An independent contractor does not work regularly for any single company and is not an employee. While there is no single test to determine whether an individual is an independent contractor for all purposes, some common characteristics of independent contractors are: they often own outside businesses and provide services according to their own terms; the services they provide are not integral to the organization's operations; they charge fees for service, and typically invoice for same; they are engaged for a specific project or term to perform a identified service or task; and they retain control over the method and manner of work. Independent contractors are issued 1099s and are responsible for paying their own

income, social security and Medicare taxes, and they are not entitled to organization-sponsored benefits.

Organizations may wish to engage independent contractors rather than employees to avoid significant wage, tax and other obligations. Doing so, however, requires careful consideration of several factors and carries the risk of substantial liability for misclassification. While no single test can be applied to determine if a worker is properly classified as an independent contractor, the chart below summarizes three commonly used tests: the IRS test, the New York State Department of Labor test, and the ABC test used by a number of other states, including California, Massachusetts and New Jersey.



EMPLOYEE OR INDEPENDENT CONTRACTOR?

IRS Test	New York State DOL	ABC Test (incl. Cal., NJ, Mass.)
<p>Behavioral Control: Does the organization have the right to direct and control the work performed?</p>	<p>Applies a balancing test, considering the following factors in deciding whether a worker is an independent contractor (no single factor is dispositive). Does the worker:</p> <ul style="list-style-type: none"> • Have an established business • Advertise in electronic and/or print media • Use business cards and stationery • Carry insurance • Keep a place of business and invest in facilities, equipment, and supplies • Pay their own expenses • Assume risk for profit or loss • Set their own schedule • Set or negotiate their own pay rate • Offer services to other businesses (competitive or non-competitive) • Have the ability to freely refuse work offers • Have the ability to choose to hire help 	<p>The worker must satisfy all three to be a contractor.</p> <ol style="list-style-type: none"> 1. the worker is free from the control and direction of the organization in connection with the performance of the work; and 2. the worker performs work that is outside the usual course of the organization’s business; and 3. the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.
<p>Financial Control: Does the organization have a right to direct the financial and business aspects of the worker’s job?</p>		
<p>Relationship: The type of relationship depends upon how the worker and organization perceive their interaction with one another. Considerations include contents of contract between the parties, benefits, permanence, and how integral the worker’s services are to the organization’s business.</p>		



Volunteers

Under federal law, volunteers are individuals who donate their services (typically part-time) for public service, religious or humanitarian objectives, without contemplation of pay, and without taking the place of employees or performing work that is otherwise done by employees.

Under New York state law, a volunteer is defined as “a person who works for a nonprofit-making institution under no contract of hire, express or implied, and with no promise of compensation, other than reimbursement for expenses as part of the conditions of work.”

The threshold inquiry to determine if someone is a volunteer is whether the individual expected compensation. While volunteers can be paid a small stipend under certain circumstances (such as reimbursement for reasonable expenses), if a “volunteer” is compensated, certain

employer obligations may be triggered, such as minimum wage requirements, health insurance benefits, and pension/retirement benefits.

Volunteers cannot work in commercial activities run by a nonprofit (e.g., a gift shop), replace paid staff to do the work usually done by paid staff, or do anything other than tasks traditionally reserved for volunteers. Volunteers cannot be required to work certain hours specified by the employer.

In addition, employees cannot choose to “volunteer” their time to do the same work they perform as employees.

If an employee has a legitimate volunteer role with an organization (that is distinct from the work he or she provides as an employee), the employee cannot be required to do volunteer work during his or her normal hours of employment.

Unpaid Interns

Under federal law, a number of factors are considered in assessing whether a worker is properly classified as an intern. Some key factors include: a clear understanding of no compensation; training similar to an educational setting;

a connection between the intern’s work and his or her formal education program; accommodation for the worker’s academic commitments; a limited duration for the internship; no displacement of paid employees by the intern; and an



understanding of no entitlement to a paid position at the conclusion of the internship.

