

Double Liability

*A Supervisor's Guide to
Managing Conflict*

**Supervisor's
Participant Manual**



DOUBLE LIABILITY
A Supervisor's Guide to Managing Conflict
Supervisor's Participant Manual

Design\Production: Barbara Alter
Developed by: Employers Resource Group, Inc.

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BNA Communications Inc.
9439 Key West Avenue
Rockville, Maryland 20850-3396
(301) 948-0540

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INTRODUCTION

Imagine being held personally liable for hundreds of thousands of dollars in damages, not for your own actions, but because one of your employees acted improperly toward another. If you fail to properly screen your applicants, or you fail to investigate and resolve complaints of harassment, abusive behavior, defamatory conduct, or threats of violence among your employees, you may find yourself in a situation similar to Jack Cade, the supervisor in the case study that you'll see in this video training program.

This program is designed to help you, as supervisors and managers, handle a variety of employment issues in an increasingly complex legal environment. Unfortunately, many front-line supervisors and managers receive little or no training in the proper way to handle the types of situations presented in this video. The problem is two fold:

- ❑ Some managers are unaware of the potential consequences when they fail to recognize and act on conflicts between employees.
- ❑ Other managers are so concerned about the risk of lawsuits that they refuse to make the difficult decisions that can prevent reduced productivity and the deterioration of employee relations.

This program will make you aware of the pitfalls to avoid and the precautions you can take to limit your personal exposure and your organization's exposure to costly litigation. This information will increase your likelihood of successfully defending yourself and your organization in the event that you are involved in a case that goes to court.

Preview ONLY

WHO IS LIABLE FOR VIOLATIONS OF LABOR AND EMPLOYMENT LAWS?

By now, most supervisors understand that they may be held liable for harassing or abusive conduct against an employee. What many supervisors don't realize is that they can also be held personally liable for failing to respond to reports of harassment, abusive conduct, defamatory statements or actions, and threats of violence. More and more, the supervisor is being sued along with the organization in legal actions. These lawsuits can result in substantial awards of damage to employees who bring them.

HOW THIS TRAINING WILL HELP YOU

This program has three principal objectives:

- To introduce participants to the most common legal pitfalls that can trip up even the most careful supervisors.
- To notify participants that, in addition to liability for their own inappropriate actions or statements, they may be liable for those of their employees.
- To give participants general guidance on how to spot problems and avoid mistakes commonly made by supervisors and managers.

Employers act only through members of management. Therefore, managers and supervisors are considered the employer in the eyes of the law and in the eyes of employees. Consequently, it is crucial for you to be familiar with federal and common law causes of action and how they impact your daily decisions.

Your actions can expose both you and your organization to costly litigation. This training program shows how your actions can work for you or against you in a lawsuit. By learning how to spot potential problem situations and remembering to act in accordance with the lessons of this program, you can reduce the chances that you and your company will be held liable for substantial damages.

FEDERAL AND COMMON LAW PRETEST

This exercise is designed to make you focus on some of the more significant federal and common law issues that are raised in *Double Liability*.

Please circle the correct answer.

1. A supervisor should not investigate reports of harassment unless the harassment is interfering with job performance or unless the employee complains.

TRUE FALSE

2. A supervisor should not interfere with office gossip; preventing the spread of rumors is not a supervisor's job.

TRUE FALSE

3. Employees are normally permitted to search an employee's locker for weapons, even if they don't have the employee's written consent.

TRUE FALSE

4. When faced with a new or difficult situation regarding employee misconduct, it is best to ask other supervisors or the Human Resources Department for advice.

TRUE FALSE

5. Federal law prohibits employers from checking into the background of employees. What they may have done in the past should have no bearing on the present position.

TRUE FALSE

6. When disciplining an employee for spreading rumors, be sure to do it in front of co-workers so that everyone is aware that you will not tolerate such conduct.

TRUE FALSE

7. If you discipline an employee for harassment, don't tell the complaining party what action was taken because it might encourage him or her to file a lawsuit.

TRUE FALSE

8. Once an employee is deemed to be under the influence of drugs or alcohol while at work, the supervisor should find transportation home for the employee.

TRUE

FALSE

9. "No Harassment" policies often cause more problems than they solve; they give employees ideas about bringing unfounded complaints.

