

10 Common Employment Law Mistakes

Utah League of Cities and Towns
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Mistake Number One



- Failure to keep the Employee Handbook Up to Date

Why Have an Employee Handbook?

- Notice
 - Standards of Conduct
 - Performance Expectations
 - At Will Status
 - Employees Rights and Duties
- Provide Good Evidence
 - Contract Disclaimers
 - Sexual Harassment Policies

Mistake Number Two

- Creating an “Implied Contract”



What is an “Implied Contract?”

- Representations that Create the Impression of Guaranteed
 - Treatment
 - Procedures
 - Longevity

Avoid

- Promissory Language
 - “Will”
 - “Shall”
 - “Always”
 - “Never”
- Any Policy You Will Not Really Carry Out
- Policies Intended to be Enforced Against Employees

Mistake Number Three



- Failing to Have an Adequate Sexual Harassment Policy

Why Have a Sexual Harassment Policy?

- Provides an Affirmative Defense to Sexual Harassment Claims
- Avoids Punitive Damages Claims

A Good Sexual Harassment Policy Includes

- Statement of Equal Employment Opportunity
- Prohibition of Sexual Harassment
- Definition of Sexual Harassment
- Complaint Procedure
- Description of Investigation/Corrective Action
- Prohibition of Retaliation
- Acknowledgment

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Mistake Number Four

- Falling Into the “Retaliation Trap”

Retaliation Is

- Protected Activity
- Adverse Employment Action
- Causal Connection Between the Two

Protected Activity

- Exercising Certain Statutory Rights
- Opposing Discrimination or Harassment
- Participation in an Investigation

Adverse Employment Action

- Dissuade a Reasonable Employee from Complaining

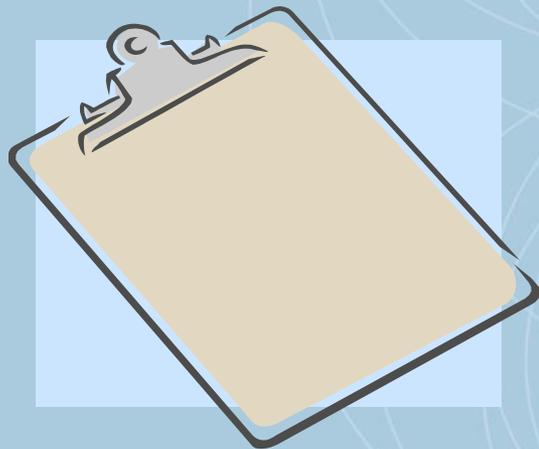
Causal Connection

- Temporal Proximity
- Documentation

If the Employee has Engaged in Protected Activity

- Proceed with Caution

Mistake Number Five



- Failure to Follow Proper I-9 Procedures

I-9 Procedures

- All Employees
- Within 3 Days of Hire
- Follow the Form



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DOCUMENT RETENTION

- Later of
 - 3 Years from Hire
 - 1 Year from Termination
- Track Dates
- Do Not Retain Supporting Documents

Avoiding Discrimination Claims

- Do Not
 - Specify Which Documents are Acceptable
 - Challenge Documents that Appear Genuine
 - Refuse Documents that Expire
 - Consider Appearance, Accent, Name or Citizenship
 - Require Citizenship or Permanent Resident Status

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Mistake Number Six



- Improper Classification of Employees as Exempt from Overtime Requirements

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Salaried ≠ Exempt

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Common Exemptions

- Executive
- Administrative
- Professional
- Outside sales
- Computer professionals



