

PLUNKETT COONEY



Conducting Employment Investigations

Protecting Your Employees and Business

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Presented by
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Featured Speaker



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CONDUCTING EMPLOYMENT INVESTIGATIONS PLUNKETT COONEY

First, Your Policies

- Five important policies to protect your employees and your company that may trigger or facilitate an investigation.

CONDUCTING EMPLOYMENT INVESTIGATIONS PLUNKETT COONEY

Equal Employment Opportunity Policy

- _____ is an equal employment opportunity employer and provides employment and advancement opportunities to its employees without discrimination on the basis of race, color, religion, sex, age, national origin, disability, or any other protected characteristic as established by law. This policy of equal employment opportunity applies to all policies and procedures relating to the recruitment and hiring, compensation, benefits, termination and all other terms and conditions of employment.

Continued



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Equal Employment Opportunity Policy

- If an employee believes that he or she has been the victim of discrimination, he/she should report that fact immediately to his/her supervisor or office manager. After receiving such a complaint, the company will undertake a full and complete investigation of charges. If it is determined that discrimination has occurred, the company will take steps to eliminate that discrimination and take disciplinary action against any employee whom it determines engaged in discriminatory behavior. _____ prohibits retaliation against any employee who reports discrimination or harassment, or participates in an investigation of such reports.



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Employees With Disabilities

- The Americans With Disabilities Act prohibits discrimination against persons with disabilities. This company does not discriminate against qualified individuals with a disability with regard to compensation, benefits, recruitment, hiring, termination, or any other terms and conditions of employment. We endorse the goals of the Act and attempt to provide reasonable accommodations to ensure equal access to all employment opportunities within the company.

Continued



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Employees With Disabilities

- Therefore, if you have a disability that affects your ability to perform the essential functions of your job, you should make a request for accommodation in writing to the company's office manager as soon as possible.
- In Michigan this request must be made, in writing, within 182 days after the need for accommodation is known.

Continued

Non-Discrimination & Anti-Harassment Policy

- _____ is committed to a work place that is free of discrimination or harassment. All employees have the right to work in a professional atmosphere that promotes equal employment opportunities and prohibits discriminatory practices, including harassment.

Continued

Non-Discrimination & Anti-Harassment Policy

- Definitions of harassment
 - Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct or communication of a sexual nature when:

Continued

Harassment

- Submission to such conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment.
- Submission to or rejection of such conduct or communication by an individual is used as a factor in decisions affecting such individual's employment.

Continued

Harassment

- Such conduct or communication has the purpose or effect of substantially interfering with an individual's employment or creating an intimidating, hostile or offensive employment environment.

Harassment on Basis of Other Protected Characteristics

- Under this policy, harassment constitutes verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his or her race, color, religion, national origin, age, disability, marital status, or any other characteristic protected by law and that:

Continued

Harassment on Basis of Other Protected Characteristics

- Has the purpose or effect of creating an intimidating, hostile or offensive work environment;
- Has the purpose or effect of substantially interfering with an individual's work performance, or
- Otherwise adversely affects an individual's employment opportunities.

Continued



Harassment on Basis of Other Protected Characteristics

- _____ prohibits any sexual or other discriminatory, harassing behavior. This behavior is a serious violation of the company's policies and procedures.
- This policy applies to all applicants and employees and prohibits harassment, whether engaged in by fellow employees, by a supervisor, manager, or by a customer or vendor.



Retaliation

- The company prohibits retaliation against any employee who reports discrimination or harassment or participates in an investigation of such reports. Retaliation against individuals for reporting harassment or discrimination or for participating in an investigation of harassment or discrimination claim is a serious violation of this policy, and, like harassment or discrimination itself, will be subject to disciplinary action.



