

HR Updates

Jill Nagy, Esq.

Danielle Hoffer, SPHR, SHRM-SCP

Confidentiality

Types of Confidential Information

- Employee
- Management Information
- Customer Information

Company view point

Confidentiality of Employee Information

- ADA
 - Requires that such information be confidential and limits who is able to access this information
 - Supervisors who need to know about restrictions on the work of an employee or other reasonable accommodations that need to be made, safety personnel handling medical emergencies, government officers investigating complaints of disability discrimination
- HIPAA
 - Regulates healthcare providers' use and disclosure of individually identifiable health information (known as Protected Health Information)
 - Specifically protects an organization from sharing any medical related information
- I-9's
 - The information contained on these forms (e.g., national origin, age, ss#) should be kept confidential so as to avoid discrimination claims from employees
- Payroll information
 - Confidentiality of SS#, wages, garnishments, medical deductions, etc.

Right to Know Law

- In some instances the Right to Know Law conflicts with general privacy laws
- The Right to Know Law requires payroll and some customarily confidential information public records
- W-2's are still not public records, but all other financial information of an agency is public
- The Museum Commission Regulations instructs how long you must maintain records and dispose of them

Confidentiality

- Information should not be openly discussed by management OR employees
- Be considerate of personal privacy and discreet with information made available to you through
 - Course of employment
 - Affected employee who chooses to share
- Not everything is everyone's business

Enforce Confidentiality

- Can be costly if a mistake is made
- Should follow corrective action for violators
- Ask questions where areas are gray

Passenger view point

Passenger Confidentiality

- The difficulty with driver passenger relationships is that riders assume drivers have some understanding of their physical condition, but drivers should not have information concerning a person's diagnosis unless it is a direct threat to the driver or other passenger's safety
- Drivers and passengers need to understand that transit is providing transportation not medical treatment, so there is limited knowledge or information about a medical condition
- ADA forms and paratransit applications must be separately maintained with proper access and controls regarding who can see that information

Securing Passenger Information

- Restricting access to PHI (electronic document storage systems, shared drives, etc.)
- Secured storage of the paper applications.
- Policy to shred paper applications after scanning.
- Restricting physical access to areas where PHI is utilized, data entered, or stored
- Completing a risk assessment for compliance with PHI management and security
 - Conducting security awareness training for all staff, focusing on risks identified
 - Follow-up with random “audits” for PHI security compliance
 - Ensure policies are in place
- Password management (changing, “generic”, securing passwords – ie., not on sticker on computer)
- Ensure drivers understand confidentiality – do not discuss medical issues or specific specialty physician information with passengers or in earshot of other passengers
- Limit PHI entered into Ecolane

Sexual Harassment

Federal and State level regulations

- Civil Rights Act of 1964
- Title VII
- States have Fair Employment Practices laws
- Often insurance companies will not provide insurance protection for a company or employee who commits sexual harassment so claims are very serious.

Definition

The most comprehensive legal sex discrimination definition entails the occurrence of any undesired sexual conduct at work, which engenders a hostile, intimidating, or uncomfortable workplace for workers.

Company view point

Sexual and other Harassment

- Not gender specific
- Does not have to be direct contact
- Harassment need not only occur in the workplace itself, but can occur through email, social media and off work premises
- Not just by management
- Not a male to female issue

Harassment Conduct

Physical Assaults

Unwanted Advancements

Sexual comments

Suggestive materials- including those posted, internet comments, written comments

Preferential treatment

Inappropriate gestures

Jokes

Harassment Conduct

- Can include “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature
- Can include offensive remarks about a person’s sex. For example, it is illegal to harass a woman by making offensive comments about women in general
- Jokes, teasing and off hand remarks become illegal when they are so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted)

Harassment

- Hostile Work Environment
- Third Party Harassment

Not just a corporate thing

- Under EEOC, both companies and individuals can be held responsible for violations under Harassment regs
- Managers are ‘agents’ of the organization and have obligations
 - To create a safe environment
 - Free from harassment of any kind
 - Address developing issues quickly, even unreported ones
 - Respond quickly to complaints – report to HR
 - DO NOT RETALIATE

How to prevent?

- Conduct Annual Training and include in orientation
- Investigate claims of harassment immediately
- Do not create an organizational culture which permits discrimination or harassment of any kind
- Ensure policies are up to date
 - Can report to anyone
 - No retaliation language

Passenger view point

Driver/Passenger Relationships

- Often drivers and/or passengers form emotional relationships because of the nature of the service they provide
- In the context of disabled passengers there is often unintentional physical touching
- Often driver and passenger relationships occur out of the workplace as well
- The relationship is more than a service for many passengers

Key Warnings

- Excessive gifts
- Excessive touching
- Relationships outside of work hours
- WARN drivers not to enter the home of paratransit passengers
- ADVISE drivers to complete incident reports any time a situation seems off
- Drivers may not retaliate against passengers

Examples of Conduct

- Dispatchers making sexual comments over the radio- Company held liable as supervisors heard comments and did not discipline or stop the comments
- Passengers groped on bus and complained to driver who did not react or intervene
- Wheelchair Securement
- Passenger/Driver Affairs

Passenger Conduct

- This is largest area of harassment for transportation because often employees interact very little
- Passengers often form attachment with drivers and are the pursuer
- Passengers are assaulted on vehicles by other passengers
- Wheelchair restraint cases

EEO Investigations

EEO Regulations

- Can be for areas including:
 - Title VII
 - Civil Rights Act – Sexual Harassment
 - Equal Pay Act
 - ADA
 - ADEA
 - Rehabilitation Act
 - Sexual Orientation Discrimination
 - Freedom of Retaliation Act

Company viewpoint

10 Common Workplace Investigation Mistakes

- Failing to plan.
- Ignoring complaints.
- Delaying investigations.
- Losing objectivity.
- Being distracted during interviews.
- Using overly aggressive interview tactics.
- Not conducting a thorough investigation.
- Failing to reach a conclusion.
- Failing to create a written report.
- Failing to follow up with those involved.

Workplace Investigations

- HR should conduct
- Design a plan
 - Who will investigate?
 - What will be investigated?
 - What evidence needs to be collected?
 - Who will be interviewed?
 - What will be asked?
- Be objective in the process
- Gather evidence, as available (emails, video, etc.)

Workplace Investigations, cont.

- Witnesses
 - Plausibility. Is the witness's version of the facts believable? Does it make sense?
 - Demeanor. Does the witness seem to be telling the truth?
 - Motive. Does the person have a reason to lie?
 - Corroboration. Are there documents or other witnesses that support the witness's version of events?
 - Past record. Does the alleged wrongdoer have a past record of inappropriate conduct?

What to include in the Investigation Report

- The incident being investigated, with dates
- The individuals involved
- Key factual findings and credibility determinations
- Applicable employer policies or guidelines
- Summaries of witness statements
- Specific conclusions
- The name of the person making a final decision
- Issues that couldn't be resolved
- Employer actions taken

PassengerViewpoint

How to Get the Company's Attention?

- Be sure that your policy is clearly provided on website and promotional material
- It must be “accessible” to all riders (visually impaired, language barriers, etc.)
- Acknowledge receipt of an EEO claim and when you anticipate a response
- Investigate the claim as a normal internal claim
- Keep track of EEO claims for the same type of monitoring of repeat offenders

Investigation

- Your investigation may include:
 - Bus videos
 - Interviews
 - Discussion with third party agencies
 - You want to log and track complaints and responses
 - Provide a written response **AND APPEAL PERIOD**
 - Your EEO policy should outline appeal provisions

Questions?