

# **ESSENTIAL PERSONNEL POLICIES FOR EMPLOYEE HANDBOOKS OF VIRGINIA EMPLOYERS**

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## **I. INTRODUCTION**

This paper identifies some of the personnel policies which every Virginia employer should consider including in its employee handbook, and provides samples of those policies. It is not intended to be a comprehensive examination of all personnel policies which may be appropriate.

Not every policy discussed here will be appropriate for every employer. Employers should carefully consider which policies are appropriate for their organization. Moreover, the sample policies are intended to be nothing more than samples. The particulars of any policy should be given careful consideration, taking into account the specific needs and concerns of the employer and its workforce and the policies currently in place.

In the sample policies provided in this paper, the company name is stated as “{ABC}.”

This paper is offered solely for informational purposes, and is not intended as legal advice.

## **II. PURPOSES OF EMPLOYEE HANDBOOKS**

### **1. What Should an Employee Handbook Do?**

An employee handbook, at its most basic, is a publication which communicates personnel policies and procedures to employees. Some employee handbooks designed to serve only this purpose consist simply of a collection of separate policy statements, bound together or assembled in a three-ring binder. Such handbooks are published simply for convenience. An employee handbook, however, can and should be much more. A carefully prepared employee handbook can and should:

- ✓ Communicate corporate culture;
- ✓ Enhance the image of the company;
- ✓ Improve employee morale;
- ✓ Facilitate recruitment of qualified applicants;
- ✓ Ensure compliance with applicable federal, state and local laws;
- ✓ Serve as a risk-management tool for employment-related claims and lawsuits; and
- ✓ Serve as a tool for planning and development of appropriate personnel policies.

### **2. Corporate Culture**

Every company has a “culture.” Corporate culture is more than rules and procedures; it is the expectations, understandings, and aspirations of the company from the highest level executive to the most junior new entrant. At its best, corporate culture can move a company forward toward success, and can guide it through difficult times. At its worst, it can act as an impediment to success, and can foster divisiveness and litigation. A carefully crafted employee handbook can be an effective and powerful tool in promoting a healthy corporate culture and in communicating the company’s culture to new employees.

### **3. Company Image**

Like corporate culture, company image is an intangible. Company image, however, can be an important factor in determining the success or failure of a company,

because employees are likely to use the company image as a guide to their own behavior. If the image of the company is that of a well-oiled machine or a tightly run ship, the company's employees are likely to respond with efficiency and productivity. On the other hand, if the company's image suggests disorganization or indecision, employees will likely fall into that mold. It is therefore important that the company project the appropriate image to its employees, and the employee handbook (or absence of same) will likely be a significant determinant of that image.

#### **4. Employee Morale**

Employee productivity is determined in large measure by employee morale. An employee who feels he or she is treated well and is fairly compensated is more likely to be productive than an employee who feels oppressed and underappreciated. The employee handbook can improve employee morale in a number of ways. It can explain the "rules of the game," thereby reducing employee uncertainty, confusion and anxiety. It can identify the numerous benefits and advantages the employee enjoys by working for the company, many of which may not be known or appreciated by the employee. It can emphasize the company's concern for the employee's well-being, and provide the employee with avenues by which the employee can express any concerns or air any grievances (which is tremendously helpful in reducing employment-related litigation.) In these and other ways, the employee handbook can enhance the morale of employees.

#### **5. Recruitment**

Many employers find it tremendously difficult to recruit qualified employees for particular positions. The employee handbook can serve as a recruiting tool, by "selling" the company not only to current employees but also to potential employees. After reading the handbook, the applicant should clearly understand the desirability of working for the company, and for that reason may choose to work for the company rather than for a competitor. To the extent the company's current employees have been "sold" on the

company, the current employees can be expected to promote the company to applicants, thereby further enhancing the company's competitive advantage in its recruitment efforts.

## **6. Compliance with Applicable Laws**

Many employers do not realize that federal, state and local laws may require that certain information be communicated to employees. An employer can meet its legal requirements under these and other laws by carefully drafting an employee handbook which addresses the various laws to which the employer may be subject.

It is important that Virginia employers drafting employee handbooks take into consideration the various Virginia and local laws (as opposed to federal laws) to which they may be subject and required to comply. For example, under Virginia law:

No employer may withhold any part of the wages or salaries of any employee except for payroll, wage or withholding taxes or in accordance with law, without the written and signed authorization of the employee.

Va. Code Section 40.1-29(C). A Virginia-specific employee handbook can reflect legal requirements such as these, so that they are not inadvertently violated. It should be noted that such laws will not be taken into consideration in any "form" employee handbook which might be purchased from, for example, an office supply store, since those forms will be general and not Virginia-specific. Likewise, employee handbooks which may be appropriate for employers in other states may not be appropriate for a Virginia employer, since the laws in the two states will be different.

## **7. Risk Management**

Perhaps the most important function of a well-crafted employee handbook is to effectively manage the risks associated with employment-related lawsuits and legal claims. Employment-related litigation has exploded as law after law has been passed granting rights to employees. This is especially true for wrongful discharge claims, i.e., claims of unlawful firing or constructive discharge. The employee handbook is probably

the single most important tool a Virginia employer has to combat employment-related legal claims, for reasons such as the following.

First, by virtue of all the considerations described above, employees should be more inclined to feel they have been and will be treated fairly. They will therefore be less inclined to file charges with government agencies or institute lawsuits against the employer.

Second, by establishing and adhering to rules and procedures designed to effectively handle employment-related issues, disputes can be more readily resolved and risks can be more effectively contained. For example, the handbook will promote consistency in the application of company policies, thereby reducing the likelihood that different supervisors will treat one group of employees (e.g., a primarily black work group) less favorably than another group of employees (e.g., a primarily white group of employees).

Third, if an employment matter is litigated, the employer can present the applicable portions of the handbook as evidence of its policies and as rebuttal to the claims asserted by the employee. This will be powerful evidence, since the employee will have signed a written acknowledgment that he or she received, read, and agreed to comply with the company's policies as stated in the handbook.

## **8. Planning and Development**

An employee handbook should not be viewed as a static document. Rather, the company should revisit the handbook on a regular basis (we recommend at least yearly). The company should evaluate whether the policies contained in it have effectively promoted the company's goals and objectives. The company should also consider whether any new laws or legal developments call for revision of its policies. To the extent a change in policy is appropriate and desirable, it should be implemented. The company, in performing this analysis, should look toward its future as well as its past. For example, plans for growth may call for adoption of new policies or revision of existing ones. Just as the company adjusts its budget and its business plan to meet

changing demands and circumstances, so too should it adjust its employee handbook and personnel policies to meet its employment-related needs. Engaging in this process of planning and development will produce real benefits for the company as well as its employees.

### **III. SPECIFIC POLICIES**

In the sample policies provided in this paper, the company name is stated as “{ABC}.”

#### **1. INTRODUCTION**

The introduction is one of the most important components of an employee handbook, because it sets forth fundamental principles that apply to the entire handbook. Some of the most important principles that should be set forth in the introduction are (1) that the handbook is not a contract, (2) that it does not alter employment at will, (3) that the employer reserves the right to revise the handbook at any time, (4) that written employee benefit plans and insurance policies will control over anything in the handbook be resolved in favor of the employee benefit plans and insurance policies, and (5) the designation of who answers employee questions about personnel policies.

Sample Policy:

#### *ABOUT THIS HANDBOOK*

*This is the employee handbook of {ABC}. We have prepared it to serve as a guide to your employment here. You are required to comply with our policies, so we ask that you read this handbook carefully. You may keep this handbook, and a copy will always be available to you through the Human Resources Department.*

*This handbook is provided for your information, to acquaint you with our working conditions, employee benefits, and some of the policies affecting your employment. It is not intended to be comprehensive or to address all the possible applications of, or exceptions to, the general policies and procedures described in it. This handbook does not constitute a contract, express or implied, or create any contractual rights, including a right to continued employment or to any fixed term or condition of employment.*

*This handbook does not alter the at-will employment relationship between {ABC} and out employees. Some subjects described in this handbook are governed by official company documents such as employee benefit plans and and insurance policies. In the event of any conflict between those official documents and this handbook, the official documents control.*

*The policies set forth in this handbook may be modified or discontinued at any time. We will notify you of changes to our policies as they occur. If you have questions about any policy of {ABC}, you should consult the Human Resources Department.*

## **2. ORGANIZATION HISTORY**

Describing the history of the organization can help employees understand its corporate culture. This can be particularly useful for small employers to medium size employers. The description should be short, and should highlight the employer's accomplishments and growth over time.

## **3. MISSION STATEMENT**

If the employer has adopted a mission statement, presenting it in the employee handbook may be appropriate. The mission statement can useful to highlight the importance of, for example, customer service.

## **4. EMPLOYMENT AT WILL POLICY**

Under the employment at will doctrine, which Virginia law follows, employment is presumed to be at-will. If employment is at will, the employer or the employer can terminate the employment relationship at any time, with or without cause, upon reasonable notice. Employment at will does not apply if there is an enforceable express or implied contract between the parties under which employment is for a specific duration or under which employment can be terminated only for good cause. For public sector employees, employment at will is subject to due process protections, where applicable.

In some cases, employee handbooks have been held to constitute enforceable contracts of employment, or to otherwise rebut the employment at will presumption.

Therefore, all employers intending employment to be at-will should include a policy in their handbook confirming that employment by the organization is at will.

Sample Policy:

#### *NATURE OF EMPLOYMENT*

*Employment with our company is “at-will,” which means that an employee is free to resign at any time. Similarly, we may terminate the employment relationship at any time, with or without cause and with or without notice. No one has the authority to make verbal statements that change the at-will nature of employment with the company, and the at-will relationship cannot be changed or modified for any employee except in a written agreement signed by that employee and the President of {ABC}. Policies set forth in this handbook are not intended to create a contract of employment, express or implied, nor are they to be construed to create contractual rights of any kind or a contract of employment between the company and any of its employees.*

#### **5. EMPLOYEE RELATIONS POLICY**

An employee relations policy emphasizes that the employer offers competitive wages and benefits, that the employer listens and responds appropriately to its employees’ concerns. Such a policy can serve as a recruiting and retention tool. It also can be an important risk management tool, because it helps the employer rebut employee claims that the employee could not report unlawful conduct such as sexual harassment. In addition, it communicates to employees that union organization of the workplace is unnecessary.

Sample Policy:

#### *EMPLOYEE RELATIONS*

*We believe that the work conditions, wages, and benefits we offer to our employees are competitive with those offered by other employers in this area and in this industry. If employees have concerns about work conditions or compensation, they are strongly encouraged to voice these concerns openly and directly to their supervisors and to management. Our experience has shown that when employees deal openly and directly with us, the work environment can be excellent, communications can be*

*clear, and attitudes can be positive. It is our policy to demonstrate our commitment to employees by responding effectively to their concerns.*

## **6. CUSTOMER RELATIONS POLICY**

The success of many organizations is tied closely to the quality of communications between employees and customers. This is true, for example, for small medical practices that rely upon patient satisfaction and referrals. For such organizations, a customer relations policy can be appropriate to emphasize the importance of customer service.

Sample Policy:

### *CUSTOMER RELATIONS*

*Satisfied customers are the most valuable assets of our business. They are the only people who can assure us of continued success and continued employment opportunities for both current and prospective employees. All employees contribute to making our customers either satisfied or dissatisfied with our products and services.*

*Customer satisfaction is a composite of many things - a smile, a neat and appropriate appearance, a friendly atmosphere, returning a phone call when you say you will, and demonstrating genuine concern for the customer - things that cost little, but are important to customers. It is therefore the responsibility of every employee to always create a positive atmosphere and thereby consistently maintain maximum satisfaction for all of our customers. When speaking with customers, whether on the phone or in the office, your voice and your actions should convey caring, concern and respect.*

## **7. COMMUNITY RELATIONS POLICY**

The reputation and public perception of an organization can be affected by the conduct of employees off the job as well as on the job. Therefore, an employer may need to take corrective action toward an employee whose behavior outside the workplace is a cause for concern, and may find it necessary to terminate such an employee. At the same time, employees may be unaware that they are accountable for the actions outside of work hours. Therefore, employers may wish to consider adopting a policy which

emphasizes the importance of employees conducting themselves appropriately at all times.

Sample Policy:

#### *COMMUNITY RELATIONS*

*Maintaining good community relations is important to the continued success of {ABC}. It is important that all employees reflect a positive image of our organization in the community. Each employee is considered to be an ambassador of our organization to the community 24 hours a day, 7 days a week, and should conduct themselves accordingly.*

### **8. ETHICS POLICY**

Business ethics can be an important concern for some organizations. This can be particularly true for organizations which have fiduciary relationships to their customers or which are subject to regulatory ethical requirements. A policy addressing ethical standards can be appropriate for such organizations.

Sample Policy:

#### *BUSINESS ETHICS*

*Our continued successful and good reputation are built upon the principles of ethical conduct of our employees. Our reputation for integrity and excellence requires careful observance of the spirit and the letter of all applicable laws and regulations, as well as a scrupulous regard for the highest standards of conduct and personal integrity. Employees owe a duty to our organization and to our customers to act in a way that will merit continued trust and confidence.*

*The practice will comply with all applicable laws and regulations and expects its directors, officers, managers, supervisors and employees to conduct themselves in accordance with the letter, spirit, and intent of all relevant laws and to refrain from any illegal, dishonest, or unethical conduct. If a situation arises where it is difficult to determine the proper course of action, the matter should be discussed openly with the Human Resources Department.*

*Compliance with this policy is the responsibility of every member of our organization.*

## **9. CONFLICT OF INTEREST POLICY**

Under Virginia law, employees owe a duty of loyalty to their employer. Conflicts of interest by their nature are contrary to that duty. Employees, however, sometimes intentionally or unintentionally place themselves in a position which involves an actual or apparent conflict of interest with the employer, because they do not understand how to recognize conflicts of interest or because they do not understand that conflicts of interest are prohibited by their employer. Therefore, some employers may wish to adopt a formal conflict of interest policy.

Sample Policy:

### *CONFLICT OF INTEREST*

*As an employee of {ABC}, you have a duty to do what is in the best interests of the company. Sometimes you may find yourself in a position where your personal or professional activities conflict with the interests of the company. Examples of potential conflicts of interest include working as a paid consultant for a supplier of the company, or hiring a family member and serving as his or her supervisor. Conflicts of interest can harm the organization, and some are illegal and can result in fines and even criminal prosecution. Therefore, is our policy that employees of {ABC} are prohibited from engaging in any activity which presents a conflict of interest with the company or which gives the appearance of doing so. If you ever question whether engaging in a certain activity or accepting a position may violate this policy, you should contact the Human Resources Department before beginning the activity or accepting the position.*

## **10. OUTSIDE EMPLOYMENT POLICY**

Employment outside the company can involve conflicts of interest. Such employment also can create scheduling issues. Therefore, many employers will find it useful to adopt an outside employment policy.

Sample Policy:

### *OUTSIDE EMPLOYMENT*

*Employees are required to obtain written approval from the Human Resources Department in advance of all outside employment to ensure no conflict exists. In general, employees will be permitted to participate in outside work activities unless the activities (a) prevent the employee from fully performing work for which he or she is employed at by the company including overtime assignments, (b) involve organizations that do or seek to do business with or compete against the company, or (c) violate provisions of law, government regulation, or company policy.*

*From time to time employees may be required to work beyond their normally scheduled hours. In cases of conflict with any outside employment, the employee's obligation to the company must be given priority.*

## **11. EQUAL EMPLOYMENT OPPORTUNITY POLICY**

Every employer should adopt a written equal employment opportunity or "EEO" policy prohibiting unlawful employment discrimination.

In drafting the policy, it is important to remember that unlawful discrimination is defined by reference to federal, state and local laws. Therefore, for example, the EEO policy of every Virginia employer should prohibit discrimination on the basis of race. Such discrimination is prohibited under Title VII of the Civil Rights Act of 1964 for employers having 15 or more employees, and by the Virginia Human Rights Act for smaller employers. Discrimination on the basis of sexual orientation, in contrast, is not prohibited for most employers by federal law, nor is it prohibited by Virginia law for employers generally. However, certain Virginia localities prohibit such discrimination, and many states other than Virginia do so. In addition, federal and state government contractors are subject to specific non-discrimination obligations.

Of course, an employer may adopt a policy under which it voluntarily prohibits types of discrimination for which the law imposes no legal restriction. An employer should do so, however, only if it is prepared to abide by and enforce that policy.

Sample Policy for a private sector Virginia business which is not a government contractor:

### *EQUAL EMPLOYMENT OPPORTUNITY*

*{ABC} is committed to a workplace free of discrimination and to providing equal opportunity in employment for all people without regard to race, color, religion, sex, pregnancy, childbirth or related medical conditions, national origin, age, disability, marital status, genetic information, veteran status, uniformed service, or any other legally protected characteristic. By hiring, compensating, training, promoting, and in all ways providing equal treatment to employees and applicants, the effectiveness of our operations can be maintained while enhancing the economic progress and growth of our organization and staff.*

*The company will ensure that managers and supervisors take positive steps to comply with this policy. They are required to be aware of potential discrimination situations, quickly resolve any discrimination issues that arise, and refrain from retaliation against any employee involved in the filing, investigation, or resolution of a discrimination claim. Managers, supervisors, and all other employees are required to cooperate fully with the investigation and resolution of all discrimination complaints.*

*We have an internal complaint procedure designed to address and resolve complaints of discrimination as quickly as possible. We will take appropriate action to prevent discrimination, and to ensure that the rights of employees who file complaints are respected, whether the complaint is filed through the internal complaint procedure or with a federal, state or local government agency or court.*

## **12. HARASSMENT POLICY**

Every employer should adopt a policy prohibiting harassment. Harassment on the basis of any prohibited characteristic (e.g., sex, race, religion, national origin, etc.) can expose an employer to significant liability. Therefore, the policy against harassment should not be limited to sexual harassment.

A non-harassment policy, like a non-discrimination policy, should include a complaint procedure through which an employee can bring harassment to the attention of management. Because the party allegedly engaged in harassment often is the employee's

immediate supervisor, the complaint procedure should not require the employee the employee to first address the complaint to his supervisor. The company's human resources department often is an appropriate alternative place for an employee to lodge a harassment complaint.

Some employers adopt a zero tolerance policy for harassment. Zero tolerance policies, however, can have drawbacks. It can force an employer to take drastic action which is neither necessary nor desired by the complaining employee. If an employer takes corrective action instead of discharging the harassing employee, that action makes the employer's enforcement of the policy inconsistent and thereby undermines the future effectiveness of the policy for risk management. An employer therefore should give careful consideration to whether a zero tolerance policy is desirable before adopting one.

Sample Policy:

#### *SEXUAL AND OTHER HARASSMENT*

*The continued success and growth of our organization depends on the effectiveness of our employees. This effectiveness, in turn, is directly related to our ability to communicate with one another in such a manner as to ensure the professional cooperation and support of all employees, the free expression and exchange of the individual's ideas and concerns, and the fair and timely resolution of conflict should it arise. It is our belief that the continued growth of our employees and our organization can best be achieved through courteous communication and professional conduct.*

*We are committed to providing a work environment that is free from all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive, including sexual harassment. Actions, words, jokes, or comments based on an individual's race, color, religion, pregnancy, sex, pregnancy, childbirth or related medical conditions, national origin, age, disability, marital status, genetic information, veteran status, uniformed service, or any other legally protected characteristic will not be tolerated. Our employees are strictly prohibited from engaging in harassment of coworkers, customers, suppliers, visitors, and all other persons in our workplace.*

*Sexual harassment includes any acts, statements, or suggestions indicating that an employee's job security, professional advancement, salary,*

*benefits, work assignment, or other conditions of employment depend on tolerating sexual harassment or that employment will be adversely affected by refusing to condone sexual harassment anywhere in the workplace. It also includes any acts, statements, or suggestions that an employee's physical attractiveness or perceived lack of physical attractiveness in the eyes of the harasser is a factor in obtaining and securing professional opportunities.*

*The following is a non-exhaustive list of examples of prohibited harassment:*

- *Repeated unwelcome flirtations, advances, or propositions;*
- *Racial slurs;*
- *Sexually graphic or degrading comments about an employee's appearance, dress, or anatomy;*
- *Verbal abuse with graphic sexual connotations;*
- *Verbal abuse with racial comments;*
- *Display of graphic sexually suggestive objects or pictures;*
- *Repeated unwelcome dirty jokes and offensive gestures;*
- *Prurient or graphic intrusive questions about an employee's personal life;*
- *Graphic descriptions of the harasser's own sexual experiences;*
- *The unwelcome use of familiarities or diminutives, such as "honey," "sweetheart," "darling," "dear," or "baby"; this can include referring to adult women as "girls";*
- *Practical jokes aimed at individuals because of sex, race, religion, age, disability, etc.;*
- *Whistling, catcalls;*
- *Comments such as "old dogs can't be taught new tricks," "new blood is needed";*
- *Leering;*

- *Exposing genitalia;*
- *Unwelcome physical contact: touching, hugging, kissing, patting, pinching, tugging at clothing, etc.;*
- *Physical or sexual assault;*
- *Jokes about physical or mental disabilities;*
- *Religious jokes;*
- *Use of derogatory terms.*

*An employee who believes that he or she has been harassed, and any employee who observes harassment of any type, should report it immediately to his or her supervisor or to the human resources department. Any supervisor or manager who becomes aware of possible sexual or other harassment is required to immediately advise the human resources department.*

*Upon receiving a report of harassment, we will investigate and take appropriate action. All employees are expected to cooperate with an investigation of any type of harassment and are required to provide truthful and complete information. Information provided by an individual will be treated as confidential to the extent consistent with thorough investigation and only provided to those who have the need for the information, or when it is required in the course of investigating the complaint. Employees accused of harassment may be suspended with or without pay pending the outcome of the investigation. Employees who claim to have been harassed may be given time off.*

*An employee who violates this policy will be subject to discipline, up to and including termination of employment.*

### **13. DISABILITY ACCOMMODATION POLICY**

The Americans with Disabilities Act prohibits discrimination on the basis of disability by employers with 15 or more employees. Similar prohibitions exist under other laws, such as the Virginia Human Rights Act, which prohibits such discrimination by smaller employers, and the Rehabilitation Act of 1973, which prohibits such discrimination by federal contractors. These laws impose obligations on covered

employers to make reasonable accommodations to qualified individuals with disabilities. Therefore, it is desirable for employers to adopt written policies confirming that such accommodations will be made.

The Americans with Disabilities Act Amendment Act of 2008 significantly expanded the impairments which constitute disabilities under the ADA. In *Summers v. Altarum Institute, Corp.* No. 13-1645 (4th Cir. 2014) (attached), the United States Court of Appeals for the Fourth Circuit became the first United States Court of Appeals to hold that a sufficiently severe temporary impairment can constitute an ADA disability under the ADAAA. Many employers still have ADA or disability accommodation policies containing a definition of “disability” reflecting the stricter standard existing before ADAAA. Such policies should be revised to reflect the broader meaning of disability established under ADAAA.

