



Liability & Property Pool Workers' Compensation Fund

RISK CONTROL SOLUTIONS

A Service of the Michigan Municipal League Liability and Property Pool and
the Michigan Municipal League Workers' Compensation Fund

DISCRIMINATION IN EMPLOYMENT

INTRODUCTION

Claims of discrimination against members of the Michigan Municipal Liability & Property Pool contribute significantly to the total percentage of all claims paid. Most discrimination claims have resulted from member practices in employment hiring and promotion decisions, sexual harassment, corrective action, and discharge.

RECOMMENDATIONS

While compliance with the following recommended employment practices does not guarantee an absence of discrimination claims, it *dramatically reduces exposure* to such claims.

To reduce your risk of discrimination claims, you should:

- Become familiar with federal and state employment laws. Know how they affect your organization.
- Adopt, train employees on, communicate openly, and enforce policy statements about:
 - Equal Employment Opportunities,
 - Sexual Harassment,
 - The Americans with Disability Act,
 - The Family and Medical Leave Act (if applicable to the organization),
 - Violence in the Workplace, and
 - Substance Abuse.
- Review employment documents and practices regularly for consistency and legality. These include the employment application, job descriptions, offers of employment, medical examinations, employment manuals, personnel files, supervisors' counseling and corrective files, and retention and release of information procedures.
- Comply with the hourly wage and overtime requirements of the Fair Labor Standards Act. Verify compliance with your attorney.
- Post all notices from the Equal Employment Opportunity Commission and the Michigan Department of Civil Rights. Contact local offices for details.

- Review employment practices and decisions periodically with an attorney who specializes in employment law. This is critical for decisions about termination or handling claims of sexual harassment, discrimination, or whistleblowing.
- Target recruiting activities to obtain applicants who reflect the community's labor market demographics. Use a variety of local sources to attract candidates.
- Set written standards such as minimum qualifications, acceptable test scores, and job-related medical requirements. Make sure these standards do not discriminate against protected classes.
- Treat current employees as well as candidates for employment in the same manner. Review employment decisions regularly for evidence of discrimination against employees because of religion, race, color, national origin, pregnancy, arrest record, genetic information, sex, age, height, weight, marital status, disability, sexual orientation, gender identity, gender expression
- Train management personnel to conduct interviews in a structured and objective manner. Individuals who recruit or select employees must know lawful and unlawful employment inquiries and practices. Training must include guidance on performing background investigations, including using social networking or Internet-based sources and drug and alcohol screening based on legitimate business needs. Review the Michigan Department of Civil Rights Pre-employment Inquiry Guide, available online at: <https://www.michigan.gov/-/media/Project/Websites/mdcr/brochures/pre-employment-guide.pdf?rev=0d0f0e842eb04d8eb8347dc840b448c3>.
- Ensure supervisors conduct performance appraisals objectively and consistently for all employees and communicate assessments with employees. Conduct performance appraisals at least annually and document them properly.
- Train supervisors on the level of discipline they are authorized to dispense and the proper procedures to follow, including for discharge and termination. Supervisors should know how to recognize mental health crises, substance abuse and the appropriate steps to take if employees are suspected of being under the influence of drugs or alcohol while on duty. All disciplinary action or identified inappropriate behavior should be reported to top management, who should monitor that the organization's guidelines and procedures are followed.
- Train all employees on the organization's Equal Employment Opportunity, Sexual Harassment, Americans with Disabilities Act, Family and Medical Leave Act, and other anti-discrimination policies. Training should cover procedures for employees to report actions suspected of violating policies and management responsibilities when such reports are made.
- Provide new employees with an appropriate orientation into the workforce. Cover all organization rules, regulations, policies, and procedures, including all safety requirements. Document the orientation.

Following these guidelines takes work. It requires a significant commitment of time and resources. However, the costs in time and dollars for non-compliance are higher. To streamline the process, you should:

- 1) Evaluate current employment practices against these guidelines to uncover weaknesses in your policies and procedures.
- 2) Prioritize corrective measures by determining the areas needing correction or presenting the most significant exposure to loss.
- 3) Distribute the responsibility for improving employment practices among qualified individuals within your organization. Use outside assistance where it is beneficial to the process.

