

law enforcement action forum

Newsletter

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Risk Reduction Strategies and Best Practices

PERSPECTIVES ON: LEADERSHIP

A Culture of Respect

One essential component of a positive and productive workplace is a culture of respect—an environment where people feel like they are appreciated and their contributions are valued; like they belong; and that they are safe and treated fairly.

Leaders who treat people with respect in all interactions set the standards and model behavior for everyone in their organization. This is critical, but modeling alone isn't enough. Leaders must also regularly communicate the importance of respectful behavior and interactions, and actively work on organizational structures and systems that support a culture of respect.

Written policies play a central role in this, drawing clear lines in the sand for acceptable conduct. For example, policies that prohibit harassment and discrimination help protect the safety and well-being of all employees. Review your policies regularly to ensure they are up to date.

However, as we all know, written policies only make a difference if they are implemented in real life and become second nature to those in the organization. This is why it is vital to have regular training sessions that address matters such as harassment, discrimination, unconscious biases, inclusion, and conflict resolution. These are not just a formality or about learning the latest buzzwords. At the core, training sessions are a tool for developing a shared understanding that builds on basic principles like being kind, treating each other fairly, helping everyone feel welcome, people valuing and accepting each other, and being able to work through disagreements constructively—all crucial elements of a culture of respect.

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Training sessions also play a significant role in keeping you, as leaders, informed and prepared to handle situations that may arise in the workplace. They equip you with the knowledge and skills necessary to promote a respectful environment. Other steps that can be taken are:

- Conduct regular assessments and surveys to gauge the level of respect within your agency. These are a vital method for understanding the current state of your organization's culture. Feedback should be used to improve policies and practices, ensuring that a culture of respect is maintained and enhanced over time.
- Empower employees to take ownership of their workplace culture.
- Engage employees in initiatives that promote respect and inclusion, such as team-building activities and volunteer programs.
- Develop clear procedures for addressing and resolving disputes promptly and fairly. Implement mediation programs to resolve more challenging conflicts.
- Strive for a diverse workforce through inclusive hiring practices.
- Involve employees from diverse backgrounds in decision-making processes.

Integrating these strategies into your organization's daily operations and values can cultivate a culture of respect, leading to a more harmonious and productive workplace.

LESSONS LEARNED: First Amendment Audits

A First Amendment audit is when people known as “auditors” visit public places such as a police department or other government office to test whether personnel will respect the constitutional right of individuals to record videos and take photographs in a public space. With some limitations, this right exists as long as the person is legally allowed to be present during the recording and does not violate laws. The following are important lessons learned:

- Understand what constitutes a “public” and “private” space and clearly mark all private spaces. Public spaces may be exterior, such as sidewalks, or interior areas that the public can generally access, such as lobbies. Private spaces are areas restricted for employees only or where the public is not permitted unescorted.
- Take steps as needed to protect private areas from public view—it is legal for people to record from public areas into visible, non-public areas.
- Have a policy that addresses First Amendment audits. Be sure all employees receive training on the policy, understand public versus private space, individual rights, and how to engage with auditors.
- Employees may not detain, remove, or arrest someone who has the legal right to be present for simply recording; making people in the area uncomfortable; or provocative behavior, disrespect, or foul language.
- Employees may not interfere with recording or confiscate equipment if the person is legally present and recording a public official or employee engaged in their duties.
- Employees should remain calm and respectful when interacting with an auditor; identify themselves and explain any concerns; and focus on the person's conduct, not on their act of recording.
- Limitations on the right to record in public spaces include: individuals may not record from a position or distance that would create a danger to themselves or others; interfere with police actions or duties; or enter a marked crime scene, police perimeter, or established police line.
- If an individual's activity falls outside the above limitations, officers should provide explicit and lawful orders for the individual to follow.
- Any detention or arrest must be based on probable cause of a crime being committed. Explain the basis for an arrest in as much detail as possible in the report and secure body-worn or in-car camera footage as evidence.
- To build public trust, foster a culture of openness and transparency.

RECENT COURT DECISIONS

United States v. McMullen

US Court of Appeals for the Sixth Circuit, 2024

The primary issue in this case was whether police obtained evidence in violation of Dorian McMullen's Fourth Amendment rights.

Cleveland, OH police found McMullen in a high-crime neighborhood, parked near a known gang member's vehicle, sitting in his car with his legs sticking out the open door. As police approached, they saw him reach for something on the car's floorboard, which they suspected to be a gun. McMullen exited his vehicle and closed the car door. During a brief conversation with an officer, he allegedly admitted to having a gun and crack cocaine in his car. Police searched the vehicle, finding a loaded gun and narcotics. McMullen was arrested and charged with being a felon in possession of a firearm.

McMullen moved to suppress the evidence, arguing that it was seized in violation of his Fourth Amendment rights. The district court denied the motion, finding that the police had reasonable suspicion to temporarily stop and question McMullen and had lawfully frisked him and searched his vehicle. McMullen appealed.

