

# RISK COMMUNIQUÉ

## ***Employment Practices Liability Self-Assessment***

*Employment Practices Liability is a fast growing area of exposure with respect to frequency and severity of lawsuits. One out of five cases in our court system today is an employment/personnel-related lawsuit. These claims include, but are not limited to:*

- *Wrongful dismissal/termination*
- *Sexual harassment retaliation*
- *Discrimination (sex/gender, race color, national origin, religion, disability, age, veteran status and other protected classes according to federal, state and local laws)*
- *Failure to hire or promote*
- *Negligent hiring/supervision*

### ***Proper Risk Management***

Generally, courts convey that entities can help avoid liability for employment practices by taking proactive measures to prevent and promptly correct any workplace wrongdoing. Thus, the burden falls on the entity to produce hard evidence that it has taken actions to protect its workers and provide a safe and healthy work environment. It is the organization's responsibility to help determine whether it has taken proactive steps by analyzing written policies, procedures and training programs.

This risk communiqué offers suggestions to help assess an entity's strengths and weaknesses in the employment practices area. Use the results to work with legal counsel to develop a plan to address the weaknesses in an employment practices compliance program. Additional guidance information is available [www.vfis.com](http://www.vfis.com) where indicated by a (\*).

### ***Section I – General Information***

	<b>Yes</b>	<b>No</b>
1. Do you have a person whose responsibility is dedicated to personnel issues?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has a qualified employment practices attorney, consultant or human resources professional assessed or audited your written personnel policies/ programs?	<input type="checkbox"/>	<input type="checkbox"/>
3. Does your entity periodically hold employee meetings to reaffirm your policies for workplace wrongdoing?	<input type="checkbox"/>	<input type="checkbox"/>
4. Are posters conspicuously displayed explaining state and federal employment laws?	<input type="checkbox"/>	<input type="checkbox"/>

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## Section II – Hiring/Application\*

	Yes	No
1. Is there more than one individual who interviews and selects employees/volunteers?	<input type="checkbox"/>	<input type="checkbox"/>
2. Is a completed employment application required?	<input type="checkbox"/>	<input type="checkbox"/>
3. Are job/position descriptions given to applicants?	<input type="checkbox"/>	<input type="checkbox"/>
4. Are reference and background checks completed?	<input type="checkbox"/>	<input type="checkbox"/>

## Section III – Written Personnel Policies/Guidelines

### A. Personnel Manual

	Yes	No
1. Is your personnel/employment manual distributed to employees?	<input type="checkbox"/>	<input type="checkbox"/>
2. Are the personnel policies regarding workplace wrongdoing and internal reporting procedures easily identifiable in the manual?	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the employee/volunteer sign an acknowledgement form?	<input type="checkbox"/>	<input type="checkbox"/>

### B. Table I – Personnel Policies and Reporting Procedures

Do you have written personnel policies that cover the following areas?

	Yes	No
a. Employment orientation	<input type="checkbox"/>	<input type="checkbox"/>
b. Internal reporting/Grievance procedures*	<input type="checkbox"/>	<input type="checkbox"/>
c. Equal Employment Opportunity (EEO)/Anti-discrimination*	<input type="checkbox"/>	<input type="checkbox"/>
d. Sexual harassment*	<input type="checkbox"/>	<input type="checkbox"/>
e. Retaliation prevention	<input type="checkbox"/>	<input type="checkbox"/>
f. Employment at-will statement (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>
g. Violence/Threats of violence*	<input type="checkbox"/>	<input type="checkbox"/>
h. Family and medical leave*	<input type="checkbox"/>	<input type="checkbox"/>

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- |   |                          |                          |
|---|--------------------------|--------------------------|
| i. Drug and alcohol use/abuse                       | <input type="checkbox"/> | <input type="checkbox"/> |
| j. Background/Reference checks                      | <input type="checkbox"/> | <input type="checkbox"/> |
| k. Telephone and electronic communications systems* | <input type="checkbox"/> | <input type="checkbox"/> |
| l. Pregnancy discrimination*                        | <input type="checkbox"/> | <input type="checkbox"/> |
| m. Social media*                                    | <input type="checkbox"/> | <input type="checkbox"/> |
| n. HIPAA/PHI  | <input type="checkbox"/> | <input type="checkbox"/> |

## C. Individual Policies

Use the following questions to evaluate each individual personnel policy:

