

law enforcement action forum

Newsletter

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Risk Reduction Strategies and Best Practices

PERSPECTIVES ON: LEADERSHIP

Internal Investigations and Employee Discipline

Administering investigations and discipline is an important part of a law enforcement leader's responsibilities. A thorough understanding is necessary to ensure the process is executed correctly from the outset. Improper handling of internal investigations and discipline can lead to considerable liability, especially when allegations are serious and the consequence may be suspension, demotion, or termination. The process can be complex, confusing, and emotional, and a leader's choices can inadvertently increase liability.

The guidelines below establish a solid foundation for carrying out investigations and discipline of a serious nature.

- 1) Ensure your agency has up-to-date policies outlining procedures for internal investigations and the disciplinary process.*
- 2) Consult with the Human Resources department and a labor attorney early and frequently. This is absolutely essential. Clearly explain the facts, circumstances, alleged policy violations, and actions being considered. Do not withhold information. As the case evolves, keep HR and your attorney updated—changes or new developments could alter the legal picture and their recommendations.
- 3) Review the relevant labor agreement at the beginning of an investigation. Review it again throughout the process, when weighing disciplinary options, and before carrying out disciplinary action. Be sure you don't overlook any steps or inadvertently violate the labor agreement. Avoid losing a case over technicalities.

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- 4) Do not start with assumptions or a predetermined outcome in mind. As facts emerge, do not let an initial impression or hypothesis lead you to minimize or dismiss contradictory information. Stay open-minded and adjust your response according to the evidence. Do not allow personal feelings to sway your good judgment.
- 5) Impose disciplinary actions that are measured, fair, and consistent. Do not apply unreasonable or inconsistent discipline to prove a point or as the result of political pressure.
 - Discipline should be proportional to the violation.
 - Discipline should be consistent with that applied previously for similar violations. Review cases of a fundamentally similar nature; if the basic elements align, your response should as well.
 - Discipline may consider the employee's length of employment and their disciplinary history.
- 6) Maintain a professional demeanor when interacting with the employee. Be respectful and empathetic. Do not let emotions drive your words, behavior, or treatment of the employee.
- 7) Maintain confidentiality. Discuss the situation only with those who have authorization and a need to know, and remain professional. Do not crack jokes, treat as gossip, or express personal feelings about the employee.
- 8) If it becomes appropriate to inform others in the organization about an employee's departure, be sure the notification is made in a professional and suitable manner.

Navigating employment law can be challenging and there is little room for mistakes. It is crucial to get things right from the start. To achieve this, follow well-crafted policies*, seek help from experts, base your decisions on factual information and similar cases, and be prepared to explain the reasons behind your choices. These steps can be essential in the event of litigation.

* The *MML Law Enforcement Risk Control Manual* offers model law enforcement policies and supporting resources that address: Internal Investigations (Ch. 13), Disciplinary Process (Ch. 14), and In-Service Training (Ch. 19).

Access to the *Manual* is available free of charge to law enforcement leaders of communities that belong to the MML Liability & Property Pool and/or MML Workers' Compensation Fund.

LESSONS LEARNED: MCOLES Officer Training Requirements, New in 2025!

In June 2024, the Michigan Commission on Law Enforcement Standards established a mandatory in-service training requirement for all licensed law enforcement officers, known as Continuing Professional Education (CPE).

Beginning in 2025, officers must complete a total of 24 hours of CPE training per year. The annual 24 hours must consist of 8 hours of training in MCOLES-designated categories plus 16 hours of agency-selected training.*

The MCOLES-designated training categories for 2025, 2026, and 2027 (8 hours per year) are:

- 2025: MCOLES-recognized mental health crisis training;
- 2026: MCOLES-recognized tactical operations training;
- 2027: MCOLES-recognized special investigations training.

Agency-selected training (16 hours per year) must: be pre-approved and registered with MCOLES; align with the current MCOLES Job Task Analysis (JTA); be pre-approved by the law enforcement agency head or their delegate; enhance law enforcement performance, professionalism, public and officer safety, and officer decision-making; adhere to current best practices in law enforcement; and address current issues facing law enforcement.

The Michigan legislature has allocated funds for CPE training. The 2025 annual distribution of CPE funds will take place in January, subject to appropriation by the legislature.

Visit the Michigan Commission on Law Enforcement Standards website for specific information.

RECENT COURT DECISIONS

Jones v. Steven Naert, Clinton County Sheriff Department

US Court of Appeals for the Sixth Circuit, 2024

The Court addressed Ronda Jones's claims against Clinton County Sheriff's Deputy Steven Naert, alleging false arrest and malicious prosecution in violation of her Fourth Amendment rights.

In December 2019, Ronda Jones' 16 year-old son was involved in a solo car crash half a mile from their home in rural Michigan. Lacking a phone, he walked home. Jones told him to return to the car, wait for police, and she would join him shortly. Meanwhile, Deputy Naert found the car empty with deployed airbags, ran the registration, and learned its owner lived nearby and had a record of prior DUI arrest. Naert drove to the residence and spoke with Jones, who had been drinking. She told Naert her son had crashed the vehicle; Naert stated his theory that she had crashed the car while driving under the influence. Upon learning that the car's airbags had deployed, Jones became worried and very intent on walking to the car to check on her son. When she attempted to leave her property, Naert arrested her for disorderly conduct, citing public intoxication. She was prosecuted and acquitted.

The district court granted Naert qualified immunity, concluding he had probable cause for the arrest and did not participate in the decision to prosecute.