Sample Policy:

#### *DISABILITY ACCOMMODATION*

*It is the policy of {ABC} to comply with all laws concerning the employment of persons with disabilities, including the Americans with Disabilities Act, as amended. We do not to discriminate against qualified individuals with disabilities in regard to application procedures, hiring, advancement, discharge, compensation, training or other terms, conditions and privileges of employment.*

*An individual desiring a reasonable accommodation to a disability should present the request to the Human Resources Department. We will engage in an interactive process with the applicant or employee to identify alternative reasonable accommodation. We may require medical documentation certifying the disability and the related limitations. If a reasonable accommodation can be made that will enable the applicant or employee to perform the essential functions of the job without undue hardship to the company, we will provide that accommodation. If more than one such accommodation is available, we will determine which of them will be offered.*

*Individuals who are currently using illegal drugs are excluded from coverage under this policy.*

*The Human Resources Department is responsible for administering this policy, including resolution of disability, accommodations, safety, and undue hardship issues.*

#### **14. LABOR LAW COMPLIANCE POLICY**

Much employment litigation is brought by employees who wait until after they are terminated to inform the employer of alleged violations of laws. In defending such litigation, it is helpful to be able to show that the employer published a policy to its employees encouraging them to report legal concerns to the company to enable the company to take corrective action. Such a policy also benefits the company because, to the extent employees follow it, the employer gains an opportunity to address and possibly resolve the employees' concerns.

Sample Policy (derived from *Jordan v. Gobo, Inc.*, 2010 U.S. Dist. LEXIS 42778 (W.D. Va. 2010)):

*It is the policy of {ABC} to make every effort to adhere to all government labor laws and regulations. In the event that any employee of our company has a question or complaint concerning proper adherence to any regulation or law, we request that individual to notify and meet with the Human Resources Department to determine if a violation took place and to give the company an opportunity to resolve the issue.*

#### **15. EMPLOYMENT APPLICATION POLICY**

To promote consistent treatment of all applicants for employment, all applicants should be required to submit an application for employment using a standard form adopted by the employer. It is desirable to state this as a company policy.

An employer should be able to rely upon information provided by the employee during the application process. If the employee provides false information in the employment application or elsewhere in the application process, the employer may be justified in discharging the employee. To support that ground for termination, the employer should state in its application policy that providing false information in the application process may result in termination. This can be helpful in a variety of

circumstances, including defending wrongful discharge claims and unemployment compensation claims.

If the employer used credit reports in its hiring process, it will need to ensure compliance with the Fair Credit Reporting Act. It is desirable to incorporate a reference to this law in the employment application policy, or to adopt a separate policy addressing it.

Sample Policy:

#### *Employment Applications*

*All applicants for employment are required to complete and submit a standard {ABC} employment application. Applicants for promotion or transfer also are required to do so. Employment application forms are available from the Human Resources Department.*

*The practice relies upon the accuracy of information contained in the employment application, as well as the accuracy of other data presented throughout the hiring process and employment. Any misrepresentations, falsifications, or material omissions in any of this information or data may result in the exclusion of the individual from further consideration for employment or, if the person has been hired, termination of employment.*

*In processing employment applications, the practice may obtain a consumer credit report or background check for employment. If the practice takes an adverse employment action based in whole or in part on any report covered by the Fair Credit Reporting Act, a copy of the report and a summary of your rights under the Fair Credit Reporting Act will be provided as well as any other documents required by law.*

## **16. IMMIGRATION LAW POLICY**

The Immigration Reform and Control Act of 1986 requires employers to examine documents that prove a person has the right to work in the United States, and to verify the identity and employment eligibility of its employees. All employers should adopt a written policy on immigration law compliance.

Sample Policy:

*IMMIGRATION LAW COMPLIANCE:*

*{ABC} does not discriminate on the basis of national origin, citizenship, or intent to become a United States Citizen. However, it is out policy to comply with the Immigration Reform and Control Act of 1986. We therefore employ only United States citizens and aliens who are authorized to work in the United States. New employees, as a condition of employment, must complete the Employment Eligibility Verification Form (Form I-9) and present documentation establishing identity and employment eligibility. Former employees who are rehired also must complete the form if they have not completed an I-9 with us within the past three years or if their previous I-9 is no longer valid or retained. If you have questions or concerns about immigration issues, you should contact the Human Resources Department. You may raise questions or make complaints about immigration law compliance without fear of retaliation or reprisal.*

**17. PROBATIONARY PERIOD POLICY**

Some employers place new employees on an initial probationary period lasting a specified period of time. During the probationary period, the employer assesses whether the employee is suitable for the job and the organization. The length of the probationary period is entirely up to the employer. Periods frequently used are 30 days, 90 days, six months, and one year. A probationary period is useful because it facilitates early termination of employees who do not meet the employer's expectations. If a probationary period is used, it should be communicated to employees in a written policy which explains the probationary period and which states that graduation from the probationary period does not alter the at-will employment relationship.

Sample Policy:

*PROBATIONARY PERIOD*

*The first 90 days of employment is a training and assessment period for new employees known as a probationary period. This probationary period is intended to give new employees the opportunity to demonstrate their ability to achieve a satisfactory level of performance and to determine whether the new position meets their expectations. We use this*

*period to evaluate employee capabilities, work habits, and overall performance. The initial probationary period may be shortened or extended, in our discretion. At the end of the probationary period a performance evaluation will be conducted and the employee will be informed whether his or her employment will be continued. The at-will status of employees does not change following successful completion of the probationary period.*

## **18. PERFORMANCE EVALUATION POLICY**

All employers are encouraged to conduct formal job performance evaluations annually and whenever a significant job performance issue arises. Such evaluations, when done properly, promote employee productivity and provide crucial evidence for defense of wrongful discharge claims and unemployment compensation claims. The criteria used in performance evaluations should mirror the job duties stated in the written job description. All performance evaluations should be appropriately documented.

Sample Policy:

### *PERFORMANCE EVALUATIONS*

*Supervisors and employees are strongly encouraged to discuss job performance and goals on an informal, day to day basis.*

*Formal performance evaluations are conducted to provide both supervisors and employees the opportunity to discuss job tasks, identify and correct weaknesses, encourage and recognize strengths, and discuss positive, purposeful approaches for meeting goals. Performance evaluations are based on the responsibilities detailed in the job descriptions, as well as on adherence to the standards of conduct expected by the practice. They are the basis for such important personnel decisions as merit raises, promotions, and termination of employment.*

*Every non-probationary employee receives a formal performance evaluation yearly. Supervisors review the employee's job description and complete an evaluation form. The employee likewise reviews his or her job description and completes an evaluation form. Then, the employee and the practice administrator meet to discuss the employee's strengths and opportunities, share their perceptions, and set objectives for the upcoming year. The evaluation forms are placed in the employee's personnel file.*

## **19. EMPLOYEE CLASSIFICATION POLICY**

Personnel policies frequently use employee classifications such as “full time employees,” “part time employees,” “probationary employees,” “regular employees,” “exempt employees,” and “non-exempt employees.” To ensure consistency among policies, it is useful to have a written employee classification policy which defines these classifications.

Sample Policy:

### *EMPLOYEE CLASSIFICATIONS*

*{ABC} has established the following employee classifications so that employees understand their employment status and benefit eligibility. These classifications do not guarantee employment for any specified period of time.*

*Each employee is classified as either nonexempt or exempt from federal and state wage and hour laws. Nonexempt employees are entitled by law to overtime pay for hours worked in excess of 40 hours in any workweek. Exempt employees are not entitled to overtime compensation under those laws. A change on an employee’s exempt or nonexempt classification requires written approval by the president of the practice.*

*In addition to the above classifications, each employee will belong to one of the following classifications: probationary, regular, part-time, or temporary.*

*Probationary employees are newly hired employees whose job performance is being evaluated for the probationary period to determine whether continued employment with the practice is appropriate. Probationary employees are not eligible for leave or employee benefits.*

*Regular employees are full-time employees who have successfully completed their probationary period. Regular employees are eligible for leave and employee benefits, subject to the terms, conditions, and limitations of each type of leave and each employee benefit program.*

*Part time employees are employees who have successfully completed their probationary period, are not temporary employees, and are regularly scheduled to work less than a full-time schedule. Part time employees are not eligible for most employee benefits, but are eligible for legally*

*mandated benefits such as workers' compensation insurance and Social Security, and may be eligible for leave subject to the terms, conditions, and limitations of the particular type of leave.*

*Temporary employees are those who are hired as interim replacements, to temporarily supplement the work force, or to assist in the completion of a specific project. Employment assignments in this classification are of a limited duration. Employment beyond any initially stated period does not in any way imply a change in employment status. Temporary employees retain that status unless and until notified in writing of a change by the Human Resources Department. While temporary employees are eligible for all legally mandated benefits such as workers' compensation insurance and Social Security, they generally are ineligible for leave and for all of other employee benefit programs.*

*A full time schedule is a schedule under which the employee regularly works at least 35 hours per week.*

## **20. EMPLOYMENT RECORDS POLICY**

Employees often have questions or concerns about records maintained by the employer. In addition, employers need to provide guidance to employees charged with the duty of maintaining such records. Furthermore, specific laws govern the contents and maintenance of certain records (e.g., the Americans with Disabilities Act requires medical records be kept in separate medical files). For all these reasons, it is appropriate for employers to adopt a written policy concerning employment records.

Sample Policy:

### ***EMPLOYMENT RECORDS***

*{ABC} will maintain a personnel file, a separate I-9 file and, when applicable, a separate medical file, for each employee. These files are the property of {ABC} and information contained within them shall be consistent with state and federal laws and our policies.*

*Personnel files contain documents related to the employee's employment, e.g., resumes, application materials, employment offer letters, W-4s, employee handbook acknowledgments, change of status and termination forms, performance appraisals, letters of recognition or commendation, and disciplinary records. Personnel files are stored in locked file*

*cabinets. Access is limited to supervisory and appropriate support personnel as required in the performance of their work. An employee may authorize, in writing, release of information, subject to the approval of the office administrator.*

*I-9 files contain I-9 forms and any related documents pertaining to employment eligibility verification. We make the contents of these files available to federal authorities for the purpose of complying with immigration laws.*

*Medical files contain documents related to worker's compensation, medical leave of absence forms, documents pertaining to disability accommodation, drug testing results, and any other documents containing medical information. We maintain a medical file for an employee only if we receive medical information or documents concerning the employee. Medical files are stored in a separate locked cabinet, apart from other employment-related files. Access is limited to supervisory and safety personnel required having access in the performance of their work. An employee may authorize, in writing, release of information, subject to the approval of the Human Resources Department.*

*An employee may access documents in his or her files as long as it is done in an appropriate time, place, and manner as determined by the company. All information in the files is treated as confidential information belonging to the company. In addition to access by the employee, access may be granted when the information is needed for business purposes, when the employee gives written authorization, when access is required by law, and when a subpoena is served. General information contained in the files such as name, address, phone number, date of hire, date of termination, and position may be disclosed.*

## **21. EMPLOYEE COMPLAINT PROCEDURE**

One of the most important policies an employer can have is an employee complaint procedure. An employee complaint procedure enables the employer to learn about and address employee complaints before they become EEOC charges, Department of Labor investigations, or federal litigation. They also enable employers to more effectively defend employee claims and lawsuits, because they establish a record of what the employee reported to the employer and, if the employee reported nothing, they can

effectively shift the burden to the employee to explain why he did not utilize the procedure to obtain resolution of his concerns.

Employee complaint procedures vary greatly in their operation and details. A simple yet effective employee complaint procedure is an “open door” policy such as the following:

#### *OPEN DOOR POLICY*

*{ABC} has an open door policy and encourages employees to bring their concerns to management for resolution. We know that problems can occur at any organization, such as interpretation of policies or other disagreements. Feel free to communicate your comments to us either verbally or in writing. We want you to enjoy your workplace.*

A slightly more structured complaint procedure directs the employee to his supervisor or alternatively to the Human Resources Department. A complaint procedure should never require an employee to first take the complaint to his supervisor, since his supervisor may be the subject of the complaint. The following is a sample of a complaint procedure with a supervisor bypass:

#### *EMPLOYEE COMPLAINTS*

*When employees deal openly and directly with their supervisors, the work environment can be excellent, communications can be clear, and attitudes can be positive. {ABC} tries to demonstrate its commitment to this principle by responding effectively to employee concerns. If you have concerns about work conditions, compensation or any other terms or conditions of your employment, you are strongly encouraged to voice these concerns cordially and directly to your supervisor. If your supervisor is not available or you believe that he or she is not the appropriate person to contact, you should contact the Human Resources Department. In doing so, however, you should select an appropriate time, place and manner so as to minimize interruption to job performance.*

An employee grievance procedure is an even more structured complaint procedure. A grievance procedure typically involves multiple levels of review. The following is a relatively simple three step employee grievance procedure:

## *EMPLOYEE GRIEVANCE PROCEDURE*

*It is the intent of {ABC} to provide an effective way for employees to bring problems concerning their well being at work to the attention of management. Therefore, an informal grievance procedure has been established for the benefit and use of our employees.*

*When an employee believes an employment decision, working condition or treatment is unjust, inequitable, discriminatory, a hindrance to effective business operations or otherwise problematic, he or she is encouraged to discuss the matter with management.*

*Misunderstandings or conflicts can arise in any organization and should be resolved before serious problems develop. Most incidents resolve themselves naturally; however, should a situation persist that the employee believes is detrimental to himself or herself or the company, the employee should follow the procedure described below for bringing the complaint to management's attention.*

*Step 1: Discussion of the problem with the immediate supervisor is encouraged as a first step. If the employee does not believe a discussion with the supervisor is appropriate, the employee should proceed directly to Step 2.*

*Step 2: If the problem is not resolved after discussion with the supervisor or if the employee thinks a discussion with the supervisor would be inappropriate, the employee is encouraged to request a meeting with the Human Resources Director. The Human Resources Director will conduct an investigation, and the employee will normally receive a response regarding the problem within five (5) working days of meeting. In the event the Human Resources Director is the subject of the grievance, the Vice President should be notified. In that case, the Vice President will conduct the investigation and respond to the employee.*

*Step 3: If the employee is not satisfied with the decision and wishes to pursue the matter further, he or she may prepare a written summary of the concerns and request that the President review the matter. This request should be made through the Vice President, who will notify the President. The President, after a full review of the facts, which may include a review of the written summary of the problem, interviews with the people involved and further investigation if necessary, will inform the employee of his or her decision, usually within 15 working days. The decision of the President will be final.*

*Please note that the company's willingness to engage in this procedure in no way modifies the company's at-will employment policy.*

An employee grievance procedure utilizing a panel of employees during the final step of the procedure can be appropriate for larger employers. The following is an example of such a procedure:

#### ***EMPLOYEE GRIEVANCE PROCEDURE***

*It is the policy of the {ABC} to provide employees with the means to have employment concerns reviewed and responded to in a timely and appropriate manner. Please note that the Company's willingness to engage in this procedure in no way modifies the company's at-will employment policy.*

*In any organization there can be differences of opinion about working conditions, work rules and policies and other work related issues. To resolve these differences, effective communication is essential. This program is designed to enhance communication by providing a formal process to resolve legitimate disputes. It is the purpose of this policy to provide a prompt, orderly means of receiving and responding to employee concerns. In addition, an employee may use the Employee Appeal Program to raise concerns regarding discrimination, harassment, or retaliation. An employee shall not be retaliated against for raising concerns of this nature brought forward with a good faith belief that a problem exists.*

*This procedure is intended to supplement, rather than discourage or replace informal discussion between supervisors and employees. A supervisor should make every reasonable effort to resolve employee concerns outside the formal Employee Appeal Program*

*This Employee Appeal Program is available to all employees who have successfully completed their probation period. This program is not available to temporary employees or employees covered by a collective bargaining agreement. A nonprobationary employee who has been involuntarily terminated may submit an appeal concerning issues related to the termination within the time constraints noted in the policy. The initiation of the employee appeal process in good faith by an employee*

*shall not adversely affect his or her standing as an employee. Group appeals are not permitted.*

*The Employee Appeal Program consists of three steps. Appeals regarding involuntary termination or issues involving the employees' immediate supervisor will be heard first at Step 2. All formal appeals beginning with Step 2 will be submitted in writing and will receive a written response. The employee submitting an appeal will state the specific response desired to resolve the problem satisfactorily.*

*Appeals regarding allegations of unlawful discrimination, harassment or retaliation may be discussed confidentially with a member of the Human Resources Department to determine the appropriate step where the employee appeal process will begin.*

*Outside counsel will not be permitted to attend any of the meetings. However, appropriate witnesses may be permitted to attend with approval from the Human Resources Department.*

*Step 1:*

*The employee should verbally present the concern to his or her supervisor within five (5) working days of the original cause for the appeal or from the date the employee learned the cause for the appeal. The supervisor will respond verbally within five (5) working days.*

*Step 2:*

*If an employee does not agree with the supervisor's response, he or she should submit a written appeal to his or her department head within five (5) working days of receiving the answer to Step 1. The employee may contact the Human Resources Department for assistance. The department head or his or her designee will review and investigate the facts of the appeal with the assistance of the Human Resources Department. The department head will then arrange and conduct a meeting with the employee and the the Human Resources Department representative. Regardless of the outcome of the meeting, the department head will provide the employee with a written response, briefly outlining the decision. This response will be delivered to the employee no later than five (5) working days following the meeting.*

*Step 3:*

*If the employee is not satisfied with the decision of the department head, he or she will give written notice within five (5) working days of receipt of the Step 2 written response to the Human Resources Department representative stating his or her wish to initiate an appeal panel.*

*The Human Resources Department representative will arrange for the selection and education of a panel of five (5) members, consisting of non-supervisory and supervisory employees. Reasonable efforts will be made to select panel members in a timely manner. The Human Resources Director will serve as an impartial and nonvoting chairperson of the panel. Unless undergoing an action of progressive discipline, all regular, non-bargaining unit employees who have successfully completed their employment probation period are eligible to serve on this panel. The Human Resources Director or his or her designee will contact employees from a list of eligible employees until seven (7) agree to serve on the appeal panel. The Human Resources Director will notify the employee's supervisor of the employee's selection and his or her obligation to serve on the panel.*

*At the time of contact with each employee, all information will be kept confidential, with no reference made to the individual appealing, the facts of his or her appeal or the identities of other panel members. Any employee selected for the panel who has knowledge of the facts or otherwise has a conflict of interest with respect to the appeal will be disqualified if they have contact with the employee filing the complaint during any time up to and including the hearing.*

*Within three (3) working days of panel selection, the Human Resources Department will notify all parties of the date, time and place of the hearing. Reasonable efforts will be made to schedule the hearing date within five (5) working days of panel selection.*

*Prior to the day of the hearing, the aggrieved employee and his or her supervisor will each eliminate one name from the list of seven (7) panel members. The remaining five (5) employees will constitute the hearing panel.*

*At the hearing, parties to the appeal will be expected to present all information relevant to a resolution of the appeal. The panel members will interview the parties and review presented material. The hearing will be held and concluded within a time frame not to exceed two (2) hours. Once all information has been presented, the panel members will*

*recommend a decision. Within five (5) working days following the close of the hearing, the panel will file its written recommendation with the President or his or her designee.*

*The President or his or her designee will review the entire record (decision, corrective action, recommendation, appeal process) and summary recommendation and issue a final and binding written decision within seven (7) working days. In all cases, the President or his or her designee may affirm, modify or reverse the recommendation of the hearing panel.*

*The panel members will be paid for the time served while attending an appeal hearing in accordance with state and federal wage and hour laws. Appeal hearings held at times other than the aggrieved employee's regularly scheduled work hours are not considered as time worked and do not qualify for overtime pay.*

*An employee may withdraw an appeal at any time. Once withdrawn, however, it may not be reinstated. If the employee does not meet the time constraints outlined in this policy, employee appeal decisions at the last step will be final. The supervisor or department head shall document the withdrawal of any appeals.*

*The procedure as outlined describes the normal course in which appeals are resolved. Employees should note that the Human Resources Department is available to provide employees consultation on a problem and any other assistance at any time prior to or during the appeal procedure.*

## **22. ELECTRONIC COMMUNICATIONS POLICY**

Much of the work of employees today involves e-mail and other electronic communications. Employees, however, can often do abuse the privileges granted to them by the employer to use its electronic communication systems. A policy summarizing acceptable and unacceptable uses of e-mail and other electronic communications can be useful in addressing this problem.

Sample Policy:

*ELECTRONIC COMMUNICATIONS POLICY*

*The following sets forth the policies of {ABC} with regard to use of, access to, and disclosure of electronic communications. For purposes of this policy, “electronic communications” include but are not limited to telephone calls, voice mail, e-mail, internet use, data sent or received on computers or data networks, and facsimile messages that are sent or received by employees and other individuals, on company resources.*

*The use of any company resources for electronic communications should be reasonably related to company business. Only employees and other authorized persons conducting business may use the electronic communication systems. Only authorized employees will be allowed to have access to the necessary software to enable them to access the internet. The method of access and authorization of persons who will have access to this software must be approved by each employee’s department director, using the appropriate authorization form.*

*The use of company resources for electronic communication shall not be used for personal or other commercial purposes. Incidental and occasional personal use of telephones, e-mail, voice mail, and facsimile transmission may occur when such use does not generate a direct cost to the company. Such messages are treated no differently from other electronic communications.*

*The use of company resources for electronic communications in the receipt of or delivery of pornographic, offensive, or illegal material is prohibited. Other prohibited electronic communications include, but are not limited to:*

- (1) Use of electronic communications of data, documents or programs in violation of copyright laws.*
- (2) Use of electronic communication systems to send messages, data, documents or programs which are restricted (in terms of access) by laws or regulations.*
- (3) Capture and “opening” of undeliverable or misdirected electronic communication, except as required in order for authorized employees of the company to diagnose and correct delivery problems.*

*(4) Use of electronic communications to intimidate others, to interfere with the ability of others to conduct company business, to create a hostile work environment, or any other use that is inconsistent with the company's image and interests.*

*(5) "Spoofing," i.e., constructing electronic communication so it appears to be from someone else.*

*(6) "Snooping," i.e., obtaining access to the files or communications of others for the purpose of satisfying idle curiosity, with no company business purpose.*

*(7) "Spamming," i.e., sending unsolicited bulk e-mail.*

*(8) Attempting unauthorized access to data or attempting to breach any security measures on any electronic communication system, or attempting to intercept any electronic communication transmissions without proper authorization.*

*The company reserves the right to monitor, access, examine and disclose the contents of its employees' and other authorized users' electronic communications, including but not limited to telephone calls, voice mail, e-mail, and visits to internet sites. The circumstances under which the company may do so include, but are not limited to (a) an investigation triggered by indications of misconduct, (b) as needed to protect health and safety, (c) as needed to prevent interference with the mission of the company; (d) as needed to locate substantive information required for company business that is not more readily available by some other means; and (e) as needed to respond to legal processes.*

*The company has software and systems in place that can monitor and record all internet and e-mail usage. You need to be aware that our security systems are capable of recording, for each and every user, each internet site visit, each chat, newsgroup or e-mail message and each file transfer into and out of our internal networks.*

*All electronic communications and data sent, received or stored on our networks and computers, by virtue of being so sent, received or stored, become the property of the company.*

*Individuals needing to monitor, access, examine or disclose the electronic communications of others, or to use information gained from such activities, must obtain written approval from company management in advance.*

*Any employee violating this Electronic Communications Policy shall be subject to discipline, up to and including discharge.*

### **23. COMPUTER SYSTEMS POLICY**

Many employees use their employer's computer system in the performance of their job duties. Lack of care by employees in the use of such systems, or misuse of those systems, can lead to system failures, data security breaches, loss of important electronic business records, and inadvertent disclosure of trade secrets. Because of these risks, all employers whose employees use computer in their job should adopt and enforce a computer systems policy telling the employees outlining their duties related to the systems and prohibiting inappropriate uses.

