

Employment Best Practices:  
Responsibilities of Senior Executives

by:

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# Employment Best Practices

## Responsibilities of Senior Executives

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# Introduction- Be Aware!

- You as executives have significant responsibility in seeing that the law of the workplace is being followed.
- You cannot depend entirely on your Human Resources Manager
- Employment decisions in an aggressive or quickly growing business sector create the risk of sloppy or even illegal employment decisions.
- Executives may have personal liability under some employment laws.

# Penny's Eight Tips for Executives

## Tip # 1- Know the Rules

- Make sure that management and your Human Resource professionals get regular updates on the developments in employment law.
- And make sure that they communicate the important developments to you

## Tip # 2-Watch out for Sexual Harassment Claims. They Continue to Be a Problem in the Workplace

- Sex Harassment is Prohibited by Title VII of the Civil Rights Act of 1964 as well as the Illinois Human Rights Act. (“IHRA”)
- Understand the Risk of Quid Pro Quo vs. Hostile Environment Harassment
- Managers should NEVER date subordinates.
- Consider the risks of after work social events where there is alcohol served, particularly where the event is sponsored by the Employer.
- Management may have personal liability under the IHRA.

## Tip # 3-Familiarize yourself with the Family Medical Leave Act.

- Be Aware of Family and Medical Leave Act (“FMLA”)
  - Covers Employers with over 75 employees.
  - Employers have a duty to inform eligible employees of their rights to FMLA leave;
  - Provides employees with up to 12 weeks of unpaid leave/year.
  - Leave may be taken for a serious health condition, or to care for someone with a serious health condition
  - Allows the leave to be taken at one time or intermittently.
  - Management has a duty to recognize when an employee may need such leave even where the employee doesn’t ask for it.

## Additional FMLA Information for Executives

- Executives can be found personally liable for violations of the FMLA.
- Executives may not have the right to retain their jobs after they take a leave of absence.
  - A salaried employee who is among the highest paid 10 % of the employees employed by the employer may be denied restoration to her former job after taking a FMLA leave.

## Tip #4 Remember the Age Discrimination in Employment Act

- No Employer Can discharge an Employee “because of” his or her age.
- These are the cases where there is most likely to be “smoking gun” evidence (direct evidence of discriminatory intent) when made by a decision-maker)
- Examples of “Smoking Gun” statements.
  - “We like to hire young, candidates with lots of energy and motivation.”
  - We consider the point in which the employee is in his “career cycle when making decisions in lay offs.”
- Where there are “smoking guns” discrimination is far easier to prove.

## **Tip #5 Retaliation Claims Create a Greater Risk than the Underlying Discrimination Claim**

- Virtually all statutes that prohibit discrimination also prohibit retaliation for bringing a claim either internally or at an administrative agency.
- The complainant need not prove the underlying discrimination claim to prevail on the retaliation claim.
- Directives must be clear. Retaliation is absolutely prohibited.

## Tip #6-Danger Signs: Consider the Following before Approving a Discharge

- Is the timing of the discharge suspicious?
- Were the discharge procedures irregular or inconsistent with Company Policy?
- Has this Employee had an abrupt change in performance or performance evaluations?
- Are you getting inconsistent statements regarding the reasons for the discharge?
- Have there been selective application of disciplinary actions or work rules?
- Is there a paper trail?

## Tip # 7-When You Can't Resolve an Employment Dispute, Consider Voluntary Mediation over Litigation

- Best practice for companies as well as employees
- It is less expensive and less time-consuming than litigation
- The process is one of problem-solving rather than an adversarial approach.
- The process is particularly effective at diffusing emotions and creating an environment of “Perceived Fairness.”
- Both parties retain control over the outcome.

## Tip #8- Recognize When You Need Your Own Employment Lawyer

- Offer of a New job
  - Particularly where you are being asked to sign a contract or non-compete agreement or are still bound under a prior one.
- Problems at Work
  - For developing strategies for resolution.
- Your Departure
  - When you want to resign, or believe you are being wrongfully discharged or want help reviewing a separation agreement.

# To Review

1. Know the Rules and stay on top of Developments in the Law.
2. Watch out for Sexual Harassment Claims
3. Become familiar with the FMLA
4. Don't forget the Age Act
5. Avoid Retaliation Claims
6. Review Termination Decisions before they become effective.
7. Consider Mediation
8. Be Aware of when you need your own Employment Attorney.

# Conclusion

- Keep an Open Door. Let it be known that Employees can come to you if they can't get satisfaction from Human Resources.
- Be Visible in the Work Environment. Let your staff know you care about their well being.
- Make sure your personnel policies are fair and consistently applied.
- Employees file suit against their employers because of "Perceptions of Unfairness."