

COMPLIANCE OVERVIEW

Provided by Clarke & Company Benefits, LLC

Achieving Compliance Through Effective Supervisor Training

One way an employer can reduce its liability risks is to ensure that its supervisors have the knowledge and tools necessary to comply with all applicable employment-related laws. This can be achieved by providing supervisors with regular training on what they are expected and obligated to do in certain workplace situations.

While supervisor training programs should be tailored to each company's specific needs and workplace culture, certain key compliance topics can be particularly helpful for avoiding employee disputes and government investigations or penalties. This Compliance Overview provides general information about these key compliance topics and also includes practical tips for crafting an effective supervisor training program.

Employers should determine the exact training that may be appropriate for their particular workforces and whether any applicable laws require certain types of training.

LINKS AND RESOURCES

- U.S. Equal Employment Opportunity Commission (EEOC) federal training and outreach [website](#)
- U.S. Department of Labor Wage and Hour Division guidance on the federal Family and Medical Leave Act ([FMLA](#)) and Fair Labor Standards Act ([FLSA](#))

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

HIGHLIGHTS

RECOMMENDED TRAINING TOPICS

- Harassment prevention
- Employment discrimination
- Employee leave obligations
- Wage and hour compliance

BEST PRACTICES FOR TRAINING

- Provide supervisors with regular training on compliance issues
- Include information about any employee handbook updates or new company policies
- Ask for supervisor input on potential training topics to identify and address any knowledge gaps
- Evaluate supervisors based on completing training sessions and implementing training suggestions
- Make training programs interactive and include real-life examples



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WORKPLACE DISCRIMINATION AND HARASSMENT PREVENTION TRAINING

A growing number of state and local laws require employers to provide sexual harassment prevention training to all employees. Even where no such obligation applies, however, all employers should ensure that their supervisors are well-versed in how to recognize and appropriately respond to any type of unlawful conduct in the workplace.

This training should include comprehensive information about all applicable anti-discrimination laws. For example, Title VII of the Civil Rights Act (Title VII) is a federal law that prohibits employers from discriminating against individuals based on certain protected traits, including race, color, religion, national origin and sex. Under Title VII, harassment based on any protected trait is a form of prohibited discrimination.

While Title VII applies to employers with 15 or more employees, most states and cities have similar laws that apply to smaller employers. These laws often include additional or broader categories of protected classes—such as sexual orientation, gender identity and gender expression – and may impose additional obligations on employers – such as requirements to adopt written workplace policies.

All employers should have a written policy on workplace harassment regardless of whether a law requires it, and any supervisor training program should include detailed information about the policy. At minimum, all supervisors should be fully trained on:

- The fact that certain conduct, such as workplace sexual harassment, is illegal;
- What constitutes unlawful conduct, as illustrated through real-life examples;
- What they must do when an employee reports unlawful conduct to them; and
- What they must do when they witness unlawful (or potentially unlawful) conduct themselves.

Supervisor training should also include strategies for preventing unlawful conduct in the first place, as well as for avoiding discrimination claims. These strategies may include, for example:

- Keeping conversations with employees focused on job-related topics; and
- Treating employees who are in similar situations consistently.

Finally, supervisors should be trained to avoid engaging in any unlawful retaliation against an employee. Retaliation can violate numerous federal and state laws, including those that prohibit employment discrimination. Supervisors should be aware of these laws and of what may constitute unlawful retaliation under them. In addition, supervisors should be instructed to consult with a human resources professional or other authority within the workplace before taking any adverse action that could be viewed as retaliatory.

EMPLOYEE LEAVE AND REASONABLE ACCOMODATION TRAINING

As many supervisors know, employees who request time off work do not always specify that they could have a right to the time off under an applicable law, such as the federal Family and Medical Leave Act (FMLA) or a similar state leave law. Nevertheless, supervisors that receive employee requests for time off must ensure that they meet all obligations that may apply under these laws.

Likewise, supervisors must be able to recognize and respond appropriately when a request for time off is one that must be considered as a “reasonable accommodation” for disability under either the federal Americans with Disabilities Act (ADA) or a similar state law.

An employer’s training program can address these issues by:

- Specifying which leave and disability laws apply to the company;
- Providing an overview of the employer’s obligations related to leave requests under the applicable laws and under the employer’s policies;
- Using real-life examples to illustrate which types of words or phrases could trigger the employer’s obligations under the applicable laws;
- Discussing how certain supervisor actions or inactions could be considered violations of the applicable laws; and
- Providing and encouraging supervisors to regularly review any practical guidance available from the appropriate enforcement agencies.

For example, private employers that have 50 or more employees (and certain schools and public employers, regardless of size) should include information about leave requirements under the FMLA, which is enforced by the U.S. Department of Labor’s Wage and Hour Division. According to this agency’s [FMLA guidance](#), an employer’s obligations begin any time an employee’s leave request includes information indicating that it **could** be covered by the FMLA.

Employers that have 15 or more employees should also include information about the ADA, which is enforced by the EEOC. Under the [EEOC’s ADA guidance](#) on reasonable accommodation requirements, an employer has an obligation to begin an informal, interactive process any time an employee requests leave for a reason related to a medical condition.