Sample Policy:

#### **COMPUTER SYSTEM POLICY**

##### *Our Computer System*

*{ABC} maintains a computer system including computer equipment, a computer network, an e-mail system, and an internet access system. Only authorized employees are permitted to use this system, and only to the extent expressly authorized by management. Use of our computer system for personal purposes, or in any way that is unlawful or inconsistent with the policies of the practice, is strictly prohibited.*

##### *Practice Property*

*The computer system, and all data that is composed, saved, stored, transmitted, or received on it, is the property of the {ABC}. Such data constitutes official business records, may be intercepted, accessed and inspected by management at any time and by any means, and is subject to disclosure by the practice to law enforcement officials. Consequently, employees should always ensure that the information contained in e-mail messages and elsewhere on our computer system is accurate, appropriate, ethical, and lawful.*

### *Virus Protection*

*Our computer system uses antivirus software which automatically scans all e-mail and other data for computer viruses, malware, and other security threats. Employees are strictly prohibited from tampering or disabling this software. Employees also are responsible for notifying management immediately in the event a workstation displays a warning that the antivirus software may be disabled or less than fully functional. In the event the antivirus software detects a security threat at a workstation, the software will display a warning at the workstation. In the event you see such a warning, immediately stop using the workstation and notify a member of management.*

### *Personal Electronic Devices and Storage Media*

*No antivirus software can detect every security threat. Therefore, as a security policy, employees are strictly prohibited from connecting personal electronic devices to our computer system. Such personal electronic devices include, but are not limited to, laptop computers, tablet computers (including but not limited to iPads), smartphones (including but not limited to iPhones), and electronic music players (including but not limited to iPods). Employees likewise are strictly prohibited from inserting personal electronic storage media, including but not limited to external hard drives, flash drives, memory cards, DVD's, CD's, and floppy disks, into any drive on our computer system.*

### *Health and Safety*

*All employees should use the computer system in a manner that promotes a healthy and safe work environment. The following specific guidelines should be observed.*

*Keyboards, monitors and mouse pads should be placed in an ergonomically appropriate position. If you are unsure of the proper position for your keyboard, monitor, or mouse pad, or if its placement causes you discomfort, you should promptly notify management.*

*Always use all safety devices, such as wrist supports, provided to you. If for any reason you do not wish to use them, you should consult management.*

*You should promptly alert management in the event you experience any pain, numbness, tingling, or other unusual sensations in your hands, wrists or arms while using the computer system. These symptoms may indicate you are at risk for carpal tunnel syndrome.*

*Never allow clothing, paper, or other flammable objects to come in contact with the wires and cables to your workstation. Doing so may create a fire hazard.*

*Never place water, coffee, soda, or any other liquid where it can spill onto your workstation. Such a spill, in addition to damaging the equipment, can create a risk of electric shock.*

*The preceding guidelines are not exhaustive. You should always exercise good judgment and common sense in the use of our computer system, and should immediately report to management anything you suspect may pose a health or safety risk.*

#### *Accommodation to Disabilities*

*In the event you have a disability which requires an accommodation in order for you to use our computer system, please notify {PERSON OR OFFICE}. In accordance with the practice's commitment to equal opportunity employment, a reasonable accommodation may be provided.*

#### *Protection of Intellectual Property Rights*

*The company purchases licenses for the use of various computer software for business purposes and does not own the copyright to this software or its related documentation. Unless authorized by the software developer, we and our employees do not have the right to reproduce such software for use on more than one computer. Accordingly, employees may only use licensed software on local area networks or on multiple machines according to the software license agreement, and the illegal duplication of software or its documentation is prohibited.*

*The unauthorized use, installation, copying, or distribution of copyrighted, trademarked, or patented material on our computer system is prohibited. As a general rule, if an employee did not create material, does not own the rights to it, or has not gotten authorization for its use, it should not be put on the computer system. Employees are responsible for ensuring that the person sending any material via our computer system has the appropriate distribution rights.*

## *Prohibited Conduct*

*Our computer system may not be used for personal purposes. Its use to solicit others for commercial ventures, religious activities, political causes, outside organizations, or other nonbusiness matters is prohibited.*

*{ABC} strives to maintain a workplace free of harassment and sensitive to the diversity of its employees. Therefore, we prohibit the use of our computer system in ways that are disruptive, offensive to others, or harmful to morale. For example, the display or transmission of sexually explicit images, messages, and cartoons is not allowed. Other such misuse includes, but is not limited to, ethnic slurs, racial comments, off-color jokes, or anything that may be construed as harassment or showing disrespect for others.*

*The following are other examples of conduct involving the use of our computer system which is prohibited:*

- Sending an anonymous e-mail message.*
- Sending or posting a discriminatory, harassing, or threatening message or image.*
- Sending or posting a message that defames or slanders an individual or company.*
- Sending or posting a message that disparages an individual's or company's products or services.*
- Sending or posting a message or material that could damage the company's image or reputation.*
- Sending or posting a chain letter, solicitation, or advertisement not related to business purposes or activities.*
- Sending or posting confidential material, trade secrets, or proprietary information outside of the company.*
- Using the system to engage in any illegal activity.*
- Using the system for personal gain.*
- Using the system for unauthorized transactions that may incur a cost to the company.*
- Stealing, using, or disclosing someone else's code or password without authorization.*
- Attempting to break into the computer system of another individual or company.*
- Copying or downloading software and electronic files without permission.*
- Violating copyright law or any software license in connection with the company's computer system.*

- *Failing to observe licensing agreements.*
- *Intentionally or carelessly transmitting a virus or introducing it into our system or any other system.*
- *Participating in the viewing or exchange of pornography or obscene materials.*
- *Passing off a personal view as representing that of the company.*
- *Jeopardizing the security of the computer system.*
- *Failing or refusing to cooperate with a company investigation involving the computer system.*

### *Monitoring*

*To ensure compliance with this and other policies of the practice, usage of the computer system, including e-mail and internet usage, may be monitored. This monitoring may occur, for example, through interception and inspection of e-mail communications and internet usage records. All employees consent to such monitoring by continuing in their employment after being notified of this computer system policy.*

### *Compliance*

*Employees are required to notify management upon learning of any violation of this policy. Employees who violate this policy, or who fail to report violations of this policy, will be subject to disciplinary action, up to and including discharge.*

## **24. WORK SCHEDULE POLICY**

Although it may seem unnecessary to tell employees that they should know their work schedule and that they should be at work as scheduled, it is appropriate to adopt a written policy stating as much. Such a policy may be useful, for example, in defending an unemployment compensation claim filed by a former employee who was terminated for absenteeism and who claims he did not know his work schedule.

Sample Policy:

### ***WORK SCHEDULE***

*All employees must be in the office during their designated working hours with the exception of lunch breaks. These hours may differ for full-time and part-time employees, and can be confirmed by consulting the master*

*schedule or by contacting the Human Resources Department. It is the responsibility of each employee to know his or her work schedule.*

## **25. WORKPLACE APPEARANCE POLICY**

In many workplaces, office appearance is very important because it directly affects the perception of the company by customers. This would be true, for example, of the office of a doctor or a dentist. For such workplaces, a workplace appearance policy is appropriate.

Sample Policy:

### *OFFICE APPEARANCE*

*All employees have a responsibility to care for the contents and furnishings of the office. Great care and expense have been taken to create a comfortable atmosphere for customers and staff. The positive contributions of all staff members make a pleasant work environment for everyone. Abuse or neglect of the office or its contents will not be tolerated. Each employee will be responsible for the cleanliness of his or her work area. Feel free to contact the Human Resources Department with suggestions to improve our office appearance.*

## **26. EMPLOYEE BREAK ROOM POLICY**

Many employers provide an employee break room. A number of issues frequently arise in regard to employee break rooms, and a written policy is useful to address them.

Sample Policy:

### *EMPLOYEE BREAK ROOM*

*The company provides an employee break room for use by employees during rest and meal breaks. Keeping the employee break room clean is the responsibility of each staff member. Please remember:*

- *Employees are required to follow the break room cleaning schedule.*
- *Use the refrigerator for short-term storage only.*

- *The refrigerator will be cleaned every Thursday, and all unlabeled or expired food will be thrown out.*
- *Clean up crumbs and spills, including in the microwave and the refrigerator, as soon as they happen with the supplies provided.*
- *Do not engage in loud phone conversations while in the break room.*
- *The furnishings in the break room have been provided as a courtesy to staff. Please care for them as you would your own.*

## **27. FOOD AND DRINK POLICY**

The presence of food and drinks can raise issues in almost any workplace. A written policy can be useful for these issues.

Sample Policy (Dental Practice):

### *FOOD AND DRINK*

*Cleanliness and infection control are necessary for patient safety, as well as for OSHA compliance. Food and drink should never be consumed in or near the operatory. Food is prohibited in the office area because it could easily come into contact with patient files, business records, computers and other office equipment, etc. Food should never be consumed in front of patients. Drinks must be in covered cups; bottles and cans are not permitted. Please limit your food and beverage consumption to the break area during your lunch period.*

*A refrigerator is provided for your convenience. We are all responsible for its cleanliness, as well as making sure everyone has enough space. Please monitor your food and take care to dispose of food before it goes bad. Similarly, respect your coworkers and use only enough space for one or two meals.*

## **28. PARKING AND MOTOR VEHICLE POLICY**

Many employees provide on-premises parking to employees. For those that do, it is desirable to adopt a written parking and motor vehicle policy. Such a policy should, at a minimum, (1) inform employees of the rules applicable to use of parking spaces, (2)

disclaim any liability for loss or damage to employees' vehicles, (3) inform employees of specific items, such as firearms and illegal drugs, which the company prohibits in motor vehicles, and (4) reserve the company's right to open and inspect motor vehicles on its property.

Sample Policy:

#### *PARKING AND MOTOR VEHICLES*

*Free parking is provided for all employees in designated parking areas on the company's premises. Employees parking on the company's premises should park only in those areas.*

*The company is not liable for any loss, theft, or damage, including vandalism, to vehicles parked on its premises. Additionally, it is not liable or responsible for any injury, death or property damage occurring as a result of the use of a motor vehicle on its premises.*

*Vehicles are not permitted on company premises overnight or for extended periods of time, and are not permitted to occupy more than one parking space. Any vehicle violating this policy may be towed at the owner's expense.*

*Illegal drugs, firearms, ammunition, explosives, and weapons of any kind are strictly prohibited on company premises. In the interests of security and safety, the company reserves the right to enter and inspect all vehicles on company premises.*

#### **29. WORKPLACE VISITORS POLICY**

In many work environments, controls are needed in regard to workplace access by visitors. In such environments, a written policy establishing the rules and procedures applicable to visitors can be helpful.

Sample Policy:

#### *Visitors in the Workplace*

*To provide for the safety and security of employees and the company's facilities, only authorized visitors are allowed on company premises. Restricting unauthorized visitors helps maintain safety standards, protects*

*against theft, ensures security of equipment, protects confidential information, safeguards employee welfare, and avoids potential distractions and disturbances. All visitors should enter at the main entrance. Authorized visitors will receive directions or be escorted to their destination. Employees are responsible for the conduct and safety of their visitors. If an unauthorized individual is observed on the company's premises, employees should immediately notify their supervisor or, if necessary, direct the individual to the main entrance.*

### **30. CLOSURE DUE TO WEATHER OR UNFORESEEN EVENTS POLICY**

Employees need to know what to do when businesses are closing as a result of, for example, heavy snowfall. A written policy can be useful for this purpose.

Sample Policy:

#### *CLOSURE DUE TO WEATHER OR UNFORESEEN EVENTS*

*In the event the company will be closed or the start of the day's work will be delayed due to weather or unforeseen events, the Human Resources Department will attempt to contact each employee before regularly scheduled business hours. Employees should not assume, however, that we will be closed merely because of snowfall or other inclement weather. Employees can call the Human Resources Department if in doubt. If you arrive at work and find that we are being affected by such an event, you may be released to go home, and will be paid for all time you worked that day. For purposes of this policy, "weather or unforeseen events" includes but is not limited to heavy snowfall, icing of roadways, power failure, earthquake, tornado, fire, flood, and natural disasters.*

### **31. ATTENDANCE AND TARDINESS POLICY**

Absenteeism and tardiness are two of the most frustrating problems faced by employers. Employers should clearly inform employees that they are required to report for work when scheduled, and that failure to do so may result in disciplinary action. All employers should adopt an attendance and punctuality policy emphasizing these points.

Sample Policy:

*Attendance and Punctuality*

*To maintain a safe and productive work environment, {ABC} requires employees to be reliable and punctual in reporting for work. Absenteeism and tardiness place a burden on coworkers, the company, and our customers. In the rare instances when employees cannot avoid being late to work or are unable to work as scheduled, they should notify their supervisor as soon as possible in advance. Unexcused absences and tardiness may lead to disciplinary action up to and including termination of employment.*

**32. TIMEKEEPING POLICY**

Another scenario frequently arising in Fair Labor Standards Act cases is that an employee will record fewer hours than he actually worked, and then will claim a supervisor ordered him not to record hours above a certain amount - often the 40 hour threshold for overtime compensation. Because the FLSA bases entitlement to overtime on hours actually worked instead of hours recorded, this puts the employer in the position of having to prove the employee did not work the hours claimed, and that can be difficult. Therefore, it is desirable for all employers subject to the FLSA to adopt a written policy requiring employees to accurately record their time.

Sample Policy:

*RECORDING YOUR WORK HOURS*

*Accurately recording time worked is the responsibility of every nonexempt employee. Federal and state laws require the company to keep an accurate record of time worked in order to calculate employee pay and benefits. Time worked is all the time actually spent on the job performing assigned duties, including breaks of less than 20 minutes.*

*It is your responsibility to accurately record the time that you start working at the beginning of each shift, and to accurately record the time that you finish working at the end of each shift. Waiting until the end of your shift to record both starting and ending times is unacceptable. You also should record the beginning and end of your meal break, and the time*

*you depart from work for personal reasons and, if applicable, the time you return to work.*

*Wages are computed based upon the work hours recorded by employees on the time clock and therefore, to ensure employees are paid for all hours worked, employees are prohibited from performing job duties “off the clock.” Employees also are prohibited from working before or after their assigned shift, during breaks, or at home without the prior express written consent of the Human Resources Department.*

*Overtime work (work in excess of 40 hours in a workweek) must always be approved before it is performed.*

*No supervisor, manager, or other person is authorized to direct any employee to incorrectly report his or her hours worked. Any employee receiving such an instruction should report it immediately to the Human Resources Department.*

*All employees are presumed to be honest and trustworthy. However, spot checks of the accuracy to timekeeping and mathematical calculations of time worked during a pay period are necessary and are conducted. Altering, falsifying, tampering with time records, or recording time on another employee’s record may result in disciplinary action, up to and including termination of employment.*

### **33. DRESS CODE AND PERSONAL APPEARANCE POLICY**

In many workplaces, the dress and appearance of employees directly affects the perception which customers and the public have of the employer. In such workplaces, it is appropriate to adopt a dress code and personal appearance policy.

Issues concerning dress and grooming sometimes arise in connection with the religious beliefs of an employee. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination by covered employers on the basis of religion, and the United States Equal Employment Opportunity Commission, which enforces Title VII, has become increasingly active in regard to discrimination on the basis of religion. On March 6, 2014, the EEOC released a new question and answer guide titled “Religious Garb and Grooming in the Workplace: Rights and Responsibilities” and a new fact sheet titled “Fact Sheet on Religious Garb and Grooming in the Workplace: Rights and

Responsibilities” (attached). All employers which have dress code and personal appearance policies should review this new guidance and evaluate their existing policies for compliance. All employers drafting new dress code and personal appearance policies likewise should ensure their new policy meets the requirements of the new guidance.

Sample Policy (Dental Practice):

#### *PERSONAL APPEARANCE AND DRESS CODE*

*Dress, grooming, and personal cleanliness standards contribute to the morale of all employees and affect the business image that {ABC} presents to patients and to the community. During business hours or when representing the practice, you are expected to present a clean, neat, and tasteful appearance. You should dress and groom yourself according to the requirements of your position.*

*The following are specific standards the practice has established and which should be strictly observed.*

- *Clinical Staff: The clinical staff may wear scrubs. They must be clean and well pressed. When they become worn or ragged they must be replaced.*
- *Front Desk Staff: The front desk staff is required to present themselves in a professional manner at all times. The attire should be suitable to a professional environment. Tennis shoes are not permitted for employees on the administration team. Flip flops, jeans, or t-shirts are not allowed.*
- *Cleanliness: Patients judge our adherence to infection control procedures by the personal hygiene of every employee. Daily showers, clean hair, deodorant, and mouthwash are recommended for everyone. Make-up should be subdued. Please remember that patients and colleagues may be sensitive or even allergic to cosmetics with strong scents, such as perfume, cologne, or shaving lotion, and use accordingly.*
- *Hair and Nails: In the interests of patient comfort and personal safety, hair should be groomed to stay off the face and out of the way. Fingernails should be clean and neatly trimmed.*
- *Accessories: In general, do not wear jewelry that makes noise or dislodges easily, or body piercings other than earrings. Tattoos*

*should not be visible. Please leave political buttons and similar symbols out of the office to help all of our patients feel comfortable with our practice.*

- *Food: Eating, drinking, or chewing gum or other food items in areas where you may come in contact with patients is prohibited.*

*If the practice feels that your personal appearance or hygiene is inappropriate, you may be asked to leave the workplace until you are properly dressed or groomed. Under such circumstances, you will not be compensated for the time away from work. Consult the Human Resources Department if you have questions as to what constitutes appropriate appearance and hygiene.*

*If this Personal Appearance and Dress Code Policy conflicts with your religious beliefs or practices, or if it may interfere with your ability to perform your job duties due to a medical condition or for any other reason, you may ask for an exception to the policy as a reasonable accommodation. We will evaluate all such requests taking into consideration the needs of the employee, the needs of the company, and applicable law.*

#### **34. SMOKING POLICY**

Smoking in the workplace is an issue that can raise strong feelings. However, the modern trend is to provide smoke-free work environments. It is best to inform employees through the employee handbook of the company's position on the issue.

Sample Policy:

##### *Smoke-Free Workplace*

*Smoking is prohibited in company facilities or on company property within 100 feet of the main entrance. This applies to employees, customers, and visitors. Employees who do smoke may not report to work smelling of smoke. We operate in a clean and sanitary environment and our employees are considered a part of that environment.*

#### **35. NON-SOLICITATION POLICY**

Solicitations by employees in the workplace can be disruptive, and employers have a clear interest in limiting such solicitations to maintain productivity. However, the

National Labor Relations Act gives employees the right to organize and join unions, and an employer can commit an unfair labor practice under the NLRA if it unduly infringes employees' right to communicate among themselves about the terms and conditions of employment or about labor unions. Therefore, employers drafting non-solicitation policies must be careful not to prohibit activity protected under the Act, as interpreted by the National Labor Relations Board. This can be challenging, because the NLRB takes an expansive view of the scope of the Act.

Sample Policy:

### *SOLICITATION*

*In an effort to ensure a productive and harmonious work environment, no employee or organization is permitted to engage in solicitation of other employees for any purpose whatsoever during working hours or in work areas.*

*The company recognizes that employees may have interests in events and organizations outside the workplace. An employee may engage in solicitation or organization of other employees if both the soliciting employee and the solicited employee are: (a) on an authorized and scheduled work break, or (b) have completed or have not yet begun their normal work hours. Any such solicitation or organization may take place only in nonwork areas such as the cafeteria and break rooms, and may not occur in any work area, whether or not that work area is visible to customers.*

*The company's fax machines and e-mail system may not be used for solicitation.*

*No solicitation may be posted on a company bulletin board without prior approval of the Human Resources Department.*

*No solicitation or organization of employees by a nonemployee may take place on the premises at any time under any circumstances.*

*In order to maintain good customer relations and preserve the dignity of the company's business, no employee may wear any insignia, badge, or button on their person, nor display any insignia, badge, or button on their desk or at their workstation, that identifies or states the slogan of any fraternal, civic, political, religious, or labor organization when, as part of*

*their normal job, that employee comes in contact with customers or is likely to do so. Offensive slogans and emblems are prohibited. The company will reasonably accommodate an employee's need to wear religious attire. The company may require employees to wear insignia, badges, or buttons purchased by the company for this purpose in relation to a business or a promotional event.*

*The company may permit employees to schedule breaks to allow participation in events such as blood drives. In some instances, the company may approve collection of money for charities or for cases of particular hardship. All such approved solicitations are made only during regularly scheduled rest and lunch periods.*

*As used in this policy, the terms "solicitation" and "organization" include any communication by any employee or group of employees to another employee or group of employees that encourages, advocates, demands, or requests a contribution of money, time, effort, or personal involvement or membership in any fund (charitable or otherwise), collection, athletic team, social, fraternal, religious, civil, or labor organization of any kind or type, or the purchase of any merchandise, raffle tickets, etc.*

*As used in this policy, the terms "insignia," "badges," or "buttons" include any symbol or ornamentation that identifies, or states a slogan of, or encourages membership in any fraternal, civic, charitable, political, religious, or labor-related club or organization.*

*Questions or concerns about this policy should be directed to the Human Resources Department.*

### **36. PERSONAL RELATIONSHIPS IN THE WORKPLACE POLICY**

Office romances can cause all manner of problems for employers. They can be breeding grounds for sexual harassment claims. They can undermine employee morale by creating an appearance of favoritism. When two employees in a relationship have a falling out, it is almost certain that job performance will be adversely affected. Some employers therefore ban such relationships. An outright ban on such relationships, however, can place the employer in an undesirable position where, for example, the two employees are key members of the management team. In view of this possibility, other employers adopt a more flexible policy, such as reflected in the sample policy below.

