

# Standard Administrative Guidelines

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Fauquier County Fire and Rescue Association

3/1/2011  
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## **Overview**

These are the policies and procedures of the Fauquier County Fire and Rescue Association Standard Administrative Guidelines. They are based on risk control recommendations from VFIS to minimize our exposure. Member companies are encouraged to review and implement these procedures in their operations.

While member companies are their own entities, they are all covered under the same insurance policy. This is a benefit to member companies from the Fauquier County Fire and Rescue Association. By implementing these policies, we can reduce our liability and minimize the cost incurred by the FRA.

## **Fidelity – Failure to comply with minimum standards may result in delay of funding**

Fidelity is defined as the strict observance of promises, duties, etc. or adherence to fact or detail. Unfortunately, some officers and managers are not always honest and may be tempted to divert money and other financial assets from your organization for personal gain. This would be known as a Fidelity Claim. Unfortunate as well is that Fidelity Claims are on the rise.

Directors, managers, chief officers, treasurers, financial secretaries and special event managers all could become a financial drain on any organization if they do not perform with fidelity. The real problem for an organization is that when these losses occur, they generally occur over relatively long periods of time. This may result in the losses being staggeringly high. There are proven risk control methods for reducing the possibility of the conditions that make Fidelity theft possible. The following are minimum standards for persons with purchasing, fund management and check writing responsibilities:

- Checks should require two signatures, signed only after they have been written in full and verified by both signers.
- Never sign blank checks or allow the use of signature stamps, even for convenience.
- Have your organization's bank require signature cards to be kept on file. Your organization should keep these up-to-date.
- Have an independent third party audit your books every three years.
- Do not permit persons with close personal ties (husband/wife; brother/sister; business partners) to have control over organizational check writing or reconciliation.
- Separate financial functions as much as practical.
- Have all financial policies in writing. Include spending limits and purchase authority in your by-laws.
- For large amounts of cash or for events occurring over a long period of time, have frequent pickup and accounting of cash. Collected money should be bank deposited to limit the amount of on hand cash.
- Have at least two people responsible for reconciliation and deposit of cash.
- Have some form of paper trail (ticket stubs, bill of sale, sign-in sheet) so that a close estimate of the anticipated cash can be obtained and confirmed.
- File annual tax returns (Form 990) with the Internal Revenue Service before the deadline and submit a copy to Fauquier County Finance Department.
- Have someone else authorize payments and sign checks for reimbursements to person issuing checks
- Keep receipts, invoices, properly mutilated voided checks and other backup documentation in orderly files
- Issue 1099's annually by January 31
- Credit Cards should be used for emergency purchases only. They should be locked up for safekeeping with limited access by necessary personnel.
- There should be no ATM cards issued.
- Setup individual user names and passwords on computers

The following will also assure fidelity:

- Bank statements should be received and reconciled by someone who does not have check writing authority.
- Require purchase orders and invoices for all purchases of property or service. Have these compared to the written checks.
- Make deposits within 3 days of receipt
- Pay all bills within 45 days
- Do not make checks payable to cash
- When applicable, sales tax should not be paid
- Set up an account for Unclaimed Property for outstanding checks
- Consider a third-party bookkeeper to prepare checks, verify balances, prepare correspondence, reconcile accounts, etc.

## Fireworks Displays

Fireworks displays are a beautiful way to highlight a holiday weekend. Many Emergency Service Organizations (ESO) hold these events, and are the organization that sponsors them.

Unfortunately, fireworks can also be the cause of serious injuries and property damage. The National Fire Protection Association (NFPA) reports that an estimated 9,600 people suffered fireworks-related injuries severe enough to require emergency room treatment. While children were the largest group affected, at least a third of those injured were adults aged 25-44. Property damage each year runs into the millions. In 2003 an estimated 2,300 fires involving fireworks caused \$58 million in direct damage. Public fireworks displays account for a very small share of the problem. But when things go wrong, they go *very* wrong. Imagine having an aerial shell fall and explode into a crowd of people – not only would there be many injuries, but the potential for liability suits is extremely high. So, what should you do? Consider some of the following procedures to prevent accidents and limit your liability.

***First and foremost, contract with a professional fireworks company*** to fire the shells. Ask for a certificate of insurance and that your ESO be named as an additional insured on their policy. The limits of their liability policy should be at least \$1 million for bodily injury and property damage.

***If you use employees/members of your ESO to handle the display instead, make sure they have been trained and certified to shoot fireworks.*** A number of states require licensing or certification in this regard. A Pyrotechnics Display Operator Training Program can also be obtained from Pyrotechnics Guild International, Inc. ([www.pgi.org](http://www.pgi.org))

***Work with the fireworks company to determine adequate distances from which spectators are separated from the display, discharge and fall-out areas.***

The NFPA Standard 1123 gives specific requirements for the display area: Allow at least 70 foot radius for every inch of internal mortar diameter of the largest aerial shell fired. There should be no spectators, dwellings or parking areas in this radius. The shell trajectory in the discharge area should have a 25 foot clearance to any overhead objects. Ground display pieces should be at least 75 feet from any spectator viewing or parking areas. The fall-out area, where debris from spent shells and any malfunctioning aerial shells fall, should be free of all spectators, vehicles or combustible materials.

***Provide adequate fire protection, fire apparatus and emergency medical service during the display.*** Monitors should be assigned to control spectators and prevent them from accessing the discharge site. They should also be alert for any changes in the fall-out area due to a wind shift and be prepared to alert the fire apparatus operators, or, if need be, stop the display.

***Clean-up is critical.*** Many injuries, especially to children, are caused by handling unexploded fireworks. Find out who is responsible for clean-up – the operator or promoter – and don't give the public access to the display area until after a daylight clean-up takes place. You should also have procedures in place to deal with unexploded shells found at this time.

**If your ESO is sponsoring a Fireworks Display, use the following checklist to help your ESO address the hazards and exposures associated with the display.**

## Fireworks Display Checklist

Name of ESO: \_\_\_\_\_ Responsible Person: \_\_\_\_\_  
Name of Contact on-site: \_\_\_\_\_ Phone # of Contractor: \_\_\_\_\_  
Name of Professional Fireworks Contractor: \_\_\_\_\_

Professional fireworks company contracted to fire the shells.

Responsibility for clean-up clearly defined in contract with professional fireworks company and is the responsibility of professional fireworks company.

Certificate of Insurance obtained from fireworks company with minimum limits of \$1,000,000 for bodily injury and property damage.

ESO named as additional insured on contractors certificate of insurance.

### **Display Area (Also see NFPA #1123)**

Display area adequate for size of aerial shell.

70 foot radius for every inch of internal mortar diameter.

No spectators, dwellings or parking areas within that display area.

### **Discharge Area (Also see NFPA #1123)**

Distance from discharge area to spectators is adequate.

Security to discharge area is adequate.

At least 25 foot clearance to any overhead objects for shell trajectory.

At least 75 foot clearance between spectator viewing areas or parking areas and ground display pieces.

Storage of shells at discharge site is adequate.

### **Fall-Out Area (Also see NFPA #1123)**

No spectators, vehicles or combustible materials located within fall-out areas.

### **Emergency Service Organization**

Adequate fire protection, fire apparatus and emergency medical service provided during display.

Adequate monitors provided to enforce crowd control and observe falling of live debris.

Adequate communication capabilities between monitors and fire apparatus.

### **Clean-up**

Display area not open to public until daylight clean-up completed.

Daylight clean-up completed.

Procedures in place for handling unexploded shells.

National Fire Protection Association (NFPA) #1123 provides more information on how to properly

conduct a fireworks display. Please review those requirements before holding your event.

NFPA

1 Batterymarch Park

Quincy, MA 02269-9101

617-770-3000

<http://www.nfpa.org>

Pyrotechnics Guild International, Inc. ([www.pgi.org](http://www.pgi.org)) is another source for information about fireworks displays. For more information on them please contact:

Bill Bahr, President/19 Yellowbrook Road/Freehold, NJ 07728/732-919-1120/

[gabamort@aol.com](mailto:gabamort@aol.com)

## Rental Agreements

Many Emergency Service Organizations (ESOs) have social halls, picnic pavilions, meeting rooms and other facilities that are available for use by the public at large. While these are typically good sources of revenue and are also a good public relations tool, they do present some additional liability exposures to the ESO. For those ESOs that lease their facilities to others, VFIS recommends the use of a contract which details the terms and conditions of the rental and also provides that the lessee/rental party will hold the emergency service organization harmless in the event of injury or other damages related to the use of the premises. When reviewing Rental Agreements, VFIS Risk Control finds that many contracts are not appropriately worded with needed protection or are incorrectly completed, often with provided spaces left blank. The following are risk management guidelines to assist your emergency service organization in reducing your liability exposure. Enclosed is a sample rental contract with a hold harmless agreement that may be used in whole or as an example for your ESO. Whether you use the sample agreement or develop your own, you should have it reviewed by an attorney.

If you should choose to create your own form, consider including the following points:

- Make certain that you have all of the parties who are actually responsible for the event listed and obtain a signature. An organization should have an officer sign the agreement. If several individuals or parties comprise the Lessee, then you should have a clause holding them jointly and severable liable.
- Define exactly what is being rented including any which room(s), accessories, utilities, appurtenant structures and/or equipment.
- Make certain you know exactly what type of event is going to take place and it is described on the agreement in writing. For example, a party could be a children's birthday party, an adult birthday party or it could be a bachelor party. You will want to know what kind of activity they intend to have and what activities you will or will not allow. You should specify any activities that you do not wish to take place.
- Define when the event will begin and end, including set-up and clean up times.
- Require a certificate of insurance or a copy of their insurance policy showing the existence of liability insurance, even from individuals. They are free and should be easy to obtain by having the individual contact their insurance agent. (You may be surprised by the number of people and organizations that don't have liability insurance.)
- Include any restrictions that you may have (e.g. no tape or thumb tacks on walls & ceilings; no alcoholic beverages, no illegal or immoral activities, etc...)
- List specifically the amount of deposit(s); when they are required; how & when they will or will not be returned.
- Who will be responsible for any and all damages, how they will be assessed?
- Have a hold harmless and indemnification clause included in the contract.
- List an emergency contact(s) from your organization on the contract.
- Include a statement explaining that your organization has the right to terminate the event or expel any person or persons for unruly, unsafe, illegal or dangerous behavior or who is in violation of any other clause of the contract.



Any forms/contracts should be reviewed by an attorney for compliance with local laws and suitability to the particular needs of the emergency service organization involved. Once developed, the contract should be used for all uses, even if the hall is being used gratis or by a member. A copy of the contract should be given to the lessee and the original kept on file.

### Sample Rental Agreement

Date: \_\_\_\_\_  
Person(s) or Name of Organization: \_\_\_\_\_ (Lessee)  
Contact Person: \_\_\_\_\_ Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Cell Phone: \_\_\_\_\_  
Rental Date: \_\_\_\_\_ Set-up Date: \_\_\_\_\_ Rental Time In: \_\_\_\_\_ Rental Time Out: \_\_\_\_\_  
Type of Event to be held \_\_\_\_\_

The Lessee(s) shall pay to the Organization the sum of \$\_\_\_\_\_.00 Dollars being hereinafter referred to as the "Deposit Amount." In the event that the reservation is cancelled by the Lessee without sixty (60) days prior written notice, the Deposit Amount shall be retained by the Organization as liquidated damages.

In addition to the Deposit Amount, a valid certificate of insurance indicating in force liability insurance shall be provided to the Organization at least ten (10) days prior to the event. (Received \_ Date \_\_\_\_\_ Copy attached \_) The total sum for the aforementioned event will be \$\_\_\_\_\_ to be paid in full by \_\_\_\_\_(Date). All Rental Payment will be made in full and in advance of the event with keys not being assigned until that time. Applicable deposit will be returned only if the following conditions are satisfied:

- Floors Swept
- Spills wiped up
- Lights off
- No property damage
- Garbage bags placed in hopper
- Table tops washed
- Doors locked
- Furniture repositioned
- Heat/Air conditioning thermostat set per instructions
- Key returned to proper person

Once the event is held and the remaining clauses of this agreement have been, in the reasonable opinion of the Organization, properly executed, the Deposit Amount will be applied to any outstanding portion of the rental sum OR returned as overpayment within 15 days by the Organization. The following persons should be contacted if problems arise during the event: John Smith 555-0000 or Joe Deer 555-1111.