- |   | Yes                      | No                       |
|---|--------------------------|--------------------------|
| 1. Is the language easy to understand?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Is there a statement addressing the range of disciplinary actions for wrongdoing?                  | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Is there an investigation procedure stated or referred to?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Is there a discipline procedure stated or referred to?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Is there a statement that wrongdoing will cease?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Are the accuser, accused and others directly concerned kept informed?                              | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Is there a retaliation prevention statement?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Is there a statement on false allegations?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Is there a statement that indicates the policy is applicable during any business-related activity? | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Is there a confidentiality statement?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. Do internal reporting procedures accompany each policy and are they easily identifiable?          | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Are there several safe avenues of internal reporting available?                                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. Is there a statement specifying that confrontation is not required?                               | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. Is there a requirement that the accused not be part of the investigation team?                    | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. Is there a third-party reporting procedure?   | <input type="checkbox"/> | <input type="checkbox"/> |

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## Section IV – Sexual Harassment Policy\*

Does this policy include:

	Yes	No
1. Definition of sexual harassment?		
2. Example of what may constitute sexual harassment?	<input type="checkbox"/>	<input type="checkbox"/>
a. Unwelcome sexual advances or requests for sexual favors.	<input type="checkbox"/>	<input type="checkbox"/>
b. Verbal or physical conduct of a sexual nature that adversely affects the employee's employment/position terms or conditions.	<input type="checkbox"/>	<input type="checkbox"/>
c. Express or implied offers of any business-related (i.e., raises or promotions) or non-business-related benefits (i.e., gifts or trips) in exchange for sexual favors.	<input type="checkbox"/>	<input type="checkbox"/>
d. Threatening or taking adverse work-related action against an employee because that employee denied sexual advances or a request for sexual favors.	<input type="checkbox"/>	<input type="checkbox"/>
3. Same gender harassment prohibited?	<input type="checkbox"/>	<input type="checkbox"/>
4. Third-party harassment prohibited?	<input type="checkbox"/>	<input type="checkbox"/>
5. A reporting procedure?	<input type="checkbox"/>	<input type="checkbox"/>

## Section V – Equal Employment Opportunity/Anti-Discrimination Policy\*

Does this policy include:

	Yes	No
1. All types of unlawful discrimination, including		
a. Race	<input type="checkbox"/>	<input type="checkbox"/>
b. Color	<input type="checkbox"/>	<input type="checkbox"/>
c. Religion	<input type="checkbox"/>	<input type="checkbox"/>
d. Gender/sex	<input type="checkbox"/>	<input type="checkbox"/>
e. Age	<input type="checkbox"/>	<input type="checkbox"/>
f. National origin	<input type="checkbox"/>	<input type="checkbox"/>

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- |   |                          |                          |
|---|--------------------------|--------------------------|
| g. Veteran status   | <input type="checkbox"/> | <input type="checkbox"/> |
| h. Disability   | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. An equal employment opportunity statement?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. A statement that employment decisions are based solely on position-related qualifications and abilities? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. A reporting procedure?   | <input type="checkbox"/> | <input type="checkbox"/> |

## **Section VI - Substance Abuse**

Does this policy include:

- |  | <b>Yes</b>               | <b>No</b>                |
|--|--------------------------|--------------------------|
| 1. Controlled substances?                          | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Prescription drugs?                             | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. A list of sources for assistance provided?      | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Reporting procedures that accompany the policy? | <input type="checkbox"/> | <input type="checkbox"/> |

## **Section VII – Violence/Threats of Violence\***

Does this policy include:

- |  | <b>Yes</b>               | <b>No</b>                |
|--|--------------------------|--------------------------|
| 1. Examples of violence and threats of violence which include:   |                          |                          |
| a. Intimidation, harassment, assault, battery, stalking or conduct that causes a person to believe that he or she is under a threat of death or serious bodily injury. | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Inflicting or threatening injury or damage to another person's life, health, well-being, family or property.  | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Possessing a firearm, explosive or other dangerous weapon on premises or using an object as a weapon.   | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Abusing or damaging an employee's or the entity's property.   | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Raising voices, using obscene or abusive language or gestures in a threatening manner.  | <input type="checkbox"/> | <input type="checkbox"/> |

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- f. Joking about any of the above conduct, which is also prohibited.
- 2. A statement that violence policy violations may result in arrest and/or prosecution?
- 3. A reporting procedure?