Regardless of whether the employer's approach to this issue is strict or flexible, the best approach is to adopt a written policy stating the employer's position.

Sample Policy:

#### *PERSONAL RELATIONSHIPS IN THE WORKPLACE*

*The employment of relatives or individuals involved in a dating relationship in the same area of an organization may cause serious conflicts and problems with favoritism and employee morale. In addition to claims of partiality in treatment at work, personal conflicts from outside the work environment can be carried over into day to day working relationships.*

*For purposes of this policy, relatives are any persons who are related to each other by blood or marriage or whose relationship is similar to that of persons who are related by blood or marriage. A dating relationship is defined as a relationship that may be reasonably expected to lead to the formation of a consensual "romantic" or sexual relationship. This policy applies to all employees without regard to the gender or sexual orientation of the individuals involved.*

*Relatives of current employees may not occupy a position that will be working directly for or supervising their relative without the prior consent of the practice. Individuals involved in a dating relationship with a current employee may also not occupy a position that will be working directly for or supervising the employee with whom they are involved in a dating relationship. The company also reserves the right to take prompt action if an actual or potential conflict of interest arises involving relatives or individuals involved in a dating relationship who occupy positions at any level (higher or lower) in the same line of authority that may affect the review of employment decisions.*

*If a relative relationship or dating relationship is established after employment between employees who are in a reporting situation described above, it is the responsibility and obligation of the supervisor involved in the relationship to disclose the existence of the relationship to management.*

*In other cases where a conflict or the potential for conflict arises because of the relationship between employees, even if there is no line of authority or reporting involved, the employees may be separated by reassignment or terminated from employment. Employees in a close personal relationship*

*should refrain from public workplace displays of affection or excessive personal conversation.*

### **37. SOCIAL MEDIA POLICY**

Social media such as Facebook, LinkedIn, and Twitter have become an integral part of many businesses and their workplaces. Social media raised numerous legal issues, and most recently has been a focus of the National Labor Relations Board. The issues raised by social media, moreover, are now a permanent part of the HR landscape. Accordingly, every employer should ask itself whether it should adopt a social media policy. If an employer decides to adopt a social media policy, then careful consideration must be given to what that policy should say, because a good social media policy can be very beneficial but a bad social media policy usually will be worse than having no social media policy at all.

Sample Policy (Doctor's Office):

#### *SOCIAL MEDIA POLICY*

*Social Media includes websites such as Facebook, YouTube, Twitter and many others. New social networking websites allowing online collaboration or commentary are being added each day. This policy covers all existing and future social networking media, including multi-media, social networking websites, blogs, and wikis for both professional and personal use.*

#### *Guiding Principles*

*Patient privacy is of utmost concern. Do not share anything that can identify a patient or otherwise constitutes disclosure of Personal Health Information of any of our patients. Know and follow the HIPAA Privacy and Security Rules. Alert management if you see information posted by others, including patients themselves, that is confidential.*

*Do not post pictures or images of employees, providers or patients without authorization.*

*Post meaningful, respectful comments. In other words, no spam and no remarks that are off-topic or offensive.*

*When disagreeing with others' opinions, keep it appropriate and polite.*

*The practice strictly prohibits unlawful discrimination, harassment and retaliation. Our employees are expected and required to observe that prohibition in their social media activities.*

*Always pause and think before posting – is this something you would say in person or to a mixed audience? Remember, what you post on the internet is written in ink and cannot be erased.*

*Only the President of the practice is authorized to speak on behalf of the practice in social media. Employees are prohibited from making any statement in social media on behalf of the practice, and are prohibited from creating Facebook or other online page or site which reasonable could be interpreted as being a page or site of the practice.*

#### *Guidelines for Participating in Social Media*

- *Be Transparent. Your honesty - or dishonesty - will be quickly noticed in the social media environment. If you are blogging about your work at the practice, use your real name, identify that you work for this practice, and be clear about your role. If you have a vested interest in something you are discussing, be the first to point it out. Transparency is about your identity and relationship to this practice. Above all, remember that you need to keep confidentiality around private information and patients.*
- *Be Judicious. Make sure your efforts to be transparent don't violate patient privacy, confidentiality, and legal guidelines. Ask permission to publish or report on conversations that are meant to be private or internal to the practice. All statements must be true and not misleading and all claims must be substantiated and approved. Never comment on anything related to legal matters, litigation, or any parties with whom we are in litigation or who have made a claim of malpractice or who have lodged a formal complaint. Do not write or comment about other dentists or healthcare providers. Be smart about protecting yourself, your privacy, and patient privacy. What you publish is widely accessible and will be around for a long time, so consider the content carefully.*
- *Write What You Know. Make sure you write and post about your areas of expertise, especially as related to the practice and our services. If you are writing about a topic that this practice is*

*involved with but you are not our expert on the topic, you should make this clear to your readers. If you are on the clinical staff, do not write or comment on clinical topics or issues. Write in the first person, and . If you publish to a use a disclaimer such as: “The postings on this site are my own and don’t necessarily represent this practice’s positions, strategies, or opinions, and do not constitute dental or medical advice.” Also, you must respect brand, trademark, copyright, fair use, confidentiality, and financial disclosure laws. If you have any questions about these, contact the Practice Administrator. Remember, you may be personally responsible for your content.*

- *Perception Is Reality. In online social networks, the lines between public and private, personal and professional are blurred. Just by identifying yourself as this practice’s employee, you are creating perceptions about your expertise and about this practice by our patients and the general public - and perceptions about you by your colleagues and managers. Be sure that all content associated with you is consistent with your work and with the practice’s values and professional standards*
- *It’s a Conversation. Talk to your readers like you would talk to real people in professional situations. In other words, avoid overly pedantic or “composed” language. Don’t be afraid to bring in your own personality and say what’s on your mind. Consider content that’s open-ended and invites response. Encourage comments. You can also broaden the conversation by citing others who are blogging about the same topic and allowing your content to be shared or syndicated.*
- *Are You Adding Value? There are millions of words out there. The best way to get yours read is to write things that people will value. Social communication from our practice should help our patients, partners, and co-workers. It should be thought-provoking and build a sense of community. If it helps people improve knowledge of health related topics or skills, improve their lifestyle, solve problems, or understand this practice better - then it’s adding value*
- *Your Responsibility. What you write is ultimately your responsibility. Participation in social media networking is not a right but an opportunity, so please treat it seriously and with respect. Failure to abide by these policies and the HIPAA Privacy*

*and Security Rules could put your employment at risk. Please also follow the terms and conditions for any third-party sites.*

- *Be a Leader. There can be a fine line between healthy debate and incendiary reaction. Do not denigrate other dentists or other healthcare providers, this practice or other employees or providers, and do not engage with others who have done so. Nor do you need to respond to every criticism or barb. Try to frame what you write to invite differing points of view without inflaming others. Some topics - like politics or religion - slide more easily into sensitive territory. So be careful and considerate. Once the words are out there, you can't really get them back. And once an inflammatory discussion gets going, it's hard to stop.*
- *Did You Make a Mistake? If you make a mistake, admit it. Be upfront and be quick with your correction. If you're posting to a blog, you may choose to modify an earlier post - just make it clear that you have done so.*

*If it gives you pause, then pause. If you're about to publish something that makes you even the slightest bit uncomfortable, don't shrug it off and hit "send." Take a minute to review these guidelines and try to figure out what's bothering you, then fix it. If you're still unsure, you might want to discuss it with the Practice Administrator. Ultimately, what you publish is yours - as is the responsibility. So be sure.*

### **38. STANDARDS OF CONDUCT POLICY**

Every employer should have a standards of conduct policy which lists examples of unacceptable conduct which may lead to disciplinary action. The listed conduct should, at a minimum, reflect the most serious and most frequently occurring kinds of employee misconduct.

Sample Policy:

#### *STANDARDS OF CONDUCT*

*It is not possible to list all the forms of behavior by employees that the practice considers unacceptable. The following, however, are some examples of conduct that may result in disciplinary action, up to and including immediate termination of employment:*

- *Obtaining employment on the basis of false or misleading information*
- *Lying to a company supervisor or manager*
- *Theft of company, employee or customer property*
- *Falsification of company records*
- *Punching in or out on another employee's time card*
- *Unauthorized possession, willful destruction, or defacement of company, employee or customer property*
- *Working or reporting for work under the influence of alcohol or illegal drugs*
- *Fighting or threatening violence in the workplace*
- *Disorderly conduct of any kind on company premises, such as fighting, wrestling, running, roughhousing, or any other activity dangerous to life, limb, or property.*
- *Use of abusive, threatening, or obscene language*
- *Unlawful discrimination, sexual or other harassment, or retaliation*
- *Negligence in the performance of job duties*
- *Insubordination or disrespectful conduct*
- *Violation of safety or health rules*
- *Smoking in the workplace*
- *Possession of dangerous or unauthorized materials, such as illegal drugs, explosives or firearms, in the workplace*
- *Possession, distribution, sale, transfer, or use of illegal drugs anywhere*
- *Excessive or unexcused absence or tardiness*
- *Leaving early without authorization*
- *Unauthorized disclosure of confidential information or trade secrets*
- *Performing personal business during working hours or on company premises, such as selling or peddling articles*
- *Loafing, lounging, or sleeping in restrooms or break rooms*
- *Visiting other departments without permission.*
- *Violation of OSHA, safety, security, or fire prevention rules*
- *Violation of company policies*
- *Unsatisfactory job performance*
- *(Medical Offices) Violation of HIPAA or other privacy laws, rules, or regulations*
- *(Medical Offices) Unauthorized disclosure of confidential patient information including protected health information*
- *Any other act detrimental to the interests of the company or its employees*

### **39. PAYROLL POLICY**

Employees often have questions regarding payroll. Many of these questions can be answered in a payroll policy.

In Virginia, payment of wages is governed by the Virginia Payment of Wage Law, Virginia Code § 40.1-29. That statute provides:

A. 1. All employers operating a business shall establish regular pay periods and rates of pay for employees except executive personnel. All such employers shall pay salaried employees at least once each month and employees paid on an hourly rate at least once every two weeks or twice in each month, except that (i) a student who is currently enrolled in a work-study program or its equivalent administered by any secondary school, institution of higher education or trade school, and (ii) employees whose weekly wages total more than 150 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500, upon agreement by each affected employee, may be paid once each month if the institution or employer so chooses. Upon termination of employment an employee shall be paid all wages or salaries due him for work performed prior thereto; such payment shall be made on or before the date on which he would have been paid for such work had his employment not been terminated.

2. Any such employer who knowingly fails to make payment of wages in accordance with this section shall be subject to a civil penalty not to exceed \$1,000 for each violation. The Commissioner shall notify any employer who he alleges has violated any provision of this section by certified mail. Such notice shall contain a description of the alleged violation. Within 15 days of receipt of notice of the alleged violation, the employer may request an informal conference regarding such violation with the Commissioner. In determining the amount of any penalty to be imposed, the Commissioner shall consider the size of the business of the employer charged and the gravity of the violation. The decision of the Commissioner shall be final.

B. Payment of wages or salaries shall be (i) in lawful money of the United States, (ii) by check payable at face value upon demand in lawful money of the United States, (iii) by electronic automated fund transfer in lawful money of the United States into an account in the name of the employee at a financial institution designated by the employee, or (iv) by credit to a prepaid debit card or card account from which the employee is able to withdraw or transfer funds with full written disclosure by the employer of any applicable fees and affirmative consent thereto by the employee. However, an employer that elects not to pay wages or salaries in

accordance with clause (i) or (ii) to an employee who is hired after January 1, 2010, shall be permitted to pay wages or salaries by credit to a prepaid debit card or card account in accordance with clause (iv), even though such employee has not affirmatively consented thereto, if the employee fails to designate an account at a financial institution in accordance with clause (iii) and the employer arranges for such card or card account to be issued through a network system through which the employee shall have the ability to make at least one free withdrawal or transfer per pay period, which withdrawal may be for any sum in such card or card account as the employee may elect, using such card or card account at financial institutions participating in such network system.

C. No employer shall withhold any part of the wages or salaries of any employee except for payroll, wage or withholding taxes or in accordance with law, without the written and signed authorization of the employee. An employer, upon request of his employee, shall furnish the latter a written statement of the gross wages earned by the employee during any pay period and the amount and purpose of any deductions therefrom.

D. No employer shall require any employee, except executive personnel, to sign any contract or agreement which provides for the forfeiture of the employee's wages for time worked as a condition of employment or the continuance therein, except as otherwise provided by law.

E. An employer who willfully and with intent to defraud fails or refuses to pay wages in accordance with this section is guilty of a Class 1 misdemeanor if the value of the wages earned and not paid by the employer is less than \$10,000 and is guilty of a Class 6 felony if the value of the wages earned and not paid is \$10,000 or more or, regardless of the value of the wages earned and not paid, if the conviction is a second or subsequent conviction under this section. For purposes of this section, the determination as to the "value of the wages earned" shall be made by combining all wages the employer failed or refused to pay pursuant to this section.

F. The Commissioner may require a written complaint of the violation of this section and, with the written and signed consent of an employee, may institute proceedings on behalf of an employee to enforce compliance with this section, and to collect any moneys unlawfully withheld from such employee which shall be paid to the employee entitled thereto. In addition, following the issuance of a final order by the Commissioner or a court, the Commissioner may engage private counsel, approved by the Attorney General, to collect any moneys owed to the employee or the Commonwealth. Upon entry of a final order of the Commissioner, or upon

entry of a judgment, against the employer, the Commissioner or the court shall assess attorney's fees of one-third of the amount set forth in the final order or judgment.

G. In addition to being subject to any other penalty provided by the provisions of this section, any employer who fails to make payment of wages in accordance with subsection A shall be liable for the payment of all wages due, plus interest at an annual rate of eight percent accruing from the date the wages were due.

H. Civil penalties owed under this section shall be paid to the Commissioner for deposit into the general fund of the State Treasurer. The Commissioner shall prescribe procedures for the payment of proposed assessments of penalties which are not contested by employers. Such procedures shall include provisions for an employer to consent to abatement of the alleged violation and pay a proposed penalty or a negotiated sum in lieu of such penalty without admission of any civil liability arising from such alleged violation.

Final orders of the Commissioner, the general district courts or the circuit courts may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner or the court as appropriate.

Virginia employers should take care to comply with this statute, especially in regard to deductions from paychecks and final payment of wages.

Sample Policy:

#### *PAYMENT OF WAGES*

*It is the policy of {ABC} to comply with all applicable laws in the payment of wages. Employees who have questions or concerns about payment of wages should contact the Human Resources Department promptly.*

*Employees are paid every 2 weeks. Each pay period begins on Monday and ends on the Sunday 14 days later.*

*It is the policy of the company not to advance monies for wages or other pay.*

*Employees normally are paid by check. If payday occurs on a holiday, paychecks will be issued on the workday before the holiday whenever*

*possible. The Human Resources Department distributes paychecks from 1:00 p.m. to 5:00 p.m. on paydays. Employees are encouraged to pick up their checks as instructed by their supervisor. Paychecks can be mailed if the employee submits a written and signed request to the Human Resources Department. The company is not responsible for checks lost in the mail. Direct deposit of paychecks can be arranged through the Human Resources Department.*

*If a regular payday falls during an employee's vacation, the employee's paycheck will be available on his or her return from vacation or may be mailed to the employee upon request from the employee. If an employee is absent on payday, that employee's paycheck will be held at the Human Resources office until he or she returns to work. No paycheck will be delivered or mailed to any person without written and signed authorization by the employee and presentation of proper identification.*

*The company makes every effort to ensure that employees are paid the correct amount and on the proper schedule. If there is an error in the amount of pay or the pay date, the employee should promptly contact the Human Resources Department. If an error has been made by the company, a replacement check will be issued or the company will make an appropriate adjustment to the next regularly issued paycheck.*

*If a paycheck is lost or stolen, the employee should complete an affidavit prepared by the Human Resources Department. A stop payment order will be issued, and a replacement check will be issued when the stop payment order has been accepted by the bank. Any fee charged to the company for this service may be passed along to the employee and deducted from the paycheck in accordance with applicable federal and state law.*

*Final paychecks will be prepared and delivered in accordance with applicable state law. When an employee dies, checks will be payable to "the Estate of [Employee Name]." An employee leaving the company will be paid all wages due for work performed before termination of employment on or before the date on which he or she would have been paid for such work had employment not been terminated. If an employee has left the company, the Human Resources Department will mail the paycheck to the forwarding address provided by the employee in writing. If the forwarding address is not known, Human Resources will try to locate the employee and forward the paycheck. Unclaimed or uncashed payroll checks will be forwarded to the state.*

*Employees are responsible for maintaining current information with the Human Resources Department. You are required to report any change in your name, home address, phone number, cell phone number, or e-mail address as soon as possible. Any time there is a change in your tax status you must complete a new W-4 Form. A change in tax status could result from a marriage, a divorce, the birth of a child, or the loss of a deduction.*

#### **40. PAYROLL DEDUCTION POLICY**

It is desirable to have a written payroll deduction policy informing employees of the basic deductions from their gross wages.

Sample Policy:

*The law requires that the company make certain deductions from every employee's wages. Among these are applicable federal, state, and local income taxes. The company also must deduct Social Security taxes on each employee's earnings up to a specified limit that is called the Social Security "wage base." The company matches the amount of Social Security taxes paid by each employee.*

*The company offers programs and benefits beyond those required by law. Eligible employees may voluntarily authorize deductions from their paychecks to cover the costs of participation in these programs.*

*Please contact the Human Resources Department if you have questions or concerns about any deduction from your paycheck.*

#### **41. FLSA SAFE HARBOR POLICY**

The Fair Labor Standards Act requires covered employers to pay non-exempt employees for all hours worked and overtime compensation for all hours worked in excess of 40 in any workweek. An employer violating the FLSA can face significant liability for backpay, liquidated damages, and litigation costs including attorney's fees.

A frequently seen scenario in FLSA litigation is where an employer makes improper deductions from the salary of an exempt employee and by doing so loses the exemption. The United States Department of Labor, however, has established a "safe harbor" for employers in that situation. DOL regulations provide:

If an employer has a clearly communicated policy that prohibits the improper pay deductions specified in § 541.602(a) and includes a complaint mechanism, reimburses employees for any improper deductions and makes a good faith commitment to comply in the future, such employer will not lose the exemption for any employees unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints. If an employer fails to reimburse employees for any improper deductions or continues to make improper deductions after receiving employee complaints, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. The best evidence of a clearly communicated policy is a written policy that was distributed to employees prior to the improper pay deductions by, for example, providing a copy of the policy to employees at the time of hire, publishing the policy in an employee handbook or publishing the policy on the employer's Intranet.

29 C.F.R. § 541.603(d). DOL also has provided the following optional policy which it states will meet the requirements of the safe harbor regulation:

*The Fair Labor Standards Act (FLSA) is a federal law which requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.*

#### *Salary Basis Requirement*

*To qualify for exemption, employees generally must be paid at not less than \$455 per week on a salary basis. These salary requirements do not apply to outside sales employees, teachers, and employees practicing law or medicine. Exempt computer employees may be paid at least \$455 on a salary basis or on an hourly basis at a rate not less than \$27.63 an hour. Being paid on a "salary basis" means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or*

*less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to exceptions listed below, an exempt employee must receive the full salary for any workweek in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any workweek in which they perform no work. If the employer makes deductions from an employee's predetermined salary, i.e., because of the operating requirements of the business, that employee is not paid on a "salary basis." If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.*

#### *Circumstances in Which the Employer May Make Deductions from Pay*

*Deductions from pay are permissible when an exempt employee: is absent from work for one or more full days for personal reasons other than sickness or disability; for absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness; to offset amounts employees receive as jury or witness fees, or for military pay; or for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions (see Company Policy on penalties for workplace conduct rule infractions). Also, an employer is not required to pay the full salary in the initial or terminal week of employment; for penalties imposed in good faith for infractions of safety rules of major significance, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. In these circumstances, either partial day or full day deductions may be made.*

#### *Company Policy*

*It is our policy to comply with the salary basis requirements of the FLSA. Therefore, we prohibit all company managers from making any improper deductions from the salaries of exempt employees. We want employees to be aware of this policy and that the company does not allow deductions that violate the FLSA.*

#### *What To Do If An Improper Deduction Occurs*

*If you believe that an improper deduction has been made to your salary, you should immediately report this information to your direct supervisor, or to [insert alternative complaint mechanism(s)]. Reports of improper deductions will be promptly investigated. If it is determined that an*

*improper deduction has occurred, you will be promptly reimbursed for any improper deduction made.*

([http://www.dol.gov/whd/regs/compliance/fairpay/modelPolicy\\_PF.htm](http://www.dol.gov/whd/regs/compliance/fairpay/modelPolicy_PF.htm).) All employers subject to the Fair Labor Standards Act should adopt a safe harbor policy for improper wage deductions.

## **42. HOLIDAY POLICY**

No law requires a company to observe holiday, but almost all do. The company's holiday policy should address, at a minimum, the following issues:

- What holidays does the company observe?
- Are holidays paid or unpaid?
- Who is entitled to holiday pay?
- How is holiday pay calculated?
- Do holidays count as hours worked?
- Can employees be required to work on holidays?
- Can an employee take time off for a holiday in observance of his religion?

The company has wide discretion in answering each of these questions. Once each question is answered in the company policy, however, the company should apply the policy uniformly.