A supervisor training program should also help ensure that supervisors understand the importance of avoiding retaliation claims by:

- Keeping an employee’s history of leave or accommodation requests separate from any performance issues involving that employee;
- Keeping any personal feelings about an employee’s leave request out of all conversations with the employee; and
- Treating all similarly situated employees in a consistent manner.

WAGE AND HOUR TRAINING

Because supervisors are often tasked with scheduling and tracking employees' work time, it is imperative that they understand the importance of accurately recording – and ensuring proper payment for – all hours worked by employees. Specifically, supervisors should be aware of the basic requirements under both the federal Fair Labor Standards Act (FLSA) and any applicable state laws that impose employee wage requirements.

This is particularly important when it comes to employees who are not exempt from [the FLSA's overtime payment requirements](#), because virtually all employers must ensure that these employees receive 1.5 times their usual hourly wage for any time they spend working beyond 40 hours in a workweek. Among other related topics, some key rules that supervisors should be trained to understand about this are that:

- Although employers may have policies that require employees to obtain supervisor approval before working overtime, employees who work unapproved overtime are still entitled to overtime compensation, even if they are subject to discipline under the employer's policy; and
- Allowing or encouraging any nonexempt employee to work "off the clock" is strictly prohibited.

It is also important for supervisors to be trained to ensure that employees take – and do not perform work during – any meal or break periods that may be required under applicable state law.

Finally, supervisor training should prepare supervisors to take appropriate steps in the event an employee has a dispute about his or her pay. This should include training on the importance of handling any pay disputes as promptly as possible.

DOCUMENTATION TRAINING

When it comes to resolving employment-related disputes, detailed documentation can make all the difference for an employer. For example, records showing an employee's poor performance, attendance issues, behavioral problems, disputes with other employees, or other indiscretions can serve as an employer's proof that any adverse employment action or termination was not because of illegal discrimination, but rather due to the legitimate employment issues the documentation reveals.

On the other hand, having bad documentation can be worse than having no documentation at all. Therefore, supervisors should be trained not only on the importance of creating records in the first place, but also on the importance of ensuring that their records are as helpful as possible for the employer.

Specifically, a training program should include information about how to:

- State specific facts as objectively as possible;
- Avoid inserting any personal opinions or conclusions; and
- Include only relevant job-related facts, such as specific portions of a company policy.

CONFIDENTIALITY TRAINING

Supervisors often have access to a variety of information about employees, including wage and salary information and sometimes even medical information. Although it may seem like protecting this information from unauthorized disclosure should go without saying, employers should never assume that supervisors are aware of all the confidentiality obligations that may apply under various federal and state laws.

For example, supervisors may not be aware that the ADA requires them to keep an employee's medical information confidential even if it does not include any information about a medical diagnosis, and even if it is not generated by a health care professional. Thus, an employer's training program should include this type of detail about all applicable laws, along with practical tips for avoiding violations.

COMMUNICATION TRAINING

When communication styles clash, simple workplace messages can unnecessarily explode into full-blown legal headaches for an employer. For this reason, employers should consider training supervisors on, among other things, how to:

- Use appropriate tone and timing to deliver information about company policies and in all conversations with employees;
- Increase employee engagement through regular one-on-ones and other meetings with employees;
- Set a positive example by following all company policies and avoiding even the appearance of undermining those policies; and
- Know when to say "I don't know" and obtain the appropriate information before answering an employee's question, instead of providing an inaccurate response and later retracting it.

ADDITIONAL GUIDANCE

Supervisor training should not be a "one and done" operation. Attention spans are short, and the more information that is thrown at supervisors, the harder it will be for them to retain any of it. Therefore, employers should consider breaking up training sessions over time and using a variety of teaching methods.

For example, an employer's overall supervisor training program could utilize various e-learning or other self-directed learning systems for certain topics, but also include in-person teaching sessions for other topics. Training sessions could also be scheduled on an ongoing basis, such as through a series of monthly or quarterly "lunch and learn" meetings. Regardless of any regular training schedule, however, employers should always ensure that supervisors:

- Receive timely notification and training on any new or different legal obligations as they arise; and

- Are kept up to speed on any changes made to employee handbooks or company policies at all times.

Employers should also prioritize training topics based on the specific needs of their organizations. Conducting exit interviews with departing employees can be a useful means of identifying topics that may be most important to include. These interviews can also help an employer determine whether a particular supervisor may need additional training or other interventions to ensure that he or she is advancing the employer's goals.

Directly asking supervisors about these issues is another way employers can gather information to help them design effective training programs. Employers could ask supervisors whether there are any topics they feel they should learn more about and whether they have any feedback about the training they have already received.

Finally, employers should ensure that their training programs are engaging and interactive. Supervisors should be given time to ask questions and participate in discussions, and lessons should be easily transferable to actual workplace challenges. To include as many real-life examples as possible, employers could ask supervisors to describe situations they have worked through in the past and add new or different twists for discussion. Employers may also consider even asking supervisors if they have any current employee situations that they would be willing to share and work through in the training.