New York law establishes 11 factors, all of which must be satisfied, for a worker to be properly classified as an unpaid intern:

- The training is educational in nature and similar to what would be given in an educational environment
- The training is for the intern’s benefit
- The intern does not displace regular employees and is closely supervised

Trainees

Under federal law, trainees are generally individuals participating in pre-employment training for a particular skill or job. Trainees are frequently unpaid. A trainee’s willingness to work without pay is not relevant; if the trainee is properly classified as an employee under applicable law, he or she must be paid accordingly.

- The organization derives no immediate advantage
- No entitlement to a job when the internship ends
- The intern is notified in writing that he or she is not an employee and will not be paid
- Internship is supervised/directed by experienced staff
- No employee benefits
- The training is general
- Hiring different than for employees
- Advertisements clearly indicate that the internship is for training, not employment

Under New York state law, a trainee must work for an organization operated exclusively for charitable, educational or religious purposes. The training must involve formal instruction and on-the-job training, and a trainee must have limited responsibility and be under supervision or guidance for a period of 2-10 weeks.



HIRING

AT-WILL EMPLOYMENT

Generally, employment is at-will, meaning the employment relationship can be terminated for any reason or no reason at the will of either party, so long as the reason

is not otherwise prohibited by law or agreement. At-will employment may be altered by an express agreement between the parties.

OFFER LETTERS

Offer letters generally should set forth the basic terms and conditions of employment, such as compensation, job duties, hours, benefits, whether employment is at will or for a fixed term, conditions of hire, and the employee's agreement to abide the organizations policies. Be careful

to avoid language in an offer letter that could be construed as a promise of permanent employment or otherwise undermine the at-will nature of the employment unless intended.



EMPLOYMENT AGREEMENTS

Employment agreements are typically reserved for upper management, and should address terms of employment, title and duties, pay and benefits, bonus eligibility (if any), termination, and choice of law. In addition, employment

agreements may address, among other things, severance eligibility, restrictive covenants and arbitration or other dispute resolution procedures.

NEW HIRE CHECKLIST

In addition to offer letters/employment agreements, New York employers should provide the following at the time of hire:

- Sexual Harassment Policy with Acknowledgment Form, Sexual Harassment Factsheet, and any related training materials
- Form I-9, Immigration Reform and Control Act
- Federal and state tax withholding forms

- Employee Handbook with Acknowledgment Form
- FMLA notice (if more than 50 employees)
- May include arbitration agreements (with class action waivers) and/or jury trial waivers

Please note that these requirements may change from time to time, and additional requirements may apply depending on the nature of your business.

BACKGROUND CHECKS AND USE OF BACKGROUND INFORMATION

The federal Fair Credit Reporting Act (“FCRA”) applies when using a third party to conduct background checks

on applicants or employees, and governs how employers may obtain and use consumer reports (including, among



other things, credit reports, criminal history reports, driving records, and drug tests). FCRA requires that an employer provide notice to and receive authorization from an applicant or employee before obtaining background information from a third party. If information obtained during

a background check is used in making an employment decision, FCRA requires that the employer provide the individual with a copy of the background report obtained and a notice of rights under FCRA.

Use of Criminal Background Information by New York Employer

Employers are restricted under New York state law from making hiring or employment decisions based on an individual's past criminal conviction. A prior conviction can be considered in making an employment decision only if the prior conviction has a direct relationship to the job and involves an unreasonable health or safety risk. If a prior conviction is relied upon when making an employment

decision, the individual must be notified, provided with a copy of the criminal record information, and provided three days to respond during which time the job must be held open. New York City employers additionally are prohibited from inquiring about an applicant's criminal history until after a conditional offer of employment has been made.

Other Important Considerations

New York City employers are prohibited from asking about, relying on, or verifying a job applicant's salary history at any stage of the hiring process. However, employers can ask an applicant about his or her salary expectations.

New York City employers also may not inquire about an applicant's credit history, except in certain limited circumstances, delineated by statute.

In addition, beginning May 1, 2020, New York City employers will be prohibited from requiring testing for marijuana or THC as a condition of employment, subject to a number of exceptions (such as employees charged with the supervision or care of children or vulnerable individuals).



WAGE AND HOUR

OVERTIME AND MINIMUM WAGE

Generally, all time worked over 40 hours in a single workweek must be compensated at a rate not less than one and one-half times the employee’s regular rate of pay, unless the employee is exempt from overtime requirements (see to the right).

