

NACD

Hire the Best
Fire the Rest
Stay Out of Court

- ▶ This document is intended to help companies consider various issues associated with employment practices in the workplace. The author is not engaged in rendering legal advice or professional legal services and no attorney client relationship is created. Anyone who creates company policy with (or without) the use of this document should consult with a qualified attorney before relying on it. The law is rapidly changing and may vary from jurisdiction to jurisdiction.

You Be the Judge

- ▶ Firing bad employees regardless of race, sex, religion, age, national origin or disability?
- ▶ Having a management practice that unauthorized overtime will not be paid?
- ▶ Having a company policy statement against sexual harassment in the employee handbook?
- ▶ Asking “U.S. Citizen” on an application?
- ▶ Firing an alcoholic for drinking whiskey on the job?
- ▶ “Testing out” a new employee with a probationary period?
- ▶ Rejecting an applicant for having a “bad attitude” during an interview

Wage & Hour Audit

- ▶ __ Are you sure that your exempt salaried employees qualify for the exemption? Exempt and nonexempt classifications are determined by job duties, not by how you pay them. Check out dol.gov (Fair Pay) for more information on the FLSA.
- ▶ __ Are you paying nonexempt employees overtime wages equal to one and one-half times their regular hourly wage? This is a requirement of the FLSA. Your state may require even more.
- ▶ __ Are all your nonexempt employees recording all hours actually worked? When you sign the timecard you're agreeing it's an accurate reflection of the hours worked.
- ▶ __ Are employees taking lunches at their desk or in their work area? If they work during lunch, they have to be paid.
- ▶ __ Are exempt employees docked for hours not worked within a workday? Don't treat exempt like nonexempt. In most cases, this type of docking jeopardizes the exemption.
- ▶ __ Are you granting "comp time" in lieu of overtime? In the private sector, "comp time" may be a problem. Check with local legal counsel to remain safe.

Attitude vs Behavior

- ▶ No one has a good or bad “attitude.” The word “attitude” should be nowhere in our workplace vocabulary. Give up on the word and keep the idea. Get a new word... BEHAVIOR!

BEHAVIOR STANDARD

- ▶ Maintain a positive work atmosphere by acting and communicating in a manner so that you get along with customers, clients, co-workers and management.

Interviewing

Position

Applicant

Job Description

Work History

Personality and Behavior

Trait #1 _____

Question:

Tell me about a time when _____.

Question:

What would you do if _____?

Trait # 2 _____

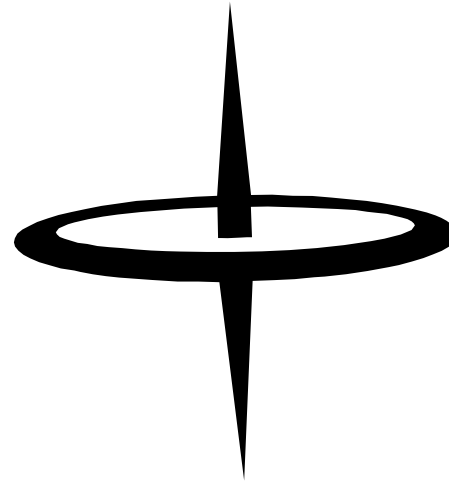
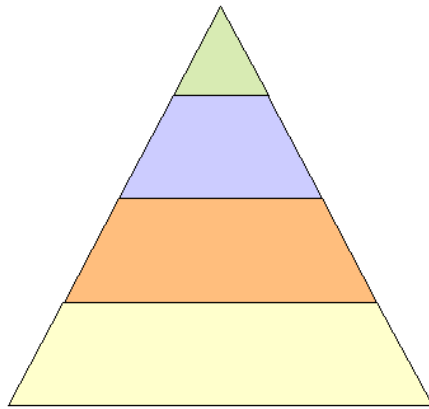
Question:

Describe a situation in which _____.