TRUE

FALSE

10. If an employee threatens to quit if required to work with another individual because of a protected personal characteristic (i.e. race, gender, religion, disabilities, etc.) always attempt to transfer one of the parties within the company to avoid friction.

TRUE

FALSE

Preview Only

TEN RULES FOR REDUCING WORKPLACE LIABILITY

Rule 1 IMMEDIATELY INVESTIGATE ALL REPORTS OF HARASSMENT AND OTHER ABUSIVE CONDUCT.

Managers and supervisors have a duty to respond to signs of conflict between their employees. It is not enough to look the other way, even in seemingly private affairs. If you are aware of such conduct, and fail to investigate, you can be held legally responsible.

Jack: Cassie! What a great picnic!

Cassie: I don't know, Jack... it's an interesting picnic, but I sense trouble.

Jack: Oh, Cassie, you're always looking at the negative side of things. I've learned my lesson. I'm careful about what I do.

Cassie: But it's not you, Jack. It's them.

Jack: Cassie, you don't think I should get involved in my employees' personal affairs, do you? Come on, enjoy the picnic.

What did Jack do wrong?

What could Jack have done better?

Rule 2 SUPPRESS ANY POTENTIALLY DEFAMATORY RUMORS.

Defamation is the publication of a false statement made with knowledge or reckless indifference for the truth. As a manager or supervisor, you can't ignore seemingly harmless statements which might be defamatory. The individuals who are spreading the rumors must be confronted, and told that they must stop spreading them or they will be disciplined.

Hermes: Relationship?!! This is a disgrace. I'm insulted and I'm mad as hell! I've had it up to here with Dee and her little group of witches. There is nothing going on between Rosie and me, and I resent the implication in that racist message. You better damn well do something about this or I will!

Jack: Hold on, now we can work this out...

Hermes: I want Dee fired and a public apology.

Jack: Calm down now Hermes. You know I have to take all allegations of sexual harassment seriously, no matter what I personally think about them. Don't worry about this, it's no big deal.

What did Jack do wrong?

What could Jack have done better?

Rule 3 RESPOND PROMPTLY TO ALL REPORTED THREATS OF VIOLENCE OR WEAPONS ON THE PREMISES.

Employers should have a written policy that expressly refers to weapons on the premises, and reserves management’s right to search the premises under certain circumstances. The policy should also require employees to cooperate with all investigations. Employees should acknowledge their awareness of this policy in writing before they start employment.

Searches of lockers and other employer property are lawful in most states, particularly when employees are notified up front that they do not have a right or expectation of privacy. Searches should be conducted in a reasonable, discreet manner so as not to humiliate the employee. Throughout the search, two members of management should be present, and typically at least one of them should be the same sex as the employee.

Bill: I heard a rumor today that he has a gun in his locker — just waiting to use it. We can’t let this go any farther. I think we ought to get rid of him. This guy’s a loose cannon.

Jack: A gun...in the plant? Are you sure?

Bill: Jack, I’m not sure, but we’ve got to find out — search his locker. If we find something, he’s gone.

Jack: I see your point, Bill, but I can’t violate someone’s privacy based on rumor. If I were wrong, it would cause one heck of a problem. Look, maybe he’s just blowing off steam. Give it some time. Everything will be all right.

What did Jack do wrong?

What could Jack have done better?

**Rule 4 WHENEVER UNUSUAL CIRCUMSTANCES ARISE,
SEEK ADVICE FROM APPROPRIATE PERSONS
WITHIN THE ORGANIZATION.**

Sometimes supervisors are faced with unusual situations. At these times, it's important that they turn to others in the organization, particularly senior management and human resource personnel. They may have had experience with the same or similar situation and may be able to look at it more objectively.

Jack: Look, Cassie, there may have been little squabbles at the picnic, but it's just a picnic. Sometimes those things just happen.

Cassie: Jack, I'm not overreacting, but there are things happening here that you really need to take a look at.

Jack: I've learned my lesson. The last time I got involved, it was a mess. The best way to stay out of trouble is not to go looking for it.

What did Jack do wrong?

What could Jack have done better?

**Rule 5 PROPERLY SCREEN ALL JOB APPLICANTS.
INVESTIGATE THEIR BACKGROUNDS AND FOLLOW
UP ON REPORTS OF ANY INAPPROPRIATE
CONDUCT.**

Harassment, abusive conduct, and workplace violence can be reduced by effectively screening all job applicants. This can include personal and business reference checks, credit checks, driving records, criminal records, and drug testing depending on the circumstances. Be sure to follow up on any and all reports.