Sample Policy:

### *HOLIDAYS*

*{ABC} observes the following holidays:*

*New Year's Day  
Presidents' Day  
Good Friday  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving Day  
Day after Thanksgiving*

*Workday directly before or after Christmas (depending on day of the week for Christmas)  
Christmas*

*If one of these holidays falls on a Sunday, it will be observed on the following Monday. If the holiday falls on a Saturday, the company will select either the following Monday or the preceding Friday as a substitute holiday. The company reserves the right to pay eligible employees in lieu of time off if the holiday falls on Saturday.*

*Full-time regular employees are granted paid time off during these holidays. Salaried employees may receive holiday pay immediately upon joining the company. Part-time, temporary and contract employees are not eligible for holiday pay.*

*Holiday pay eligibility is contingent upon the employee working a full shift on the workday preceding the holiday and a full work shift on the workday following the holiday unless (a) the holiday falls during the employee's approved vacation period, (b) the employee is ill and has submitted a doctor's note, or (c) the employee leaves work on the workday before or after the holiday because of an industrial accident.*

*Holiday pay shall be at the employee's regular straight-time rate, inclusive of shift premiums, times his regularly scheduled hours (not to exceed 8 hours).*

*A holiday shall not be considered hours worked for the purpose of computing overtime.*

*At times, business needs may require employees to work on a holiday. The company reserves the right to require an employee to work on a holiday. An eligible hourly or nonexempt employee who works on a holiday shall be paid double time for all hours worked, plus the earned holiday pay. There shall be no duplicating of overtime. When an exempt salaried employee is required to work on a holiday, his or her department head may authorize time off with pay, at a later date of convenience to the company and employee, equal to the amount of time worked on the holiday.*

*Employees who need time off to observe religious practices should contact the Human Resources Department. Depending upon business needs, the employee may be able to work on a day that is normally observed as a holiday and then take time off for another religious day. The employee may also be able to switch his or her schedule with another employee, take*

*vacation time, or take off unpaid days. The company will seek to reasonably accommodate individuals' religious observances.*

#### **43. VACATION / SICK LEAVE / PAID TIME OFF POLICY**

No law requires a company to provide paid vacation. Most employers, however, do provide paid time off for vacation. Many specific issues arise in regard to vacation, and at a minimum the company's written vacation policy should address the following issues:

- Who is entitled to vacation?
- Is vacation paid or unpaid?
- How much vacation can an employee take?
- How is vacation scheduled?
- Does vacation pay carry over from year to year?
- What limits does the company place on when vacation can be taken?
- How is vacation pay calculated?
- Are employees entitled to unused accrued vacation upon termination of employment?

The company has wide discretion in answering each of these questions. Once each is question is answered in the company vacation policy, however, it is important that the company apply the policy uniformly.

Sample Policy:

##### *PAID VACATION*

*It is important for all eligible employees to have time off for rest and relaxation. Annual paid vacations are provided each year on the basis of years of service from the last date of hire. Regular full-time employees earn vacation on the following schedule:*

<i>Completed Years of Service</i>	<i>Days of Vacation</i>
<i>1</i>	<i>5</i>
<i>2</i>	<i>7</i>
<i>3 to 10</i>	<i>10</i>
<i>Over 10</i>	<i>14</i>

*Probationary, temporary, part-time and contract employees are not eligible for this benefit.*

*No vacation is earned or paid until 12 months of continuous service is completed.*

*Employees are expected to schedule their vacation in order to maintain continuous and efficient service for our customers and effective processing of the workload. Vacation slots are filled on first come, first served basis. Therefore, we encourage scheduling of vacations as far in advance as possible.*

*Vacation time is to be taken in no more than 1 week periods. Longer vacations may be granted only if scheduling will not interfere with the normal operating efficiency of the company.*

*Vacation days not used within a vacation year can be carried over to future years up to a maximum of 5 days per year and 21 days total.*

*Upon termination of employment, regardless of the reason, the company does not pay for vacation days not taken.*

*In the event a holiday falls within a vacation period, that day will be treated as holiday pay and not vacation pay.*

*Employees will not receive additional vacation time off due to illness or disability occurring while on their vacation.*

*Vacation pay will be calculated using straight time hourly rates. Overtime, incentive pay, on-call pay, bonuses, and the like are not considered.*

*Vacation days do not count as time worked for purposes of overtime calculations.*

*In the event of a prearranged absence, including vacation, the company may allow an employee to receive his or her paycheck a day early. Such requests must be approved by the supervisor and the Human Resources Department.*

*Accrued vacation and sick pay must be used prior to commencement of any unpaid leave of absence.*

*Any full-time employee who is called to serve on jury duty may use accrued vacation for that purpose.*

No law requires a company to provide paid sick leave, but most do. Any sick leave policy should be written. Specific issues which arise in regard to sick leave that should be addressed in the sick leave policy include:

- Who is entitled to sick leave?
- Is vacation paid or unpaid?
- How much sick leave can an employee take?
- How is sick leave scheduled?
- Does sick leave carry over from year to year?
- How is sick leave pay calculated?
- Are employees entitled to unused accrued paid sick leave upon termination of employment?

The company has wide discretion in answering each of these questions. Once each question is answered in the company vacation policy, however, the policy must be applied uniformly.

Sample Policy:

#### *SICK LEAVE*

*Regular full-time employees become eligible for 5 days of paid sick leave per year after 1 year of continuous full-time employment.*

*An eligible employee may use sick leave for an absence due to his or her own illness or injury. Sick leave benefits are intended solely to provide income protection in the event of illness or injury, and may not be used for any other absence.*

*Sick leave may be taken in increments of one hour or more. Employees who are unable to report to work due to illness or injury should notify their supervisor as soon as possible before the scheduled start of their workday. The supervisor also should be contacted on each additional day of absence. For planned absences such as for doctor appointments, the employee should give their supervisor at least two weeks notice if possible,*

*or else as much prior notice as is possible. The company may require certification by the employee's health care provider verifying the need for leave and the beginning and expected ending dates of the leave.*

*For hourly employees, paid sick leave will be calculated based on the employee's straight time pay rate times the number of hours the employee would otherwise have been scheduled to work on that day, and does not include overtime compensation or any special forms of compensation such as bonuses or incentives. For salaried employees, holiday pay is equal to the salary the employee otherwise would have been paid for that day.*

*Unused sick leave does not carry over from year to year, and employees will not be entitled to payment for sick leave which is unused at the end of the year or upon termination of employment.*

Some employers choose to use a paid time off policy under which employees earn a specified amount of paid leave per year for use for sickness, vacation, or any other purpose. Paid time off policies simplify leave because employees do not have to designate their leave as being sick leave or vacation. A drawback to paid time off policies is that employees can take leave under them for FMLA qualifying purposes but the employer may not know that the time off can be designated as FMLA leave.

Sample Policy:

#### *PAID TIME OFF*

*Instead of vacation days, sick days, etc., {ABC} has a system of paid personal leave days which can be used for vacations, illnesses, deaths in the family, religious holidays or any other purpose. This leave is in lieu of all other types of paid leave.*

*You must request permission to use paid leave in advance of the date on which you would like your leave to begin. In most cases, this means that you must submit your request to your supervisor at least one week in advance. Requests for vacation must be submitted ninety (90) days in advance.*

*Requests for paid leave will be evaluated based on a number of factors, including anticipated work load and staffing available during the proposed period of absence. In the case of an illness where advance notice*

*is not practical or possible, you must present a doctor's excuse to your supervisor when you return to work.*

*Paid leave days can be used as they accrue. However, you may not take off more than ten (10) days at a time. A maximum of five (5) unused paid leave days may be carried over from year to year. Any unused paid leave days which exceed the five (5) day maximum carry-over will be paid to you in cash on the first payday which follows the end of the calendar year. Upon termination of your employment, you will be paid for any unused paid leave days which have accrued through your last day of work.*

*You will accrue paid leave days while employed by the Company in accordance with the following schedule:*

*Employees with Less Than One Year of Service: If you have less than one (1) year of service you will accrue two (2) days of leave for each calendar quarter completed.*

*Employees With Between One (1) Year and Three (3) Years of Service: In any year after you have at least one (1) year of service, you will accrue two and one half (2 1/2) days of leave for each calendar quarter of completed service.*

*Employees With Between Three (3) Years and Five (5) Years of Service: In any year after you have at least three (3) years of service, you will accrue three (3) days of leave for each calendar quarter of completed service.*

*Employees with More Than Five (5) Years of Service: In any year after you have at least five (5) years of service, you will accrue four (4) days of leave for each calendar quarter of completed service.*

*You will be considered to have completed a calendar quarter only if you began to work prior to the first day of the second month in the calendar quarter and continue to work through the end of that calendar quarter.*

#### **44. FAMILY AND MEDICAL LEAVE ACT POLICY**

All employers covered by the Family and Medical Leave Act must have a written FMLA policy.

In drafting an FMLA policy, it is important to incorporate recent amendments to the FMLA in regard to family military leave. The National

Defense Authorization Act for Fiscal Year 2008 or “NDAA” amended the FMLA to allow qualified employees with family members in the military to take leave due to a “qualifying exigency” and for servicemember “caregiver” leave. On October 28, 2009, President Obama signed the National Defense Authorization Act for Fiscal Year 2010, which made several changes in regard to family military leave. The 2010 changes expanded employees’ rights to family military leave for an exigency associated with a family member’s call to service, and extended exigency leave to active duty service members and members of the reserve forces (instead of just family members of National Guard and reservists), expanded the type of covered duty to deployments to a foreign country and calls to active duty in a foreign county, extended the 26 weeks of leave to employees who are family members of servicemembers and veterans for up to 5 years after a veteran leaves service if he or she develops a service-related injury or illness that was incurred or aggravated while on active duty, and expanded the caregiver leave provision to include veterans who are undergoing medical treatment, recuperation, or therapy for serious injury or illness that occurred any time during the 5 years preceding the date of treatment.

Sample Policy:

#### *FAMILY AND MEDICAL LEAVE*

*It is the policy of {ABC} to provide leave in accordance with the Family & Medical Leave Act and to comply fully with all laws pertaining to employee leave. If you have questions concerning FMLA leave or any other types of leave, you should contact the Human Resources Department.*

#### *Eligibility for FMLA Leave*

*Employees are eligible for FMLA leave if they:*

- 1. Have worked for the company for at least 12 months in the last 7 years;*
- 2. Have worked at least 1,250 hours for the company during the 12 calendar months immediately preceding the request for leave; and*

3. Are employed at a work site that has 50 or more employees within a 75-mile radius.

#### *Basic FMLA Leave*

*Employees who meet the eligibility requirements described above are eligible to take up to 12 weeks of unpaid leave during any 12-month period for any of the following reasons:*

- 1. To care for the employee's son or daughter during the first 12 months following birth;*
- 2. To care for a child during the first 12 months following placement with the employee for adoption or foster care;*
- 3. To care for a spouse, son, daughter, or parent ("family member") with a serious health condition;*
- 4. For incapacity due to the employee's pregnancy, prenatal medical or child birth; or*
- 5. Because of the employee's own serious health condition that renders the employee unable to perform an essential function of the position;*

*In cases where spouse are employed by the company, the two spouses together may take a combined total of 12 week' leave during any 12 month period for reasons 1 and 2, or to care for the same individual pursuant to reason 3.*

#### *Military Family Leave*

*There are two types of Military Family Leave available.*

*(1) Qualifying Exigency Leave: Employees meeting the eligibility requirements described above may be entitled to use up to 12 weeks of Basic FMLA Leave to address certain qualifying exigencies. Leave may be used if the employee's spouse, son, or daughter, or the employee is on active duty or called to active duty status in the National Guard or reserves in support of a contingency operation. Qualifying exigencies may include:*

- Short-notice deployment (up to 7 days of leave)*

- *Attending certain military events*
- *Arranging for alternative child care*
- *Addressing certain financial and legal arrangements*
- *Periods of rest and recuperation for the servicemember (up to 5 days of leave)*
- *Attending certain counseling sessions*
- *Attending post-deployment reintegration briefings*
- *Other activities agreed upon by the company and the employee*

*(2) Leave to Care for a Covered Servicemember. Employees who meet the eligibility requirements for FMLA leave can take up to 26 weeks of leave to care for a covered servicemember during a single 12 month period. A covered servicemember is a current member of the armed forces, including a member of the National Guard or reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list. If both spouses work for the company, the aggregate amount of leave that can be taken by the husband and wife to care for a covered servicemember is 26 weeks in a single 12-month period.*

#### *Use of Leave*

*An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations.*

*Military family leave due to qualifying exigencies may also be taken on an intermittent basis. Leave may not be taken on an intermittent basis when taken to care for the employee's own child during the first year following birth, or to care for a child placed with the employee for foster care or adoption.*

### *Pay, Benefits, and Protections During FMLA Leave*

*FMLA leave is unpaid leave. However, an employee's FMLA leave runs concurrently with other types of paid leave. If an employee requests leave because of the employee's own serious health condition, to care for a family member with a serious health condition, or to care for a seriously injured or ill family member in the military, any accrued paid vacation and sick leave first will be substituted for any unpaid FMLA leave. If an employee requests leave because of birth, adoption, or foster care placement of a child, or for a qualifying exigency, any accrued paid vacation first will be substituted for unpaid FMLA leave. The substitution of paid leave time for unpaid leave time does not extend the 12 week leave period. In no case can the substitution of paid leave time for unpaid leave time result in the receipt of more than 100 percent of an employee's salary.*

*During approved FMLA leave, the company will maintain the employee's health benefits as if the employee continued to be actively employed. If paid leave is substituted for unpaid FMLA leave, the company will deduct the employee's portion of the health plan premium as a regular payroll deduction. If leave is unpaid, the employee must pay his or her portion of the premium. An employee's healthcare coverage will cease if the employee's premium payment is more than 30 days late. If the payment is more than 15 days late, the company will send the employee a letter to this effect. If the company does not receive the copayment within 15 days after the date of this letter, the employee's coverage may cease. If the employee elects not to return to work for at least 30 calendar days at the end of the leave period, the employee will be required to reimburse the company for the cost of the premiums paid by the company for maintaining coverage during the unpaid leave, unless the employee cannot return to work because of a serious health condition or other circumstances beyond the employee's control.*

*Upon return from FMLA leave, most employees will be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.*

*If the need to use FMLA leave is foreseeable, the employee must give the company at least 30 days prior notice of the need to take leave. When 30 days notice is not possible, the employee must give notice as soon as practicable (within 1 to 2 business days of learning of the need for leave except in extraordinary circumstances). Failure to provide such notice may be grounds for delaying the start of the FMLA leave. Whenever possible, requests for FMLA leave should be submitted to the Human*

*Resources Department using the Request for FMLA Leave form available from the Human Resources Department. When submitting a request for leave, the employee must provide sufficient information for the company to determine if the leave might qualify as FMLA leave, and also provide information on the anticipated date when the leave would start and the duration of the leave. Sufficient information may include that the employee is unable to perform job functions, that a family member is unable to perform daily activities, that the employee or family member needs hospitalization or continuing treatment by a healthcare provider, or the circumstances supporting the need for FMLA leave. Employees also must inform the company if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees will be required to provide a certification and periodic recertification supporting the need for leave.*

*When an employee requests leave, the company will inform the employee whether he or she is eligible under the FMLA. If the employee is eligible, the employee will be given a written notice that includes details on any additional information he or she will be required to provide. If the employee is not eligible under the FMLA, the company will provide the employee with a written notice indicating the reason for ineligibility.*

*If leave will be designated as FMLA-protected, the company will inform the employee in writing and provide information on the amount of leave that will be counted against the 12 or 26 week entitlement.*

*If the employee is requesting leave because of the employee's own or a covered relation's serious health condition, the employee and the relevant healthcare provider must supply appropriate medical certification. Employees may obtain Medical Certification forms from the Human Resources Department. When the employee requests leave, the company will notify the employee of the requirement for medical certification and when it is due (no more than 15 days after requesting leave). If the employee provides at least 30 days notice of medical leave, he or she should also provide the medical certification before leave begins. Failure to provide requested medical certification in a timely manner may result in denial of leave until it is provided. The company, at its expense, may require an examination by a second healthcare provider designated by the company, if it reasonably doubts the medical certification the employee initially provide. If the second healthcare provider's opinion conflicts with the original medical certification, the company, at its expense, may require a third, mutually agreeable, healthcare provider to conduct an examination and provide a final and binding opinion. The company may require subsequent medical recertification. Failure to provide requested*

*certification within 15 days, except in extraordinary circumstances, may result in the delay of further leave until it is provided.*

*If an employee takes leave because of the employee's own serious health condition or to care for a covered relation, the employee must contact the company on the first and third Tuesday of each month regarding the status of the condition and his or her intention to return to work. In addition, the employee must give notice as soon as is practicable (within 2 business days if feasible) if the dates of the leave change or are extended or were unknown initially.*

*Highly compensated employees (the highest-paid 10 percent of employees at a worksite or within a 75-mile radius of that worksite) may not be returned to their former or equivalent position following a leave, if restoration of employment will cause substantial economic injury to the company. This fact-specific determination will be made by the company on a case-by-case basis. The company will notify employees if they qualify as "highly compensated" employees if the company intends to deny reinstatement, and of employees' rights in such instances.*

*Leave because of a serious health condition or either type of family military leave may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced-leave schedule (reducing the usual number of hours worked per workweek or workday) if medically necessary. If leave is unpaid, the company will reduce the employee's salary based on the amount of time actually worked. In addition, while an employee is on an intermittent or reduced schedule leave, the company may temporarily transfer the employee to an available alternative position that better accommodates the recurring leave and which has equivalent pay and benefits.*

#### **45. VOTING TIME OFF POLICY**

Many states require employers to give employees time off to vote, but Virginia does not. Nevertheless, many employers grant employees time off to vote. For an employer that does so, a written policy is desirable.

Sample Policy:

##### ***TIME OFF TO VOTE***

*The company encourages employees to fulfill their civic responsibilities by participating in elections. Generally, employees are able to find time to*

*vote either before or after their regular work schedule. If employees are unable to vote in an election during their nonworking hours, the company will grant up to two hours of unpaid time off to vote. Employees should request time off to vote from their supervisor at least two working days prior to the Election Day. Advance notice is required so that the necessary time off can be scheduled at the beginning or end of the work shift, whichever causes less disruption to the normal work schedule.*

#### **46. JURY DUTY AND COURT APPEARANCE POLICY**

Employers must consider several laws in regard to employee jury duty and court appearances.

The federal Jury System Improvement Act of 1978, 28 U.S.C. § 1875 (“protection of jurors’ employment”), which applies to jury service in federal courts, provides:

(a) No employer shall discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of such employee’s jury service, or the attendance or scheduled attendance in connection with such service, in any court of the United States.

(b) Any employer who violates the provisions of this section-

(1) shall be liable for damages for any loss of wages or other benefits suffered by an employee by reason of such violation;

(2) may be enjoined from further violations of this section and ordered to provide other appropriate relief, including but not limited to the reinstatement of any employee discharged by reason of his jury service; and

(3) shall be subject to a civil penalty of not more than \$5,000 for each violation as to each employee, and may be ordered to perform community service.

(c) Any individual who is reinstated to a position of employment in accordance with the provisions of this section shall be considered as having been on furlough or leave of absence during his period of jury service, shall be reinstated to his position of employment without loss of seniority, and shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices

relating to employees on furlough or leave of absence in effect with the employer at the time such individual entered upon jury service.

(d) (1) An individual claiming that his employer has violated the provisions of this section may make application to the district court for the district in which such employer maintains a place of business and the court shall, upon finding probable merit in such claim, appoint counsel to represent such individual in any action in the district court necessary to the resolution of such claim. Such counsel shall be compensated and necessary expenses repaid to the extent provided by section 3006A of title 18, United States Code.

(2) In any action or proceeding under this section, the court may award a prevailing employee who brings such action by retained counsel a reasonable attorney's fee as part of the costs. The court may tax a defendant employer, as costs payable to the court, the attorney fees and expenses incurred on behalf of a prevailing employee, where such costs were expended by the court pursuant to paragraph (1) of this subsection. The court may award a prevailing employer a reasonable attorney's fee as part of the costs only if the court finds that the action is frivolous, vexatious, or brought in bad faith.

Similarly, Virginia Code section 18.2-465.1 ("penalizing employee for court appearance or service on jury panel"), which appears to jury service and court appearances in Virginia state courts, provides:

Any person who is summoned to serve on jury duty or any person, except a defendant in a criminal case, who is summoned or subpoenaed to appear in any court of law or equity when a case is to be heard or who, having appeared, is required in writing by the court to appear at any future hearing, shall neither be discharged from employment, nor have any adverse personnel action taken against him, nor shall he be required to use sick leave or vacation time, as a result of his absence from employment due to such jury duty or court appearance, upon giving reasonable notice to his employer of such court appearance or summons. No person who is summoned and appears for jury duty for four or more hours, including travel time, in one day shall be required to start any work shift that begins on or after 5:00 p.m. on the day of his appearance for jury duty or begins before 3:00 a.m. on the day following the day of his appearance for jury duty. Any employer violating the provisions of this section is guilty of a Class 3 misdemeanor.

The Fair Labor Standard Act regulations concerning payment of wages on a salary basis for purpose of the FLSA white collar exemptions, 29 C.F.R. § 541.118(a)(4), provide:

Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

Because supervisors may not be familiar with these laws, most companies will find it beneficial to adopt a written policy on jury duty and court appearances.

Sample Policy:

#### *JURY DUTY AND COURT APPEARANCES*

*{ABC} recognizes the importance of jury service and the importance of providing testimony in court proceedings. Therefore, no employee who is summoned to serve on jury duty or any employee, except a defendant in a criminal case, who is summoned or subpoenaed to appear in any court of law when a case is to be heard or who, having appeared, is required in writing by the court to appear at any future hearing, shall be discharged from employment or have any adverse personnel action taken against him or her as a result of such absence from employment due to such jury duty or court appearance, nor shall he or she be required to use sick leave or vacation time, provided the employee has giving reasonable notice to the Human Resources Department of such court appearance or summons. If you are called for jury or witness service, you should present the summons to the Human Resources Department promptly after you receive it.*

*No employee who is summoned and appears for jury duty for four or more hours, including travel time, in one day shall be required to start any work shift that begins on or after 5:00 p.m. on the day of his or her appearance for jury duty or begins before 3:00 a.m. on the day following the day of his or her appearance for jury duty.*

*In general, time off for jury duty or court testimony is unpaid leave. However, employees may, at their option, use accrued vacation and paid sick leave for income continuation during such leave. As required by law, exempt salaried employees will be paid their full salary for any workweek in which they are required to perform jury service or serve as a witness for less than the entire workweek, or during which they perform any work*

*for the practice. For all employees, vacation, sick leave, and other benefits will continue to accrue during time off for jury duty or court testimony.*

#### **47. JURY DUTY AND COURT APPEARANCE POLICY**

All employers should have a policy for compliance with the Uniformed Services Employment and Reemployment Rights Act.

Sample Policy:

##### *LEAVES OF ABSENCE FOR MILITARY SERVICE*

*The company is committed to protecting the job rights of employees absent on military leave in accordance with the Uniformed Services Employment and Reemployment Rights Act and other applicable law. In accordance with federal and state law, it is our policy that no employee or prospective employee will be subjected to any form of discrimination on the basis of that person's membership in or obligation to perform service for any of the Uniformed Services of the United States. Specifically, no person will be denied employment, reemployment, promotion, or other benefit of employment on the basis of such membership. Furthermore, no person will be subjected to retaliation or adverse employment action because such person has exercised his or her rights under applicable law or this policy. For information on your rights of obligations in connection with military service, or if you believe that you have been subjected to discrimination in violation of this policy, please contact Human Resources Department*

#### **48. WORKPLACE SAFETY POLICY**

In many workplaces, workplace safety is an important concern. Employers in such industries should adopt a workplace safety policy.