Question:

Discuss a time when _____.

Old vs New



Policies

All overtime must be authorized. Working unauthorized overtime may lead to disciplinary action.

Reasonable business attire.

Any relationship, on or off the job, that affects our ability to run our business or your ability to do your job may be a valid reason for firing.

Triangulation

Firing Options

Reasonable

- ▶ Progressive Discipline
- ▶ In order for the documentation to stand up on its own, it has to be signed or initialed or witnessed.
- ▶ At will

Termination Checklist

- ▶ Was a specific policy violated and does the violation warrant termination?
- ▶ Show me the policy!
- ▶ Have other employees been held accountable to the same policy?
- ▶ Prove the employee *knowingly* violated the policy!
- ▶ Do we have confirmation that the employee did indeed violate the policy?
- ▶ How did the employee react when confronted with the violation?
- ▶ Has the employee complained of harassment or unfair treatment?
- ▶ Has the employee recently filed a worker's compensation claim?
- ▶ Is the employee about to vest in certain benefits or involved in union activities?
- ▶ Has the employee returned from, or applied for, military/medical leave?
- ▶ Has the employee recently complained of a Company wrongdoing or safety issue?
- ▶ Are there any current grievances or complaints pending?
- ▶ Were any promises made verbally, or in writing, to this employee by senior management?
- ▶ Were any requested accommodations denied to this employee?
- ▶ Is there evidence of discrimination based on age, sex, race, religion, national origin, disability or any other legally protected characteristic?

Stay Out of Court

#1 CHECK YOUR EGO

- ▶ If you just read the headlines you'd think employers don't have a chance — that greedy attorneys and "entitlement minded" employees have management held hostage. But if you read the details you'd see most of these lawsuits can be avoided. The "my way or the highway" approach of some managers all but says, "Please sue me." If you fire people until the stealing stops, you are going to get sued! If you say to the court, "Women belong back at home, chained to a stove, not working," you are going to get sued!

#2 SEND THE RIGHT MESSAGE

- ▶ When you tell people "use it or lose it" and then get mad when they "use it," you're sending the wrong message. When you reward good people by ignoring them, suspend for absenteeism violations, tell people not to talk about their salaries and fire people for resigning — is it any wonder employers get sued!

Stay Out of Court

#3 BE CONSISTENT

- ▶ Consistency buys morale and serious legal protection. Most attorneys will say you are better off being consistently wrong than being inconsistent.

#4 DOCUMENT

- ▶ Common sense management, and now the law, is saying to find problem people and deal with them quickly. The burden of proof is heavily on the employer. Proper documentation lets you take credit for the good faith efforts being made.

#5 THINK LIKE AN OUTSIDER

- ▶ Would you want to go on *60 Minutes* and defend your “dumb blond” joke or a video tape of last year’s holiday party? *60 Minutes* isn’t always right, but they are everywhere. If you wouldn’t do it or say it on *60 Minutes*, then don’t do it, or say it, or allow it to be done or said in your operation.

Fear Factor

Discrimination: By the numbers

state	# of employees	charges filed	odds of being charged	% charges dropped
IL	5,863,400	3572	.0006	31.9
CA	14,783,400	18773	.0012	21.5
KS	1,340,100	809	.0006	67.7
FL	7,766,400	1402	.0001	82.3
MA	3,215,400	3328	.0010	na
NY	8,526,200	5331	.0006	na
EEOC	133,500,000	75,768	.0005	61.4

Who is this guy?

Hunter was an award-winning senior course leader for the American Management Association and has delivered over 4000 presentations on hiring, firing and staying out of court. He is a top rated speaker for SHRM, speaker of the year for Vistage and the author of *Please Sue Me: The Guide to Safe Hiring and Firing Practices for the Frontline Manager with a Short Attention Span*.

Hunter runs a HR consulting service dedicated to the rights of management and targeted to businesses with a one-person human resources department.

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