The US Sixth Circuit Court of Appeals affirmed the district court decision, finding reasonable suspicion for a Terry stop and reasonable protective measures that had not violated McMullen's constitutional rights. The court rejected McMullen's argument that the gun in his vehicle was not immediately accessible to him at the time of the search, stating that a weapon is not necessarily inaccessible just because it is temporarily behind a closed door.

Ward v. Shelby County

US Court of Appeals for the Sixth Circuit, 2024

The primary issue in this case is whether Sedric Ward's claim under the Uniformed Services Employment and Reemployment Act (USERRA) is compensable despite a previous settlement agreement with the county.

Ward, an Army reservist, worked at the Shelby County, MI jail. In 2014, the county investigated service member jail employees and accused several, including Ward, of taking fraudulent leaves. The county fired Ward, who was later cleared of fraud and appealed his termination. He entered a settlement agreement with the county and signed a release of "any and all claims whatsoever" in exchange for about \$2,500 and being allowed to return to work. He ultimately decided not to return and, in 2020, sued the county under USERRA for investigations that targeted service members but not other county employees.

The county moved for summary judgment, arguing that Ward had released his right to a USERRA claim by entering the settlement agreement. The district court denied the motion, finding that Ward's USERRA claim did not fall within the scope of the agreement. The court also held that, because the settlement terms were "objectively less beneficial" than Ward's rights under USERRA, it did not meet a requirement—established within the act—that any agreement to release USERRA rights must be "more beneficial" for the service member than the rights they give up. At trial, a jury found in Ward's favor and the court ordered the county to pay Ward more than \$1.5 million.

The US Sixth Circuit Court of Appeals has vacated the district court's judgment on both questions. The court held that Ward's settlement release does apply to the USERRA claim. It also held that a court cannot decide whether a settlement provides "greater" benefits than a USERRA claim—only the service member can make that decision, based on individual considerations. However, given Ward's testimony that he had been unemployed for eighteen months and the settlement was presented as "take it or leave it," the appeals court concluded that there is an open question for a jury to determine: whether Ward entered the agreement based on a considered decision and belief that its benefits outweighed his USERRA claim or his choice instead reflected only desperation. The appellate court remanded the case for such further proceedings.

LEGAL INSIGHTS

Curtilage: Protected by the Fourth Amendment

The 4th Amendment protects a homeowner from unreasonable searches – that protection is highly guarded by courts throughout the country. The United States Supreme Court has held that at the Amendment's "very core" is the right of a person "to retreat into his own home and there be free from unreasonable governmental intrusion." *Florida v Jardines*, 569 US 1, 6 (213).

All officers must know that this protection extends to a home's "curtilage," which is the "area immediately surrounding and associated with the home." This can include a yard, garden, porch, driveway etc.

Warrantless searches of a home's curtilage are presumptively unreasonable *unless* exigent circumstances exist. Those circumstances must be reviewed through the lens of a reasonable police officer under the same or similar circumstances and must be carefully documented in the officers' reports.

Again, ask: why are we here? What are the exigencies of the situation?

**By Audrey Forbush
Plunkett Cooney**



MIOSHA MOMENT

General Industry Standard, Part 490, Permit-Required Confined Spaces

The term "confined space" means a space that meets all three of the following characteristics:

- Is large enough and so configured that an employee can bodily enter and perform assigned work
- Has limited or restricted means for entry or exit
- Is not designed for continuous employee occupancy.

A Permit-Required Confined Space (PRCS) is any confined space with one or more of the following characteristics:

- Contains or has the potential to contain a hazardous atmosphere
- Contains a material that has the potential for engulfing an entrant
- Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or a floor that slopes downward and tapers to a smaller cross-section
- Contains any other recognized serious safety or health hazard.

Employees are safer when they do not need to enter PRCS to perform an assigned task. Where feasible, the employer should have a policy stating that employees never enter a PRCS.

When a permit space is identified, any associated hazard(s) should be described. The most frequently cited hazard is failing to identify all permitted spaces in the workplace.

Any confined space rescue service must meet the requirements of OSHA Standard 1910.146 for Rescue and Emergency Services.

MIOSHA Consultation, Education & Training Division

The Consultation Education and Training (CET) Division offers free, statewide safety and health assistance to employers and employees. Call: 517-284-7720.

LEAF MEMBER SPOTLIGHT

Jeff Watson

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Do you have questions about any material in this newsletter?

Do you have a suggestion for topics to be covered in future editions?

Call or email Matt Heins at
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THE LAW ENFORCEMENT ACTION FORUM (LEAF)

LEAF includes police chiefs, sheriffs, and public safety directors from law enforcement agencies of all sizes and all over Michigan.

LEAF members meet regularly to discuss relevant public policy matters and assist in developing model policies for the MML *Law Enforcement Risk Control Manual*.

The *Manual* is available free of charge to law enforcement executives of MML Liability & Property Pool and Workers' Compensation Fund member communities.

To access to the manual of model policies, complete the request form at:

<http://www.mml-leaf.org/request-access.php>

(Note: If you move to a different law enforcement agency, you must reapply.)

**A service of the Michigan Municipal League
Liability & Property Pool and Workers' Compensation Fund
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