Sample Policy:

##### *WORKPLACE SAFETY*

*To assist in providing a safe and healthful work environment for employees, customers, and visitors, {ABC} has established a workplace safety program. This program is a top priority for the company. The Human Resources Department has responsibility for implementing,*

*administering, monitoring, and evaluating the safety program. Its success depends on the alertness and personal commitment of all.*

*The company provides information to employees about workplace safety and health issues through regular internal communication channels such as supervisor-employee meetings, bulletin board postings, e-mail, memos, or other written communications.*

*Some of the best safety improvement ideas come from employees. Those with ideas, concerns, or suggestions for improved safety in the workplace are encouraged to raise them with the practice administrator.*

*Each employee is expected to obey safety rules and to exercise caution in all work activities. Employees must immediately report any unsafe condition to his or her supervisor. Reports and concerns about workplace safety issues may be made anonymously if the employee wishes. All reports can be made without fear of reprisal.*

*Employees who violate safety standards, who cause hazardous or dangerous situations, or who fail to report or, where appropriate, remedy such situations may be subject to disciplinary action, up to and including termination of employment.*

*In the case of accidents that result in injury, regardless of how insignificant the injury may appear, employees should immediately notify their supervisor. Such reports are necessary to comply with laws and initiate insurance and worker's compensation benefits procedures.*

#### **49. WORKPLACE SECURITY POLICY**

A workplace security policy focuses on the security of the work environment and the appropriate response to threats to employees. Such a policy is appropriate for most work environments.

Sample Policy:

##### **WORKPLACE SECURITY**

*The policies below have been adopted by the company to help ensure our building is a safe environment for those who work here.*

### *After Hours Access*

*From time to time, it may be necessary for staff to work before or after regular business hours. If you find yourself in this situation, please notify your supervisor when you will be arriving or departing so that he or she will be aware when you will be in the building, adjust any alarm systems as necessary, and notify others, such as security guards and cleaning crews.*

### *Parking Area Safety*

*For your own safety, please be aware of your surroundings when you are in the parking facilities, especially early in the morning or at night when there are fewer people around. If possible, walk in groups of two or three to your cars to ensure that everyone makes it to their cars safely. Should you see any suspicious people or activity in the parking facilities, do not hesitate to call 911.*

### *Entry into the Building*

*Entry to our building is controlled by front desk staff. Access can be denied at their discretion. The back door shall remain locked at all times.*

### *Alarms*

*Our worksite is protected by an alarm system. Should you unintentionally activate the alarm or need to disarm it for a specific reason, please contact the supervisors who have the alarm codes and are familiar with the deactivation process.*

### *Controlling a Rowdy or Violent Patient*

*Should you feel threatened by a rowdy or violent customer or visitor, do not hesitate to call 911. The safety of our staff is our first priority. If you feel threatened or intimidated by a customer or visitor, use your best judgment in determining whether the authorities should be called.*

### *Suspicious People or Activity*

*If you see suspicious or unusual activity on the premises, which includes the waiting area and, parking facilities, report it as soon as possible to a supervisor. If you feel immediately threatened, call 911.*

## 50. DRUG AND ALCOHOL POLICY

Employers in certain industries, and employers with certain government contracts, are required by law to have drug and alcohol testing programs meeting specified criteria. Drugs and alcohol, however, are a concern in virtually every workplace. Therefore, most employers will want to, at a minimum, prohibit the use of alcohol and illegal drugs in the workplace. Some employers may also want to implement pre-hire drug testing, periodic drug testing, reasonable suspicion drug testing, post-accident drug testing, or random drug testing. Drug testing involves many legal issues, so an employer should obtain assistance from a qualified legal or human resources professional in designing a drug testing program.

Sample Policy (Prohibition Only, No Testing):

### *DRUGS AND ALCOHOL*

*It is the desire of {ABC} to provide a safe and healthful workplace. To promote this goal, employees are required to report to work in appropriate mental and physical condition to perform their jobs in a satisfactory manner.*

*While on the company's premises and while conducting company-related activities off premises, no employee may use, possess, distribute, sell, or be under the influence of alcohol or illegal drugs. The legal use of prescribed drugs is permitted on the job only if it does not impair an employee's ability to perform the essential functions of the job effectively and in a safe manner that does not endanger other individuals in the workplace. Violations of this policy may lead to disciplinary action, up to and including immediate termination of employment. Such violations may also have legal consequences.*

*Employees with problems with alcohol and certain drugs that have not resulted in and are not the immediate subject of disciplinary action may request approval to take unpaid time off to participate in a rehabilitation or treatment program. Leave may be granted if the employee agrees to abstain from use of the problem substance and abides by all the company's policies, rules, and prohibitions relating to conduct in the workplace, and if granting the leave will not cause the practice undue hardship.*

*Employees with questions on this policy or issues related to drug or alcohol use in the workplace, or who have questions or concerns about substance dependency or abuse, are encouraged to discuss these matters with the Human Resources Department to receive assistance or referrals to appropriate resources in the community. They may do so without fear of reprisal.*

## **51. WORKPLACE INSPECTIONS POLICY**

Employers often want to search their premises for drugs, alcohol, firearms or other items, but are reluctant to do so because of concerns of invasion of employee privacy. By publishing a policy informing employees that workplace searches may occur, employers preclude employees from having a reasonable expectation of privacy and thereby facilitate workplace searches.

Sample Policy:

### *WORKPLACE INSPECTIONS*

*{ABC} wishes to maintain a work environment that is free of illegal drugs, alcohol, firearms, explosives, contraband, and other prohibited or inappropriate materials. To this end, we prohibit the possession, transfer, sale, or use of such materials on our premises, and require the cooperation of all employees in administering this policy. Desks, lockers, computers, and other devices may be provided for the convenience of employees but remain the sole property of the company. Accordingly, they, as well as any articles found within them, can be inspected by any agent or representative of the company at any time, either with or without prior notice.*

## **52. WORKPLACE VIOLENCE PREVENTION**

Violence in the workplace is an increasing concern among employers. Publishing and enforcing a workplace violence policy can significantly decrease the likelihood of workplace violence and can help employees and supervisors respond appropriately to threats of workplace violence

Sample Policy:

*WORKPLACE VIOLENCE PREVENTION*

*{ABC} is committed to preventing workplace violence and to maintaining a safe work environment. Given the increasing violence in society in general, the company has adopted the following guidelines to deal with intimidation, harassment, threats of violence, or actual violence that may occur during business hours or on its premises.*

*All employees, including supervisors and temporary employees, should be treated with courtesy and respect at all times. Employees are expected to refrain from fighting, "horseplay," or other conduct that may be dangerous to others. Firearms, weapons, and other dangerous or hazardous devices or substances are strictly prohibited from the premises of the company without proper written authorization.*

*Conduct that threatens, intimidates, or coerces another employee, a customer, or a member of the public at any time, including off-duty periods, will not be tolerated. This prohibition includes all acts of harassment, including harassment that is based on an individual's race color, sex, religion, national origin, citizenship, age, or any other legally protected characteristic.*

*All threats or acts of violence, whether direct and indirect, should be reported as soon as possible to your immediate supervisor or any other member of management. This includes threats by employees, as well as threats by customers, vendors, solicitors, or other members of the public. When reporting a threat of violence, you should be as specific and detailed as possible.*

*All suspicious individuals or activities should also be reported as soon as possible to a supervisor or member of management. Do not place yourself in peril. If you see or hear a commotion or disturbance near your workstation, do not try to intercede or see what is happening.*

*The company will promptly and thoroughly investigate all reports of threats or acts of violence and of suspicious individuals or activities. The identity of the individual making a report will be protected as much as is practical. Anyone determined to be responsible for threats or acts of violence or other conduct that is in violation of these guidelines will be subject to prompt disciplinary action, up to and including termination of employment.*

*The company encourages employees to bring their disputes or differences with other employees to the attention of their supervisors or the Human Resources Department before the situation escalates into potential violence. The company is eager to assist in the resolution of employee disputes and will not punish, discipline or retaliate against employees for raising such concerns.*

#### **IV. MISTAKES TO AVOID**

The following are the top ten mistakes which, in the author's experience, employers make in regard to employee handbooks. They are conveniently stated as things you should not do.

- # 10: DO NOT copy and past personnel policies from the internet, employee handbook software, this paper, or anywhere else into your employee handbook without carefully considering what is right for your organization.
- #9: DO NOT adopt personnel policies that sound good on paper but do not reflect what you actually will do.
- #8: DO NOT assign the job of preparing your organization's employee handbook to your secretary.
- #7: DO NOT accidentally turn your employee handbook into a contract.
- #6: DO NOT put your employee handbook in a desk drawer or a file cabinet instead of publishing it to you employees.
- #5: DO NOT tell your employees that you have a new handbook and they can examine it by appointment in your office.

- 4#: DO NOT publish your employee handbook without first having it reviewed by qualified legal counsel or a qualified human resources professional.
  
- #3: DO NOT give your employee handbook to employees without obtaining proof that they received it, such as a signed acknowledgment of receipt.
  
- # 2: DO NOT think your employee handbook doesn't matter.
  
- # 1: DO NOT think your employee handbook from 5 or 10 years ago is up to date.

**PUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 13-1645**

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CARL R. SUMMERS,

Plaintiff - Appellant,

v.

ALTARUM INSTITUTE, CORPORATION,

Defendant - Appellee.

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AARP; NATIONAL EMPLOYMENT LAWYERS ASSOCIATION,

Amici Supporting Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Gerald Bruce Lee, District Judge. (1:12-cv-01493-GBL-IDD)

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Argued: December 10, 2013

Decided: January 23, 2014

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Before MOTZ, AGEE, and DIAZ, Circuit Judges.

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Reversed and remanded by published opinion. Judge Motz wrote the opinion, in which Judge Agee and Judge Diaz joined.

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**ARGUED:** David Scher, THE EMPLOYMENT LAW GROUP, PC, Washington, D.C., for Appellant. Paul William Coughenour, CLARK HILL PLC, Detroit, Michigan, for Appellee. **ON BRIEF:** R. Scott Oswald, THE EMPLOYMENT LAW GROUP, PC, Washington, D.C., for Appellant. Carly E. Osadetz, CLARK HILL PLC, Detroit, Michigan, for

Appellee. Rebecca Hamburg Cappy, NATIONAL EMPLOYMENT LAWYERS ASSOCIATION, San Francisco, California; Daniel B. Kohrman, AARP FOUNDATION LITIGATION, Washington, D.C.; Melvin Radowitz, AARP, Washington, D.C., for Amici Supporting Appellant.

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DIANA GRIBBON MOTZ, Circuit Judge:

Pursuant to recent amendments to the Americans With Disabilities Act, a sufficiently severe temporary impairment may constitute a disability. Because the district court held to the contrary, we reverse and remand.

I.

A.

Carl Summers appeals the dismissal of his complaint for failure to state a claim on which relief can be granted. Accordingly, we recount the facts as alleged by Summers. Minor v. Bostwick Labs, Inc., 669 F.3d 428, 430 n.1 (4th Cir. 2012).

In July 2011, Summers began work as a senior analyst for the Altarum Institute, a government contractor with an office in Alexandria, Virginia. Summers's job required him to travel to the Maryland offices of Altarum's client, the Defense Centers of Excellence for Psychological Health and Traumatic Brain Injury ("DCoE"). At DCoE, Summers conducted statistical research, wrote reports, and made presentations. Altarum policy authorized employees to work remotely if the client approved. The client, here DCoE, preferred contractors to work on-site during business hours, but permitted them to work remotely from home when "putting in extra time on [a] project."

On October 17, 2011, Summers fell and injured himself while exiting a commuter train on his way to DCoE. With a heavy bag slung over his shoulder, he lost his footing and struck both knees against the train platform. Paramedics took Summers to the hospital, where doctors determined that he had sustained serious injuries to both legs. Summers fractured his left leg and tore the meniscus tendon in his left knee. He also fractured his right ankle and ruptured the quadriceps-patellar tendon in his right leg. Repairing the left-leg fracture required surgery to fit a metal plate, screws, and bone into his tibia. Treating Summers's ruptured right quadriceps required another surgery to drill a hole in the patella and refasten his tendons to the knee.

Doctors forbade Summers from putting any weight on his left leg for six weeks and estimated that he would not be able to walk normally for seven months at the earliest. Without surgery, bed rest, pain medication, and physical therapy, Summers alleges that he would "likely" not have been able to walk for more than a year after the accident.

While hospitalized, Summers contacted an Altarum human-resources representative about obtaining short-term disability benefits and working from home as he recovered. The Altarum representative agreed to discuss "accommodations that would allow Summers to return to work," but suggested that Summers

"take short-term disability and focus on getting well again." Summers sent emails to his supervisors at Altarum and DCoE seeking advice about how to return to work; he suggested "a plan in which he would take short-term disability for a few weeks, then start working remotely part-time, and then increase his hours gradually until he was full-time again."

Altarum's insurance provider granted Summers short-term disability benefits. But Altarum never followed up on Summers's request to discuss how he might successfully return to work. The company did not suggest any alternative reasonable accommodation or engage in any interactive process with Summers. Nor did Altarum tell Summers that there was "any problem with his plan for a graduated return to work." Instead, on November 30, Altarum simply informed Summers "that Altarum was terminating [him] effective December 1, 2011, in order to place another analyst in his role at DCoE."

B.

In September 2012, Summers filed a complaint in the Eastern District of Virginia alleging two claims under the Americans With Disability Act ("ADA" or "Act"). First, Summers asserted that Altarum discriminated against him by wrongfully discharging him on account of his disability. Second, Summers asserted that Altarum failed to accommodate his disability. After Summers amended the complaint in October 2012, the district court

granted Altarum's Rule 12(b)(6) motion and dismissed both claims without prejudice.

Rather than filing a second amended complaint, Summers filed a new lawsuit in December 2012 presenting essentially the same two claims. A few months later, the district court again granted Altarum's motion to dismiss both claims, this time with prejudice. First, the court dismissed the wrongful-discharge claim on the ground that Summers had failed to allege that he was disabled. The court reasoned that a "temporary condition, even up to a year, does not fall within the purview of the [A]ct" and so "the defendant's not disabled." The court further suggested that Summers was not disabled because he could have worked with the assistance of a wheelchair. Second, the court dismissed Summers's failure-to-accommodate claim on the ground that Summers failed to allege that he had requested a reasonable accommodation. The court reasoned that an employee bears the burden of requesting a reasonable accommodation, and that Summers's proposal to work temporarily from home was unreasonable "because it sought to eliminate a significant function of the job."

On appeal, Summers challenges only the district court's dismissal of his wrongful-discharge claim. He does not contest the court's dismissal of his failure-to-accommodate claim, and so we do not consider it.

## II.

To survive a motion to dismiss, a complaint must state "a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). We review de novo an appeal from a Rule 12(b)(6) dismissal, accepting the complaint as true and drawing reasonable inferences in the plaintiff's favor. Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 253 (4th Cir. 2009).

### A.

The ADA makes it unlawful for covered employers to "discriminate against a qualified individual on the basis of disability." 42 U.S.C. § 12112(a) (2012). The Act prohibits covered employers from discharging qualified employees because they are disabled. Id. To establish a wrongful-discharge claim, a plaintiff must show, among other things, that he suffered from a "disability." Young v. United Parcel Serv., 707 F.3d 437, 443 (4th Cir. 2013).

Under the ADA, a "disability" may take any of the following forms: (1) "a physical or mental impairment that substantially limits one or more major life activities" (the "actual-disability" prong); (2) "a record of such an impairment" (the "record-of" prong); or (3) "being regarded as having such an impairment" (the "regarded-as" prong). 42 U.S.C. § 12102(1). Summers alleges that he was disabled under the ADA's actual-

disability prong. Specifically, he asserts that his impairment "substantially limit[ed]" his ability to walk -- which the ADA recognizes as one of the "major life activities" whose substantial limitation qualifies as a disability. Id. § 12102(2)(A). Accordingly, if Summers's impairment substantially limited his ability to walk, he suffered a "disability" for purposes of the ADA.

B.

In September 2008, Congress broadened the definition of "disability" by enacting the ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 ("ADAAA" or "amended Act"). In response to a series of Supreme Court decisions that Congress believed improperly restricted the scope of the ADA, it passed legislation with the stated purpose of "reinstating a broad scope of protection to be available under the ADA." Id. § 2(b)(1). Particularly relevant to this case, Congress sought to override Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184, 199 (2002), in which the Supreme Court had adopted a strict construction of the term "disability" and suggested that a temporary impairment could not qualify as a disability under the Act. Congress believed that Toyota set an "inappropriately high level of limitation necessary to obtain coverage under the ADA." Pub. L. No. 110-325, § 2(b)(5).

Abrogating Toyota, the amended Act provides that the definition of disability "shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by [its] terms." 42 U.S.C. § 12102(4)(A). Further, Congress instructed that the term "substantially limits" be interpreted consistently with the liberalized purposes of the ADAAA. Id. § 12102(4)(B).<sup>1</sup> And Congress directed the Equal Employment Opportunity Commission ("EEOC") to revise its regulations defining the term "substantially limits" to render them consistent with the broadened scope of the statute. Pub. L. No. 110-325, § 2(b)(6).

After notice and comment, the EEOC promulgated regulations clarifying that "[t]he term 'substantially limits' shall be construed broadly in favor of expansive coverage" and that the term is "not meant to be a demanding standard." 29 C.F.R. § 1630.2(j)(1)(i) (2013). The EEOC regulations also expressly provide that "effects of an impairment lasting or expected to last fewer than six months can be substantially limiting" for purposes of proving an actual disability. Id. § 1630.2(j)(1)(ix) (emphasis added).

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<sup>1</sup> The ADAAA provides, with respect to the "regarded-as" prong, that a plaintiff will not be disabled if his impairment is "transitory and minor," i.e. of "an actual or expected duration of 6 months or less." Id. § 12102(3)(B). It contains no similar durational requirement for the "actual-disability" prong.

According to the appendix to the EEOC regulations, the "duration of an impairment is one factor that is relevant in determining whether the impairment substantially limits a major life activity." Id. § 1630.2(j)(1)(ix)(app.). Although "[i]mpairments that last only for a short period of time are typically not covered," they may be covered "if sufficiently severe." Id. The EEOC appendix illustrates these principles: "[I]f an individual has a back impairment that results in a 20-pound lifting restriction that lasts for several months, he is substantially limited in the major life activity of lifting, and therefore covered under the first prong of the definition of disability." Id.

### III.

In dismissing Summers's wrongful-discharge claim, the district court held that, even though Summers had "suffered a very serious injury," this injury did not constitute a disability because it was temporary and expected to heal within a year. That holding represented an entirely reasonable interpretation of Toyota and its progeny. But in 2008, Congress expressly abrogated Toyota by amending the ADA. We are the first appellate court to apply the amendment's expanded

definition of "disability."<sup>2</sup> Fortunately, the absence of appellate precedent presents no difficulty in this case: Summers has unquestionably alleged a "disability" under the ADAAA sufficiently plausible to survive a Rule 12(b)(6) motion.

A.

Summers alleges that his accident left him unable to walk for seven months and that without surgery, pain medication, and physical therapy, he "likely" would have been unable to walk for far longer.<sup>3</sup> The text and purpose of the ADAAA and its

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<sup>2</sup> In Reynolds v. American National Red Cross, 701 F.3d 143, 151-52 (4th Cir. 2012), we briefly discussed the ADAAA before declining to apply the statute retroactively. In the course of our discussion we noted that the plaintiff's impairment -- a minor lifting restriction -- was not severe enough to constitute a disability even under the ADAAA's liberal new standard. Id. at 154 n.10. But we did not suggest, let alone hold, that the ADAAA excluded temporary impairments from its definition of disability.

<sup>3</sup> In enacting the ADAAA, Congress clarified that courts must disregard so-called "mitigating measures" when determining whether an impairment constitutes a disability. Pub. L. No. 110-325, § 2(b)(2). The new statute and regulations require courts to evaluate a plaintiff's impairment as it would manifest without treatments such as medication, mobility devices, and physical therapy. 42 U.S.C. § 12102(4)(E)(i); 29 C.F.R. § 1630.2(j)(5). A proposed but rejected regulation had included as an example of a mitigating measure "surgical interventions, except for those that permanently eliminate an impairment." 76 Fed. Reg. 16,978, 16,983 (Mar. 25, 2011). The EEOC omitted this example due to the public's confusion over how it would apply, instead explaining that whether a given surgery constitutes a mitigating measure should be determined "on a case-by-case basis." Id. Because Summers's impairment could constitute a disability with or without surgery, we need not address whether his surgeries constituted mitigating measures.

implementing regulations make clear that such an impairment can constitute a disability.

In the amended Act, after concluding that courts had construed the term "disability" too narrowly, Congress stated that it intended to liberalize the ADA "in favor of broad coverage." 42 U.S.C. § 12102(4)(A). Congress also mandated that the ADA, as amended, be interpreted as broadly as its text permits. Id. Furthermore, the EEOC, pursuant to its delegated authority to construe "disability" more generously, adopted new regulations providing that an impairment lasting less than six months can constitute a disability. 29 C.F.R. § 1630.2(j)(1)(ix). Although short-term impairments qualify as disabilities only if they are "sufficiently severe," id. § 1630.2(j)(1)(ix) (app.), it seems clear that the serious impairment alleged by Summers is severe enough to qualify. If, as the EEOC has concluded, a person who cannot lift more than twenty pounds for "several months" is sufficiently impaired to be disabled within the meaning of the amended Act, id., then surely a person whose broken legs and injured tendons render him completely immobile for more than seven months is also disabled.

In holding that Summers's temporary injury could not constitute a disability as a matter of law, the district court erred not only in relying on pre-ADAAA cases but also in misapplying the ADA disability analysis. The court reasoned

that, because Summers could have worked with a wheelchair, he must not have been disabled. This inverts the appropriate inquiry. A court must first establish whether a plaintiff is disabled by determining whether he suffers from a substantially limiting impairment. Only then may a court ask whether the plaintiff is capable of working with or without an accommodation. See 42 U.S.C. § 12102(4)(E)(i)(III) (the determination whether an impairment is substantially limiting "shall be made without regard to the ameliorative effects of . . . reasonable accommodations"). If the fact that a person could work with the help of a wheelchair meant he was not disabled under the Act, the ADA would be eviscerated.<sup>4</sup>

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<sup>4</sup> To mount a wrongful-discharge claim, a plaintiff must also establish that he is a "qualified individual" -- i.e., that "with or without reasonable accommodation, [he] can perform the essential functions of [his] employment position." 42 U.S.C. § 12111(8). The district court did not address the "qualified individual" issue in the context of Summers's wrongful-discharge claim. But in dismissing Summers's failure-to-accommodate claim, the court suggested that Summers was not a "qualified individual" because his requested accommodation -- a temporary period of working remotely -- was unreasonable. Summers does not challenge the dismissal of his failure-to-accommodate claim and so, as explained above, we do not revisit that holding. But because the "qualified individual" issue likely will arise on remand of the wrongful-discharge claim, we note that an employee's accommodation request, even an unreasonable one, typically triggers an employer's duty to engage in an "interactive process" to arrive at a suitable accommodation collaboratively with the employee. See Wilson v. Dollar General Corp., 717 F.3d 337, 346-47 (4th Cir. 2013). "[L]iability for failure to engage in an interactive process depends upon a finding that, had a good faith interactive process occurred, the (Continued)

B.