Event Restrictions:

- No illegal activities or drugs
  - No firearms
  - No taping, nailing or thumb tacking of decorations or signs to any wall, door or ceiling
  - All alcoholic beverages brought in must be served by bartenders assigned by the Organization.
- During the event the beverages are released to and to remain in the care, custody and control of the bartenders. The fee for the bartenders for the aforementioned event is \$ \_\_\_\_\_

payable in addition to and in full with the rental fee. No alcoholic beverages may be removed from the building at any time.

• The premises leased and related services are described and limited as follows:

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• The premises shall be used for the type of event described above and for no other purposes. The Lessee shall be responsible for all persons who attend the function and shall ensure that all persons act in an orderly, responsible and safe manner. The Organization retains the right to terminate the event or expel any person or persons who are deemed to be unruly, unsafe, illegally or acting with dangerous behavior or who are in violation of any other clause of the contract. In consideration of the leasing of the premises of ABC Emergency Service Organization (otherwise referred to as The Organization) to the undersigned, the undersigned hereby releases The Organization, its officers, directors, members and employees (collectively the "The Organization Parties") from any and all suits, actions, compensation, consequential and punitive damages, any and all property damage, personal injuries, illnesses, death resulting from any occurrence or accident that may occur as a result of or arise out of leasing or use of the described premises by the Lessee.

The undersigned hereby agrees to indemnify, defend and hold harmless The Organization Parties against any such claims brought by any person or entity.

Name of Lessee (print): \_\_\_\_\_ Name of Lessee (sign): \_\_\_\_\_

Name of Lessee (print): \_\_\_\_\_ Name of Lessee (sign): \_\_\_\_\_

For the Organization (print): \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Addendums (Initial each):

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## **Liquor Liability**

Liquor liability represents a significant exposure to the Emergency Service Organization (ESO). In recent years, both the frequency of claims involving this coverage, as well as the severity of the awards, have increased dramatically. If the insured is involved in any of the following activities, a full evaluation of the operation and controls should be made.

1. Private Club
2. Bar
3. Social hall where alcoholic beverages are sold, distributed, or managed by the insured, (whether licensed or not).
4. Social hall where alcoholic beverages are provided by lessee and distributed or managed by the insured.
5. Continuing or ongoing special events, such as summer softball leagues, where alcoholic beverages are sold.
6. Individual special events with beer or liquor sales.

### **Examples of Past Claims**

Social member of VFC left the bar with a blood-alcohol level of .08 percent. Claimant involved in auto accident with severe injuries. Reserve of \$300,000. After leaving a picnic/party sponsored by the insured fire company, claimants were involved in an automobile accident. One of the injuries resulted in death. Beer, liquor, and wine were served on a cash basis. The driver of the vehicle was under twenty-one. Claimants brought suit under liquor liability; current reserve at \$265,000. The following areas/topics should be discussed with ESO and evaluated with comments made pertaining to the evaluation.

### **Full Service Bar/Club or Social Hall**

1. Does the ESO operate with or without a license?
2. Is a license required?
3. Does the ESO have a written Alcoholic Beverage Management Policy? (If yes, review it for adequacy—use VFIS standard recommendation for comparison.)
4. Estimate of receipt for beverage sales?
5. Hours of operation?
6. Have the bartenders received any server awareness training (i.e., TIPS or TAM)? How many? Copies of certificates obtained?
7. If associated with social hall rentals only, who purchases, manages, and distributes the beverages?

### **Special Events**

1. When is the event held? For how long?
2. Is a license or permit required?
3. Does the ESO have written procedures for controlling the alcoholic beverage exposure?
4. How are beverages purchased? (Cash by the drink? Tickets or coupons? Free with purchase of mug or glass?)
5. Is there a controlled area for consumption?
6. Estimate of liquor receipts?

### **Host Exposure**

1. How many times per year is there an alcohol exposure associated with a rental operation?

2. Is there a person from the ESO responsible for serving the alcoholic beverages?
3. Have members who are serving alcoholic beverages received any server awareness training (i.e., TIPS or TAM)?
4. Does the ESO verify the age of all youthful guests prior to serving any alcoholic beverages?
5. Does the ESO discourage guests who exhibit signs of intoxication from driving, by offering alternate means of transportation (i.e., taxi or designated drivers)?
6. Does the ESO utilize a rental agreement containing a hold harmless or release of liability clause in conjunction with these rentals?

**Liquor Policy Rules and Regulations**

The purpose of this policy is to set forth the position of with regard to alcohol consumption. Our position is that if one chooses to drink alcohol at social events one should be guided by maturity, restraint and regard for the well being of others.

1. No individual under the age of 21 is permitted to purchase or consume alcoholic beverages on this premises. Any individual under the age of 21 seen purchasing or consuming alcoholic beverages will be removed from the premises with the proper authorities notified.
2. Proof of age will be required of any guest utilizing our\_\_\_\_\_.
3. It is the policy of the \_\_\_\_\_(ESO)\_\_\_\_\_ to discontinue an event if we believe individuals are becoming intoxicated or unruly. Law enforcement will be contacted if necessary.
4. Any individual who chooses to consume alcohol is strongly encouraged to refrain from driving and to designate a driver who has not been drinking as his or her only source of transportation.

The above mentioned rules and regulations have been formulated for the safety of our guests utilizing our

\_\_\_\_\_.

## Playground Safety

Playgrounds are great assets in a community. Besides providing opportunities for fun and exercise, they help children develop physically, socially, and intellectually. Unfortunately, each year over 200,000 children head to the emergency room as a result of injuries on playground equipment, and over 75% of these injuries happen on public playground equipment. If your organization has a playground, VFIS would like to help you minimize these risks and keep your community's children healthy and safe.

**Age Appropriateness**—First, in selecting playground equipment, bear in mind the age of the children who will be playing there. Locate equipment for very young children—ages 2–5—in a separate area, and make sure it offers additional support and safeguards. When choosing equipment, remember to accommodate children with disabilities as well.

**Supervision**—Children often use playground equipment in unanticipated ways. When adults supervise children, they can help protect them by identifying dangerous situations and intervening. Adults can also check for strings on clothing or unsecured ropes on equipment that can present hazards. Supervision is highly recommended.

**Maintenance**—Regular inspection of playground equipment and surface areas is another important way to ensure that children are kept safe. Using the attached checklist (or one found at [www.cpsc.gov/cpscpub/pubs/325.pdf](http://www.cpsc.gov/cpscpub/pubs/325.pdf), Appendix A), your designated maintenance person should go over each piece of equipment regularly and arrange for any needed repairs. Also, debris should be removed frequently.

**Fall Surfacing**—Most playground injuries —nearly 70 percent—are related to falls. This is why the ground surface is so important. Did you know that grass is no longer recommended as a surfacing material on playgrounds? Currently, experts recommend 12 inches of shock absorbing material, such as hardwood fiber/mulch, sand and synthetic materials such as poured in place rubber mats or tiles. Concrete, asphalt, blacktop, packed dirt or rocks are no longer acceptable. At least the six foot square area surrounding each piece of equipment (the “use zone”) should contain the recommended surface material. Remember, your efforts to minimize injuries, death, and losses make a significant difference. Beginning with these basic safeguards, make sure that your playground is as safe as you can possibly make it. For more detailed information and resources, go to [www.cpsc.gov/cpscpub/pubs/325.pdf](http://www.cpsc.gov/cpscpub/pubs/325.pdf).

## **Playground Safety Checklist**

**Following is a generic checklist for playground equipment. Make sure that:**

- Surface materials are appropriate and in good condition.
- Debris is picked up.
- Elevated equipment has guardrails.
- Spaces, including those between ladder rungs, do not measure less than 3.5 inches or more than 9 inches.
- No sharp points or edges protrude, and all “s” hooks are closed.
- Tripping hazards, such as tree roots, holes, sprinklers, or exposed footings, are eliminated.
- Play structures are adequately spaced.
- Equipment that may contain traces of lead paint is tested and remedied or removed.
- Benches and swing seats are in good condition.
- Climbing equipment is free of entanglement hazards.
- No piece of equipment is taller than 10 feet.
- There are no missing or broken rungs, nuts, bolts, etc.
- No standing water is present.
- Any cracks, frayed ropes, or rough edges are taken care of.
- Maintenance checks are routinely performed and repairs made.
- Playground rules are posted.

## **Determining Discipline and Termination Administration**

The term “employees” may also apply to volunteer members of your emergency services organization.

### **Determining Discipline**

It is important for an organization to be able to prove reasonable factors are considered for determining discipline, up to and including termination. The following checklist may be utilized to ensure consistency and fairness in reaching disciplinary decisions for all employees.

- Consult with those designated within the organization that primarily handle employee performance issues (Fire Chief, Administrator, Human Resources Department, Supervisors).
  - Consult with the organization’s legal counsel (experienced in labor and employment matters).
  - Don’t make hasty or emotional decisions, which often lead to future problems (i.e. in litigation, the disciplinary decision is not fully supported by documentation).
  - Has the organization followed what is required by its written personnel policies or guidelines (such as Personnel Handbook/Manual or collective bargaining agreement)?
  - When applicable, follow the terms and conditions of the individual’s employment contract.
  - Were relevant progressive discipline policies followed?
  - Are there legitimate business reasons for the discipline or termination that can be supported by written evidence typically found in the employee’s personnel file?
  - What prior notice or disciplinary documentation exists with respect to deficiencies regarding performance or misconduct and that the employee was given an opportunity to correct such deficiencies?
  - Has the employee had sufficient time and an opportunity to correct performance, behavior or conduct that may lead to the disciplinary action?
  - How were other employees disciplined for similar acts or performance in the past?
  - Has the disciplinary decision been reviewed by appropriate persons as designated in written policies or guidelines (i.e. Personnel Manual or collective bargaining agreement)?
  - Has the organization or third-party investigator conducted an impartial review of the facts and circumstances surrounding the potential discipline or termination?
  - Is the employee afforded a reasonable opportunity to present his or her point of view?
  - What harmful impact did the employee’s performance, conduct or wrongdoing have on other personnel, the organization, or the community? Consider future possible impact as well.
  - If minimal or no harm was caused, what was or could be the potential harm to co-workers, the organization or the community?
  - What action best prevents further substandard performance, wrongdoing or misconduct while protecting co-workers, outsiders and providing a safe and productive work environment?
  - Was the employee’s conduct malicious, intentional or negligent?
  - Is the employee likely to commit future wrongdoing or misconduct?
  - When applicable, did the employee cooperate with investigation efforts?
  - If the employee committed workplace wrongdoing or otherwise violated the organization’s rules, did the employee show remorse?
  - Is an alternative to termination appropriate to give additional time to investigate and deliberate before termination, or otherwise allow the employee’s performance to “turn around”?
- Examples include instituting a performance improvement plan, probation, leave of absence, reassignment, demotion, or suspension.
- In the event of litigation, would witnesses and documentation be available to help justify the

disciplinary or termination decision?

- Would a jury conclude that the organization's treatment of the disciplined or dismissed employee was unquestionably fair and reasonable?
- Has the organization hired or does it plan to hire another person to take over the terminated employee's job responsibilities? Be prepared to explain when and why those arrangements were made. What are the qualifications of the replacement employee? Are there any facts present that could suggest unlawful discrimination?

### **Preparing For and Conducting the Termination Meeting**

Proper preparation for a termination meeting can help demonstrate respect for involved parties, limit liability exposure for the organization, and mitigate potential violence. The following checklist is designed to assist in facilitating uniform and equitable termination meetings.

