COUNTY MANAGEMENT & RISK CONFERENCE
APRIL 10-12, 2019 | SAN MARCOS
RESOURCES AND SOLUTIONS FOR COUNTIES
Here Today.  
Gone Tomorrow  
Now What?  

The Insider Recipe for Hiring, Firing, Retiring  

Stacy Corluccio  
Claims Manager  
Risk Management Services  

Rollie Ford  
HR Consultant  
Southwest TX
Disclaimer

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

• Effectively navigate the Employee Onboarding Process and Procedures.

• Navigation through policies, procedures and details of medical benefits and income when an employee is injured while on the job or outside of work.

• Effectively navigate the Employee Off Boarding Process and Procedures.
Objective One:

Effectively navigate the Employee Onboarding Process and Procedures.
Prepare to Hire

• Identify the vacancy and evaluate the need for position
• Review your budget
• Prepare your plan
Job Descriptions

• A written summary of the significant aspects of a job.

• Not required under the ADAAA, but they help to ensure compliance with ADAAA.

• Can justify the employee selection decision in determining the best qualified applicant for the position.
Job Description Components

• A summary of the position
• Essential job functions
  “Why the job exists.”
• Marginal duties – additional duties
  “Other duties as assigned within the scope of the department.”
Job Description Components

• Physical requirements of job
  “Physical actions required to perform essential job functions.”

• Working conditions
  Environment, travel, overtime...
Job Descriptions and Worker’s Compensation

- Start the process of return to work!
- DWC-74: Description of Employee’s Employment
- Where is it?
  - WC Claims Resource Guide and or Division of WC Website
Steps to Hiring

- Work with Human Resources to help eliminate "potential" problems
- Use standardized applications vs. resumes
- Applications must be retained at least 2 years, unless hired, then must be retained for 5 years after separation.
Interview Questions

• Must relate to the job requirements and the applicant’s ability to perform the essential functions.

• Steer clear from “protected status” types of questions.

• Ask “Open-Ended,” not Yes-No.
Interview Questions

Sex

Appropriate = **NONE** unless BFOQ

Inappropriate = “*Do you plan to have children?*” “*Do you think a woman can do this job?*”
Interview Questions

Religion

Appropriate = NONE

Inappropriate = “What is your religion?” “What church do you belong to?”
Interview Questions

**Race**

Appropriate = \textit{NONE}

Inappropriate = “What is your race?” “What is your color?”
Interview Questions

National Origin

Appropriate = NONE

Inappropriate = “Were you born in the US?” “What is your nationality?”
Interview Questions

Age

Appropriate = Are you at least 18 years old?

Inappropriate = “How old are you?” “What is your birth date?”
Interview Questions

Disability

Appropriate = “Can you do the essential job functions with or without an accommodation?”

Inappropriate = “Are you disabled?”
Interview Questions

**Arrest**

Appropriate = Have you ever been convicted of a felony?

**Record**

Inappropriate = “Have you ever been arrested?”
Interview Questions

Driver License

Appropriate = Do you have a current driver license?

Inappropriate = “Let me see your current driver license.”
Interview Questions

Marital Status

Appropriate = NONE

Inappropriate = “Are you married?”
Interview Questions

Citizenship

Appropriate = “Are you legally authorized to work in the United States?”

Inappropriate = “Are you a U.S. Citizen?”
Interview Questions

Languages

Appropriate = “Do you speak English?” or “Do you speak Spanish?” - only if necessary for the position

Inappropriate = “What is your native language?”
Interview Questions

Military Experience

Appropriate = “Have you served in the United States Armed Forces?”

Inappropriate = “Were you dishonorably discharged?”
Interview Questions

**Education**

Appropriate =

Anything pertaining to the educational requirements of the job

“What degree, certification or training do you have?”
Interview Questions

Photograph

Appropriate = NONE

Inappropriate = Requiring a picture
Interview Questions

Personal Characteristics

Appropriate = NONE

Inappropriate = “What color are your eyes or hair?” “What do you weigh?” “What is your height?”
Creating Questions to Determine Attitude

1. Determine the characteristics of high performers (Deals with stress well; good communicator; team player; positive).

2. Determine the characteristics of low performers (Not a team player; can not deal with stress; does not like to talk to people at counter; dramatic; negative).
Creating Questions to Determine Attitude