Employee 1: I knew something was going to blow. He's been threatening Bill all week.

Employee 2: I always wondered how Andrew even got a job here. Willis told me he pulled a gun on his last job.

What did Jack do wrong?

What could Jack have done better?

Rule 6 CONDUCT INVESTIGATIONS AND COUNSELING SESSIONS DISCREETLY.

Managers and supervisors can get themselves into trouble by failing to act discreetly. Never confront an employee in an open setting or in the presence of co-workers. Investigations and counseling sessions should be conducted in the supervisor's office where issues can be discussed privately and discreetly.

Jack: Hermes, Rosie...now you're having lunch together? What is it with you two? I've been hearing rumors lately that you guys are having an affair.

Hermes: What? I don't believe this! Why don't you just yell out to everyone in the company!

What did Jack do wrong?

What could Jack have done better?

Preview Only

Rule 7 FOLLOW UP WITH THE VICTIMS OF HARASSMENT. ADVISE THEM OF CORRECTIVE ACTION TAKEN AND ENCOURAGE THEM TO REPORT ANY FUTURE MISCONDUCT OR RETALIATION.

Following an investigation of allegations of harassment, be sure to follow up with the victims. Notify them of what, if any, corrective action has been taken. Remind them that you have a “No Harassment” policy and that it will be enforced. Instruct them to alert you to any future incidents of harassment immediately.

Hermes: What do you mean, no big deal?! My reputation is at stake here! I’m her supervisor!

Jack: I’m going to have a talk with Dee later this afternoon. I’ve already reprimanded her for improper use of the E-mail system. Hermes, I’ll take care of it, don’t worry.

Hermes: I want to make sure this doesn’t happen again.

What did Jack do wrong?

What could Jack have done better?

Rule 8 REMOVE EMPLOYEES IMPAIRED BY THE EFFECTS OF DRUGS AND/OR ALCOHOL FROM THE WORK AREA AND PROVIDE THEM WITH SAFE TRANSPORTATION HOME.

It's important to maintain a drug and alcohol-free work environment. Supervisors and managers must understand that such a policy is only effective when it is strictly enforced. Quick intervention not only saves you and your organization a great deal of time and effort wasted in lost productivity, it may well save lives.

If you see any sign of impairment, immediately remove the employee from the workplace. Remember that it's equally important that you arrange safe transportation home; failing to make these arrangements can expose you to substantial liability if that employee ends up causing an accident on his way home.

Bill: Jack, I swear to you that Dion smells worse than he did the other day.

Jack: But is he drunk?

Bill: Well, I don't know if he's drunk or not. But it sure as hell doesn't smell like cough syrup. If you'll authorize it Jack, I'd like to call him a cab and send him home.

Jack: A cab? Forget it, I've done that guy enough favors. Besides, we've got two other men out today. Somebody's got to work the crane. We've got orders to ship.

What did Jack do wrong?

What could Jack have done better?

Rule 9 TAKE ACTION TO PREVENT AND CORRECT ALL FORMS OF HARASSMENT.

An effective supervisor enforces the company's policies. He or she also acts at the first sign of trouble to prevent a recurrence of inappropriate or abusive conduct.

Jack: Now, I don't put any credence in those rumors, but...

Rosie: Jack, these rumors could destroy my marriage... and my career.

Hermes: I am insulted! What kind of company is this?

Jack: Look, I believe you. I don't buy the rumors, but there is nothing I can do about it. So I want you to know, it's hands off for me.

What did Jack do wrong?

What could Jack have done better?

Rule 10 ENCOURAGE EMPLOYEES TO WORK WITH EACH OTHER.

Employers must not allow their employees to discriminate against each other. Those who refuse to work with an employee because he or she has AIDS or because of some other discriminatory reason should be disciplined.

Helen: Jack, I want you to know that I am not going to risk working with Felix anymore. I've got kids; I just can't do it. We've all talked about it. Everyone in the department knows he has AIDS.

Jack: Now wait a minute. That's a serious allegation. How can you be sure?

Helen: All the signs are there — he looks emaciated...and I swear Joan says she's seen some red patches on his skin.

Jack: Now Helen...

Helen: And you know, just the way he is. Now I feel for the man, but I can't put my children at risk. Period.