- Before a termination meeting, once again consult with those designated within the organization that primarily handle employee performance issues (Fire Chief, Administrator, Human Resources Department, Supervisors).
- Did the organization consult with its legal counsel (experienced in employment and labor matters) before the termination meeting?
- Ensure the termination decision is supported as much as practicable by written documentation in the personnel file.
- Termination letters, severance agreements and other correspondence should be reviewed by legal counsel and those within the organization responsible for personnel administration.
- Organize necessary information to provide to the employee including the final paycheck, benefit information, and any documents necessary for the employee's signature. Compile a list of the organization's property or other items that must be collected from the employee.
- Select an available and appropriate witness for the termination meeting to help corroborate what is said, resolve any disputes, and protect against potential violence.
- Does the designated witness understand his or her role in the termination meeting?
- Have those facilitating the termination sessions received training on proper procedures?
- Plan your dialogue and prepare a written outline to make sure all necessary points are covered with the employee.
- Plan the location of the termination meeting to allow for no interruptions and as much confidentiality as possible (under no circumstances should an employee be terminated in the presence of peers or coworkers except a designated witness).
- Has the dismissal meeting been scheduled at a time that will eliminate or minimize the employee's personal contact with coworkers before he or she leaves the premises?
- Be respectful and professional while communicating the termination decision with the employee.
- Tell the employee the legitimate business interests behind the organization's decision to terminate the working relationship. While it may not be legally required to give specific reasons for the termination, to give vague or no reasons often provokes suspicion. The former worker and remaining employees may speculate as to the "real reason" for the termination.
- Firmly communicate the termination decision is final, unless new information is learned in the meeting that should delay the termination process.
- Diligently document issues covered during the termination session. Listen to and document what the employee has to say.
- Be careful what is said and written during the meeting. Everything written could be seen by others outside of the organization (i.e., attorneys, judges, juries).



- Let the employee read and sign the document or form used to record the issues addressed during the termination meeting. If the employee refuses to sign, note the refusal on the form.
- Ask the employee to update his or her contact information for benefit and tax purposes.
- Request the employee participate in an exit interview to gain further insight about the organization, and learn of any alleged wrongdoing in the workplace.
- Send an exit interview form by mail to the former employee if he/she is unavailable or otherwise chooses not to participate in the face-to-face exit interview.
- Place documentation regarding the termination in the employee's personnel file.
- Has the organization considered whether outplacement counseling is appropriate? An outplacement counselor on-site may help defuse a potentially hostile situation by redirecting the former employee's anger to focusing on the next step – moving forward.
- After the termination, don't leave coworkers completely "in the dark". Without infringing on the terminated employee's privacy, inform those immediately impacted by the departure whether their job duties will change and, if appropriate, review organization policies and/or performance expectations with remaining personnel.

## **Progressive Discipline & Terminations**

Wrongful discharge is a leading cause of employee practice claims. Changes have occurred over the years and employers/organizations must be aware of their responsibilities pertaining to disciplining employees. Employees exercising their legal rights, such as seeking resolution to civil rights grievances, are guaranteed certain legal protections. It is always best for the disciplining supervisor to seek advice from those responsible for personnel matters and/or legal counsel prior to determining whether formal discipline is warranted. Guidelines are listed below to help guide an emergency services organization through the disciplinary or termination process.

Progressive discipline is a method of imposing discipline in steps, where a first offense results in a lesser punishment and subsequent offenses receive progressively harsher penalties. Of course, the organization may bypass certain steps as warranted by the nature and severity of the offense (i.e. violence). Four basis progressive discipline steps are:

- **Verbal warning** – Although it is a “verbal” warning, documentation of such warning should be noted and placed in the employee / member’s file. The supervisor giving the warning should sign and date the warning form or other document.
- **Written warning** – This should include a description of the behavior, what change is needed of the member, and what consequences the member may face if the behavior continues. A written warning is generally signed by both the member and the supervisor conduct placed in the member’s personnel file. A signed warning by the member does not admit fault, but rather acknowledges the fact that the warning was received. The member has the right to respond in writing to the warning and have this included in the personnel file as well.
- **Suspension** – This may be paid or unpaid and range from a few days to a few weeks. The length of suspension should match the severity of the wrongdoing or policy violation.
- **Discharge** – There are some offenses that could warrant bypassing lesser disciplinary steps and result in immediate termination. Those may include (but are not limited to) criminal acts, violence, destruction of property, and intoxication.

### **Documentation**

If a written progressive discipline policy exists, your organization should follow it.

Documentation of the various steps is the key to uniformity and fairness. A well-documented personnel file is typically the best piece of evidence supporting the organization’s discipline or termination decision. The documented record should include:

- Date, time and place of policy infraction(s).
- Factual details of the incident(s).
- Specific rules and policies violated.
- Remedial steps recommended.
- Signature of the supervisor and member being disciplined.

### **Determining Discipline/Termination**

The following checklist is designed to assist the organization in determining first whether disciplinary action is needed and then what level of discipline is appropriate.

- Consult with the organization’s legal counsel. (The attorney should be experienced in labor and employment law.

- Has the organization followed what is required by personnel policies and/or the collective bargaining agreement?
- When appropriate, follow the terms and conditions of the member's individual employment contract.
- Did the organization follow its existing progressive discipline policies?
- Assure that you have clear, understandable work rules and notification of disciplinary action if violated.
- Are rules and policies written in plain, easy-to-understand language?
- Has the member signed an acknowledgement form indicating the understanding of the organization's rules and corresponding penalties if violated?
- What does the member's personnel record/file reflect concerning the circumstances surrounding the disciplinary or termination decision?
- How were other members treated or disciplined for similar past actions? Treat similarly situated employees/members the same.
- Has the organization conducted an impartial review of the facts and circumstances surrounding the potential discipline/termination?
- Has the organization considered the member's point of view?
- Have appropriate levels of management reviewed the disciplinary decision?
- What harmful impact did the member's conduct or wrongdoing have on other members, the organization or outsiders?
- If little or no harm was caused, what could be the potential harm to co-workers, the organization or outsiders?
- Has the member had sufficient time and opportunity to correct conduct that may result in disciplinary action?
- Was the member's conduct malicious, intentional or negligent?
- Is the member likely to commit future wrongdoing or misconduct?
- What are the legitimate business reasons for the discipline or termination?
- What prior notice or disciplinary documentation exists with respect to performance deficiencies, misconduct and an opportunity to correct such actions?
- In the event of litigation, what witnesses and documentation would be available to justify the disciplinary or termination decision?
- Did the member cooperate with investigation efforts?
- If the member committed workplace wrongdoing or otherwise violated organization rules, did the member show remorse?
- What is the impact of the member's continued presence on fellow workers and outsiders?
- What action best prevents further wrongdoing or misconduct while protecting co-workers, outsiders and providing a safe and productive work environment?
- Is an alternative to termination appropriate in order to allow for additional time to investigate and deliberate before dismissal, or otherwise allow the member's performance to "turn around"? Examples include suspension, probation, leave of absence, reassignment, demotion, or a performance improvement plan.
- Has the organization hired or does it plan to hire another person to take over the terminated member's job responsibilities? Be prepared to explain how, when and why those arrangements were made. What are the qualifications of the replacement? Are there any facts present that could suggest unlawful discrimination or nepotism?
- Make sure your organization understands the whistleblower laws in your state.

- Would a jury conclude that the organization's treatment of the dismissed member was unquestionably fair and reasonable?

### **Termination Administration**

This checklist may serve as a guide for conducting responsible terminations.

- Did the organization consult with its legal counsel (experience in employment and labor laws) before the termination meeting or decision?
- All termination letters, confidentiality agreements, releases, severance agreements and other correspondence should be reviewed internally by those responsible for personnel relations and legal counsel.
- Prepare final paycheck, and particulars of compensation and benefits for presentation during the termination meeting and be prepared to explain.
- Have those conducting the termination session received training on proper procedures?
- Has a written outline been prepared to make sure all points are covered?
- Has the dismissal interview been scheduled at a time that will eliminate or minimize the member's personal contact with the other members before he or she leaves the premises?
- Is the termination meeting documented (i.e., exit interview form)?
- Be professional, courteous, and accurate with what is said and written during the termination session. Remember that everything written could be seen by others outside of the organization (i.e., attorneys, judges, juries).
- Listen to what the member has to say and write down everything for the record.
- Let the member read and sign the exit interview form. If the member refuses to sign, note the refusal on the form.
- Place the exit interview form in the member's personnel file.
- Consider having a witness present for the termination meeting. It is recommended to have a witness present to help corroborate what was said to reduce exposure to false allegations, defamation claims, and violence.
- Keep disciplinary actions and documentation as confidential as possible.
- Has the organization considered whether outplacement counseling is appropriate?

## **Performance Management / Evaluations**

This policy refers to “members”, which may apply to employees or volunteers of your ESO.

### **Why are Performance Evaluations Important?**

Communication through performance evaluations helps strengthen personnel relations. Periodic evaluations allow for goals and objectives to be established, improves supervisor – subordinate communications, and helps keep an accurate record of job performance. Failing to complete performance evaluations communicates to your ESO members that their professional development is not important. The performance evaluation is an important part of the member file. Personnel-related litigation (i.e., wrongful termination, discipline, and failure to promote) often involves analysis of written performance evaluations. For example, many wrongful termination or discharge lawsuits hinge on whether an ESO can sufficiently defend its decision to terminate a member. Claims often involve a former member alleging the ESO’s decision to terminate was based on unlawful reasons, such as discrimination. In turn, ESOs must be able to point to documentation regarding the former member’s work performance that helps support the termination. Documentation of performance evaluations may help or hurt an ESO in the event of litigation.

### **Tips for Maintaining an Effective Performance Evaluation Process**

**“Buy-in” from Members** – Those utilizing the performance management system must understand it is a valuable process that benefits members and the ESO alike. Supervisors and non-supervisors should be given the opportunity to provide input regarding the evaluation process, so it will fit the ESO’s needs and job descriptions. For implementing or revising performance evaluation procedures, consider establishing a Performance Management Committee which analyzes evaluation forms and processes from other ESOs. Customization allows personnel to better understand the purpose and benefits of the performance management system. Consider utilizing a human resources consultant and / or legal counsel for assisting in the development or revision of the ESO’s evaluation process.

**Comprehensive and Timely** – Perform evaluations on or near the date as set forth in written procedures. More than one level of supervision should review each evaluation to help determine the depth and accuracy of the performance record. Additionally, upper level management review allows for more consistency in the evaluation process as a whole.

**Training for Supervisors** – All too often supervisors receive little or no formal instruction concerning how to conduct comprehensive, accurate and uniform evaluations. Periodic training for supervisors helps emphasize the importance of this communication process.

**Facilitating the Evaluation Meeting** – ESO leaders often fail to dedicate time to evaluate performance, outline individual expectations, and set goals. It can be difficult for some supervisors to confront problems with members not wishing to damage relationships, as they would rather avoid conflict. It may seem easier to avoid discussing minor problems or incidents, with the expectation they will resolve themselves. However, it is far more difficult to rectify a problem after escalating into a more serious issue. Not addressing personnel matters can lead to frustrated members perceiving their needs and concerns are not valued. Counseling and constructive criticism can be sensitive, especially when dealing with a “difficult” or member performing below expectations. Similar to discipline or termination sessions, emotions can run high during evaluation meetings. With only two people in a room, conversation can sometimes turn into a matter of “he said, she said”. ESOs should consider including a third

person in evaluation meetings, preferably another supervisor trusted by the member being evaluated. Before the evaluation session, review all documentation pertaining to the member's performance, such as prior evaluations, commendations, counseling records, warnings / reprimands, and performance improvement plans. The face-to-face meeting is especially important to the subject of the evaluation. Being prepared as a supervisor communicates a level of commitment and caring.

***Self-Evaluations*** – Completing self-evaluations prior to meeting with their supervisors allows members to take ownership of the process. This opportunity for self-reflection allows members to identify their accomplishments, areas for improvement, and goals for the next evaluation period. Without self-evaluations, the evaluation process is viewed as one-way communication, flowing only from the higher ranking member. Some members more harshly scrutinize their own performance than their supervisors. Self-evaluations promote two-way communication, a much friendlier method of communication. The ultimate goal is to open avenues of communication and clarify expectations from all parties.

***Accuracy of Job Descriptions*** – Periodic performance evaluations allow for ESO members to review their job description. Is the written job description an accurate depiction of what the member is actually doing on the job? When assessing job performance, it is essential to review the essential and non-essential job functions found in a job description.