The minimum wage for New York employers varies based upon where in the state the employer is located; as of January 1, 2020, the applicable minimum wages are:

New York City — 10 or fewer employees	\$15.00 per hour
New York City — 11 or more employees	\$15.00 per hour
Nassau, Suffolk and Westchester Counties	\$13.00 per hour
Rest of the state	\$11.80 per hour

WHO IS ENTITLED TO OVERTIME: EXEMPT VS. NONEXEMPT

For purposes of minimum wage and overtime requirements, employees can be classified as either exempt or nonexempt. All employees are considered nonexempt unless they

satisfy the criteria for one or more specific exemptions under applicable law.



Nonexempt employees are entitled to overtime, and are often paid on an hourly basis (though they may be salaried). Exempt employees, who satisfy the criteria of one of the

exemptions listed below, are not entitled to overtime, and are generally paid on a salary basis.

KEY EXEMPTIONS FROM OVERTIME REQUIREMENTS

Determining whether an employee is exempt from overtime requirements is a highly fact-specific determination and must be done on a case-by-case basis. To qualify for an exemption, an employee must be paid on a salary basis

and satisfy the duties test and exceed the salary threshold associated with the exemption.

The most common exemptions under federal law are summarized below.

Administrative exemption

To qualify, an employee’s primary duties must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers, and includes the exercise of direction and independent judgement on significant matters.

The salary threshold for the administrative exemption is \$684 per week (equivalent to \$35,568 per year). However, to be exempt under New York law (as opposed to federal law), a higher salary rate is required; see 3(c)(vi) below.

Executive exemption

To qualify, an employee’s primary duties must be managing the business, or managing a typically recognized

department or subdivision of the business. The employee must customarily and regularly direct the work of at least



two or more other full-time employees or their equivalent. The employee must also have authority to hire or fire other employees, or have weight given to his or her suggestions on hiring, firing, advancement, and promotions.

Professional exemption

There are two types of professional exemptions: learned professionals and creative professionals.

To qualify for the learned professional exemption, the employee's primary duty must be the performance of work requiring advanced knowledge. Advanced knowledge generally means work that is predominantly intellectual in character, in a field of science or learning, and is typically acquired by a prolonged course of specialized intellectual instruction.

Highly compensated employee exemption

To qualify, the employee's primary duties must include performing office or non-manual work, and the employee must customarily and regularly perform at least one of the exempt duties or responsibilities associated with the administrative, executive or professional exemptions.

The salary threshold for the executive exemption is \$684 per week (equivalent to \$35,568 per year). However, to be exempt under New York law (as opposed to federal law), a higher salary rate is required; see 3(c)(vi) below.

The creative professional exemption requires that the employee's primary duty be the performance of work requiring invention imagination, originality, or talent in a recognized field of artistic or creative endeavor.

The salary threshold for the professional exemptions is \$684 per week (equivalent to \$35,568 per year). (There is no higher salary threshold for exemption under New York Law, unlike the administrative and executive exemptions.)

The salary threshold for the highly compensated employee exemption is \$107,432 per year, with at least \$684 per week paid on a salary basis. Total annual compensation to meet the salary threshold can include commissions, nondiscretionary bonuses, and other nondiscretionary compensation. It is unclear if this exemption serves to exempt workers under New York state law.



Other exemptions

Federal law provides for other less common exemptions, such as exemptions applicable to certain computer professionals and outside salespersons. New York law also provides for certain exemptions applicable to farm

laborers, outside salespersons, volunteers, learners, apprentices, members of a religious order, students in or for a nonprofitmaking institution, and staff counselors in a children’s camp.