Despite the sweeping language of the amended Act and the clear regulations adopted by the EEOC, Altarum maintains that a temporary impairment cannot constitute a disability. In doing so, Altarum principally relies on pre-ADAAA cases that, as we have explained, the amended Act abrogated. Additionally, Altarum briefly advances two other arguments why Summers's leg injuries did not "substantially limit" his ability to walk.

1.

First, Altarum contends that the EEOC regulations defining a disability to include short-term impairments do not warrant deference under Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). Altarum argues that Congress's intent "not to extend ADA coverage to those with temporary impairments expected to fully heal is evident," because such a "dramatic expansion of the ADA would have been accompanied by some pertinent statement of Congressional intent." Altarum Br. 34-35.

When a litigant challenges an agency's interpretation of a statute, we apply the familiar two-step Chevron analysis.

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parties could have found a reasonable accommodation that would enable the disabled person to perform the job's essential functions." Id. at 347 (quoting Jones v. Nationwide Life Ins. Co., 696 F.3d 78, 91 (1st Cir. 2012))(quotation marks omitted).

First, we evaluate whether Congress has "directly spoken" to the precise question at issue. If traditional rules of statutory construction render the intent of Congress clear, "that is the end of the matter." Chevron, 467 U.S. at 842. If the statute is "silent or ambiguous" with respect to the question at issue, we proceed to the second step -- determining whether the agency's interpretation of the statute is reasonable. Id. at 843. An agency's reasonable interpretation will control, even if better interpretations are possible. Id. at 843 n.11.

Although Altarum contends that Congress's intent to withhold ADA coverage from temporarily impaired employees is "evident," Altarum Br. 34, no such intent seems evident to us. To be sure, the amended Act does preserve, without alteration, the requirement that an impairment be "substantial" to qualify as a disability. But Congress enacted the ADAAA to correct what it perceived as the Supreme Court's overly restrictive definition of this very term. And Congress expressly directed courts to construe the amended statute as broadly as possible. Moreover, while the ADAAA imposes a six-month requirement with respect to "regarded-as" disabilities, it imposes no such durational requirement for "actual" disabilities, thus suggesting that no such requirement was intended. See Hamdan v. Rumsfeld, 548 U.S. 557, 578 (2006) ("[A] negative inference may be drawn from the exclusion of language from one statutory

provision that is included in other provisions of the same statute." ). For these reasons, we must reject Altarum's contention that the amended Act clearly evinces Congress's intent to withhold ADA coverage for temporary impairments. At best, the statute is ambiguous with respect to whether temporary impairments may now qualify as disabilities.

Accordingly, we turn to step two of the Chevron analysis -- determining whether the EEOC's interpretation is reasonable. We conclude that it is. The EEOC's decision to define disability to include severe temporary impairments entirely accords with the purpose of the amended Act. The stated goal of the ADAAA is to expand the scope of protection available under the Act as broadly as the text permits. The EEOC's interpretation -- that the ADAAA may encompass temporary disabilities -- advances this goal. Moreover, extending coverage to temporarily impaired employees produces consequences less "dramatic" than Altarum seems to envision. Prohibiting employers from discriminating against temporarily disabled employees will burden employers only as long as the disability endures. Temporary disabilities require only temporary accommodations.

2.

Alternatively, Altarum argues that, even deferring to the EEOC regulations, Summers's impairment does not qualify as a disability. Altarum maintains that the EEOC regulations do not

apply to Summers's impairment because those regulations do not cover "temporary impairments due to injuries" even if they do cover "impairments due to permanent or long-term conditions that have only a short term impact." Altarum Br. 37.

But, in fact, the EEOC regulations provide no basis for distinguishing between temporary impairments caused by injuries, on one hand, and temporary impairments caused by permanent conditions, on the other. The regulations state only that the "effects of an impairment lasting or expected to last fewer than six months can be substantially limiting" -- they say nothing about the cause of the impairment. 29 C.F.R. § 1630.2(j)(1)(ix).

Nor do the regulations suggest that an "injury" cannot be an "impairment." Rather, the EEOC defines an impairment broadly to include "[a]ny physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems," including the "musculoskeletal" system. Id. § 1630.2(h)(1). This expansive definition surely includes broken bones and torn tendons. And the EEOC elsewhere uses the terms "injury" and "impairment" interchangeably. See id. § 1630.2(j)(5) n.3 (app.); id. § 1630.15(f) (app.).

In sum, nothing about the ADAAA or its regulations suggests a distinction between impairments caused by temporary injuries and impairments caused by permanent conditions. Because Summers

alleges a severe injury that prevented him from walking for at least seven months, he has stated a claim that this impairment "substantially limited" his ability to walk.

#### IV.

Under the ADAAA and its implementing regulations, an impairment is not categorically excluded from being a disability simply because it is temporary. The impairment alleged by Summers falls comfortably within the amended Act's expanded definition of disability. We therefore reverse the district court's dismissal of Summers's wrongful-discharge claim and remand the case for further proceedings consistent with this opinion.

REVERSED AND REMANDED



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## Religious Garb and Grooming in the Workplace: Rights and Responsibilities

This publication by the U.S. Equal Employment Opportunity Commission (EEOC) answers questions about how federal employment discrimination law applies to religious dress and grooming practices, and what steps employers can take to meet their legal responsibilities in this area.

Examples of religious dress and grooming practices include wearing religious clothing or articles (e.g., a Muslim hijab (headscarf), a Sikh turban, or a Christian cross); observing a religious prohibition against wearing certain garments (e.g., a Muslim, Pentecostal Christian, or Orthodox Jewish woman's practice of not wearing pants or short skirts), or adhering to shaving or hair length observances (e.g., Sikh uncut hair and beard, Rastafarian dreadlocks, or Jewish peyes (sidelocks)).

In most instances, employers are required by federal law to make exceptions to their usual rules or preferences to permit applicants and employees to observe religious dress and grooming practices.

### 1. What is the federal law relating to religious dress and grooming in the workplace?

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended ("Title VII"), prohibits employers with at least 15 employees (including private sector, state, and local government employers), as well as employment agencies, unions, and federal government agencies, from discriminating in employment based on race, color, religion, sex, or national origin. It also prohibits retaliation against persons who complain of discrimination or participate in an EEO investigation. With respect to religion, Title VII prohibits among other things:

- disparate treatment based on religion in recruitment, hiring, promotion, benefits, training, job duties, termination, or any other aspect of employment (except that "religious organizations" as defined under Title VII are permitted to prefer members of their own religion in deciding whom to employ);
- denial of reasonable accommodation for sincerely held religious practices, unless the accommodation would cause an undue hardship for the employer;
- workplace or job segregation based on religion;

- workplace harassment based on religion;
- retaliation for requesting an accommodation (whether or not granted), for filing a discrimination charge with the EEOC, for testifying, assisting, or participating in any manner in an EEOC investigation or EEO proceeding, or for opposing discrimination.

There may be state or local laws in your jurisdiction that have protections that are parallel to or broader than those in Title VII.

## ***2. Does Title VII apply to all aspects of religious practice or belief?***

Yes. Title VII protects all aspects of religious observance, practice, and belief, and defines religion very broadly to include not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, Buddhism, and Sikhism, but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or may seem illogical or unreasonable to others.

Religious practices may be based on theistic beliefs or non-theistic moral or ethical beliefs as to what is right or wrong that are sincerely held with the strength of traditional religious views. Religious observances or practices include, for example, attending worship services, praying, wearing religious garb or symbols, displaying religious objects, adhering to certain dietary rules, proselytizing or other forms of religious expression, or refraining from certain activities. Moreover, an employee's belief or practice can be "religious" under Title VII even if it is not followed by others in the same religious sect, denomination, or congregation, or even if the employee is unaffiliated with a formal religious organization.<sup>[1]</sup>

The law's protections also extend to those who are discriminated against or need accommodation because they profess no religious beliefs. For example, an employer that is not a religious organization (as legally defined under Title VII) cannot make employees wear religious garb or articles (such as a cross) if they object on grounds of non-belief.

Because this definition is so broad, whether or not a practice or belief is religious typically is not disputed in Title VII religious discrimination cases.

## ***3. Does the law apply to dress or grooming practices that are religious for an applicant or employee, even if other people engage in the same practice for non-religious reasons?***

Yes. Title VII applies to any practice that is motivated by a religious belief, even if other people may engage in the same practice for secular reasons.<sup>[2]</sup> However, if a dress or grooming practice is a personal preference, for example, where it is worn for fashion rather than for religious reasons, it does not come under Title VII's religion protections.

## ***4. What if an employer questions whether the applicant's or employee's asserted religious practice is sincerely held?***

Title VII's accommodation requirement only applies to religious beliefs that are "sincerely held." However, just because an individual's religious practices may deviate from commonly-followed tenets of the religion, the employer should not automatically assume that his or her religious observance is not sincere. Moreover, an individual's

religious beliefs - or degree of adherence - may change over time, yet may nevertheless be sincerely held. Therefore, like the "religious" nature of a belief or practice, the "sincerity" of an employee's stated religious belief is usually not in dispute in religious discrimination cases. However, if an employer has a legitimate reason for questioning the sincerity or even the religious nature of a particular belief or practice for which accommodation has been requested, it may ask an applicant or employee for information reasonably needed to evaluate the request.

#### **EXAMPLE 1**

##### **New Observance**

Eli has been working at the Burger Hut for two years. While in the past he has always worn his hair short, he has recently let it grow longer. When his manager advises him that the company has a policy requiring male employees to wear their hair short, Eli explains that he is a newly practicing Nazirite and now adheres to religious beliefs that include not cutting his hair. Eli's observance can be sincerely held even though it is recently adopted.<sup>[3]</sup>

#### **EXAMPLE 2**

##### **Observance That Only Occurs at Certain Times or Irregularly**

Afifah is a Muslim woman who has been employed as a bank teller at the ABC Savings & Loan for six months. The bank has a dress code prohibiting tellers from wearing any head coverings. Although Afifah has not previously worn a religious headscarf to work at the bank, her personal religious practice has been to do so during Ramadan, the month of fasting that falls during the ninth month of the Islamic calendar. The fact that Afifah adheres to the practice only at certain times of the year does not mean that her belief is insincere.<sup>[4]</sup>

#### ***5. Can an employer exclude someone from a position because of discriminatory customer preference?***

No. If an employer takes an action based on the discriminatory religious preferences of others, including customers, clients, or co-workers, the employer is unlawfully discriminating in employment based on religion. Customer preference is not a defense to a claim of discrimination.

#### **EXAMPLE 3**

##### **Employment Decision Based on Customer Preference**

Adarsh, who wears a turban as part of his Sikh religion, is hired to work at the counter in a coffee shop. A few weeks after Adarsh begins working, the manager notices that the work crew from the construction site near the shop no longer comes in for coffee in the mornings. When the manager makes inquiries, the crew complains that Adarsh, whom they mistakenly believe is Muslim, makes them uncomfortable in light of the anniversary of the September 11th attacks. The manager tells Adarsh that he will be terminated because the coffee shop is losing the

construction crew's business. The manager has subjected Adarsh to unlawful religious discrimination by taking an adverse action based on customer preference not to have a cashier of Adarsh's perceived religion. Adarsh's termination based on customer preference would violate Title VII regardless of whether he was correctly or incorrectly perceived as Muslim, Sikh, or any other religion.<sup>[5]</sup>

Employers may be able to prevent this type of religious discrimination from occurring by taking steps such as training managers to rely on specific experience, qualifications, and other objective, non-discriminatory factors when making employment decisions. Employers should also communicate clearly to managers that customer preference about religious beliefs and practices is not a lawful basis for employment decisions.

***6. May an employer automatically refuse to accommodate an applicant's or employee's religious garb or grooming practice if it would violate the employer's policy or preference regarding how employees should look?***

No. Title VII requires an employer, once it is aware that a religious accommodation is needed, to accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless doing so would pose an undue hardship. Therefore, when an employer's dress and grooming policy or preference conflicts with an employee's known religious beliefs or practices, the employer must make an exception to allow the religious practice unless that would be an undue hardship on the operation of the employer's business. Fact patterns illustrating whether or not an employer is aware of the need for accommodation appear below at examples 4-7.

For purposes of religious accommodation, undue hardship is defined by courts as a "more than de minimis" cost or burden on the operation of the employer's business. For example, if a religious accommodation would impose more than ordinary administrative costs, it would pose an undue hardship. This is a lower standard than the Americans with Disabilities Act (ADA) undue hardship defense to disability accommodation.

When an exception is made as a religious accommodation, the employer may nevertheless retain its usual dress and grooming expectations for other employees, even if they want an exception for secular reasons. Co-workers' disgruntlement or jealousy about the religious accommodation is not considered undue hardship, nor is customer preference.

**EXAMPLE 4**

**Exception to Uniform Policy as a Religious Accommodation**

Based on her religious beliefs, Ruth adheres to modest dress. She is hired as a front desk attendant at a sports club, where her duties consist of checking members' identification badges as they enter the facility. The club manager advises Ruth that the club has a dress code requiring all employees to wear white tennis shorts and a polo shirt with the facility logo. Ruth requests permission as a religious accommodation to wear a long white skirt with the required shirt, instead of wearing shorts. The club grants her request, because Ruth's sincerely held religious belief

conflicts with the workplace dress code, and accommodating her would not pose an undue hardship. If other employees seek exceptions to the dress code for non-religious reasons such as personal preference, the employer is permitted to deny their requests, even though it granted Ruth a religious accommodation.

***7. How will an employer know when it must consider making an exception to its dress and grooming policies or preferences to accommodate the religious practices of an applicant or employee?***

Typically, the employer will advise the applicant or employee of its dress code or grooming policy, and subsequently the applicant or employee will indicate that an exception is needed for religious reasons. Applicants and employees will not know to ask for an accommodation until the employer makes them aware of a workplace requirement that conflicts with their religious practice. The applicant or employee need not use any "magic words" to make the request, such as "accommodation" or "Title VII." If the employer reasonably needs more information, however, the employer and the employee should discuss the request. In some instances, even absent a request, it will be obvious that the practice is religious and conflicts with a work policy, and therefore that accommodation is needed.

**EXAMPLE 5**

**Employer Knowledge Insufficient**

James's employer requires all of its employees to be clean-shaven. James is a newly hired employee, and was hired based on an online application and a telephone interview. When he arrives the first day with an unshorn beard, his supervisor informs him that he must comply with the "clean-shaven" policy or be terminated. James refuses to comply, but fails to inform his supervisor that he wears his beard for religious reasons. James should have explained to his supervisor that he wears the beard pursuant to a religious observance. The employer did not have to consider accommodation because it did not know that James wore his beard for religious reasons.

**EXAMPLE 6**

**Employer Knowledge Sufficient**

Same facts as above but, instead, when James's supervisor informs him that he must comply with the "clean-shaven" policy or be terminated, James explains that he wears the beard for religious reasons, as he is a Messianic Christian. This is sufficient to request accommodation. The employer is permitted to obtain the limited additional information needed to determine whether James's beard is worn due to a sincerely held religious practice and, if so, must accommodate by making an exception to its "clean-shaven" policy unless doing so would be an undue hardship. [\[6\]](#)

**EXAMPLE 7**

**Employer Believes Practice Is Religious and Conflicts with Work Policy**

Aatma, an applicant for a rental car sales position who is an observant Sikh, wears a chunni (religious headscarf) to her job interview. The

interviewer does not advise her that there is a dress code prohibiting head coverings, and Aatma does not ask whether she would be permitted to wear the headscarf if she were hired. There is evidence that the manager believes that the headscarf is a religious garment, presumed it would be worn at work, and refused to hire her because the company requires sales agents to wear a uniform with no additions or exceptions. This refusal to hire violates Title VII, even though Aatma did not make a request for accommodation at the interview, because the employer believed her practice was religious and that she would need accommodation, and did not hire her for that reason. Moreover, if Aatma were hired but then instructed to remove the headscarf, she could at that time request religious accommodation.

***8. May an employer assign an employee to a non-customer contact position because of customer preference?***

No. Assigning applicants or employees to a non-customer contact position because of actual or feared customer preference violates Title VII's prohibition on limiting, segregating, or classifying employees based on religion. Even if the employer is following its uniformly applied employee policy or practice, it is not permitted to segregate an employee due to fear that customers will have a biased response to religious garb or grooming. The law requires the employer to make an exception to its policy or practice as a religious accommodation, because customer preference is not undue hardship.

**EXAMPLE 8**

**Assigning Employee to "Back Room" Because of Religious Garb**

Nasreen, a Muslim applicant for an airport ticket counter position, wears a headscarf, or hijab, pursuant to her religious beliefs. Although Nasreen is qualified, the manager fears that customers may think an airport employee who is identifiably Muslim is sympathetic to terrorist hijackers. The manager, therefore, offers her a position in the airline's call center where she will only interact with customers by phone. This is religious segregation and violates Title VII.<sup>[7]</sup>

As a best practice, managers and employees should be trained that the law may require making a religious exception to an employer's otherwise uniformly applied dress or grooming rules, practices, or preferences. They should also be trained not to engage in stereotyping about work qualifications or availability based on religious dress and grooming practices. Many EEOC settlements of religious accommodation cases provide for the employer to adopt formal religious accommodation procedures to guide management and employees in handling these requests, as well as annual training on this topic.

***9. May an employer accommodate an employee's religious dress or grooming practice by offering to have the employee cover the religious attire or item while at work?***

Yes, if the employee's religious beliefs permit covering the attire or item. However, requiring an employee's religious garb, marking, or article of faith to be covered is not a

reasonable accommodation if that would violate the employee's religious beliefs.

#### EXAMPLE 9

##### **Covering Religious Symbol Contrary to Individual's Religious Beliefs**

Edward practices the Kemetic religion, an ancient Egyptian faith, and affiliates himself with a tribe numbering fewer than ten members. He states that he believes in various deities and follows the faith's concept of Ma'at, a guiding principle regarding truth and order that represents physical and moral balance in the universe. During a religious ceremony he received small tattoos encircling his wrist, written in the Coptic language, which express his servitude to Ra, the Egyptian god of the sun. When his employer asks him to cover the tattoos, he explains that it is a sin to cover them intentionally because doing so would signify a rejection of Ra. Therefore, covering the tattoos is not a reasonable accommodation, and the employer cannot require it absent undue hardship.<sup>[8]</sup>

#### ***10. May an employer deny accommodation of an employee's religious dress or grooming practice based on the "image" that it seeks to convey to its customers?***

An employer's reliance on the broad rubric of "image" or marketing strategy to deny a requested religious accommodation may amount to relying on customer preference in violation of Title VII, or otherwise be insufficient to demonstrate that making an exception would cause an undue hardship on the operation of the business.

#### EXAMPLE 10

##### **"Image"**

Jon, a clerical worker who is an observant Jew, wears tzitzit (ritual knotted garment fringes at the four corners of his shirt) and a yarmulke (or skull cap) in conformance with his Jewish beliefs. XYZ Temps places Jon in a long-term assignment with one of its client companies. The client asks XYZ to notify Jon that he must remove his yarmulke and his tzitzit while working at the front desk, or assign another person to Jon's position. According to the client, Jon's religious attire presents the "wrong image" and also violates its dress code prohibiting any headgear and requiring "appropriate business attire." XYZ Temps may not comply with this client request without violating Title VII.

The client also would violate Title VII if it changed Jon's duties to keep him out of public view, or if it required him not to wear his yarmulke or his tzitzit when interacting with customers. Assigning Jon to a position out of public view is segregation in violation of Title VII. Moreover, because notions about customer preference (real or perceived) do not establish undue hardship, the client must make an exception to its dress code to let Jon wear his religious garb during front desk duty as a religious accommodation. XYZ should strongly advise its client that the EEO laws require allowing Jon to wear this religious garb at work and that, if the client does not withdraw its request, XYZ will place Jon in another assignment at the same rate of pay and decline to assign another

worker to the client.[\[9\]](#)

#### EXAMPLE 11

##### "Image"

Tahera, an applicant for a retail sales position at a national clothing company that carries current fashions for teens, wears a headscarf in accordance with her Muslim religious beliefs. Based on its marketing strategy, the company requires sales personnel to wear only clothing sold in its stores, and no headgear, so that they will look like the clothing models in the company's sales catalogues. Although the company believes that Tahera wears a headscarf for religious reasons, the company does not hire her because it does not want to make an exception. While the company may maintain its dress and grooming rule for other sales personnel, it must make an exception for Tahera as a religious accommodation in the absence of employer evidence of undue hardship.[\[10\]](#)

In many jobs for which employers require employees to wear uniforms (e.g., certain food service jobs or service industry jobs), the employee's beliefs may permit accommodation by, for example, wearing the item in the company uniform color(s). Employers should ensure that front-line managers and supervisors understand that if an employee's proposed accommodation would pose an undue hardship, the employer should explore alternative accommodations.

***11. Do government agencies whose employees work with the public have to make exceptions to uniform policies or otherwise allow religious dress and grooming practices if doing so would not cause an undue hardship?***

Yes. Government agency employers, like private employers, must generally allow exceptions to dress and grooming codes as a religious accommodation, although there may be limited situations in which the need for uniformity of appearance is so important that modifying the dress or grooming code would pose an undue hardship. Therefore, it is advisable in all instances for employers to make a case-by-case determination of any needed religious exceptions.