***Protect Against Workplace Wrongdoing*** – Are members given the opportunity to answer the question, “Since your last evaluation, have you been witness to or personally subjected to any workplace risk or wrongdoing, such as harassment, discrimination, or threats of violence?” This provides members an opportunity to step forward to make an allegation and allows the ESO the ability to investigate, stop any wrongdoing, and prevent future occurrences.

***Performance Improvement Plan (PIP)*** – Many ESOs are unfamiliar with the PIP concept, an important aspect of an effective performance management process. A PIP may be necessary when a member's performance and / or behavior is not satisfactory. A PIP is a joint effort between a supervisor and subordinate to develop a plan of increased communication, accountability, and guidance. Supervisors ask questions like, “*How can the ESO and I enable you to better meet the responsibilities of your position?*” In turn, a plan is documented holding the member accountable for meeting time specific goals.

***Evaluating Supervisors*** – Are supervisors evaluated, in part, on whether they complete evaluations in a timely and thorough manner? Performance management is a substantial responsibility and should be quantified in evaluating a supervisor's performance.

***Consider Renaming the Process*** – Some members may feel threatened by possible subjectivity of evaluations. Referring to the process as “performance development” rather than “evaluations” may help members focus on the true purpose of the process, which is personal and institutional growth.

## **Exit Interview Procedures**

Employment termination is a reality for every organization. Exit interviews provide a final opportunity to gather insights about how your employees and volunteers perceived their working experience with your emergency services organization. Exit interviews provide an organization another opportunity to learn of any workplace wrongdoing that may have occurred during an employee's or volunteer's tenure. Simply asking questions may be enough to encourage an employee or volunteer to come forward with an allegation, rather than hold on to an allegation until a later date. A primary objective is for the organization to learn of alleged workplace wrongdoing, such as harassment or discrimination, thus allowing for a prompt and thorough investigation. By conducting an exit interview the organization will also strengthen its position that it took every reasonable measure to learn of and rectify workplace wrongdoing. This policy offers guidelines and sample exit interview questions to enhance your organization's personnel practices. The goal is to strengthen personnel relations, improve working conditions and reduce exposure to litigation.

### **Preparing For Exit Interviews**

Exit interviews are given to departing members, whether their separation is voluntary or involuntary. It is recommended two persons facilitate the oral exit interview with the departing employee or volunteer, which helps clarify what is said during the meeting. Below are additional suggestions for planning the exit interview.

- Interviews can be conducted orally (face to face or over the telephone) or in writing. Oral interviews are preferred because personal interaction is important for the sensitive nature of severing the working relationship. However, employees or volunteers may be asked to complete a written exit interview form or questionnaire if an oral interview cannot be scheduled or it would be more appropriate or comfortable for the individual to answer in written format, on his or her own time schedule.
- Carefully select the interviewers. Choose neutral persons the departing employee or volunteer trusts and who can keep issues confidential.
- Review the departing individual's personnel file and visit with appropriate supervisors in order to fully understand the known circumstances leading to the separation of the working relationship.
- If applicable, be prepared to reiterate the organization's legitimate reasons for the dismissal.
- Schedule the exit interview session as close as possible to the employee or volunteer's departure from the organization. The meeting may be planned as the member's last official business with the organization.
- Assure that the departing employee or volunteer understands that comments made during the exit interview will remain as confidential as possible, while still allowing for a prompt and thorough investigation should allegations of workplace wrongdoing be raised.
- Make assurances the organization does not tolerate retaliation against anyone for making a complaint of workplace wrongdoing or for participating in an investigation.
- Listen to the departing member's comments and diligently document. Don't give personal opinions, but instead remain objective.
- Don't argue with a departing employee or volunteer.
- Expect the unexpected. Don't be surprised if the departing member makes new allegations.
- Never conduct an exit interview alone, particularly if the departing employee or volunteer has

ever demonstrated irrational or violent propensities. Before the meeting, review the organization's workplace violence and safety policies and procedures.

- Be prepared to explain the organization's policy on providing references.

### **Sample Exit Interview Questions**

Exit interviews represent a prime opportunity to gain candid information on employment or working conditions within the organization. Not only can an organization gain important feedback on its strengths and weaknesses (as perceived by the individual), but exit interviews may also provide an opportunity for a departing employee or volunteer to bring forward any allegations (i.e., discrimination or harassment) should they exist. This is also an opportunity to cover continuation of health insurance or other benefits the former employee may be eligible for.

1. Specifically, why are you leaving ABC organization (if termination is voluntary)?
2. Do you believe you were treated fairly while with the organization?
3. Did you feel valued as an employee or volunteer?
4. What aspects of your job were most satisfying?
5. What did you like most about your job and/or association with ABC organization?
6. What did you like least about your job and/or association with the organization?
7. Do you have any suggestions for improving work conditions, productivity, or morale?
8. Do you have any recommendations for improving the organization's training and personnel development programs?
9. Please comment on your working relationship with your supervisor.
10. Was your supervisor supportive and communicative with you?
11. Did your supervisor seek your input on issues affecting your work?
12. How frequently did you have discussions with your supervisor(s) about your career goals?
13. How would you evaluate the performance of your supervisor(s)?
14. How would you describe employee/volunteer morale within the organization? What factors influence your answer?
15. Please comment on the employee benefit plans. Did the benefits meet your needs sufficiently?  
Are there other benefits that could have been offered?
16. Were you ever denied benefits that you thought you were entitled to receive?
17. Do you know of any unreported workplace related accidents, injuries, or illnesses involving yourself or others?
18. Do you presently suffer from an injury that is work-related?
19. During your employment or affiliation, did you understand the organization's policies and reporting procedures/grievance procedures?
20. Did you observe or were you personally subjected to work-related harassment during your employment or affiliation with the organization?
21. During your employment or affiliation with ABC organization, did you ever think that you were discriminated or retaliated against because of your race, color, religion, sex, sexual orientation, religion, age, national origin, veteran status, disability, or for filing a workers' compensation or disability claim? If so, please explain in detail these circumstances.
22. Any additional comments?



### **How Should You Utilize Information Obtained From Exit Interviews?**

All information brought forward by departing employees or volunteers in exit interviews should be retained, analyzed and if necessary, thoroughly investigated.

- Assess any trends such as high turnover or problems with specific coworkers or supervisors.
- Utilize information gathered in exit interviews to improve working conditions, productivity, and morale. Share information with those in the organization that can implement change for the benefit of the organization and its members.
- Follow up immediately on any allegations of workplace risk or wrongdoing. Don't assume the departing member made false allegations because he or she was "walking out the door, had nothing to lose, or is simply a vengeful person". Instead, utilize the organization's internal investigation procedures to discover whether the accusations were valid, and prevent future incidents of workplace wrongdoing.

## **Equal Employment Opportunity Commission (EEOC) Overview**

This policy provides an overview of the United States Equal Employment Opportunity Commission (EEOC) and the employment and civil rights laws enforced by the EEOC, and it gives insight as to what can be expected should an EEOC charge be lodged against your emergency services organization (ESO).

### **Overview of Federal Laws Prohibiting Job Discrimination**

EEOC is responsible for coordinating, enforcing, and overseeing all federal equal employment opportunity regulations, practices, and policies. ESO leaders and administrators should be aware of the federal laws prohibiting job discrimination. Some of the most pertinent laws are described briefly below.

- ***Title VII of the Civil Rights Act of 1964 (Title VII)*** prohibits employment discrimination based on race, color, religion, sex, or national origin with respect to hiring, discharge, compensation, promotion, classification, training, apprenticeship, referral for employment, or other terms, conditions, and privileges of employment. Title VII applies to employers with 15 or more employees.
- ***Age Discrimination in Employment Act of 1967 (ADEA)*** protects workers who are 40 years of age or older. The ADEA applies to those entities with over 20 employees.
- ***Americans with Disabilities Act of 1990 (ADA)*** prohibits employment discrimination against qualified individuals with disabilities and applies to employers with over 15 employees.
- ***Civil Rights Act of 1991*** provides monetary damages in cases of intentional employment discrimination.
- ***Equal Pay Act of 1963 (EPA)*** protects men and women who perform substantially equal work in the same organization from sex-based wage discrimination. The EPA applies to most employers with one or more employees.

### **When an EEOC Charge of Work-Related Discrimination is Filed**

A member of an ESO who believes that his or her employment rights have been violated because of race, color, sex / gender, religion, national origin, age, disability or because of retaliation may file a charge of discrimination with the EEOC. It is the EEOC's job to investigate the charge to determine whether there is reasonable cause to believe that discrimination occurred.

***Time restrictions for filing an EEOC charge*** – In most geographic areas, a charge must be filed with the EEOC within 300 days from the date of the alleged discrimination or violation. In a limited number of areas where a state or local employment discrimination law does not apply, a charge must be filed within 180 days.

***Notice of Charge filed with the EEOC*** – An employer is notified by the EEOC within 10 days of receiving a charge. Notification typically includes a copy of the charge that identifies the charging party, date(s) of the alleged discrimination, and the basis of the charge. An explanation of the EEOC charge process is generally included, as well as reference to the employer's obligation to retain records pertaining to the allegation. Moreover, the notification reminds the employer of the non-retaliation provisions of EEOC laws.

***Inform the ESO's legal counsel*** – Once put on notice of the EEOC charge filing, immediately inform the ESO's retained labor and employment attorney. It is pertinent to follow all procedural steps and requirements when processing an EEOC charge. In addition, be aware of the ESO's reporting obligations to VFIS regarding Management Liability / Employment Practices claims.

***Non-retaliation measures*** – Take steps to ensure management and non-management personnel don't retaliate against the complaining party or those participating in the investigation. Clearly communicate to the person(s) filing charges that their working relationship and conditions will not be affected and provide them with multiple avenues of complaint in the event of retaliation.

***Expectations once an EEOC charge has been filed*** – After a charge is filed, your ESO may be asked to provide a position statement responding to the allegations. At this stage, the ESO may also be asked to provide documents and other information related to the subject of the EEOC's investigation. The EEOC may utilize a variety of resolution methods in addressing a discrimination charge:

- ***Mediation*** - EEOC can seek to settle a charge at any stage of the investigation if the charging party and the employer willingly participate in a confidential mediation process.

If mediation and settlement efforts are unsuccessful, EEOC generally continues its investigation. EEOC will notify your ESO if the charge filed is eligible for mediation.

- ***Investigation*** – EEOC may make written requests for information, review documentation, conduct interviews, and visit the facilities where the alleged discrimination occurred. When the investigation is complete, EEOC will discuss the evidence with the charging party and employer, as appropriate.

***EEOC may dismiss the discrimination charge*** – At any time in the process, EEOC may dismiss the charge if it determines that further investigation will not establish a violation of law. When a charge is dismissed, EEOC notifies the charging party who is then given 90 days to file a lawsuit on his or her own behalf.

***EEOC may determine there is reasonable cause to believe discrimination occurred*** – If the EEOC investigation results in reasonable cause to believe discrimination has occurred, the ESO and charging party are informed in a letter of determination. The EEOC then typically attempts conciliation with the ESO to establish a remedy. Successful conciliation, mediation, or settlement of an EEOC complaint bars the charging party and EEOC from going to court, unless the conciliation, mediation, or settlement agreement is not honored. If the EEOC is unable to conciliate the case, the agency may sue in federal court. For the common cases when the EEOC decides not to sue, the agency issues a notice closing the case and gives the charging party 90 days in which to file a lawsuit on his or her own behalf. This written correspondence is often referred to as a “right to sue” letter.

## **Workplace Violence/Threats of Violence**

Emergency Services Organization (ESO) leaders often have the first opportunity to note warning signs of violence, including instances of domestic abuse involving ESO members (employees and volunteers) that may escalate into violence in the workplace. Measures can be taken to reduce the likelihood of a violent incident at the ESO or during an ESO-related activity. This policy offers risk management guidelines and a sample Violence/Threats of Violence policy to help provide a safe and productive work environment for all members and reduce exposure to litigation.