Appeals Court Findings:

The Sixth Circuit held that Naert lacked probable cause to arrest Jones for disorderly conduct, as "Public intoxication is not a civil or criminal offense in Michigan. Intoxication, without any further reasonable basis for believing that a person may endanger another, is not enough to arrest them for disorderly conduct." However, the court affirmed the grant of qualified immunity, as Jones failed to demonstrate that the unlawfulness of the arrest was "clearly established" at the time. Additionally, the court upheld the dismissal of the malicious prosecution claim, agreeing that Naert did not influence or participate in the decision to prosecute her.

McNeal v. City of Blue Ash, Ohio

US Court of Appeals for the Sixth Circuit, 2024

The Court addressed claims brought by Gary McNeal, a 61 year-old former police officer with over 33 years of service. McNeal alleged that his termination from the Blue Ash PD was due to age discrimination and that he had endured a hostile work environment of increased scrutiny and disciplinary actions.

McNeal's disciplinary issues began around 2016. He received multiple reprimands and suspensions for policy violations, including failing to activate his microphone during traffic stops and not responding promptly to assignments. In June 2018, McNeal was dispatched to a medical emergency but his response was delayed and he did not activate his lights or siren, contrary to department policy. An internal investigation revealed multiple policy violations both related and unrelated to that incident, leading to his termination in November 2018.

Appeals Court Findings:

Age Discrimination Claim: The court affirmed the district court's summary judgment in favor of the defendants, concluding that McNeal failed to provide sufficient evidence that age was the "but-for" cause of his termination. The court noted that the department had legitimate, non-discriminatory reasons for his dismissal.

Hostile Work Environment Claim: The court reversed the summary judgment on this claim, finding that McNeal's cumulative treatment, including disproportionate discipline and increased scrutiny compared to younger officers, could reasonably be perceived as creating a hostile work environment. The court emphasized that while individual acts might be separately actionable, their cumulative effect could contribute to a hostile atmosphere.

Employers should be aware that consistent patterns of differential treatment and increased scrutiny of older employees can contribute to a hostile work environment claim.

LEGAL INSIGHTS

Consistency and Impartiality in Employee Discipline

Consistency and impartiality are key components to employee discipline. Depending on the nature of the alleged infraction and the rank of the persons involved, outside, independent investigations may become necessary to maintain impartiality and to avoid the appearance of undue bias as well as favoritism.

Use of an outside, independent investigator should be determined on a case-by-case basis in consultation with labor counsel to avoid the appearance of impropriety and to preserve the integrity of the investigation as well as the findings related to recommended discipline. It does not necessarily mean that the investigation must be conducted by an individual outside the municipality, but it may require involvement of human resources (if available) and/or administrators outside the department itself.

Thoughtful and consistent issuance of discipline will serve to diminish liability related to claims of discrimination and retaliation by confirming the legitimate basis for the discipline.

**By Audrey Forbush
Plunkett Cooney**



MIOSHA MOMENT

Reminder – The OSHA Injury/Illness Reporting Deadline is Fast Approaching

By Frank Demers

As we enter the new year, it's important to be mindful of your organization's annual OSHA injury/illness reporting obligations. Municipalities that have employed eleven (11) or more employees throughout a calendar year are required to record all reportable work-related injuries or illnesses (injuries or illnesses that require treatment beyond basic first aid) that occur during the calendar year on the *OSHA Occupational Injury and Illness Reporting Form—Form 300*.

Additionally, at the conclusion of each year, affected employers must prepare an *Annual Summary of Work-Related Injuries & Illnesses—Form 300A*, summarizing all injuries/illnesses for the entire municipality during that year. A copy of *Form 300A* must then be posted in a conspicuous area in each municipal building by no later than February 1 (of the year following the year covered) and remain posted until at least April 30.

For more information and to obtain copies of the required forms, please refer to the MIOSHA website online at: <https://www.osha.gov/sites/default/files/OSHA-RK-Forms-Package.pdf>

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.

Do you have questions about
any material in this newsletter?

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

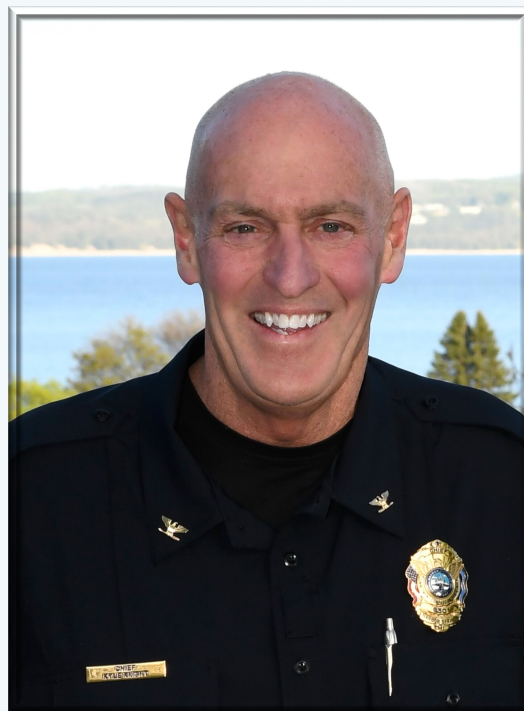
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LEAF MEMBER SPOTLIGHT

Kyle Knight

Chief of Police
Harbor Springs Police Department



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:
<https://mml.org/programs-services/risk-management/leaf/request-access-form/>

(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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