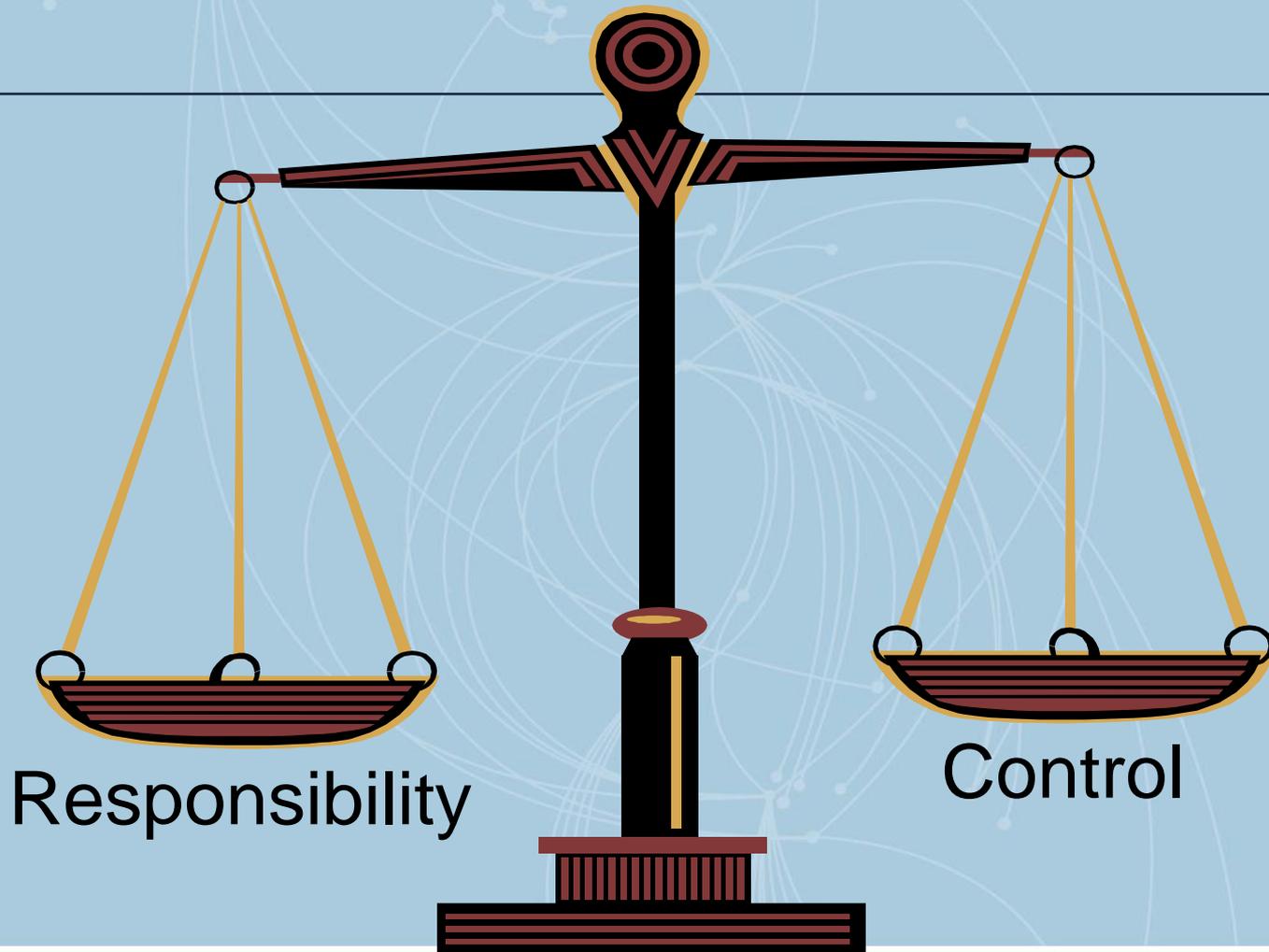
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Mistake Number Seven

- Treating Employees as “Independent Contractors”



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Responsibility

Control

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Factors to Consider

- How, When, Where, Who
- Required Training
- Reporting
- Periodic Pay
- Payment of Expenses
- Furnishing Tools or Materials
- Profit & Loss

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Mistake Number Eight

- Improper Evaluation and Screening of Applicants



At Least Some Background Investigation is Advisable

- At a minimum, confirm work history and references
- For some jobs, a more extensive background check may be advisable
- Written Consent

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Mistake Number Nine

- Failure to Accurately Document Performance



Why Document Performance?

