



MEETING NOTES
November 8, 2012

In Attendance:

Bryan Howard, DESE
Carol Newguard, SAO
Nancy Johnston, DED
Darlene Robinett, DOR
Dawn Korsmeyer, Supreme Court
Debbie Davis, Credit Union
Mary Hoskins, DHSS
Pam Dobson, DHE
Yamini Laks, DSS
Gina Hall, Public Defender
Jane Duncan, Public Defender
Guy Krause, OA
Felicia Light, AGO
Mary Canel, SOS
Jennifer Eddy, DNR

Libbie Farrell, OA
Nickie Smith, DSS
Pam Schmidt, DMH
Mari-Jo Wilkes, DNR
Michelle Jacobsen, DHSS
Heather Kaiser, SOS
Mona Smith, DHSS
Rachel Potts, DED
Bridget White, DOC
Peggy DeMeurers, MSHP
James Nelp, DOR
Stacy Kaiser, MODOT
Stacey Jacobs, STC
Tom Fast, OA
Vicki Glenn, Gaming

Employment Law Best Practices – Jim Ward & Julianne Germinder, Attorney General’s Office

Jim and Julianne spoke to the group about reducing the risk of retaliation claims. The bulk of the cases they see come through the Attorney General’s Office are retaliation based. Disability and harassment based cases follow in numbers. They indicated the importance of maintaining a “no retaliation” policy and making sure supervisors and managers are trained on the policy. Jim and Julianne provided a helpful [Ten Strategies for Reducing the Risk of Retaliation Claims](#) document.

We submitted a list of questions to Jim prior to the meeting, which he and Julianne went through and discussed. There was lengthy discussion, but some of the information is below.

Why does the Attorney General’s office settle on cases?

If an agency loses a case, it leaves a black mark against the agency. Sometimes it is better for the agency to settle than suffer the loss. The plaintiff only needs to provide a contributing factor that a protected category played a role in the

disciplinary action. In addition, attorney fees are usually included in state court cases, if the ruling is in favor of the plaintiff, which average \$350,000.

What type of documentation should be kept?

Most lawsuits stem from performance issues, so it is important to document performance issues and discussions. Performance evaluations should be realistic and honest and should support the action being taken. Don't go overboard with documentation, but be thorough and consistent.

Remember when typing e-mails that they are not privileged information and can be used in court.

What happens if the agency can't provide documentation or there are holes in information?

If an agency doesn't have the best documentation, be candid with the Attorney General's office and let them know up front.

What if you have an employee that is a witness in a case?

Have the employee work with the Attorney General's office, so they can give the employee direction for the case. The Attorney General's office represents the employee.

Encourage employees not to discuss case details in the workplace.

What factors should be considered when addressing social media?

First amendment protections are limited for public employees, but complaining about the workplace on Facebook can be protected. The Attorney General's office can give guidance on how to word agency policies and handle social media issues.

Jim and Julianne reminded agencies to ensure policies are kept up-to-date and periodic training on anti-harassment is held periodically, at a minimum of once every two to three years preferably. They indicated that it is a good practice to have employees sign-off that the employee has read and reviewed the anti-harassment policy and received training.

The Attorney General's office prefers agencies contact them prior to cases being filed, so they can provide guidance in disciplinary situations. If you have any questions, please contact Jim or Julianne.

OA Accounting – Libbie Farrell

No update.

OA Personnel – Guy Krause

Leave balance checking program report is now available on MOBIUS.

The annual Employment Law Update training is scheduled for December 4. Sue Willman from Spencer, Fane, Britt, and Browne, LLP in Kansas City will be the presenter.

Statewide Policy Committee Update

The committee's statutory change recommendations to bereavement leave are still being reviewed.

The committee continues to review FMLA, in hopes of providing guidelines for more consistent application by agencies.

Next Meeting

Recruitment using Social Media Resources

December 13, 2012
Room 400 HSTOB
8:30 a.m. to 10:30 a.m.