Jack: Now, according to all I have read, you can't spread AIDS through anything except sexual contact...

Helen: Jack, no one really knows, and I'm not taking the chance. And a lot of the others feel the same way I do.

Jack: Let me see what I can do.

What did Jack do wrong?

What could Jack have done better?

SUMMARY OF RULES

- Rule 1** Immediately investigate all reports of harassment and other abusive conduct.
- Rule 2** Suppress any potentially defamatory rumors.
- Rule 3** Respond promptly to all reported threats of violence or weapons on the premises.
- Rule 4** Whenever unusual circumstances arise, seek advice from appropriate persons within the organization.
- Rule 5** Properly screen all job applicants. Investigate their backgrounds and follow up on reports of any inappropriate conduct.
- Rule 6** Conduct investigations and counseling sessions discreetly.
- Rule 7** Follow up with the victims of harassment. Advise them of corrective action taken and encourage them to report any future misconduct or retaliation.
- Rule 8** Remove employees impaired by the effects of drugs and/or alcohol from the work area and provide them with safe transportation.
- Rule 9** Take action to prevent and correct all forms of harassment.
- Rule 10** Encourage employees to work with each other.

Notes

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FEDERAL AND COMMON LAW POST-TEST

Please circle the correct answer.

1. A supervisor should only respond to derogatory comments made by an employee toward another employee if they are job-related.

TRUE FALSE

2. A supervisor should suppress derogatory comments about co-workers, even if he or she believes them to be true.

TRUE FALSE

3. A supervisor can only search an employee's locker when employee safety is at risk.

TRUE FALSE

4. When uncertain about a decision, seek advice from fellow employees of the individual accused.

TRUE FALSE

5. An applicant's background has little bearing on his or her future job performance and conduct, and digging up past problems can only subject a supervisor to liability for invasion of privacy.

TRUE FALSE

6. Investigations of complaints of improper conduct should be conducted openly and publicly.

TRUE FALSE

7. Once a harassment complaint is made, a supervisor may not discuss his or her disciplinary actions with the complaining party.

TRUE FALSE

8. When a supervisor suspects an employee is taking drugs, he should send him home immediately.

TRUE FALSE

9. Employers should not encourage their employees to read and sign their “No Harassment” policies because it will inform them of the law and encourage them to file lawsuits.

TRUE

FALSE

10. There’s little an employer can do to require an employee to work with another employee.

TRUE

FALSE

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APPENDIX

AN OVERVIEW OF VARIOUS FEDERAL LAWS AND COMMON LAW CAUSES OF ACTION

The following is a summary of the legal principles that relate to the employment issues raised in this video. Current case law illustrates the application of these principles.

HARASSMENT

Title VII of the Civil Rights Act of 1964 protects workers from discrimination based upon race, sex, national origin, color, and religion. Various federal laws have expanded these protections to include age, disability, and citizenship status, and many state and local laws go farther by extending protection to areas such as marital status and even sexual preference.

Dating back to 1971, the Federal courts have ruled that workers have a right to an environment free of ethnic, religious or racial discrimination. They have held that workers' rights are violated by the pervasive use of derogatory terms and by abusive treatment.

Finally in 1991, sexual harassment was recognized as a form of prohibited discrimination. The Civil Rights Act of 1991 was enacted for the express purpose of providing additional remedies under federal law to deter unlawful harassment. The Act facilitates actions against employers and encourages litigation by providing for compensatory and punitive damages and trial by jury. It authorizes as much as \$300,000 in compensatory damages in addition to the back pay, reinstatement, and attorney's fees provisions previously available under Title VII.

There are two types of sexual harassment:

1. **Quid Pro Quo:** Submission to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature is made a term of employment or used as a basis for employment decisions, either explicitly or implicitly. The employer is strictly liable for its supervisor's "quid pro quo" sexual harassment. Regardless of whether the employer knows about the harassment, it is liable for economic losses such as a lost job, promotion, transfer, etc. as well as punitive damages.
2. **Hostile Environment:** Such conduct has a purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. The organization is liable if it condoned prohibited conduct or created an environment which permitted it to occur. Relevant factors in determining the employer's liability include:

- Whether the employer knew or should have known of the hostile work environment;
- The existence of a policy that specifically addresses sexual harassment;
- The existence of a grievance procedure that does not require that a complaint be made first to an immediate supervisor, against whom most harassment claims are made.