### **Preventing and Detecting Violence and Threats of Violence**

Consider the following tips to help detect and prevent workplace violence and threats of violence:

- Conduct background checks
- Create and disseminate a clear no tolerance policy for workplace violence (may result in immediate termination for any act or threat)
- Encourage members to promptly report incidents and threats
- Develop a emergency response plan as pertains to workplace violence
- Complete work site risk analysis/assessment to identify where the organization may be vulnerable and determine what steps can be taken to reduce risk
- Use of an Employee Assistance Program (EAP) can assist organizations concerned with potential violence and function as a resource in dealing with threats or acts of violence
- Provide supervisory and non-supervisory training on conflict resolution, anger management, team building, and identifying early warning signs of violence
- Monitor email and phone calls for known threats of violence against District Members
- Advertise the EAP or other resources for victims of domestic violence
- Consider providing assistance to employees attempting to obtain restraining orders
- Obtain restraining orders for organization when appropriate
- Develop a post-incident response plan
- Require badge access other than visitor areas or lobby
- Give only first names over the phone or to strangers
- Escort terminated members off premises
- Install more lighting in parking lots if necessary
- Consider video surveillance

### **Sample Violence/Threats of Violence Policy**

XYZ is committed to preventing workplace violence and providing a safe work environment. XYZ prohibits and does not tolerate violent acts or threats of violence against employees, volunteers, visitors, guests, community members or other individuals within its facilities or during any XYZrelated activity (including off-duty periods).

## **Definition**

Violence may be described as verbal or physical threats, intimidation, and/or aggressive physical contact. Prohibited conduct includes, but is not limited to the following:

- Intimidation, harassment, assault, stalking, or other conduct that causes a person to reasonably believe that he or she is under a threat of bodily injury or death.
- Threatening, attempting, or inflicting injury or damage to another person (member), member's family or property.
- Possessing a dangerous weapon such as a firearm, explosive, or hazardous device, or using an object as a weapon on XYZ property or during any XYZ-related activity.
- Using obscene or abusive language or gestures in a threatening manner.

Because of the potential for misunderstanding, joking about any of the above conduct is also prohibited. Members are also expected to refrain from fighting, "horseplay" or other conduct that may be dangerous to others.

## **Restraining Orders**

Any member who obtains a restraining order against any person should immediately notify XYZ management. XYZ has made a commitment to provide a safe workplace and can only do so if it receives information concerning individuals who have been ordered to maintain a distance from its facilities and/or members.

## **Warning Signs of Potential Violence**

There are often signs serving as a warning that violence in the workplace may occur. Please review the following list of early warning signs that an individual may act out violently, keeping in mind that demonstration of one or many of the actions on the below list do not automatically point to certain violence. However, activities should be noted and XYZ will assist in detecting and defusing a potential workplace incident.

- Increase in use of alcohol or using drugs.
- History of violent or aggressive behavior or frequent physical fighting off or on duty.
- Displaying a loss of control, (i.e., loss of temper on a frequent basis, frequently for unsubstantiated reasons, or over minor issues).
- Either joking or making serious direct or veiled threats.
- Physically, verbally or emotionally intimidating others or instilling fear, for example via harassing phone calls, emails and/or stalking.
- Being obsessed with one's job and having no known outside interests.
- Being a loner and/or expressing a strong desire for a personal or romantic relationship with a co-worker. Under these circumstances, the co-worker may feel threatened and report the unwanted attention.
- Obsession with weapons or militia, particularly if this is new behavior for a member.
- Feeling constantly disrespected, demonstrating a "me versus the world" attitude. Experiencing difficulty with authority, for example feeling discriminated against, harassed, or intentionally targeted. Does not accept criticism well and commonly harbors resentment.
- Expressing desperation, significant frustration or depression over recent professional, personal, or financial problems.
- Fascination with other recent incidents of violence and approval of the use of violence.
- Disregard for safety, thus presenting a risk to self and others.
- Demonstrates a lack of conscience and/or abuse towards other persons or animals.
- Vandalism or property damage.
- Failing to acknowledge the feelings or rights of others.

- Having been a victim of violence or bullying.

### **What to do**

If you witness a potentially violent situation, or are dealing with a threatening or violent person do not place yourself in danger or try to intercede. You should not attempt to challenge or disarm the individual. If possible, escape the scene and immediately contact local law enforcement authorities. Tips proven to be effective in this type of situation are as follows:

- Try to remain calm
- Keep a distance of 4-6 feet
- Do not touch the threatening or violent individual
- Make constant eye contact, but do not try to “stare down” the threatening or violent person
- Actively listen and respond to the individual
- Ask the person making the threats or acting violently for solutions
- If a supervisor or other appropriate authority can be safely notified of the need for assistance without endangering your safety or that of others, do so. Otherwise, cooperate and follow the instructions given. Please see reporting procedures below.

### **Reporting Procedure**

All threats of (or actual) violence, both direct and indirect, MUST be reported as soon as possible to your immediate supervisor or any other member of XYZ management. Members are encouraged to contact the appropriate law enforcement authorities without first informing their immediate supervisor if they reasonably believe that imminent danger to their own safety or that of others exists. Members shall then immediately report to their supervisor or others in the chain of command. A reportable incident can be an act or threat from XYZ members, as well as others from the public and includes those threats or acts that may be perceived, actually experienced, or witnessed. When reporting an act or threat of violence, you should be as specific and detailed as possible. Members must also report all threats or violent acts they witness or experience while on duty away from XYZ premises or during any XYZ-related activity, or which related to the member or legitimate business interest of XYZ. The identity of the individual making a report will be protected as much as is practical. In order to maintain workplace safety and the integrity of its investigation, XYZ may suspend members suspected of violence or threats of violence, either with or without pay, pending investigation. In no instance will a member be disciplined, retaliated against or discharged for good faith reporting of any reasonably perceived act or threat of violence. Anyone reasonably believed to have engaged in retaliation of any kind will be subject to disciplinary action up to and including termination of employment or membership, and prosecution for any criminal behavior linked to retaliatory activity. False or intentionally misleading reports are unacceptable and will be handled through XYZ personnel procedures regarding disciplinary measures up to and including employment termination. All acts or threats of violence will be thoroughly investigated and disciplinary action and/or legal prosecution to the fullest extent possible will be pursued against members, and non-members for violating this policy.

## **Sexual Harassment**

It is extremely important for the emergency service organization to implement and disseminate a clear no tolerance policy for sexual harassment and inform all members of the available avenues of internal complaint. The organization must also prepare itself to promptly investigate all sexual harassment allegations and take appropriate remedial action to ensure harassment stops and discipline is administered. This policy offers guidelines, sample policies and procedures so your organization can help provide a safe and productive environment for all employees/members.

### **Updating Your Harassment Policy & Reporting Procedures**

The first step is to review and update your anti-harassment policy and reporting procedures. Consider the following guidelines for assistance:

- 1. Is the policy written in plain, easy-to-understand language?*
- 2. Does the current policy define sexual harassment?*
- 3. Does the policy list examples for what may constitute sexual harassment?*

Examples of harassment include, but are not limited to:

- o Unwelcome sexual advances or request for favors.
- o Verbal or physical conduct of a sexual nature that adversely affects the employee/member's employment/position terms or conditions.
- o Conduct that unreasonably creates an intimidating, hostile or offensive work environment.
- o Express or implied offers of any business-related (i.e. raises or promotions) or nonbusiness related benefits (i.e. gifts or trips) in exchange for sexual favors.
- o Threatening or taking adverse work-related action against an employee/member because that employee/member denied sexual advances or requests for sexual favors.

- 4. Is same gender harassment prohibited?*

It is a common misconception for people to think that males cannot sexually harass other men, as that is just "locker room" behavior. Similarly, it is illegal for women to harass other women.

- 5. Is third-party harassment prohibited?*

Harassment committed by non-members/employees is strictly prohibited and not tolerated.

- 6. Identifiable and understandable reporting procedure?*

- 7. Are several safe avenues of internal reporting available to all employees/members?*

- 8. Does the policy avoid any language that might discourage complaints?*

For instance, employees/members should not be required to directly confront the person(s) that may be the source of the complaint before utilizing any of the available internal reporting avenues. Also, requiring employees/members to submit a complaint in writing or to be made to the chief officer may seem too cumbersome or threatening to the employee/member.

- 9. Does the policy prohibit retaliation against individuals that make good faith allegations, or otherwise participate in an investigation?*

- 10. Does the policy ensure confidentiality to the maximum extent possible?*

- 11. Does the policy state that an investigation will take place and that the employee/member complaining of harassment will be informed of the results of the investigation?*

## **Plan Implementation**

Any policy that gathers dust on a shelf is a little use as a preventative or defensive measure. Recent court rulings have made it clear that a policy ignored is tantamount to a finding of liability. To ensure the implementation of your updated policy, consider the following:

- Widely disseminate the policy to all locations, including sub-stations.
- Each employee/member should sign an acknowledgement form indicating: (1) receipt of the policy, (2) comprehension of the no tolerance policy for sexual harassment, and (3) knowledge of the internal reporting procedures.
- Institute a system for informing any new hires/members or transferred employees about the policy.
- All employees/members review the policy annually at a minimum.
- Train all supervisory personnel to properly deter, identify, address and stop sexual harassment.
- Make sexual harassment prevention and proper handling of complaints an essential job function for all supervisory personnel, and make these conditions part of those supervisor's performance evaluation.
- Ensure that a labor and employment attorney periodically reviews the policy.

## **What is an Investigation?**

An investigation is when one or more people try to determine the actual facts to the complaint. Interviews with all parties of the complaint should be completed. These people should also interview any witnesses. After the interviews the individual(s) conducting the investigation should make a determination as to the facts. If warranted, the determination should include disciplinary action.

## **Characteristics of Good Investigation**

Investigation procedures should be in place and followed for allegations of harassment. Remember that juries look at an entity's internal response processes and ask questions like, "Was the employee/member treated fairly?" and "Does the entity take reported risks seriously?"

1. *Investigate all complaints of harassment* – whether or not the complainant is the alleged victim.
2. *Begin sexual harassment investigations immediately* – and always within 24 hours after a complaint is made.
3. Consider separating the alleged victim from the alleged harasser during the investigation to minimize any potential for continuing harm or retaliation.
4. *Who in the organization is responsible for investigating allegations/incidents of harassment?* Have individuals been designated to respond to incidents and allegations of wrongful acts? Proactively establishing an "investigation team" shows reasonableness.
5. *Persons on the internal investigation/response team should reflect the diversity of the workforce.*
6. *Those responsible for internal investigations should be trained on the investigation procedures.*

Ideally, an entity should have proactive training of its internal investigators, before ever dealing with an actual allegation.

7. *Documentation process/forms for investigations.*

Utilizing consistent forms for investigation demonstrates fairness for all involved in an allegation. A goal is to prevent various supervisors from using their own methods of



documentation and investigation. Record keeping is crucial for a solid defense in the event of litigation.

8. *Are non-retaliation measures taken to protect all parties involved in an investigation?*

The accuser, accused and all others directly concerned with an allegation of wrongdoing should be kept informed as to the investigation process and ultimate findings. Part of that constant communication is to make sure all parties are not being retaliated against in any way.

9. Complete your investigation and take remedial action as soon as practicable, preferably within two to three weeks of the initial complaint.

10. Make sure you inform the complainant about the conclusions of the investigation. The “victim” needs to know what disciplinary steps are taken, otherwise the victim may believe that his or her complaints were not taken seriously.

11. Consider involving a third-party investigator and/or facilitator. Employee/members may be more comfortable speaking candidly to an objective person from outside the organization.

### Sample Anti-Harassment Policy

The Organization prohibits and does not tolerate sexual harassment in the workplace or during any Organization-related activity. The Organization provides internal procedures for victims of sexual harassment to report sexual harassment and disciplinary penalties for those who commit sexual harassment. No employee, members, third party, or board member, no matter his or her title or position has the authority to commit or allow sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and any other verbal, physical, or visual conduct of a sexual nature that unreasonable interferes with an individual’s work performance or creates an intimidating, hostile, or offensive working environment. The Organization prohibits and does not tolerate any employee, members, board member or visitor, male or female, to harass an employee/member or to create a hostile or intolerable working environment by exhibiting, committing or encouraging:

- Director or implied threats that submission to sexual advances will be a condition of employment or continued service with the Organization;
- Sexual explicit or pornographic material such as posters, calendars, pictures or objects;
- Unwelcome advances, including, but not limited to, requests, comments or innuendoes regarding sex, sexual jokes, gestures, statements, e-mail or voicemail messages, leering or stalking;
- Physical conduct that is sexual in nature, including, but not limited to touching, pinching, patting, brushing, massaging someone’s neck or shoulders and/or pulling against another’s body or clothes; and
- Physical assaults on other employees/members, including but not limited to rape, sexual battery, or any attempt to commit such acts.