#### EXAMPLE 12

##### Public Employee

Elizabeth, a librarian at a public library, wears a cross as part of her Catholic religious beliefs. In addition, after church services she attends on Ash Wednesday each year, Elizabeth arrives at work with a black ash mark on her forehead in the shape of a cross, which she leaves on until it wears off. Her new supervisor directs her not to wear the cross in the future while on duty, and to wash off the ash mark before reporting to work. Because Elizabeth's duties require her to interact with the public as a government employee, the supervisor fears that her cross and ash mark could be mistaken as government endorsement of religion in violation of the Establishment Clause of the First Amendment to the U.S. Constitution. He cites the need to avoid any appearance of religious favoritism by government employees interacting with the public, and

emphasizes that librarians must be viewed as impartial with respect to any information requests from library patrons. However, because the librarian's cross and ash mark are clearly personal in this situation, they would not cause a perception of government endorsement of religion. Accordingly, accommodating Elizabeth's religious practice is not an undue hardship under Title VII.[\[11\]](#)

#### EXAMPLE 13

##### Public Employee

Gloria, a newly hired municipal bus driver, was terminated when she advised her supervisor during new-employee orientation that due to the tenets of her faith (Apostolic Pentecostal), she needs to wear a skirt rather than the pants required by the transit agency dress code. Absent evidence that the type of skirt Gloria must wear would pose an actual safety hazard, no undue hardship would have been posed by allowing this dress code exception, and Gloria's termination would violate Title VII.  
[\[12\]](#)

#### **12. May an employer bar an employee's religious dress or grooming practice based on workplace safety, security, or health concerns?**

Yes, but only if the practice actually poses an undue hardship on the operation of the business. The employer should not assume that the accommodation would pose an undue hardship. While safety, security, or health may justify denying accommodation in a given situation, the employer may do so only if the accommodation would actually pose an undue hardship. In many instances, there may be an available accommodation that will permit the employee to adhere to religious practices and will permit the employer to avoid undue hardship.

#### EXAMPLE 14

##### Long Hair

David wears long hair pursuant to his Native American religious beliefs. He applies for a job as a server at a restaurant that requires its male employees to wear their hair "short and neat." When the restaurant manager informs David that if offered the position he will have to cut his hair, David explains that he keeps his hair long based on his religious beliefs and offers to wear it in a ponytail or held up with a clip. The manager refuses this accommodation and denies David the position because he has long hair. Since David could have been accommodated without undue hardship by wearing his hair in a ponytail or held up neatly with a clip, the employer violated Title VII.[\[13\]](#)

#### EXAMPLE 15

##### Facial Hair

Prakash, who works for CutX, a surgical instrument manufacturer, does not shave or trim his facial hair because of his Sikh religious observance. When he seeks a promotion to manage the division responsible for sterilizing instruments, his employer tells him that he

must shave or trim his beard because it may contaminate the sterile field. All division employees are required to be clean shaven and wear a face mask. When Prakash explains that he does not trim his beard for religious reasons, the employer offers to allow Prakash to wear two face masks instead of trimming his beard. Prakash thinks that wearing two masks is unreasonable and files a Title VII charge. CutX will prevail because it offered a reasonable accommodation that would eliminate Prakash's religious conflict with the hygiene rule.<sup>[14]</sup>

#### **EXAMPLE 16**

##### **Facial Hair**

Raj, a Sikh, interviews for an office job. At the end of the interview, he receives a job offer but is told he will have to shave his beard because all office staff are required to be "clean shaven" to promote discipline. Raj advises the hiring manager that he wears his beard unshorn because of his Sikh religious practice. Since no undue hardship is posed by allowing Raj to wear his beard, the employer must make an exception as an accommodation.<sup>[15]</sup>

#### **EXAMPLE 17**

##### **Clothing Requirements Near Machinery**

Mirna alleges she was terminated from her job in a factory because of her religion (Pentecostal) after she told her supervisor that her faith prohibits her from wearing pants as required by the company's new dress code. Mirna requested as an accommodation to be permitted to continue wearing a long but close-fitting skirt. Her manager replies that the dress code is essential to safe and efficient operations on the factory floor, but there is no evidence regarding operation of the machinery at issue to show that close-fitting clothing like that worn by Mirna poses a safety risk. Because the evidence does not establish that wearing pants is truly necessary for safety, the accommodation requested by Mirna does not pose an undue hardship.

#### **EXAMPLE 18**

##### **Head Coverings That Pose Security Concerns**

A private company contracts to provide guards, administrative and medical personnel, and other staff for state and local correctional facilities. The company adopts a new, inflexible policy barring any headgear, including religious head coverings, in all areas of the facility, citing security concerns about the potential for smuggling contraband, interfering with identification, or use of the headgear as a weapon. To comply with Title VII, the employer should consider requests to wear religious headgear on a case-by-case basis to determine whether the identified risks actually exist in that situation and pose an undue hardship. Relevant facts may include the individual's job, the particular garb at issue, and the available accommodations. For example, if an individual's religious headgear is or can be worn in a manner that does

not inhibit visual identification of the employee, and if temporary removal may be accomplished for security screens and to address smuggling concerns without undue hardship, the individual can be accommodated.

[\[16\]](#)

#### EXAMPLE 19

##### Kirpan

Harvinder, a Sikh who works in a hospital, wears a small (4-inch), dull, and sheathed kirpan (symbolic miniature sword) strapped and hidden underneath her clothing, as a symbol of her religious commitment to defend truth and moral values. When Harvinder's supervisor, Bill, learned about her kirpan from a co-worker, he instructed Harvinder not to wear it at work because it violated the hospital policy against weapons in the workplace. Harvinder explained to Bill that her faith requires her to wear a kirpan in order to comply with the Sikh code of conduct, and gave him literature explaining that the kirpan is a religious artifact, not a weapon. She also showed him the kirpan, allowing him to see that it was no sharper than the butter knives found in the hospital cafeteria. Nevertheless, Bill told her that her employment at the hospital would be terminated if she continued to wear the kirpan at work. Absent any evidence that allowing Harvinder to wear the kirpan would pose an undue hardship in the factual circumstances of this case, the hospital is liable for denial of accommodation.[\[17\]](#)

#### ***13. Are applicants and employees who request religious accommodation protected from retaliation?***

Yes. Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, which includes requesting religious accommodation. Protected activity may also include opposing a practice the employee reasonably believes is made unlawful by one of the employment discrimination statutes, or filing a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under the statute.

#### EXAMPLE 20

##### Retaliation for Requesting Accommodation

Salma, a retail employee, requests that she be permitted to wear her religious headscarf as an exception to her store's new uniform policy. Joe, the store manager, refuses. Salma contacts the human resources department at the corporate headquarters. Despite Joe's objections, the human resources department instructs him that in the circumstances there is no undue hardship and that he must grant the request. Motivated by reprisal, Joe shortly thereafter gives Salma an unjustified poor performance rating and denies her request to attend training that he approves for her co-workers. This violates Title VII.

#### ***14. What constitutes religious harassment under Title VII, and what obligation does an employer have to stop it?***

Religious harassment under Title VII may occur when an employee is required or coerced to abandon, alter, or adopt a religious practice as a condition of employment. Religious harassment may also occur when an employee is subjected to unwelcome statements or conduct based on religion. Harassment may include offensive remarks about a person's religious beliefs or practices, or verbal or physical mistreatment that is motivated by the victim's religious beliefs or practices. Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, such conduct rises to the level of illegal harassment when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment action (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or even a third party who is not an employee of the employer, such as a client or customer.

An employer is liable for harassment by co-workers and third parties where it knew or should have known about the harassment and failed to take prompt and appropriate corrective action. An employer is always liable for harassment by a supervisor if it results in a tangible employment action, such as the harassment victim being fired or demoted.<sup>[18]</sup> Even if the supervisor's harassment does not result in a tangible employment action, the employer will still be liable unless it exercised reasonable care to prevent and correct promptly any harassing behavior (such as having an effective complaint procedure) and the harassed employee unreasonably failed to take advantage of opportunities to prevent or correct it (such as failing to use the complaint procedure).

#### **EXAMPLE 21**

##### **Co-Worker Harassment**

XYZ Motors, a large used car business, has several employees who are observant Sikhs or Muslims and wear religious head coverings. A manager becomes aware that an employee named Bill regularly calls these co-workers names like "diaper head," "bag head," and "the local terrorists," and that he has intentionally embarrassed them in front of customers by claiming that they are incompetent. Managers and supervisors who learn about objectionable workplace conduct based on religion or national origin are responsible for taking steps to stop the conduct by anyone under their control.<sup>[19]</sup>

Workplace harassment and its costs are often preventable. Clear and effective policies prohibiting ethnic and religious slurs and related offensive conduct are essential. Confidential complaint mechanisms for promptly reporting harassment are critical, and these policies should encourage both victims and witnesses to come forward. When harassment is reported, the focus should be on action to end the harassment and correct its effects on the complaining employee. Employers should have a well-publicized and consistently applied anti-harassment policy that clearly explains what is prohibited, provides multiple avenues for complaints to management, and ensures prompt, thorough, and impartial investigations and appropriate corrective action.

The policy should also assure complainants that they are protected against retaliation.

Employees who are harassed based on religious belief or practice should report the

harassment to their supervisor or other appropriate company official in accordance with the procedures established in the company's anti-harassment policy.

Once an employer is on notice of potential religious harassment, the employer should take steps to stop the conduct. To prevent conflicts from escalating to the level of a Title VII violation, employers should immediately intervene when they become aware of abusive or insulting conduct, even absent a complaint.

***15. What should an applicant or employee do if he believes he has experienced religious discrimination?***

Employees or job applicants should attempt to address concerns with management. They should keep records documenting what they experienced or witnessed and any complaints they have made about the discrimination, as well as witness names, telephone numbers, and addresses. If the matter is not resolved, private sector and state and local government applicants and employees may file a charge of discrimination with the EEOC.

To locate the EEOC office in your area regarding questions or to file a charge of discrimination within applicable time deadlines, call toll free 1-800-669-4000 or 1-800-669-6820 (TTY) for more information.

Federal sector applicants and employees should contact the EEO office of the agency responsible for the alleged discrimination to initiate EEO counseling. For more details, see "How to File a Charge of Employment Discrimination,"

<http://www.eeoc.gov/employees/charge.cfm>.

***16. Where can employers and employees obtain more information?***

In addition to Title VII's prohibitions on religious, race, color, national origin, and sex discrimination, the EEOC enforces federal statutes that prohibit employment discrimination based on age, disability, or genetic information of applicants or employees. The EEOC conducts various types of training and can help you find a format that is right for you. More information about outreach and training programs is available at <http://www.eeoc.gov/eeoc/outreach/index.cfm>. You should also feel free to contact the EEOC with questions about effective workplace policies that can help prevent discrimination, or for more specialized questions, by calling 1-800-669-4000 (TTY 1-800-669-6820), or sending written inquiries to: Equal Employment Opportunity Commission, Office of Legal Counsel, 131 M Street, NE, Washington, D.C. 20507.

***Other resources related to this topic:***

***Questions and Answers About Employer Responsibilities Concerning the Employment of Muslims, Arabs, South Asians, and Sikhs***

<http://www.eeoc.gov/eeoc/publications/backlash-employer.cfm>

***Questions and Answers About the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs Under the EEO Laws***

<http://www.eeoc.gov/eeoc/publications/backlash-employee.cfm>

***Questions and Answers on Religious Discrimination in the Workplace***

[http://www.eeoc.gov/policy/docs/qanda\\_religion.html](http://www.eeoc.gov/policy/docs/qanda_religion.html)

***Best Practices for Eradicating Religious Discrimination in the Workplace***

[http://www.eeoc.gov/policy/docs/best\\_practices\\_religion.html](http://www.eeoc.gov/policy/docs/best_practices_religion.html)

**Compliance Manual on Religious Discrimination**

<http://www.eeoc.gov/policy/docs/religion.html>

**Guidelines on Discrimination Because of Religion, 29 C.F.R. Part 1605**

<http://www.gpo.gov/fdsys/pkg/CFR-2013-title29-vol4/xml/CFR-2013-title29-vol4-part1605.xml>

**Guidelines on Religious Exercise and Religious Expression in the Federal Workplace** (Aug. 14, 1997),

<http://clinton2.nara.gov/WH/New/html/19970819-3275.html>

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[1] For further discussion about the definition of "religion" under Title VII, see *EEOC Compliance Manual on Religious Discrimination* (2008) at 12-I-A-1.

[2] *EEOC v. Family Foods, Inc. d/b/a Taco Bell*, No. 5:11cv00394 (E.D.N.C. consent decree entered April 2012) (settlement of case alleging failure to accommodate long hair worn pursuant to employee's Nazirite religious beliefs).

[3] The sincerity of an employee's religious beliefs or practices must be determined as of the time of the alleged discrimination. *EEOC v. Ilona of Hungary, Inc.*, 108 F.3d 1569, 1575 (7th Cir. 1997); *EEOC v. IBP, Inc.*, 824 F. Supp. 147, 151 (C.D. Ill. 1993).

[4] *Id.*

[5] *EEOC Compliance Manual on Religious Discrimination* (2008) at Example 14.

[6] *EEOC Compliance Manual on Religious Discrimination* (2008) at 12-I-A-3; 12-IV-A-2; Examples 30 and 31.

[7] See generally *EEOC v. Alamo Rent-A-Car, LLC*, 432 F. Supp. 2d 1006 (D. Ariz. 2006).

[8] See, e.g., *EEOC v. Red Robin Gourmet Burgers, Inc.*, 2005 WL 2090677 (W.D. Wash. Aug. 29, 2005) (denying employer's motion for summary judgment in case involving employer that had refused to accommodate an employee whose religious beliefs precluded him from covering his Kemetic religious tattoos to comply with employer's dress code, and therefore needed an exception).

[9] *EEOC v. 704 HTL Operating, LLC and Investment Corporation of America, d/b/a MCM Elegante Hotel*, 11-cv-00845 JCH/LFG (D.N.M. consent decree entered Nov. 2013) (settlement on behalf of individual whom employer hired for hotel housekeeping position but then barred from working unless she removed her Muslim head scarf); *EEOC v. Lawrence Transportation Systems*, Civil Action No. 5:10CV97 (W.D. Va. consent decree entered August 2011) (settlement on behalf of applicant for storage company loading position who alleged he was not hired due to his Rastafarian dreadlocks); *EEOC v. LAZ Parking, LLC*, Case No. 1:10-CV-1384 (N.D. Ga. consent decree entered Nov. 2010) (settlement on behalf of Muslim parking facility employee who was terminated for refusing to remove her hijab); *EEOC v. Comair, Inc.*, Civil Action No. 1:05-cv-0601 (W.D. Mich. consent decree entered Nov. 2006) (settlement on behalf of Rastafarian airline applicant alleging he was not hired because he refused to cut his

hair to conform with the company's grooming standards); *EEOC v. Pilot Travel Ctrs. LLC*, Civil Action No. 2:03-0106 (M.D. Tenn. consent decree entered April 2004) (settlement on behalf of Messianic Christian maintenance worker who wore beard as part of his religious practice, and was terminated for refusing to shave in compliance with employer's no-beard policy).

[10] *EEOC v. United Galaxy Inc., d/b/a Tri-County Lexus*, No. 2:10-CV-04987 (D.N.J. consent decree entered Nov. 2013) (settlement of case alleging car dealership violated Title VII religious accommodation obligation when it refused to hire as a sales associate an applicant who wore a beard, uncut hair, and a turban pursuant to his Sikh faith, unless he agreed to shave his beard to comply with the dealership's dress code).

[11] *Draper v. Logan County Pub. Library*, 403 F. Supp. 2d 608 (W.D. Ky. 2005) (public library employee's First Amendment free speech and free exercise rights were violated when she was prohibited from wearing a necklace with a cross ornament).

[12] *U.S. v. Washington Metro. Area Transit Auth.*, No. 1:08-CV-01661 (RMC) (D.D.C. consent decree entered Feb. 2009) (lawsuit filed and settled by U.S. Department of Justice on behalf of city bus driver applicants and employees who were denied religious accommodation to wear skirts instead of pants, and to wear religious head coverings); *EEOC v. Brink's Inc.*, No. 1:02-CV-0111 (C.D. Ill.) (consent decree entered Dec. 2002) (settlement of case alleging that messenger employee was denied reasonable accommodation when she sought to wear culottes made out of uniform material, rather than the required trousers, because her Pentecostal Christian beliefs precluded her from wearing pants); see also *EEOC v. Scottish Food Systems, Inc. and Laurinburg KFC Take Home*, 1:13-CV00796 (M.D.N.C. consent decree entered Dec. 2013) (settlement of case alleging denial of accommodation to Pentecostal Christian employee in food service position who adhered to a scriptural interpretation that women should wear only skirts or dresses, and therefore needed an exception to restaurant's requirement of uniform pants); *EEOC v. Fries Restaurant Management d/b/a Burger King*, No. 3:12-CV-3169-M (N.D. Tex. consent decree entered Jan. 2013) (same).

[13] *EEOC Compliance Manual on Religious Discrimination* (2008) at Example 35. See also *EEOC v. Grand Central Partnership*, Civil Action No. 08-8023 (S.D.N.Y. consent decree entered Aug. 2009) (settlement, along with policy and procedure changes and related training, in case alleging failure to accommodate long dreadlocks and short beards worn pursuant to Rastafarian religious practice by workers performing sanitation, maintenance and public safety duties; company grooming policy had required that long hair, including dreadlocks, be worn inside hats, which was impracticable; settlement included agreement to allow the dreadlocks to be worn down but clipped back in neat ponytails).

[14] *EEOC Compliance Manual on Religious Discrimination* (2008) at Example 46; *EEOC v. United Parcel Service*, 94 F.3d 314 (7th Cir. 1996) (genuine issue of material fact regarding whether the employer reasonably accommodated the employee's religious practice of wearing a beard precluded summary judgment for the employer).

[15] *EEOC v. United Parcel Service*, Civil Action No. 08-cv-1806 (M.D. Pa. consent decree entered Feb. 2010) (settling Title VII claim of failure to accommodate package delivery employee whose religious practice of wearing long hair and beard

necessitated exception to company's grooming code).

[16] *EEOC v. Imperial Security, Inc.*, Civil Action No. 2:10-CV-04733 (E.D. Pa. consent decree entered Nov. 2011); see also *United States v. New York State Dep't of Corr. Servs.*, Civil Action No. 07-2243 (S.D.N.Y. consent decree entered Jan. 2008) (settlement of case brought by U.S. Department of Justice, providing for individualized review of correctional officers' accommodation requests with respect to uniform and grooming requirements, and allowing employees to wear religious skullcaps such as kufis or yarmulkes if close fitting and solid dark blue or black in color, provided no undue hardship was posed).

[17] *EEOC Compliance Manual on Religious Discrimination* (2008) at Example 39; *EEOC v. Heartland Employment Services, LLC d/b/a ManorCare Health Services-Citrus Heights*, Case No. 2:08-cv-00460-FCD-DAD (E.D. Cal.) (consent decree entered May 2010); *EEOC v. Healthcare and Retirement Corp. of America d/b/a Heartland Health Care Center - Canton*, Case No. 07-13670 (E.D. Mich. consent decree entered Dec. 2009).

[18] In *Vance v. Ball State University*, 133 S. Ct. 2434, 2443 (2013), the Supreme Court held that the term "supervisor" applies only to those who are "empowered by the employer to take tangible employment actions against the victim," including "hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."

[19] See *EEOC v. Sunbelt Rentals, Inc.*, 521 F.3d 306 (4th Cir. 2008); *EEOC v. WC&M Enter., Inc.*, 496 F.3d 393 (5th Cir. 2007); *EEOC v. Lithia Subaru of Oregon City* (D. Ore. consent decree entered March 2006).

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U.S. Equal Employment Opportunity Commission

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## Fact Sheet on Religious Garb and Grooming in the Workplace: Rights and Responsibilities

This fact sheet provides basic information about how federal employment discrimination law applies to religious dress and grooming practices. A full-length question-and-answer guide is available at [http://www.eeoc.gov/eeoc/publications/qa\\_religious\\_garb\\_grooming.cfm](http://www.eeoc.gov/eeoc/publications/qa_religious_garb_grooming.cfm).

**In most instances, employers covered by Title VII of the Civil Rights Act of 1964 must make exceptions to their usual rules or preferences to permit applicants and employees to follow religious dress and grooming practices.** Examples of religious dress and grooming practices may include: wearing religious clothing or articles (e.g., a Christian cross, a Muslim hijab (headscarf), a Sikh turban, a Sikh kirpan (symbolic miniature sword)); observing a religious prohibition against wearing certain garments (e.g., a Muslim, Pentecostal Christian, or Orthodox Jewish woman's practice of wearing modest clothing, and of not wearing pants or short skirts); or adhering to shaving or hair length observances (e.g., Sikh uncut hair and beard, Rastafarian dreadlocks, or Jewish peyes (sidelocks)).

- **Title VII prohibits disparate treatment based on religious belief or practice, or lack thereof.** With the exception of employers that are religious organizations as defined under Title VII, an employer must not exclude someone from a job based on discriminatory religious preferences, whether its own or those of customers, clients, or co-workers. Title VII also prohibits discrimination against people because they have no religious beliefs. **Customer preference is not a defense to a claim of discrimination.**
- **Title VII also prohibits workplace or job segregation based on religion (including religious garb and grooming practices), such as assigning an employee to a non-customer contact position because of actual or assumed customer preference.**
- **Title VII requires an employer, once on notice that a religious accommodation is needed for sincerely held religious beliefs or practices, to make an exception to dress and grooming requirements or preferences, unless it would pose an undue hardship.**
  - Requiring an employee's religious garb, marking, or article of faith to be covered is not a reasonable accommodation if that would violate the employee's religious beliefs.
  - An employer may bar an employee's religious dress or grooming practice based on workplace safety, security, or health concerns only if the circumstances actually pose an undue hardship on the operation of the business, and not because the employer simply assumes that the accommodation would pose an undue hardship.
  - When an exception is made as a religious accommodation, the employer may still refuse to allow exceptions sought by other employees for secular reasons.
  - Neither co-worker disgruntlement nor customer preference constitutes undue hardship.
  - **It is advisable in all instances for employers to make a case-by-case determination of any requested religious exceptions, and to train managers accordingly.**
- **Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, which includes requesting religious accommodation.** Protected activity may also include opposing a practice the employee reasonably believes is made unlawful by one of the employment discrimination statutes, or filing a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under the statute.
- **Title VII prohibits workplace harassment based on religion,** which may occur when an employee is required or coerced to abandon, alter, or adopt a religious practice as a condition of employment, or for example, when an employee is subjected to unwelcome remarks or conduct based on religion.

**To locate the EEOC office in your area regarding questions or to file a charge of discrimination** within applicable time deadlines, call toll free 1-800-669-4000 or 1-800-669-6820 (TTY) for more information. Federal sector applicants and employees should contact the EEO office of the agency responsible for the alleged discrimination to initiate EEO counseling. For more details, see "How to File a Charge of Employment

Discrimination," <http://www.eeoc.gov/employees/charge.cfm>.

In addition to Title VII's prohibitions on religious, race, color, national origin, and sex discrimination, the EEOC enforces federal statutes that prohibit employment discrimination based on age, disability, or genetic information of applicants or employees. You may contact the EEOC with questions about effective workplace policies that can help prevent discrimination, or with more specialized questions, by calling 1-800-669-4000 (TTY 1-800-669-6820), or sending written inquiries to: Equal Employment Opportunity Commission, Office of Legal Counsel, 131 M Street, NE, Washington, D.C. 20507.