Supervisors must understand that they may be personally liable not only for engaging in sexual harassment, but for failing to act quickly and properly when reports or complaints about said activity among employees are made or when the supervisor should have known it was occurring.

Sample Judgment:

In *Preston v. Income Producing Management*, 66 FEP Cases 1225 (D. Kan. 1994) the Court held that the jury's award of punitive damages against an employer for the conduct of a manager of its fast food restaurant, who did nothing when a female employee complained of sexual harassment, was appropriate. The manager had authority to hire and fire employees and had the further responsibility of disciplining and/or counseling employees on areas of discriminatory practice. The Court described the employer's position that it was immune from punitive damages for the inaction of its manager as "nonsense."

DEFAMATION

Defamation involves communicating to others something which harms the reputation of another person, where the statement was made falsely or with reckless disregard for the truth. Even if a supervisor makes a statement (e.g., that someone may have violent tendencies) which later turns out not to be true, if the communication is made only to those having a legitimate need to know and is based on facts obtained from a careful investigation, the supervisor will have a valid defense against defamation.

Supervisors must be careful to remember that statements of pure opinion, as opposed to statements of fact, are not considered capable of bearing defamatory meaning. Therefore, supervisors should not be concerned about defamation claims when completing performance evaluations for their employees. Trouble often arises when supervisors give glowing reviews of employees who, in reality, are likely to be eventually terminated.

Sample Judgments:

The Court in *Staples v. Bangor Hydro-Electric*, 8 IER Cases 1153 (Maine Sup. Jud. Ct. 1993) held that a supervisor's statement that he had reason to believe an employee had sabotaged the corporation's computers was defamatory despite the employer's contention that the statement merely expressed the supervisor's opinions or suspicions. The employer maintained that statements among its own employees can not be considered publication

to a third party for purposes of a defamation action. The Court disagreed, and added that although a communication to fellow employees may have been protected by a qualified privilege, it can nevertheless be a publication of the information. The Court also disagreed with the employer's contention that the statement was conditionally privileged based on the fact that the privilege is lost if the individual knew his statement to be false or that he recklessly disregarded its truth or falsity, or the individual acted entirely out of ill will toward the plaintiff.

In another case, *Lyons v. National Car Rental Systems*, 9 IER Cases 1302 (1st Cir. 1994), an employee of a car rental agency who was accused of car theft and interrogated by the Chief of Security, stated a claim for slander even though the employer had grounds for suspecting that the theft was committed by the employee. A question of fact existed as to whether the Security Chief's statements were made with recklessness or malice sufficient to overcome the employer's conditional privilege. The Court held that a jury could conclude that statements misrepresenting the existence of "strong evidence" that the employee was involved in the theft, calling her a liar, and threatening her with prosecution if she did not confess were malicious. Therefore, the First Circuit reversed the District Court's grant of summary judgment for the employer.

NEGLIGENT HIRING

In negligent hiring cases, the issue of employer responsibility focuses on whether the employer's pre-employment investigation into the employee's background was adequate under the circumstances. Liability rests where the employer "knows" or "should have known" of an applicant's potential for harming someone.

The extent of the employer's duty to investigate an individual's background depends on the type of position for which the individual is being considered. Where an employee's duties consist of outside work with only incidental contact with others, the potential risk of harm to others is usually limited, and, therefore, the courts may require less in an employment inquiry. There, obtaining relevant past employment information and personal data during the interview process may be sufficient without further inquiry. On the other hand, greater scrutiny will be expected of individuals being considered for a position of public trust (i.e., policeman, security guard), or for positions involving substantial contact with the public or access to areas such as hotel rooms or apartments.

In some circumstances, an employer may be vulnerable to legal claims for not inquiring into an applicant's off-duty conduct. Negligent hiring allows a party such as a resident, client, customer, visitor, or employee to sue an employer for not conducting an adequate inquiry into an employee's or applicant's off-duty conduct or background.

Sample Judgment:

In *Medina v. Graham Cowboys, Inc.*, 7 IER Cases 399 (N.Mex. Ct. App. 1992) the plaintiff brought an action against a bar after a barroom doorman had assaulted the plaintiff in the parking lot. The Court concluded that the employer negligently hired the doorman since it knew or should have known that he had been in several previous fights at the bar and elsewhere, he was unfit for the position, and he would pose a danger to patrons if asked to remain "on call" on the employer's premises.