The Organization will take all allegations of sexual harassment seriously and determine what constitutes sexual harassment based on a review of the facts and circumstances of each situation. The Organization will make every effort to ensure that those named in the report, or are too closely associated with those involved in the report, will not be part of the investigative team. The Organization reserves the right and provides notice that third parties may be used to investigate harassment claims. Even conduct that is intended to be “innocent” may still constitute sexual harassment if it falls within the terms of this policy. If any member expresses

concern that your behavior may be violated this policy, please respect his/her concerns. Regardless of your intent, how others interpret your behavior is important.

This policy is not meant to interfere with or discourage friendships among members. However, members must be sensitive to acts or conduct that may be considered offensive by other members. The Organization prohibits retaliation made against any member who lodges a good faith complaint of sexual harassment, or who participates in any related investigation. The Organization recognizes that making false accusations of harassment in bad faith can have serious consequences for those who are wrongly accused. The Organization prohibits deliberately making false and/or malicious harassment allegations, as well as deliberately providing false information during an investigation. Anyone who violates this rule is subject to disciplinary action, up to and including termination.

### **Reporting Procedure**

If you are aware of sexual harassment taking place, you must immediately report to your direct supervisor. If you feel uncomfortable doing so or your direct supervisor is the source of the complaint, condones or ignores the harassment, immediately report to your supervisor's supervisor. If neither of these alternatives is satisfactory to you, then you should immediately direct your reports to the Chief, any Board member, or [insert other available avenues of reporting here]. You are not required to directly confront the person who is the source of your report before notifying any of those individuals listed. Nevertheless, you are required to make a reasonable effort to make the harassment known to the Organization.

### **Sample Form Acknowledging Receipt and Understanding of Anti-Harassment Policy**

I acknowledge that I have received and read the anti-harassment policy and have had it explained to me. I also acknowledge that I understand that no employee, member, or third party, up to and including a Board member has the authority to commit sexual harassment. I understand that it is my responsibility to abide by all rules contained in the policy. I also understand how to report incidents of harassment as set forth in the anti-harassment policy, including not retaliating against any employee/member exercising his or her rights under the policy.

Employee's/Member's Printed Name and Date

Employee's/Member's Signature

Date of Annual Review:

## Conducting Internal Investigations

It is extremely important for any organization to be prepared to promptly conduct a thorough and equitable investigation of alleged workplace wrongdoing such as harassment, discrimination, retaliation, theft, and threats of violence. Additionally, an organization must take appropriate remedial action to stop workplace wrongs and prevent future occurrences. This policy offers risk management guidelines to assist your emergency services organization in appropriately responding to employee or volunteer allegations of wrongdoing in the workplace.

### **Tips For Conducting Investigations**

**Tip #1 - Establish an Internal Investigation Team**—Designate an Internal Investigation Team to promptly and effectively investigate allegations of personnel conflict or wrongdoing. In the interest of fairness, the Investigation Team should reflect the diversity of the workforce. Which members of your organization should serve on the Investigation Team? Consider the following selection criteria:

- Job responsibilities include managing personnel issues
- Trusted and respected employees/volunteers
- Ability to maintain confidentiality
- Interviewing skills
- Detail oriented/well organized
- Documenting skills
- Unbiased, reasonable decision makers
- Available for follow up

**Tip #2 - Train the Investigation Team**—It is recommended that a labor and employment attorney or human resources professional periodically train your organization’s Investigation Team to prepare for the variety of potential allegations of workplace wrongdoing. Training on case scenarios is a productive “trial run” for investigators, designed to help avoid mistakes with an actual complaint. Proactive training familiarizes Team members with established investigation guidelines and strengthens employee/volunteer confidence in the organization’s fair internal processes.

**Tip #3 - Know What Constitutes an Effective Investigation**—Sound investigations include many factors, including but not limited to:

- Fair to all involved
- Conflict of interest check to identify and remove any Investigation Team members named in a complaint or too closely associated with those involved
- Initiate the investigation promptly upon receipt of a complaint
- Review of relevant organization policies and procedures
- Non-retaliation measures (when appropriate, consider separating the accuser and the accused during the investigation to minimize potential for continuing harm or retaliation)
- Protecting confidentiality to the greatest extent possible while allowing for a comprehensive investigation
- Instructing that the complaint and investigation should be kept confidential
- Outlining investigation steps for all interested parties
- Informing interested parties that false and/or malicious allegations or participation in the investigation will lead to discipline
- Reaffirming the organization’s multiple avenues of complaint in the event of further

wrongdoing or retaliation

- Interviewer(s) taking detailed notes, careful not to interpret what is said
- Allowing all interested parties to give their detailed accounting, and perspectives of the facts
- Interviewer(s) develop an investigation summary – an objective report of the facts established during the investigation
- Reviewing interview notes with persons questioned to ensure accurate documentation
- Communicating an estimated timeframe for completion of the investigation
- Timely completion of the thorough investigation, indicating the organization took the complaint seriously

**Tip #4 - Incorporate Standardized Investigation Forms**—Utilizing consistent forms and/or questions for investigations demonstrates fairness for all involved in an allegation. A goal is to prevent various supervisors from using their own methods of questioning and documentation. Standardized forms and questions help guide the investigators when meeting with the person making the complaint (accuser), the accused, and any witnesses. Strive for consistency from one investigation to the next, yet allow for customization depending upon who is being interviewed and the nature of the allegation. Remember that it is wise to assume all documentation surrounding the investigation may be discoverable, and ultimately provided to opposing legal counsel, a judge or jury.

**Tip #5 - Third-Party Investigations**—Circumstances may arise where an internal investigation may be perceived as biased for the organization’s benefit. Employees or volunteers may be more comfortable speaking candidly to an objective person from outside the organization. Examples of when an outside third-party investigator may be appropriate include:

- A high-ranking member of the organization is accused of wrongdoing
- Multiple complainants
- An employee from a small organization perceives there is “nowhere to turn”
- Other real or perceived internal conflicts of interest exist

A human resources consultant, private investigator, or legal counsel may serve as a third-party investigator. Select an investigator based on the professional’s level of education and experience in relation to the nature of the complaint. Lastly, become familiar with the Fair and Accurate Credit Transactions Act of 2003 (FACTA), which requires an employer using an outside third-party investigator to provide the affected individual with a summary of the investigation report after taking adverse employment action.

**Tip #6 – Consider Involving Outside Legal Counsel**—Seek immediate input from your legal counsel regarding the response to a personnel complaint. There are valid reasons for and against utilizing your regular legal counsel as the third-party investigator, including the attempt to keep all or part of the documentation surrounding the investigation confidential for subsequent litigation. For this, protected documentation should be labeled “attorney work product” and/or “privileged attorney-client communication”. One possible disadvantage of using your organization’s regular attorney for conducting the investigation may be that the attorney may be asked to serve as a witness in subsequent litigation, and therefore unable to represent the organization in litigation.

## **Employee Practice Exposure – Hiring/Applying for Membership**

Proper hiring or application procedures is the first step in reducing the possibility of future employment or membership problems. If the organization has a good application, prospective employee/membership review procedure and new employee/member orientation then the organization will be able to provide a good first defense in the event a disgruntled or disenchanted employee/member brings an wrongful termination suit. The following are some suggestions and guidelines to use when interviewing/hiring prospective employees/members.

### **Hiring/Application Guidelines**

- Position/Job descriptions should be developed for each job classification.
- ◆ Included in the job description should be the duties, responsibilities, required experience, limitations and any physical and mental ability requirements.
- “Bona Fide Occupational Qualifications” should be established for each job classification.
- A written application should be completed which includes the following about the applicant:
  - ◆ Identification of the applicant (name, address, telephone number)
  - ◆ Qualifications of the applicant (education, training, certificates, licenses)
  - ◆ Experience of the applicant (relevant experience with date)
  - ◆ Background and references (3 personal reference, not related)
  - ◆ Waiver/consent (which includes)
    - Statement included that information is truthful and accurate
    - Applicant waives confidentiality rights with respect to criminal history checks, reference checks, etc.
- Applicant should sign and date application
- Face-to-face interviews should be completed by multiple officers. The group then will have a variety of opinions of the individual.
- ◆ Use only application/resume and job description to ask questions.
- ◆ Concentrate the interview on subjects that are tied to the job itself.
- The organization should be aware of the following federal laws which guard the rights of applicants.
  - ◆ Title VII of Civil Rights Act of 1964
  - ◆ Age discrimination in Employment Act of 1967
  - ◆ American with Disabilities Act
  - ◆ Fair Credit Reporting Act
  - ◆ Employee Polygraph Protection Act of 1988
- Confirm employment/membership with a letter which details terms, conditions, restrictions, requirements, salary (if appropriate) etc.
- Present to new employee/member an organization manual and job description for which the individual must sign off and date.

## Employment/Membership Application Form

*\*All information and references given on the application may be verified by the Fire Chief/Administrator of the organization.*

Name: Date:

Address: Phone:

D.O.B.: S.S. #

**(Federal Law Prohibits Age Discrimination)**

Driver's License Number and State:

Driver's License Class and Expiration Date:

Current Employment or Name of School:

### **Educational background:**

High School/Tech School:

College/Vocational School:

Post Graduate:

Military Experience:

### **Previous Firefighting/ ESO Experience:**

Fire Company/ESO: Date: Rank:

Fire Chief's/Administrator's Name: Phone #:

Fire Company/ESO: Date: Rank:

Fire Chief's/Administrator's Name: Phone #:

Total years involved in ESO:

Fire Schools/Training [Firefighters/Rescue, EMS, etc.]

### **Health Information:**

Is there any reason that your present health condition would restrict your activities as a firefighter/emergency service provider? [If yes, please explain.]

Do you suffer from any fear/phobias that would restrict your activities as a firefighter/emergency service provider? [fear of height, claustrophobia, etc.]

Name of Person to contact in case of an emergency

Emergency Phone Number: ( )

Beneficiary [Relationship]

### **Background Investigation:**

Have you ever been convicted of a crime? Yes No

[If yes, please explain]

I agree to permit the (Name of Organization) to conduct an investigation into my background through the Police Department, State Police, FBI, or any other recognized law enforcement organization. This information will be held in confidence by the (Volunteer Fire Company/ESO).

Signature of Applicant Date:

*\*The applicant certifies that the above information is true and accurate.*

Signature of Applicant Date:

Signature of Fire

Chief/Administrator

Date:

## **Harassment and Discrimination Prevention Training**

Harassment and discrimination claims continue to plague emergency service organizations (ESOs). Costly and high profile lawsuits damage the reputation, morale, and financial wellbeing of ESOs nationwide. Overall, your ESO is held to a legal standard to make reasonable efforts to prevent and promptly respond to work related harassment and discrimination. Nothing communicates an ESO's zero-tolerance policy for unlawful harassment more than effective training sessions led by credible and knowledgeable professionals. This policy offers risk management guidelines to assist your ESO in providing harassment and discrimination training to all employees and volunteers.

### **Periodic Training**

All employees and volunteers should periodically attend mandatory training to prevent harassment and discrimination. Consistent training helps demonstrate that the ESO's harassment and discrimination prevention policy doesn't simply "sit on the shelf gathering dust," but is instead an active policy. Training should be conducted frequently enough to help demonstrate the ESO's commitment to provide a safe and productive work environment.

### **Participation Is Crucial**

All employees and volunteers should attend harassment and discrimination training. Too often, top administrators fail to participate in educational sessions, sending the wrong message to the rest of the ESO members. Those holding top positions and rank within your ESO should lead the organization when it comes to preventing harassment and discrimination, and attending training themselves sends a clear message about its importance. Those from administration with supervisory and managerial responsibilities must demonstrate their leadership qualities when it comes to providing a safe and productive work environment, free from wrongdoing.