Salary thresholds for exemption in New York

The salary threshold requirements for the administrative and executive exemptions under New York state law (there is no salary threshold requirement for the professional exemptions under state law) varies based upon where in the state the employer is located:

New York City	\$1,125 per week (\$58,500 annually)
Nassau, Suffolk and Westchester Counties	\$975 per week (\$50,700 annually)
Rest of the state	\$885 per week (\$46,020 annually)



HANDBOOKS AND LEAVE LAWS

HANDBOOKS

Handbooks provide employees with guidance and explanation about how the employer operates. A handbook provides an opportunity to formally welcome new employees, introduce the organization and explain expectations. Handbooks help make sure policies and procedures are uniformly applied, and provide employees with a centralized place to look for answers to common questions related to their employment. In addition, handbooks and signed acknowledgments from employees can assist in an employer's legal defense in the event of an employment related dispute.

While some policies included in a handbook are required by law, others may vary depending on the employer and

be tailored to the employer's needs. Beware that certain handbook provisions may be found to create an implied contract of employment, and that care should be taken to avoid any such language.

Employers also should be cognizant that, in connection with the COVID-19 pandemic, New York State and City have prepared certain guidelines for that employers must follow with respect to office re-openings, safety protocols and requirements, and similar matters. Employers should ensure that they are aware of and following any such guidelines, and further should ensure that their policies are comply with the requirements of any such guidelines.



COMMON HANDBOOK POLICIES

- Timekeeping
- Hours and Overtime
- Meal and Rest Breaks
- Lactation Breaks
- Paid Time Off
- Job-Protected Leave
- Technology
- Computers/email/ internet
- Social media
- Standards of Conduct
- Personnel Records
- Violence in the Workplace
- Safety
- Visitors
- Whistleblower
- Conflicts of Interest
- Solicitation and Distribution
- Termination
- Equal Opportunity Employer
- Reasonable Accommodations
- Religious
- Disability under the ADEA, state and local law
- Sexual Harassment
- Anti-Discrimination
- Complaint Procedure



KEY LEAVE LAWS

Federal, state and local law require that covered employers provide certain leave to eligible employees.

New York City Earned Safe and Sick Time

Many states and localities have enacted paid sick leave requirements for employers. In New York City, employers with five or more employees must provide up to 40 hours of paid safe/sick leave per year, which accrues at a rate of one hour of paid safe/sick time for every 30 hours worked. All employees who work more than 80 hours in a calendar year are entitled to paid safe/sick leave.

New York City employers with less than five employees may provide unpaid sick/safe leave.

Leave under the Earned Safe and Sick Time Act can be used for the following purposes:

- An employee's or family member's mental or physical illnesses or to seek medical diagnosis or treatment

Some key leave requirements for New York employers are described below.

- Care of a child whose school or childcare provider is closed due to public health emergency
- Closure of employee's place of business due to a public emergency
- Obtaining services from a domestic violence shelter, rape crisis center or similar service
- Safety planning, relocating, or taking actions to increase the safety of the employee or family members
- Filing a complaint and/or meeting with an attorney or social service provider regarding related criminal or civil proceedings
- Certain other related actions



New York Paid Family Leave (NYPFL)

The New York Paid Family Leave Act provides eligible employees with job-protected, paid time off for certain purposes. The NYPFL applies to all employers who have one or more employees for at least 30 days during any calendar year. Employees who work for a covered employer for 26 or more consecutive weeks are eligible for paid family leave. Leave under the NYPFL can be taken for the following purposes:

- Care for a family member with a serious health condition
- Bond with an employee's newborn or newly placed adoptive or foster child during the first 12 months following birth or placement
- Address any qualifying exigency related to a spouse, domestic partner, child or parent who is serving on active military duty

Federal Family and Medical Leave Act (FMLA)

The FMLA gives covered employees the right to take job-protected unpaid leave for certain medical or family obligations. The FMLA applies to private employers that have 50 or more employees within a 75 mile radius for at least 20 calendar workweeks. To be eligible for FMLA leave,

Currently, employees are entitled to up to 10 weeks of paid family leave in a 52-week period. Beginning January 1, 2021, employees will be entitled to up to 12 weeks of paid family leave in a 52-week period.

While an employee is on paid family leave, an employer must maintain the employee's existing health benefits, and upon the employee's return, he or she must be restored to the same position (or comparable) held when the leave began.

Paid family leave is typically funded through weekly payroll tax deductions from employees' paychecks.

an employee must have worked at least 12 months (not necessarily consecutively) for the employer and worked at least 1,250 hours during the 12 months immediately preceding the first day of leave.