STATE AND FEDERAL LAWS

Michigan employers must consider various state and federal statutes when they make employment decisions. Some of the most important are:

State:

- The Michigan Elliott-Larsen Civil Rights Act (ELCRA)
- The Michigan Persons with Disabilities Civil Rights Act (PDCRA)

Federal:

- The Civil Rights Acts of 1964 and 1991
- The Americans with Disabilities Act (ADA)
- The Age Discrimination in Employment Act (ADEA)
- The Equal Pay Act (EPA)
- The Pregnancy Discrimination Act
- The Pregnant Workers Fairness Act (PWFA)
- The Family and Medical Leave Act (FMLA)

**Contact MML Risk Management Services Staff
or your Loss Control Consultant for more information.**



Important Phone Numbers

| | |
|---|---|
| MML Risk Management Services | 734.662.3246 or 800.653.2483 |
| Loss Control Services | 800.482.0626 |
| MI Department of Civil Rights | 313.456.3700 or michigan.gov/mdcr |
| Equal Employment Opportunity Commission | 800.669.4000 |

Note:

***This document is not intended to be legal advice.
It only identifies some of the issues surrounding this topic.
Public agencies are encouraged to review their procedures with an expert
or a competent attorney who is knowledgeable about the subject.***



SELF-ASSESSMENT: DISCRIMINATION IN EMPLOYMENT

Claims of discrimination can result from practices in all areas of employment. Most frequently, they arise because of the hiring process, promotional and disciplinary procedures, and harassment in the workplace. Openly supporting and enforcing anti-discrimination policies will not guarantee that claims will not arise. It will, however, reduce your exposure to them and minimize the likelihood that employees or applicants will make such claims and successfully prove discrimination. Your human resource professional should review the best practices listed below and identify and correct any deficiencies in your practices as soon as possible.

Organization Name

Completed by

Date

Does Your Organization:

(A response of "No" may require further analysis and/or an action plan for correction.)

| Yes | No | | Discrimination in Employment |
|--------------------------|--------------------------|-----|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. | Rely on an individual knowledgeable about state and federal laws when making employment-related decisions? |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. | Adopt and openly enforce policy statements concerning: |
| <input type="checkbox"/> | <input type="checkbox"/> | | Equal Employment Opportunity? |
| <input type="checkbox"/> | <input type="checkbox"/> | | Sexual and other types of Harassment? |
| <input type="checkbox"/> | <input type="checkbox"/> | | Family and Medical Leave Act Policy (if required by law)? |
| <input type="checkbox"/> | <input type="checkbox"/> | | Disability in the Workplace? |
| <input type="checkbox"/> | <input type="checkbox"/> | | Violence in the Workplace? |
| <input type="checkbox"/> | <input type="checkbox"/> | | Substance Abuse in the Workplace? |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. | Train employees and supervisors on civil rights and anti-discrimination laws? |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. | Discipline employees who violate civil rights and anti-discrimination laws? |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. | Review employment documentation regularly to meet state and federal guidelines? (Application forms, job descriptions, manuals, etc.) |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. | Post all required state and federal notices? |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. | Set hiring standards that do not discriminate against a protected group? |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. | Make all hiring decisions without regard to religion, race, color, national origin, pregnancy, arrest record, genetic information, sex, age, height, weight, marital status, disability, sexual orientation, gender identity, or gender expression? |
| <input type="checkbox"/> | <input type="checkbox"/> | 9. | Assure that all individuals – especially interviewers – involved in the recruitment and selection process are adequately trained on employment laws and discrimination? |
| <input type="checkbox"/> | <input type="checkbox"/> | 10. | Train all supervisory employees on your organization's policies and procedures? |
| <input type="checkbox"/> | <input type="checkbox"/> | 11. | Always follow its policies and procedures consistently? |
| <input type="checkbox"/> | <input type="checkbox"/> | 12. | Monitor and evaluate the effectiveness of anti-discrimination programs and make corrections when needed? |

CONCLUSIONS




If you can honestly answer “yes” to all applicable questions, your risk management program for claims of discrimination in employment is on solid footing – congratulations! Following the recommended practices reduces your organization’s exposure to future claims in this area. Remain vigilant for new or changing risks and address them promptly.



If you answered “no” to one or more questions, your organization faces increased exposure to claims of discrimination in employment and the associated direct and indirect costs. Each “no” response indicates a possible deficiency in your risk management program. You should consider these carefully and take one or more of the actions below:

- Correct any deficiency that may exist;
- Contact your attorney for advice;
- Contact MML Risk Management Services at the numbers below;
- Contact MML Loss Control Services at the number below.

**Contact MML Risk Management Services Staff
or your Loss Control Consultant for more information.**

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|---|--|
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