Tracking employee and volunteer participation is necessary to ensure everyone is receiving a consistent message about workplace behaviors. Upon completion of a training session, ESO members should read and sign forms acknowledging their:

- participation in the educational program
- understanding of the ESO's multiple avenues of internal complaint
- expectation that the ESO will promptly and thoroughly investigate allegations of wrongdoing while keeping matters as confidential as possible
- understanding that the ESO may utilize an outside third-party investigator to help resolve allegations of harassment and discrimination.

### **Methods of Training**

There are a variety of methods available for training to prevent harassment and discrimination. An ESO may utilize training programs in video format, computer based education, or written materials. There is no substitution, however, for live training before ESO members. This allows for question and answer sessions, so issues specific to a particular ESO or jurisdiction may be addressed. When feasible, in person training from a third-party professional or a well respected member of the ESO is preferred.

## **Qualify The Trainer**

In order to comprehensively cover important issues, many ESOs find educating and training employees on personnel related topics is best accomplished by an outside professional. The following checklist can aid in qualifying the right trainer for an ESO:

- Request a resume/biography to learn of experience and education in employment law and/or human resources.
- Ensure that the trainer is familiar with the operations and unique working environment of an ESO.
- Ask to sit in on a sample training session to observe firsthand the presenter's communication style, effectiveness and interaction with an audience.
- Ask for a brief mock presentation on relevant subject matter if it's not possible for you to observe another training session.
- Contact a number of references and find out their level of satisfaction.
- Request samples of handout materials to ensure quality and professionalism.

If an ESO uses one of its own employees or volunteers to facilitate training, ensure the individual is relatively knowledgeable about relevant laws, court decisions and trends surrounding harassment and discrimination. Also, make sure any in house trainer is not one of the "worst offenders" of inappropriate behavior. Credibility of the trainer is crucial in communicating the importance of preventing harassment and discrimination in your work environment.

## **Training Topics**

In order to strengthen working relations and reduce exposure to harassment and discrimination claims, consider the important training topics below for all employees and supervisors:

- Jurisdictional specific legal review
- Definitions and examples of what constitutes unlawful behavior, using scenarios specific to ESOs
- Legally protected groups or classes
- Sexual harassment covered in detail
- A review of the ESO's implemented harassment and discrimination policy
- Multiple avenues of internal reporting for ESO members
- Appropriate usage of electronic communication systems (i.e., Internet and email)
- Retaliation prevention for those making allegations or participating in an investigation
- The ESO's procedures for taking prompt action to investigate allegations, stop wrongdoing, and prevent future occurrences
- The right of the ESO to utilize an outside third-party investigator to respond to allegations of harassment and discrimination
- The intent of the ESO to keep matters as confidential as possible while still allowing for a prompt and thorough investigation and resolution of allegations.

## **Supervisory Training**

Supervisory training can decrease exposures to harassment and discrimination claims by providing tools to help prevent, detect and properly respond to workplace wrongdoing. Increased legal responsibilities fall on those with supervisory authority. Therefore, additional training is recommended for persons at all levels of supervision.



## **Employee Practice Exposure – Job or Position Description**

A detailed position/job description is the starting point of a thorough hiring/membership process. A position/job description informs the applicant of the essential functions of the position/job. The “essential functions” of the position/job are important since these are the functions that the employee/member must be able to perform to be considered a viable candidate for a job/position. The following is an outline of a possible approach that can be used to create new descriptions or modify existing descriptions in your effort to comply with the job description aspects of the American Disabilities Act.

### **Position/Job Summary**

Should answer the question “why does this position exist in the organization.” This should be a brief statement of the major components of the position, including:

- Essential job functions
- Purpose and objectives of these functions
- Key relationships

### **Position Responsibilities**

This should be a list of specific responsibilities that cover the various aspects of the job.

### **Required Education/Experience**

The education and experience required should:

- Reflect the level that would be established to recruit for the position.
- Be the same for everyone in that position.
- Be consistent with job’s responsibilities
- Reflect what best fits the requirements of the position or what qualifications are necessary to advance to a higher position.

### **Required Skills**

Skill needed should be listed on the position/job description. It may be also beneficial to include the frequency with which the skill is required.

Skill requirements can only be listed with the following caveats:

- The disabled employee has the right to request an accommodation.
- The organization has the obligation to provide an accommodation unless the accommodation poses an “undue hardship” or compromises the safety of disabled person or other members/employees.

### **Physical Requirements and Environmental Conditions**

Document the physical capabilities required to perform the responsibilities (essential job functions) and the special environmental conditions that are inherent in the work area where the job functions are performed.

## **Sample Job Summary**

Protects lives and property through activities associated with fire prevention, fire suppression, hazardous materials and emergency medical incidents and participates in the training and maintenance activities necessary to achieve that end.

### **ESSENTIAL JOB FUNCTIONS**

- RESPONDS promptly to fire alarms and other emergency calls to major incidents when notified while on duty.
- DRIVES fire apparatus and OPERATES pump and other equipment with fire fighting, rescue, salvage and maintenance operations.
- ENTERS burning buildings and ADVANCES charged and uncharged hose lines and APPLIES extinguishing agents to fires.
- POSITIONS and CLIMBS ladders to gain access to upper floors for rescue.
- Effectively COMMUNICATES verbally by means of two-way radio as person-to-person and in writing through completion of various records, memos and letters.

### **POSITION RESPONSIBILITIES**

- PROVIDES emergency medical service to fire or accident victims and assists the local emergency medical service provider as necessary or when required.
- INSPECTS buildings for fire hazards and COMPLETES pre-fire plans as appropriate.
- MAINTAINS apparatus, equipment, buildings and grounds.
- PARTICIPATES in all phases of training necessary to acquire the knowledge and skills required of the position.
- ASSISTS Company Officer in maintaining records and submitting reports.
- SERVES as Acting Lieutenant when so designated.
- PERFORMS other duties as required.
- PROTECTS property from unnecessary smoke and water damage by using salvage covers, positive pressure ventilation fans and water vacuum.
- CLIMBS, CRAWLS and RUNS as necessary to accomplish fire extinguishment, rescue and personal safety.
- CARRIES or MOVES heavy equipment and/or objects necessary to achieve fire extinguishment or rescue.

### **REQUIRED EDUCATION/EXPERIENCE**

- Requires a valid State Driver's License or a Class C State Driver's License.
- A general knowledge of a variety of subjects and skills related to fire fighting, emergency medical service and hazardous material.

### **REQUIRED SKILLS**

- Ability to respond quickly use good judgment under stress in hazardous situations, and the human relationships.
- Knowledge of street and hydrant locations.
- Knowledge of dispatch procedure.

## **PHYSICAL REQUIREMENTS**

- Must be able to lift and move ladder and climb ladder.
- Must have agility to climb through rafters, on roofs and crawl through tunnels.
- Must be able to open and close valves and be able to advance with hose discharging water.
- Must be able to carry heavy loads up and down stairs.
- Must be able to run and drag hose.
- Must be able to hear alarms and respond.
- Must be able to effectively communicate via two-way radio and over the telephone.
- Must be able to grasp and safely use hand tools such as axe, pike pole, chain saw, shovel, etc.

## **Electronic Communication Systems (Internet & Email Usage)**

Technological advancements have dramatically heightened the risk of personnel related litigation for emergency service organizations (ESOs). The increased accessibility of computers, Internet, email, television and cell phones raises the number of costly lawsuits facing ESOs. Hostile work environment claims often involve elements of technology, such as inappropriate email messages or Internet usage. Moreover, ESOs frequently are forced to address their members' inappropriate utilization of technology, resulting in discipline such as suspension, demotion and termination. This policy offers risk management guidelines for addressing electronic communication systems within your ESO. The goal is to assist your ESO in preventing technology abuses and reducing your exposure to personnel related claims.

### **Developing and Implementing a Policy and Procedure**

ESOs are under a duty to implement written policies and procedures designed to provide a workplace free from harassment and discrimination, as well as to prevent confidentiality breaches. It is prudent risk management to develop or update an ESO's policy governing all electronic communications, not just Internet and email usage. ESOs face increasing risks with other forms of technology, such as personal cell phones (i.e., inappropriate pictures taken with these phones) and television viewing (i.e., displaying pornographic or other sexual content on ESO property). ESO members should also receive and sign a form acknowledging their understanding of the parameters of the electronic communication systems policy and the ESO's ability to monitor their usage. It is recommended that ESOs retain legal counsel specializing in employment and labor law to review and approve policy language prior to implementation.

### **Preventing Harassment and Discrimination**

Employees more willingly accept restrictions on their usage of electronic communication systems when ESOs integrate them with existing nondiscrimination and harassment policies. ESOs must clearly communicate that electronic communication systems are not to be used in any way that may be disruptive, offensive to others, or harmful to morale. The ESO policy should prohibit the display or transmission of sexually explicit pictures, messages, videos, or any transmission or use of communications that contain profane or offensive language, ethnic slurs, racial epithets, or anything that may be construed as harassment, discrimination, or disparagement of others based on race, color, national origin, gender, age, disability, religion, sexual orientation, or political beliefs. Additionally, computer software programs may also be purchased to help filter inappropriate subject matter.

### **ESO's Right to Monitor**

Most national studies and surveys conclude that approximately seven of ten American workers access the Internet at work for non-work purposes and that more than one-half send and receive personal messages on their work email accounts. Granting ESO members access to electronic communication systems while on the job is a privilege and not a guaranteed personal right. Availability of technology on the job is designed to enhance business practices, rather than decrease productivity and increase legal liability for the ESO. While ESO members have a reasonable expectation of personal privacy at work, ESOs must communicate that these privacy interests are limited while conducting ESO business, on ESO property, or using ESO owned

equipment. Policies should indicate that all computer files, including emails sent or received, are considered and treated as if they are business-related information. They should also reflect that the ESO not only has the capability, but reserves the right, with or without notice, to access, monitor, review, copy, and/or delete any computer files, including email sent or received, and all web site communications and/or transactions.

### **Technology Filters and Safeguards**

Monitoring software is essential for preventing member access to inappropriate Internet sites and curbing email abuses. Computer filtering software can flag messages containing offensive, discriminatory, or suspicious words. ESOs should consider installing an onscreen display of the electronic communication systems policy that would appear each time members log onto their computers. Such technology safeguards can help remind members that their usage is monitored, and prevent incidents of harassment, malicious gossip, and dissemination of confidential information.

### **Discipline**

Many ESOs are being forced to discipline employees and volunteers for abusing electronic communication systems. Penalties for those who violate ESO policy and engage in harassing, discriminatory or other inappropriate behavior typically would follow a progressive disciplinary process. However, in some circumstances, a first violation may be severe enough that termination may be the most appropriate finding. For example, accessing pornography is the most common prohibited computer activity that leads to disciplinary action. Policies should set forth the ESO's right to determine and administer harsh and consistent discipline for those violating harassment, discrimination, or confidentiality standards.

## **Grievance Procedures**

Emergency service organizations (ESOs) are challenged to demonstrate strict adherence to their personnel grievance procedures. Litigation often focuses on whether the ESO mishandled the grievance in cases such as wrongful termination or discipline, harassment, or discrimination. Before costly and time consuming litigation arises, ESOs are encouraged to become intimately familiar with their grievance procedures. Many ESO leaders and Board members have not been required to administer a grievance, nor have they been trained on how to administer their current written grievance policy and procedure. ESO leaders who have been required to process grievances on a more frequent basis would agree that following an unfamiliar or cumbersome grievance policy and procedure is challenging. This policy provides risk management guidance for ESOs on examining the scope and functionality of their personnel grievance procedures.

### **Formal Grievances Procedure versus Internal Reporting Process**

Often ESOs are unable to explain the differences between their formal written grievance procedures and the separate and distinct internal reporting procedures that typically accompany personnel policies prohibiting workplace wrongdoing such as harassment or discrimination. Generally, a standalone grievance procedure is more complicated and demanding for the ESO and member complaining about a personnel problem. An internal reporting process is considered more straightforward, while allowing for multiple avenues of complaint, prompt investigation and follow up designed to stop workplace wrongs and prevent future occurrences. Formal, multistep grievance procedures are commonly part of a work environment that includes a union, collective bargaining agreement, or employee association. However, ESOs without unions or employee associations may publish grievance procedures in their personnel manuals or employee handbooks. If a written grievance procedure exists within your ESO's personnel manual or handbook, determine whether the grievance steps are perceived as cumbersome, both for the complaining employee/volunteer and for the ESO. Unless there is a requirement from a collective bargaining agreement, for example, implementing a straightforward internal reporting procedure may be easier for members and the ESO.