NEGLIGENT RETENTION

An employer may be liable for failing to fulfill a duty of reasonable care owed to its employees and third parties, by refusing to discharge an employee with a demonstrated propensity for misconduct. This claim is most similar to hostile work environment claims inasmuch as the standard for liability is that the employer "knew or should have known" that the conduct was occurring or that the harasser had the propensity to commit such conduct.

Sample Judgment:

In *Bryant v. Livigni*, 8 IER Cases 1349 (Ill. App. Ct. 5th Dist. 1993), the Court upheld an award of punitive damages against an employer for negligent retention when its manager, in the course of a visit to the store during his off-duty hours and while intoxicated, pulled a four year old boy from a car and threw him in the air after seeing the boy's companion urinate against the outside store wall. The plaintiff had introduced evidence that the employer had promoted the manager seven years earlier, shortly after he threw an empty milk crate that struck and injured a co-worker. The Court also relied on the fact that a co-worker knew that the manager had broken his 13 year old son's collarbone two years earlier while disciplining him by throwing him into bed.

THE AMERICANS WITH DISABILITIES ACT

Title I of the ADA prohibits discrimination against disabled persons in private employment by private employers with 15 or more employees.

Sample Judgments:

In *Hindman v. GTE Data Services*, 3 AD Cases 641 (M.D. Fla. 1994), an employer discharged an employee who brought a loaded gun onto company property. The employee claimed that his irrational behavior was caused by a chemical imbalance. Initially the Court denied the employee's motion for summary judgment and held that a question of fact existed as to whether the employer could have reasonably accommodated the employee and as to whether the employee posed a direct threat to the health and safety to others in the workplace. Ultimately however, the court dismissed the case, (4 A.D. Cases 182 (M.D. Fla. 1995), stating that the employer did not violate

the ADA because it did not know of the alleged disability until after it made its decision to discharge him.

In another case, *Doe v. City of New York*, (2d Cir. 1994) the plaintiff filed a discrimination charge stating that he had not been hired because the employer suspected he was HIV positive. The parties then entered into a settlement agreement which contained a confidentiality clause. Despite the confidentiality clause, the New York Commission on Human Rights issued a press release disclosing the terms of the conciliation agreement. The Court held that individuals who are HIV positive have a right to privacy under the U.S. Constitution. The Court added that issues remained as to whether the Commission's interest in issuing a press release was substantial and therefore outweighed the employee's privacy interest.

Preview Only

FEDERAL AND COMMON LAW PRETEST ANSWERS

1. A supervisor should not investigate reports of harassment unless the harassment is interfering with job performance or unless the employee complains.

FALSE. All incidents of suspected harassment, reported or not, must be investigated immediately upon becoming aware of such conduct. Supervisors must not “look the other way” and hope that the employee never complains.

2. A supervisor should not interfere with office gossip; preventing the spread of rumors is not a supervisor’s job.

FALSE. Defamation is the publication of a false statement made with knowledge of its falsity, or reckless indifference for its truth or falsity. It can be the basis of a lawsuit and the supervisor can be found liable along with the defaming party if he or she fails to suppress any potentially defamatory rumors.

3. Employees are normally permitted to search an employee’s locker for weapons, even if they don’t have the employee’s written consent.

TRUE. Managers and supervisors have an obligation to act whenever they learn of the potential for violence at the worksite. Searches of lockers and other employer property (where necessary to protect property or to prevent injury) are lawful in most states, particularly when employees are notified up-front that they do not have a right or expectation of privacy in those areas. Written consent is not normally required. However, the laws vary from state to state and no search should be undertaken without consulting council.

4. When faced with a new or difficult situation regarding employee misconduct, it is best to ask other supervisors or the Human Resources Department for advice.

TRUE. Many supervisors mistakenly believe that they don’t need help because they know their departments better than anyone else. Your fellow supervisors or Human Resource specialist might have dealt with similar situations before.

5. Federal law prohibits employers from checking into the background of employees. What they may have done in the past should have no bearing on the present position.

FALSE. Reference checks should be done on all job applicants. Checking personal and business references, credit histories, and criminal records may be appropriate especially for certain types of positions.