Unlike under the NYPFL, FMLA leave can be used for an employee's own serious medical condition. In addition to bonding leave, FMLA provides eligible mothers with leave for incapacity due to pregnancy and prenatal care.

FMLA runs concurrently with NYPFL, unless otherwise expressly permitted by the employer.

OTHER TYPES OF LEAVE

Employers should adopt and distribute policies that address the following types of leave, some of which are required under federal, state and/or local law:

- Jury duty
- Military and Military Spouse Leave
- Vacation
- Personal
- Holiday
- Voting
- Disability
- Pregnancy (including under the NYC Pregnancy Workers Fairness Act)



PANDEMIC-RELATED LEAVE

Although beyond the scope of this guide, in response to the COVID-19 pandemic, federal and state lawmakers have enacted legislation expanding certain categories of leave to which employees in New York may be entitled. At the federal level, the Families First Coronavirus Response Act (“FFCRA”) applies to private employers with fewer than 500 employees and to all government employers. The FFCRA provides (i) up to 80 hours of paid sick leave for specified purposes, and (ii) covered employees with expanded rights under the Family and Medical Leave Act, including paid leave for qualifying reasons related to COVID-19. The

FFCRA went into effect on April 1, 2020 and is set to expire on December 31, 2020.

At the state level, in March 2020, New York passed an emergency law guaranteeing paid and unpaid sick leave and job protection to employees who cannot work due to certain COVID-19 related circumstances. The amount of leave to which an employee is entitled depends upon the size of his or her employer, with a maximum available leave for large employers of two weeks.



DISCRIMINATION AND HARASSMENT

PROTECTED CHARACTERISTICS

Federal, state and city law prohibit employment discrimination on the basis of the following protected characteristics:

<p>Federal Laws</p>	<p>Race, color, religion or creed, national origin or ancestry, sex, age, physical or mental disability, pregnancy, veteran status, genetic information, citizenship. On June 15, 2020, the U.S. Supreme Court additionally held that federal prohibitions on sex-based discrimination include protections for gay and transgender workers.</p>
<p>New York State Human Rights Law (NYSHRL)</p>	<p>All of the above, plus: sexual orientation, marital status, domestic violence victim status, criminal or arrest record</p>
<p>New York City Human Rights Law (NYCHRL)</p>	<p>All of the above, plus: alienage status, gender identity, gender expression, partnership status, caregiver status, credit history, unemployment status, sexual and reproductive health decisions, status as a victim of domestic violence, stalking and sex offenses</p>



HARASSMENT

Harassment is a form of discrimination. It can occur on the basis of any protected characteristic and can take many different forms. For example, harassment can be verbal (derogatory statements, slurs, derogatory comments or jokes), physical (assault or inappropriate physical conduct),

visual (displaying derogatory posters, cartoons, drawings or making derogatory gestures) and online (derogatory statements or sexually suggestive postings on social media platforms).

Sexual Harassment

Sexual harassment is a form of sex discrimination, and includes any harassment based on an individual's sex or gender. Sexual harassment is not limited to conduct that is sexual in nature, and can include a wide range of activity, such as:

- Unwelcome or inappropriate touching of employees or customers
- Making lewd or sexual comments about an individual's body or style of dress
- Sharing sexually inappropriate images or videos
- Asking for favors of a sexual nature in exchange for a favorable employment decision or as a requirement to keep your job
- Gazing at an employee in a sexually suggestive or distasteful manner

- Sending suggestive letters, notes or emails
- Making insulting comments about someone's gender identity or sexual orientation
- Asking about someone's sexual orientation
- Jokes
- Innuendo
- Pressure for dates
- Sexual Gestures

As described below, New York employers are required to maintain and distribute anti-sexual harassment policies and conduct regular anti-sexual harassment training for their employees.



REASONABLE ACCOMMODATION

Employers are required to provide a reasonable accommodation to qualified individuals with a disability to allow them to perform the essential functions of their jobs, unless doing so would impose an undue hardship on the employer. Some examples of reasonable accommodations include making facilities more accessible, restructuring workspaces, and allowing changes to an employee's work schedule.