- Notice and Opportunity to Correct
- Create a Record of Problems

Common Problems with Performance Evaluations

- “Grade Inflation”
- Lack of Thoroughness
- Improper Tone

Mistake Number Ten



- Mishandling Terminations

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Termination: The Ultimate Employment Decision

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Two Rules of Thumb

- Base Decisions on Fact
- Treat Employees with Dignity and Respect

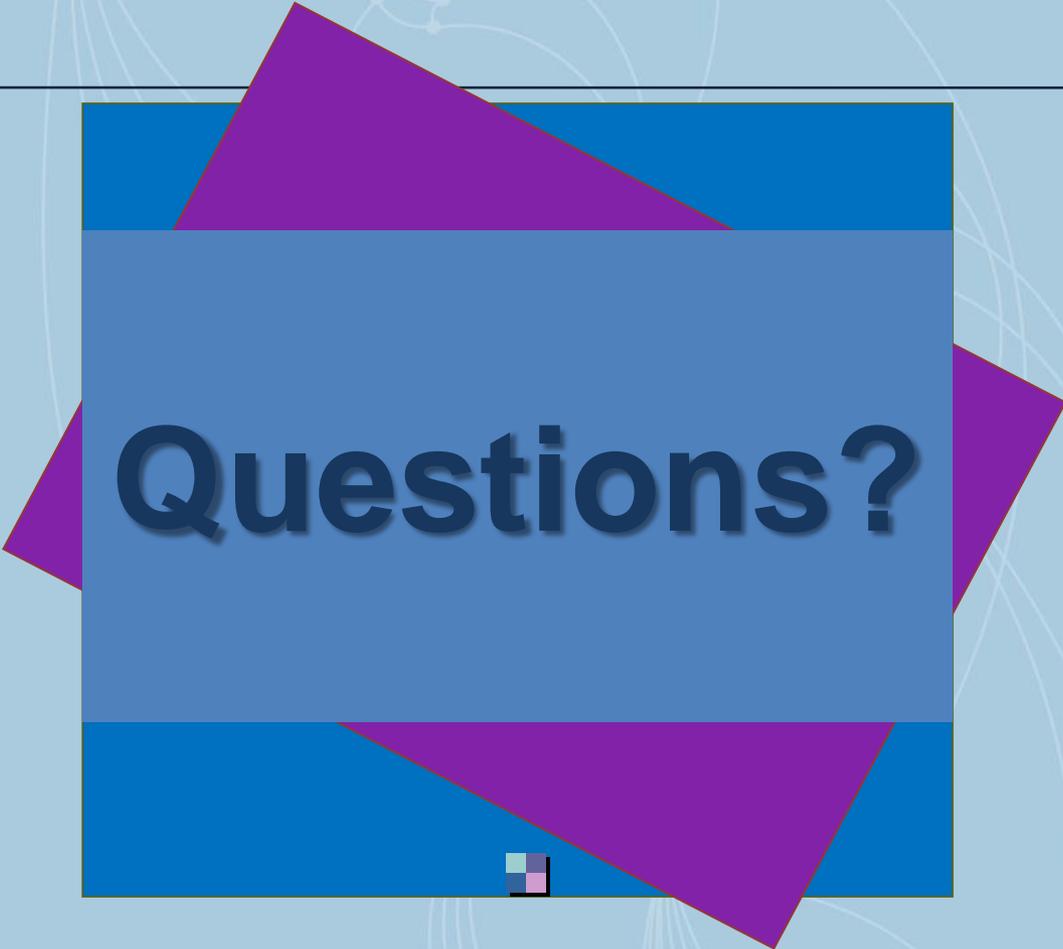
Base Decisions on Facts

- Understand the Context
- Investigate
- Take Your Time

Treat Employees With Dignity and Respect

- Setting and Tone
- Be Clear and to the Point
- Respect the Person's Dignity
- Give Employee a Road Map

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Questions?

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