6. When disciplining an employee for spreading rumors, be sure to do it in front of co-workers so that everyone is aware that you will not tolerate such conduct.
- FALSE.** Investigations and counseling should be done discreetly. The intent is to stop the improper conduct, not to embarrass the employee or set an example. If the accusations are untrue, you could be sued for defamation.
7. If you discipline an employee for harassment, don't tell the complaining party what action was taken because it might encourage him or her to file a lawsuit.
- FALSE.** Always follow up with the victims of harassment. Advise them of corrective action taken and encourage them to report any future misconduct or retaliation.
8. Once an employee is deemed to be under the influence of drugs or alcohol while at work, the supervisor should find transportation home for the employee.
- TRUE.** If you suspect that an employee is under the influence of drugs or alcohol, provide him or her with safe transportation home. Quick intervention not only saves time and effort in lost production, but it also saves lives.
9. "No Harassment" policies often cause more problems than they solve; they give employees ideas about bringing unfounded complaints.
- FALSE.** By openly opposing harassing behavior and establishing a method for reporting such conduct, the employer is stating clearly that he or she will not tolerate inappropriate behavior. This helps not only to prevent harassment before it takes place, but diminishes the chances of the employer and supervisor being found liable in the event it does occur.
10. If an employee threatens to quit if required to work with another individual because of a protected personal characteristic (i.e. race, gender, religion, disabilities, etc.) always attempt to transfer one of the parties within the company to avoid friction.
- FALSE.** Encourage employees to work with one another. More importantly, acceding to an employee's wishes based on unlawfully discriminatory stereotypes can, itself, be unlawful.

FEDERAL AND COMMON LAW POST-TEST ANSWERS

1. A supervisor should only respond to derogatory comments made by an employee toward another employee if they are job-related.

FALSE. Any and all derogatory or harassing comments should be investigated immediately. Managers and supervisors have a duty to maintain a workplace free from harassment and abuse.

2. A supervisor should suppress derogatory comments about co-workers, even if he or she believes them to be true.

TRUE. Although the fact that a statement is true might preclude a finding of defamation, an employee may still claim harassment. Moreover, derogatory comments about co-workers do nothing but lower employee morale.

3. A supervisor can only search an employee's locker when employee safety is at risk.

FALSE. Searches of lockers and other employer property are permitted in most states without regard to the reason behind the search. This is especially true when employees are notified before hand that they do not have an expectation of privacy in those areas. The search should be done in a reasonable, discrete manner, so as not to humiliate the employee.

4. When uncertain about a decision, seek advice from fellow employees of the individual accused.

FALSE. There are times when supervisors need guidance in dealing with an employee. However, it should not come from the employee's co-workers. Seek advice from other supervisors, senior management or human resource individuals.

5. An applicant's background has little bearing on his or her future job performance and conduct, and digging up past problems can only subject a supervisor to liability for invasion of privacy.

FALSE. Problems such as workplace violence, sexual harassment, theft and others can be reduced by carefully screening applicants and recognizing problem employees. A supervisor's failure to properly screen applicants can result in negligent hiring claims.

6. Investigations of complaints of improper conduct should be conducted openly and publicly.

FALSE. Investigations regarding reports of harassment and improper conduct should be conducted as discretely as possible so as to protect the dignity of all employees. Otherwise, it could lead to a defamation claim if the allegations turn out to be false.

7. Once a harassment complaint is made, a supervisor may not discuss his or her disciplinary actions with the complaining party.

FALSE. The complaining party should be notified of the actions taken in response to the complaint. The complaining party should know that the organization has taken the claim seriously, acted quickly to stop it, and will prevent further occurrences.

8. When a supervisor suspects an employee is taking drugs, he should send him home immediately.

FALSE. The employee should be removed from his work area, and then taken for a drug test assuming this is permissible. The supervisor should arrange for safe transportation to the drug testing facility and home from there.

9. Employers should not encourage their employees to read and sign their "No Harassment" policies because it will inform them of the law and encourage them to file lawsuits.

FALSE. In order to reduce workplace harassment, every employer should have a "No Harassment" policy, signed by all employees. Moreover, courts frequently look to see if an employer has an accessible policy in determining liability in hostile environment lawsuits.

10. There's little an employer can do to require an employee to work with another employee.

FALSE. An employee's refusal to work with another creates conflict. If an employee refuses to work with a co-worker, he is subject to discipline, up to and including discharge.