### **Determine the Origins of the Grievance Procedure**

ESOs are encouraged to analyze the origins of their written grievance procedure. They should determine whether the ESO's legal counsel (familiar with labor and employment issues), together with ESO leaders and Board members, have developed a grievance process separate from reporting procedures that accompany workplace wrongdoing policies such as harassment. When an ESO first develops its personnel policy manual, it is not uncommon to "cut and paste" a grievance procedure from another organization's manual without understanding its ramifications. Without a union or employee association presence, an ESO should assess whether the existence of a formal grievance process was intended and necessary, as opposed to more straightforward internal reporting procedures.

### **Grievance Procedure Steps**

A formal written grievance procedure may require that:

1. The employee/volunteer (member) put the grievance or complaint in writing.
2. The ESO's responses to a grievance or complaint be in writing.
3. Grievance procedure steps be time sensitive.

For instance, a grievance may need to be filed within 10 working days of the incident that generated the complaint, or the member forfeits his or her right to complain. Similarly, the designated ESO representative must respond in writing within 10 working days of receipt of the initial grievance.

4. Various ESO members be responsible for handling different steps in the process, such as the complainant's immediate supervisor, supervisor's supervisor, top administrator, personnel committee, or Board members.
5. Grievance steps serve as an appeal process within the ESO's chain of command.
6. The acting human resources representative help guide the complaining employee or volunteer through the various steps of the grievance process.
7. A personnel grievance committee, sometimes made up of Board members, serve as the final group to hear an employee's or volunteer's appeal.
8. Members be afforded a hearing during the final appellate step, which would include a review of all facts, documents, and call for testimony from the grievant, parties directly named, and other witnesses.
9. The member filing the grievance seek legal representation or a union representative throughout the course of the grievance.

ESOs must ensure that grievance procedures found in a collective bargaining agreement remain consistent with grievance procedures found in other ESO documents, such as a personnel policy manual or employee handbook. Contrasting grievance procedures often lead to misapplication and confusion for those asked to utilize the process. To eliminate this problem, the ESO's legal counsel and a union representative should compare the documents to bring them into agreement.

### **Internal Reporting Procedures**

While it is not required that an ESO incorporate formal grievance procedures, multiple avenues of internal complaint must be provided so members' concerns can be promptly investigated and resolved. Below is a sample internal reporting process:

*If you are aware of workplace conflict or wrongdoing taking place, you must immediately report this to your direct supervisor. If you feel uncomfortable doing so, or if your direct supervisor is the source of the problem, condones the problem, or ignores the problem, immediately report the situation to your supervisor's supervisor, any other supervisor or manager, human resources manager, or lead/top administrator. If these alternatives are not satisfactory to you, then you can immediately direct your report, complaint, or questions to any member of the ESO's personnel committee or Board of Directors. You are not required to directly confront the person who is the source of your report or complaint before notifying any of the individuals listed.*

### **Training On Formal Grievance Procedures**

Familiarity with and confidence in an ESO's procedures is important when accessing or effectively addressing a grievance or complaint. The ESO should periodically educate and train designated representatives regarding their responsibilities as spelled out in the formal grievance procedures. In addition to what is specified, to ensure equitable and consistent facilitation of grievances, the ESO should train those persons tasked with preparing written responses, meeting time deadlines, assessing the credibility of the grievance, facilitating hearings, and generally resolving personnel conflicts. ESO members will only be confident enough to utilize the formal grievance procedures if they know the ESO is intimately familiar with how to manage the process.

## **Weapons in the Workplace**

Emergency service organizations (ESOs) must address concerns about weapons and violence in their work environments. At a time when nearly all states have passed concealed weapon laws, it is recommended that ESOs consider implementing a Weapons in the Workplace policy. ESO leaders are responsible for taking reasonable measures to protect their members (employees and volunteers) from workplace violence. This policy offers risk management guidelines to implement and administer a Weapons in the Workplace policy fairly in your ESO and generally protect against violence in the workplace.

### **Sample “Weapons in the Workplace” Policy**

XYZ prohibits and does not tolerate weapons on XYZ property, or during any XYZrelated activity. Weapons include, but are not limited to, visible and concealed weapons, including those for which the owner holds the necessary permits. Weapons can include firearms/guns, knives or swords with a blade longer than three inches, explosive or chemical materials, or any other objects that could be used to harass, intimidate, or injure another individual, employee, volunteer, manager, or supervisor. Employees or volunteers who violate this policy will be subject to disciplinary actions, up to and including employment termination.

### **Reporting Procedure**

Any employee or volunteer who is subject to, or observes, violent behavior or threat of violent behavior, a firearm or other weapon, or any situation that appears to be potentially dangerous, must immediately report such action to his/her supervisor, department director/Chief Officer, human resources department, or Chief Administrator/Fire Chief. The reporting person is not required to directly confront the person who is the source of the report, question, or complaint before notifying any of the individuals listed. Nevertheless, the reporting person is required to make a reasonable effort to report policy violations or make workplace violence or threats of violence known should they exist.

### **Risk Management Tips for Violence Prevention**

Instituting a Weapons in the Workplace policy is part of a larger program to prevent violence in the workplace. Consider the following risk management tips for maintaining a comprehensive program for violence prevention for your ESO:

- Conduct criminal background checks for all employees and volunteers (both current and potential members and applicants).
- As part of the selection and hiring process, conduct criminal background checks for all employees and volunteers.
- Provide periodic training and education for all members regarding preventing violence in the workplace and weapons in the workplace, including domestic violence.
- Encourage members to promptly report threats and incidents of violence both within and outside the ESO.
- Develop an emergency response plan pertaining to workplace violence.
- Complete a worksite risk analysis/assessment to identify where the organization may be vulnerable, and determine what steps can be taken to reduce risk.
- Make an Employee Assistance Program (EAP) available that can help personnel deal



appropriately with personal and professional issues that can lead to reduced work productivity, stress, depression, violence and other problems.

- Advertise the EAP or other resources for victims of domestic violence.
- Take precautionary measures when a member is terminated from the ESO (i.e. conducted in a secure setting with a witness present; when necessary develop a strategy for exiting the premises with concern for security and the departing member's dignity).
- Post signs around ESO facilities warning members and visitors that weapons must not be carried onto ESO property unless needed for law enforcement or other official job duties.
- Consider implementing visitor procedures.

## **Pregnancy Discrimination and Accommodations**

Pregnancy discrimination claims filed with the federal Equal Employment Opportunity (EEOC) jumped 39% from 1992 to 2003. During that time, the nation's birthrate dropped 9%. The surge of pregnancy discrimination complaints is one of the fastest-growing types of employment discrimination charges filed with the EEOC, outpacing the rise in sexual harassment and gender discrimination claims. Emergency Services Organization (ESO) leaders should understand discrimination and accommodation laws involving pregnancy. This policy offers risk management guidelines to fairly administer your ESO's pregnancy discrimination prevention policy and accommodation procedures.

### **The Pregnancy Discrimination Act**

The Pregnancy Discrimination Act (PDA) is an amendment to Title VII of the Civil Rights Act of 1964. This federal law prohibits employment discrimination on the basis of pregnancy, childbirth, or related medical conditions for organizations with more than 15 employees. Pregnancy discrimination is a form of sex discrimination. The PDA requires ESOs treat workers who are pregnant or affected by related conditions the same as other workers who have temporary medical limitations or disabilities. Similarly, individual state laws also prohibit adverse actions based on pregnancy related conditions. Examples of pregnancy discrimination include:

- Refusing to hire or select an employee or volunteer for membership based on pregnancy or the possibility of future pregnancy;
- Terminating or demoting a pregnant member;
- Disparately applying leave laws or policies to pregnant employees; and
- Denying the same or similar job or position to a member when she returns from pregnancy related leave.

For members that feel they may be subjected to pregnancy discrimination, your ESO must maintain and advertise its multiple avenues of internal complaint. The ESO must promptly investigate any reports of discrimination, discipline offending parties, and take appropriate measures to prevent future occurrences.

### **Hiring & Selection**

As long as a pregnant woman can perform the essential functions of the job, an ESO cannot refuse to hire or select the woman because of her pregnancy related condition, because of prejudices against pregnant workers, or the prejudices of coworkers, clients or customers. An ESO is not required to hire or select pregnant women or show preferential treatment, but instead treat them the same way as other applicants with temporary disabilities. Avoid discussing an applicant's pregnancy or potential for pregnancy during the interview or selection process, even if her condition is divulged or may be apparent. Instead focus on job requirements and the candidate's ability to satisfy them.

### **Pregnant Worker Treated As If Temporarily Disabled**

Pregnant ESO members must be permitted to work as long as they are able to perform their jobs. The ESO member is responsible, with the advice from her healthcare provider (physician), to determine how long she will be able to safely continue in her normal assigned position, performing the essential job functions. If a member is temporarily unable to perform her job due to pregnancy, the ESO must treat her the same as any other temporarily disabled member of the workforce. Examples include providing modified tasks, alternative assignments, disability leave or leave without pay.

### **Accommodations For Pregnant Workers**

Create an accommodation request procedure offering multiple avenues of internal reporting. Don't jump to conclusions that a member cannot perform the essential functions of the job because she is pregnant. Your ESO should determine the feasibility of all requested accommodations, considering various factors, including, but not limited to the nature and cost of the accommodation, overall financial resources, and the accommodation's impact on the ESO's operations, including its impact on the ability of other members to perform their duties. Seriously consider involving the ESO's retained labor and employment attorney to help address accommodations. Follow the ESO's policy and past practices that may allow a member with a temporary disability or medical condition to transfer to a position that better accommodates the condition or to work part-time. Generally, however, your ESO will not be required to create a modified duty position vacancy where one does not exist in order to accommodate an individual who cannot fulfill the essential functions of the position.

### **Other relevant leave issues to consider:**

- ***Rely on Medical Professionals*** – Remaining consistent in its personnel practices, an ESO has the right to require return-to-work certification from a physician following any temporary disability leave. The essential physical and mental requirements set forth in a written job description should be the guide. If the ESO questions the member's medical certification, such that the organization reasonably believes the member may not be able to return to work and presents an imminent threat of harm to herself or others, the ESO is entitled to get a certification from an ESO-appointed doctor. A physician should determine which, if any, of the duties the pregnant member cannot perform, and at what point performance and safety is compromised. Only with professional guidance should the ESO make changes, such as restrict or limit a member's job due to pregnancy.
- ***Reinstatement after early complications*** – If a member has been absent from work as a result of a physician documented pregnancy related condition and recovers, the ESO may not require her to remain on leave until after the baby's birth if that member has been medically released back to duty.
- ***Avoid predetermined leave dates*** – An ESO may not have a rule which prohibits a member from returning to work for a predetermined length of time after childbirth. Likewise, the ESO should not predetermine a date at which time the pregnant member is automatically deemed unfit for duty. Allow the member's physician to make the determination of when leave is necessary and provide an updated job description and any other information to make an accurate assessment. Each return-to-work situation should be assessed on a case-by-case basis while remaining consistent with past practices for other temporarily disabled members.
- ***Family and Medical Leave*** – Pregnancy related leave is covered by the PDA, Family and

Medical Leave Act (FMLA), and in limited circumstances, the Americans with Disabilities Act (ADA). Consult with your ESO's labor and employment attorney to determine the applicability of these federal laws and other similar state leave laws.

- **Benefits** – If an ESO provides benefits to workers on leave, the same benefits should be provided to those on leave for pregnancy related conditions.

- **Policies and Training** – Implement clear and detailed policies and procedures addressing pregnancy discrimination and accommodations. Train all personnel, particularly supervisors on relevant laws and

## **Treatment of Minors**

Minors are persons under the age of 18 under parental supervision or guardianship. The ESO shall notify the parents and/or guardian in the following situations:

- Events unfavorable of the ESO
- Failure to adhere to published Standard Operating Procedures, By-Laws or Guidelines of the ESO
- As deemed necessary by Administrative bodies