## **Section VIII – Telephone and Electronic Communication Systems Policy\***

Does this policy include:

- |   | <b>Yes</b>               | <b>No</b>                |
|---|--------------------------|--------------------------|
| 1. The entity's property rights to all electronic communications?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. The entity's right to monitor electronic communications?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. A statement that acquisition, possession or transmission of defamatory, obscene, offensive or harassing material is strictly prohibited.                     | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. A statement that, upon voluntary or involuntary dismissal, employees may not take any computer-related programs, files or materials for personal possession. | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. A statement clarifying the company's "no rights to privacy" policy respecting electronic communications?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. A reporting procedure?   | <input type="checkbox"/> | <input type="checkbox"/> |

## **Section IX – Performance Evaluations\***

- |  | <b>Yes</b>               | <b>No</b>                |
|--|--------------------------|--------------------------|
| 1. Do all supervisors in the entity utilize the same evaluation forms?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Are performance evaluations conducted on or around the date as set forth in written procedures?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Is there a designated person within the entity that reviews all supervisors' evaluations?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Are supervisors evaluated, in part, upon their diligent documentation of all personnel actions and violations or entity rules and guidelines? | <input type="checkbox"/> | <input type="checkbox"/> |

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## Section X – Disciplinary Procedures/Progressive Discipline\*

- |  | Yes                      | No                       |
|--|--------------------------|--------------------------|
| 1. Does your entity follow a procedure for determining whether disciplinary action is appropriate?               | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Are reprimand/warning/suspension forms uniformly and consistently utilized?                                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Do supervisors adequately document the personnel files before disciplinary action is taken?                   | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Does a designated person ensure that supervisors maintain proper and current records of disciplinary actions? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. If a progressive disciplinary procedure is in place, does record keeping reflect that the entity follows it?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Is a written process utilized for employees to appeal disciplinary actions?                                   | <input type="checkbox"/> | <input type="checkbox"/> |

## Section XI – Termination/Dismissals\*

- |   | Yes                      | No                       |
|---|--------------------------|--------------------------|
| 1. Are written internal procedures used to determine whether termination or dismissal is appropriate under the circumstances? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Is there adequate file documentation for terminations/dismissals?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Are there exit interviews?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Is there a review by legal counsel, human resources or other personnel consultant before termination?                      | <input type="checkbox"/> | <input type="checkbox"/> |

## Section XII – Internal Investigations\*

An entity will be judged by its internal response processes and if it treats all parties fairly. Does the entity have a fair process in place to respond to internal complaints of workplace risk and wrongdoing? Investigations shouldn't be limited to sexual harassment allegations. Put in place investigation procedures that are followed in regard to allegations of discrimination, retaliation, internal theft, violence, unsafe acts and other forms of wrongdoing.

- |  | Yes                      | No                       |
|--|--------------------------|--------------------------|
| 1. Is there a person/persons in the entity responsible for investigating allegations/incidents of workplace wrongdoing?              | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Is there an investigation team and do persons on the internal investigation/response team reflect the diversity of the workforce? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Are those responsible for internal investigations trained in the appropriate procedures?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Are non-retaliation measures taken to protect all parties involved in an investigation?   | <input type="checkbox"/> | <input type="checkbox"/> |

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## Section XIII – Training Programs

The major focus in this section is to evaluate whether your entity has taken a proactive approach in preventing and properly responding to workplace wrongdoing. Formalized training and educational programs demonstrate a commitment to preserve a safe and productive work environment. A formalized and periodic training plan shows reasonableness and helps refute charges of negligence. Training reveals that written personnel programs are “active,” rather than “gathering dust on the shelf.”

	Yes	No
1. Has your entity completed training on the following topics within the past 24 months?		
a. New employee orientation	<input type="checkbox"/>	<input type="checkbox"/>
b. Internal reporting and grievance procedures	<input type="checkbox"/>	<input type="checkbox"/>
c. EEO/Anti-discrimination*	<input type="checkbox"/>	<input type="checkbox"/>
d. Sexual harassment*	<input type="checkbox"/>	<input type="checkbox"/>
e. Retaliation prevention	<input type="checkbox"/>	<input type="checkbox"/>
f. Employment at will (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>
g. Violence/Threats of violence	<input type="checkbox"/>	<input type="checkbox"/>
h. Family and medical leave	<input type="checkbox"/>	<input type="checkbox"/>
i. Drug and alcohol use/abuse	<input type="checkbox"/>	<input type="checkbox"/>
j. Telephone and electronic communication systems	<input type="checkbox"/>	<input type="checkbox"/>

### Topics that apply to supervisory training

	Yes	No
k. Hiring	<input type="checkbox"/>	<input type="checkbox"/>
l. Reporting allegations, claims or incidents of workplace risk & wrongdoing	<input type="checkbox"/>	<input type="checkbox"/>
m. Performance evaluations	<input type="checkbox"/>	<input type="checkbox"/>
n. Promotion processes	<input type="checkbox"/>	<input type="checkbox"/>
o. Disciplinary procedures	<input type="checkbox"/>	<input type="checkbox"/>
p. Termination/dismissal	<input type="checkbox"/>	<input type="checkbox"/>
q. Record keeping/File maintenance	<input type="checkbox"/>	<input type="checkbox"/>
r. Background checks	<input type="checkbox"/>	<input type="checkbox"/>