Reporting

- _____ strongly urges the reporting of all incidents of discrimination, harassment or retaliation, regardless of the offender's identity or position. Early reporting and intervention have proven to be the most effective methods of resolving actual or perceived incidents of harassment, so that rapid and constructive action can be taken. The company will make every effort to stop alleged harassment before it becomes severe or pervasive, but can only do so with the cooperation of its employees. *Continued*



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Reporting

- Individuals who believe they have experienced conduct that they believe is contrary to the company's policy, or who have concerns about such matters, should file their complaints with their regional manager, the office manager or company executive as soon as possible.
- Employees are not obligated to bring their complaints to their immediate supervisor before bringing the matter to the attention of the office manager or their regional manager.

Continued



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Reporting

- Any reported allegations of harassment, discrimination or retaliation will be investigated promptly, thoroughly and impartially. Misconduct constituting harassment, discrimination or retaliation will be dealt with promptly and appropriately.



CONDUCTING EMPLOYMENT INVESTIGATIONS



Violence in Workplace Policy

- Our company is committed to providing a safe environment for its employees, customers and visitors. In order to provide a safe workplace, we require:

Zero Tolerance for Violence

- “Violence” is defined to include physically harming another in any way; shoving or pushing; physical intimidation or coercion; brandishing weapons and/or threatening or talking of violence toward another. Any display or threat of violence in the workplace may subject an employee to disciplinary action up to and including immediate termination.

Reporting Potential Problems

- It is each employee’s responsibility to prevent violence in the workplace. Employees can help by reporting to management their observations in the workplace. In keeping with our “Open Door Policy,” we urge immediate reporting of any violent activity.

Continued

Reporting Potential Problems

- Employees can help maintain the violence free environment that the company seeks through communication and cooperation.
- In the event of a violent incident, follow company procedures regarding emergency situations to ensure the safety of co-workers, customers and visitors.

Zero Tolerance for Weapons

- Weapons of any kind, including, but not limited to guns, brass knuckles, nunchaku, knives, clubs, or any other objects that are intended to be used as a weapon, are prohibited and are not permitted on company premises.
- Possession of weapons on company property, regardless of whether the employee obtained a permit to carry such weapon, will subject that employee to disciplinary action up to and including immediate termination.

Open Door Policy

- The company encourages all employees, regardless of position, to discuss their problems and concerns with management.
- If you have a concern at work, we will review the concern with you and attempt to resolve it according to the following procedure:

Continued

Open Door Policy

- Explain your problem or concern to your office manager. Generally, your manager should be able to resolve the issue.
- Your problem may be such that you prefer to discuss it with your regional manager or operations manager. Always feel free to do so.

Continued

Open Door Policy

- It is the policy of our company that all employee suggestions and complaints shall be given consideration.
- There will be no discrimination or retaliation against any employee because that employee has presented a complaint or problem.

Open Door Policy

- The company is committed to this Open Door Policy and is confident that it will work to resolve your problem or concern.

Beyond Your Policies

- Complaints made pursuant to any of these policies will trigger a duty to investigate.
- However, there are other reasons for investigations, such as an employee who appears to be “blowing the whistle” under Michigan Whistleblowers’ Protections Act.

Michigan Whistleblowers’ Protection Act, MCL 15.361 et seq.

- Sec. 2. An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee’s compensation, terms, conditions, location, or privileges of employment because the employee, or person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or suspected violation of law or regulation or rule promulgated pursuant to a law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because the employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

Additional Reasons for Investigations

- Suspected theft
- Time card abuse
- Other violation of the employer’s policies and procedures.

What Triggers the Need to Investigate?

- Only complaints made pursuant to policies through proper channels?
- Complaints made by others?
- Anonymous complaints?
- Unexplained changes in behavior or productivity?
- Loss of money or company assets?
- EEOC or MDCR complaint or receipt of a lawsuit?

Initial Steps

- Is an investigation necessary?
 - If so, are intermediate measures necessary?
 - Making changes to avoid contact between the parties
 - Identify individuals to conduct the investigation.
 - Individuals trained in skills required for interviewing witnesses and evaluating credibility; and that are not directly under the supervision of anyone who is accused of wrongdoing.