3. Find a situation to elicit the **characteristic** you want to discover.

4. Question opening: “Tell me about a time you ______” (Be very specific and don’t be leading.)

**Example:** “Tell me about a time you dealt with a difficult customer.” Or “Tell me about a time you made a mistake.”

5. Grade/evaluate interview immediately when it is over (the 50 minute hour...)
Interview Closing

- Repeat job duties and expectations.
- Do not oversell the job.
- State the negative and positive of job.
- Ask if they have any questions.
- State when you plan to make a decision and thank them.
Checking References

• Ensures accuracy of information in all phases of the process (interview, resume and application)

• FACTUAL
  • Past Employment Information
  • Professional References
  • Educational/Certifications Information
Past Employment History

• Dates of employment
• Reasons for leaving a job
• Salary/position held
• Job duties/responsibilities
• Strengths/weaknesses
• Attitude/motivation
• Ability to work with others
Reference Verification Methods

• Telephone Calls
  • Drawbacks: Restrictive policies
  • Benefits: Quick – saves time and money

• Written Correspondence
  • Drawbacks: Time-consuming
  • Benefits: Used for factual information
  • Release forms are required
Reference Verification Methods

Investigative Services – 3rd Party

- Used for specific types of jobs
- Fee-based
- Verifies education, work experience, credit history, criminal records, and certifications

Drawbacks: Fair Credit Reporting Act compliance – release forms
Fair Credit Reporting Act
Three separate authorizations/notifications required:

- Before obtaining a report – written release required
- Before taking adverse action – provide a copy and list of applicants rights
- Upon rejection, inform of right to obtain a free report
Free Electronic Services

• Social Security Number Electronic Verification Service (verify up to 10 names): 1-800-772-6270

• Department of Homeland Security E-Verify: provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers
  http://www.uscis.gov/e-verify
Criminal History Checks

**DPS crime records division website:**

- Only eligible entities: Secure site for employment and licensing verifications is [secure.txdps.state.tx.us](http://secure.txdps.state.tx.us/)  512-424-2474

- Public site: [records.txdps.state.tx.us](http://records.txdps.state.tx.us)

- Cost: $3.00 + fee

- Purchase “credits” and sign-in --- easy!
Ready to Hire

• Make the offer – use the smallest amount of salary – hourly or weekly

• Provide information if requiring pre-employment physicals – these must be made post offer

• Be ready for your new hire
Objective Two:

Navigation through policies, procedures and details of medical benefits and income when an employee is injured while on the job or outside of work
FMLA Applies to All Public Agencies

All counties with 50 or more employees employed within 75 miles of the workplace must grant FMLA to eligible employees.

Seasonal and temporary employees count towards the 50, but not elected officials!
FMLA Eligibility

Employee has worked for county for at least 12 months

• Break >7 years not counted unless military call up
• >3 years burden on employee

Has worked at least 1250 hours during the last 12 months prior to FMLA Leave

• Part-timers and long-term temps might qualify

all time lost due to military service is counted as time worked
FMLA Allows 12 Weeks Leave For

- A newly born, adopted or foster-placed child
- A spouse, child or parent with a serious health condition
- The employee’s own serious health condition or workers comp claim
Children Over 18

**All of the following must be true:**

- When disabled as defined by ADAAA
- Incapable of self care
- Has a serious health condition
- And in need of care due to that condition
Military Qualifying Exigency Leave

- Short term deployment (7 days)
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation (15 days)
- Post deployment activities (during first 90 days home)
- Any additional agreed upon activities
Military Qualifying Exigency Leave

- Leave to care for military members parent
- Arranging for alternative care
- Attending meetings with staff at care facility
- Can require copy of military members rest and recuperation leave orders or other military documentation
Military Care Giver Leave

- Qualified employee: up to 26 weeks of leave in a single 12 month period to care for a *spouse, child, parent or next of kin* recovering from a serious injury or illness sustained as a result of active duty in the military

- Veterans are covered

![Warning Symbol]

**DOES** extend FMLA from 12 weeks to up to 26 weeks
Military Care Giver Leave

Reasons for Leave:

A member of the military undergoing medical treatment, recuperation, therapy, outpatient treatment or on the temporary disability retired list

Certain veterans undergoing medical treatment, recuperation or therapy
Intermittent FMLA

May be taken when medically necessary to care for a seriously ill family member or because of the employee’s own serious health condition. (usually chronic conditions)
FMLA: Medical Certifications

- County may require (give employees 15 days to obtain)
- Can only require intermittent leave recertification every 6 months.
- Fitness for Duty: must include a copy of the job description or essential functions on or before the designation notice is given to the employee.
- Supervisor is never allowed to contact a physician to clarify the information provided.
- Privacy requirements must be met.
FMLA Protections

A covered employee must:

- Maintain county paid benefits
- Be restored to their original job
  - Or equivalent job in terms of pay, benefits and other conditions of employment
- Be provided proper documentation in writing
  - To include Notice of Eligibility Form WH-381 and Designation Notice Form WH-382
  - If requiring medical certifications, use proper forms.

www.dol.gov
After FMLA is Exhausted

- Have a policy in place to offer employees COBRA at the end of their 12 weeks.