If an employee requests an accommodation, his or her employer must engage in a good faith interactive process with the employee to determine the limitations created by the disability and explore possible reasonable accommodations. Employers are required to provide accommodations even if the employee does not make a request. If the employer knows, or should have known, that the employee is experiencing workplace problems as a result of a disability, a reasonable accommodation should be made.

Whether a particular accommodation is reasonable or imposes an undue hardship is a highly fact-specific determination that must be made on a case-by-case basis.

In addition to reasonably accommodating disability, applicable law also requires that employers make reasonable accommodations for an employee's religious beliefs and/or practices.

New York City imposes a heightened burden on employers, and requires that the parties must continue their dialogue in good faith until such time as the employer determines that it can or cannot offer an accommodation. At such time, the employer must provide a written statement to the employee, identifying what accommodation has been approved or denied.



OBLIGATIONS IMPOSED BY NEW YORK STATE AND CITY LAW

Training

Sexual harassment training must be conducted annually for all employees. Among other things, the training must include an interactive component, an explanation and examples of prohibited sexual harassment, and information about federal, state and local laws prohibiting sexual harassment.

Training must also advise employees of their rights and remedies related to sexual harassment, including internal complaint processes and available complaint mechanisms through federal, state and local agencies.

Notice and Posting of Policies.

All employers in New York State must provide anti-harassment policies to their employees, which must include certain information, including a complaint form.

Employers are also required to distribute a Stop Sexual Harassment factsheet in both English and Spanish to new hires.

New York City employers must also conspicuously display anti-sexual harassment rights and responsibilities

Recent Expansion of New York State Anti-Discrimination Laws

New York State anti-discrimination laws now cover all New York State employers, and expand sexual harassment

protections to non-employees (i.e., to contractors, subcontractors, vendors, consultants, interns and



volunteers). State anti-discrimination laws also prohibit mandatory arbitration clauses and non-disclosure agreements (NDAs) that cover sexual harassment claims, with certain exceptions. In addition, state law allows for

uncapped punitive damages against an employer who is found to have violated the law.

REPORTING AND RESPONDING TO COMPLAINTS OF DISCRIMINATION OR HARASSMENT

Employees should be guided by the maxim of “see something, say something.” Bystander intervention is required under New York City law, and everyone is required to report incidents of actual or perceived harassment and discrimination to the organization’s designated department or representative, including incidents of conduct directed toward others.

Employees should be encouraged to come forward if they feel uncomfortable because of another individual’s behavior in the workplace, even if they are uncertain whether the conduct constitutes harassment.

Following receipt of a discrimination or harassment complaint, an organization must conduct a prompt and thorough investigation and take appropriate action based on the circumstances. To the extent possible, confidentiality should be maintained during the investigation process and thereafter. If a complaint of discrimination or harassment is substantiated, the organization must take appropriate remedial, disciplinary and/or preventative action.

Retaliation against an employee who complains about actual or perceived discrimination or harassment is strictly prohibited, and can subject individual retaliators and the organization to legal liability.



PERFORMANCE MANAGEMENT AND DISCIPLINE

It is critical that organizations appropriately document and manage the performance of their employees. When a dispute arises related to an adverse employment action (such as termination or demotion), performance documentation can significantly bolster an employer's defenses and establish that the employer acted on the basis of a legitimate, non-discriminatory reason. However, if such documentation is not created and maintained correctly, it can undermine an employer's defenses and support an employee's claims of discrimination or retaliation.

Some key components of good performance review documents are: (i) detailed and accurate facts, with specific examples of the employee's performance; (ii) acknowledgment of both good and bad performance; and (iii) clear and easy to understand assessments of performance and expectations.

Employers should adopt, implement and enforce a progressive discipline policy (except in cases of serious misconduct). Human Resources personnel (if available) should be involved in the disciplinary process to the extent possible. Discipline for misconduct should not come as a surprise to employees if the employer maintains clear policies regarding conduct and progressive discipline. Similarly, in most cases, terminations based on misconduct should not come as a surprise to an employee if progressive discipline policies have been followed. If termination becomes necessary, termination meetings should be carefully planned and considered in advance.



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