Interviews

- The investigator and a second person, who will act as a witness, should interview the complaining party, the individual complained about and any third parties who can reasonably be expected to have relevant information.
 - Confidentiality
 - Non Retaliation

Questions to ask Complainant (Assuming sexual harassment)

- Who, what, when, where, and how: *Who* committed the alleged harassment? *What* exactly occurred or was said? *When* did it occur and is it still ongoing? *Where* did it occur? *How often* did it occur? *How* did it affect you?
- How did you react? What response did you make when the incident(s) occurred or afterwards?

Continued



Questions to ask Complainant (Assuming sexual harassment)

- How did the harassment affect you? Has your job been affected in any way?
- Are there any persons who have relevant information? Was anyone present when the alleged harassment occurred? Did you tell anyone about it? Did anyone see you immediately after the episode(s) of alleged harassment?

Continued



Questions to ask Complainant (Assuming sexual harassment)

- Did the person who harassed you harass anyone else? Do you know whether anyone complained about harassment by that person?
- Are there any notes, physical evidence or other documentation regarding the incident(s)?
- How would you like to see the situation resolved?
- Do you know of any other relevant information?



Questions to ask the Alleged Harasser

- What is your response to the allegations?
- If the harasser claims that the allegations are false, ask why the complainant might lie.
- Are there any persons who have relevant information?
- Are there any notes, any physical evidence or other documentation regarding incident(s)?
- Do you know of any other relevant information?

Questions to ask Third Parties

- What did you see or hear? When did this occur? Describe the alleged harasser's behavior toward the complainant and toward others in the workplace.
- What did the complainant tell you? When did she/he tell you this?
- Do you know of any other relevant information?
- Are there other persons who have relevant information?

Before Reviewing Evidence

- Make sure that you have interviewed all of the individuals who may have information and have reviewed all documents that may be helpful.
- If you have obtained information from interviews done after the initial interview with the complainant that raise additional questions, you should go back and ask those questions to the complainant and/or the other witnesses to make sure that you have a full and a complete understanding of the facts.

Documentation

- Summarize questions asked and the answers given by each of the witnesses and have them sign those summaries as being true and accurate, with a notation that if there is anything that is untrue or any additions that they want to make, to please do that before signing the statement.

Credibility Determination

- If there are conflicting versions of what occurred, the interviewers must make determinations regarding credibility, and in making those determinations, should consider:
 - Whether the testimony was believable and made sense under all of the circumstances.

Continued

Credibility Determination

- Whether the person had reason to lie; whether they appeared to be telling the truth.
- Did the alleged harasser have a history of similar behavior in the past?
- Is there witness testimony or physical evidence that corroborates the individual's testimony?

Reaching a Determination

- After reviewing all of the evidence, including interviews, documents and credibility issues, the interviewers should make a determination as to whether or not harassment occurred.
- After making this determination, the parties should be informed.

Immediate & Appropriate Corrective Action

- The company must undertake immediate and appropriate corrective action, including discipline, whenever it determines that the harassment has occurred and the parties should be informed of those measures.

Appropriate Disciplinary Measures

- Proportional to the seriousness of the offense
- Calculated to stop the conduct
- No retaliation

The PLUNKETT COONEY
Informed Employer
Webinar Series

- **June 9**
Keeping Employers Out of the Weeds...
With Medical Marijuana and Social Media
- **Sept. 15**
Who can it be now? - What to do When the
Department of Labor Comes Knocking
- **Nov. 17**
ADA & FMLA - The Good, Bad & Ugly

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Upcoming Event

- **Nov. 10**
Employment Law Mock Trial
Troy Marriott Hotel

This half-day morning session will provide attendees with a behind-the-scenes look at a jury trial, including live jury deliberations, based on an actual employment law case.

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Thank You for Attending!

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