- Review the employee’s status and condition.

- Begin the interactive process to determine and DOCUMENT your actions. Not every leave under the FMLA will have the ADAAA protection but evaluation is important.
Objective Three:

Effectively navigate the Employee Off Boarding Process and Procedures
Terminations

Ask yourself these questions before terminating:

• What are the real reasons for terminating this employee?
• Are they work related reasons?
• How would a jury of the employees peers look at the reasons?
• Have you consulted legal counsel?
Terminations

- Do you have SPECIFIC, OBJECTIVE, VALID documentation?
- Does the employee fall into a protected class?
- Is your decision CONSISTENT with your past practices and current policies?
- What do you have in the employees personnel files?
I am not a lawyer and this should not be considered legal advice. You should seek appropriate counsel for your own situation.
Retaliation

Texas Labor Code §451.001 - DISCRIMINATION AGAINST EMPLOYEES PROHIBITED.

Ask this question...

Is there a business need completely unrelated to the injury or claim to have this person replaced?
WC Benefits and Termination

1. Do the medical benefits cease?

2. What about income benefits? Do they stop?

3. What if someone was on light duty when they were terminated?
Educate on Worker’s Compensation

• All new employees, especially supervisors and department heads.

• Distribute Employee Rights and Responsibilities Notice in orientation.
  • WC Claims Resource Guide or on Division of WC Website

• Educated employees report injuries timely and have a positive effect on claims.
Terminating Employees on WC

Can you terminate an employee who is receiving workers’ compensation?

A. Yes
B. No.
C. Talk to your County Attorney first!
Terminations – The Process

1. Work with your legal counsel or HR Manager.

2. Have all your documentation in order and complete.

3. Don’t delay your actions – if you need time to prepare – send the employee home until you are prepared to take action.
Terminations – The Process

Once your documentation is in place and you have consulted with your legal counsel...

Meet with the employee in private. Always have one unbiased witness (preferably another supervisor).

State the purpose of the meeting.

Give only valid and documented work related reasons for your decision.

No small talk or personal talk.
Terminations – The Process

1. Keep the meeting professional and on track.
2. Stay calm, remain objective and avoid emotion.
3. Help the employee retain their dignity.
4. Explain the exit procedure and begin at end of meeting.
Immediate Terminations

- Some offenses require immediate termination
- Consult with your legal counsel or HR immediately

Remember – suspension is possible while consulting with legal and preparing your final documentation paperwork.
Managers Responsibilities

• Do not share information with your other employees.

**THIS IS A MANAGEMENT ISSUE.**
**CONFIDENTIALITY IS A MUST!**

• “An example to other employees...” equals a possible slander lawsuit.

• Future reference requests – each termination has different requirements.

*consult legal counsel*
Final Considerations

PLEASE DO NOT SAY INAPPROPRIATE THINGS...

“I would like a younger staff.”

“The girls just need to get along with the boys.”

“You might get fired for filing on us.”

“I think people eligible for retirement should retire.”

“If you quote me, I’ll just deny I said it.”
Final Considerations

PLEASE DO NOT DO INAPPROPRIATE THINGS...

• Do not say or put anything into writing that could be considered stereotypical or retaliatory.

• If you get advice and don’t understand the advice...CLARIFY IT BEFORE PROCEEDING!

ask a lawyer!
The Final Consideration

THINK BEFORE YOU ACT!

• Make certain your story makes sense, you have anticipated all the potential flaws and properly documented all actions.

• If not, HOLD UP the process, regroup and rethink your actions.
Northwest
- Michele Arseneau
- 512-461-1667
- michelea@county.org

Northeast
- Diana Cecil
- 512-924-6360
- dianac@county.org

Southeast
- Mary Ann Saenz-Thompson
- 512-921-9056
- maryanns@county.org

Southwest
- Rollie Ford
- 512-680-1994
- rollief@county.org