



## **Reduce Your County's Risk: An HR Perspective**

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***Disclaimer: This training is designed to provide general information about the subject matter covered. Neither TAC nor the trainers are engaged in rendering legal advice. If you need legal advice, TAC recommends that you seek the services of a competent attorney who is familiar with your specific situation.***

### **What is Risk?**

Risk involves uncertainty about the effects/implications of an activity with respect to something that humans value (such as health, well-being, wealth, property or the environment), often focusing on negative, undesirable consequences.

### **Employment Laws:**

**Title VII of the Civil Rights Act of 1964** prohibits harassment and discrimination of employees in the workplace based on race, color, religion, sex and national origin. The definition of "sex" was expanded after a Federal Supreme Court ruling in June of 2020, to include any individuals that identify with the LGBTQ+ community.

**Age Discrimination in Employment Act of 1967** prohibits age discrimination based on age for individuals over the age of 40.

**Americans with Disabilities Act as Amended:**The ADAAA prohibits discriminating against an employee or applicant with a disability, physical or mental. It prohibits discrimination against qualified applicants and employees with disabilities. It includes both physical and mental impairments that substantially limit one or more major life activities. Employers are required to provide reasonable accommodations for applicants and employees with disabilities.

**Pregnancy Discrimination Act:** The Pregnancy Discrimination Act prohibits discriminating against an employee when they are pregnant. This acts states we treat pregnant employees as we would treat any other employee.

**Family Medical Leave Act:** This is 12 weeks of leave, within a 12 month period, for employees that meet the eligibility and have a qualifying event. The employee has to have worked for at least 12 months (doesn't have to be consecutive) and 1250 hours within the 12 months prior to the leave request. There are time sensitive documents that have to be sent to the employee and returned to the employer for this type of job protected leave. Benefits continue just as they would for an employee not on FMLA leave.

**Genetic Non-Information Act:** This law was passed in 2008 and protects employees from being discriminated against because of a genetic disposition to an illness/disease.

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**Policies Are Important**

The county has a list of policies that define expectations on things like conduct, benefits, and terminating employment. There are a couple of very important policies that you and your employees should be familiar with - the Harassment and Sexual Harassment policy. It defines expectations for the employee and supervisors when it comes to reporting harassment and what to do when a complaint is received. As Elected officials, you can also have your own inner-office policies that should compliment the Employee Handbook that your employees are issued upon hire. A best practice would be to have these in written form and have your employees sign an acknowledgment form after you review these with them.

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**Job Descriptions**

For management, a well written job description is essential in evaluating job content, recruiting, salary comparison, training and development and career planning; not having job descriptions can make it difficult to address employee issues based on performance, attendance, or attitude. When we fail to have these documents with proper job titles, requirements, essential functions, misclassify marginal duties as essential, or forget some of the physical requirements or work conditions – it is difficult to defend our reason for termination. The essential functions outline why the job exists – without them there is no need for the job – limit these to 5. Job descriptions need to be reviewed regularly by department heads and when there are changes to the job, the job description needs to be updated... this is a living document and it should evolve as the position does.

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**Documentation**

Without proper documentation, the county opens itself up to liability which can result in costly claims. This can cause an increase in financial loss and can come in the form of reduced benefits to employees such as no pay raises, reduction of force, reduced benefits. Your only method of justification against this type of risk is Documentation. If you don't document incidents when they occur, it is difficult to show a pattern of bad behavior or performance and either correct it or take disciplinary action. Focus on the facts – don't embellish – the employee needs to have a clear understanding of what they did wrong. Don't make their personal issues part of the documentation – this could lead to additional risk for the county. Thorough documentation is essential to performance management and provides for a strong defense for employers against complaints to the EEOC and unemployment. According to the EEOC (Equal Employment Opportunity Commission) If you don't document it – it didn't happen.

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**What is Documented**

Disciplinary Actions should be documented – even if it is a verbal communication. Follow it up with an email to your employee reminding them of what the discussion was about. If the behavior or incident occurs again, then give them a formal write-up. Include facts surrounding the issue, dates, times, behavior, or performance issue and what the consequences will be if it occurs again. They need to know their job is in jeopardy. Complaints should be documented and dealt with. Your county should have a Harassment and Discrimination policy in your handbook. These complaints must be documented regardless of how large or small and reported to the person responsible for conducting the investigation. Accommodations should also be documented so that there is a record of the request, if the county was able to make the accommodation, what the accommodation was and when the accommodation went into effect. When we make accommodations and don't document them, the employee may think that this is their "new job" and then we have nothing to show otherwise.

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