



Employment Law Training

EOHLC REGIONAL LEGAL
SERVICES TRAINING PROGRAM

MAY 31, 2023



Announcement

DHCD is now the Executive Office of Housing and Livable Communities

* EOHLC's address, email and telephone numbers are unchanged

Disclaimer

- This training presentation is offered for general information and educational purposes. No attorney-client relationship is formed by attending this seminar.
- All opinions expressed herein are personal and should not be construed as the official guidance of the Executive Office of Housing and Livable Communities.
- This program will be recorded. Please mute your microphones and turn off your cameras to ensure quality of the recorded seminar.
- If you have an employment situation you need help with, the Retained Risk Liability Program can assign legal counsel subject to terms and conditions of the Program. Please contact Sarah O'Leary (Sarah.oleary@mass.gov) for assistance.

Our Speaker



Attorney Courtney Mayo

Attorney Mayo is a partner at Hassett & Donnelly and currently serves as President of the Worcester County Bar Association.

Courtney is a go-to labor law attorneys for municipalities and other public employers in the Commonwealth and has assisted many LHA's navigate difficult employment situations.

Today she will focus on legal compliance and financially dangerous mistakes for LHA's to avoid in the hiring and employment termination stages.

She will discuss laws and new legal decisions that can result in costly litigation. Alert employers must focus on the details and proceed carefully during these phases of the employment relationship.

Employment Law Training: What You Need to Know About Hiring and Firing Employees

May 31, 2023

HASSETT | DONNELLY

BOSTON | HARTFORD | MANCHESTER

NEW YORK | PORTLAND | PROVIDENCE | WORCESTER

What to Consider When Hiring

The Application Process

- ▶ Posting:
 - ▶ Include all essential functions of the position in the posting
 - ▶ Special degrees or education
 - ▶ Licenses
 - ▶ Training or experience required/ preferred
 - ▶ Physical requirements - expected to lift certain weight?
 - ▶ Be able to be on their feet all day?
 - ▶ List expected workdays and hours
 - ▶ Does the employee need to be on call
 - ▶ Are they expected to occasionally work weekends or holidays

The Application Process

- ▶ Written Application:
 - ▶ Do not ask for age or date of birth
 - ▶ Do not ask about criminal history
 - ▶ Do not ask about disability or health issues
 - ▶ Do ask for specific references including telephone and email contact information
 - ▶ Do have them execute CORI Acknowledgement form in advance

Save all cover letters, resumes and applications of non-hires for one year

The Application Process

- ▶ Watch out for applicants with multiple, short periods of employment with previous employers
 - ▶ You can call a previous employer for information, verify previous employment
- ▶ Check references carefully
- ▶ Verify their licenses
- ▶ Google the candidate
- ▶ Check for their social media accounts
 - ▶ Check Facebook and Instagram
 - ▶ Look on LinkedIn

The Application Process

- ▶ You've decided to offer a candidate the job, what next?
 - ▶ Make a Conditional Offer of Employment in writing
 - ▶ Advise the employee that the offer is conditioned upon the completion of a background check and CORI
 - ▶ What can be considered with CORI results
 - ▶ Confirm with the employee that they can perform the essential functions of the job with or without a reasonable accommodation
 - ▶ If they need an accommodation for a disability, that should be discussed / determined
 - ▶ Interactive Dialogue
 - ▶ Reasonableness of Accommodation

Always be prepared to defend your decision to hire a particular employee and not hire another.

Onboarding a New Employee

- ▶ Upon hire, an employee should complete their onboarding paperwork including an I-9, M-4, W-2 and the NHR paperwork
- ▶ Review the employee's job description with them - make sure they understand the expectations of the position
- ▶ Provide the employee with your personnel policies and/or employee handbook. The employee should sign an acknowledgment that they received the documents and promise to read and review them.
 - ▶ Handbook does not create an employment contract
- ▶ Review the employee's benefits with them
 - ▶ Wages
 - ▶ Expectations for evaluation and increases
 - ▶ How much vacation time and how accrued (be clear)
 - ▶ Are they entitled to comp. time?
 - ▶ How is overtime handled?
 - ▶ Need permission in advance?
 - ▶ Sick time and PTO
 - ▶ What rolls over

Employee v. Independent Contractor

- ▶ No withholdings or benefits for an Independent Contractor
- ▶ Question of Control:
 - ▶ Who controls the work (when/ where)
 - ▶ Who provides the equipment
 - ▶ How are they paid (regularly v. upon receipt of invoice)

Payment of Wages

- ▶ Keep Good Records!
 - ▶ How do you keep track of hourly employee?
 - ▶ Time Card? (Review)
 - ▶ When allowing time to roll over, keep good records - confirm with employee
 - ▶ How is overtime handled?
 - ▶ Is the employee entitled to take comp. time?
 - ▶ What is the policy with respect to calling out?
 - ▶ What is your policy with respect to time off?
 - ▶ Requests for time off should be in writing and approved
 - ▶ Keep in a file
 - ▶ Wages can include straight pay, overtime, PTO, vacation and sick time
 - ▶ *Reuter v. Methuen*, 489 Mass. 465 (2022)

Employee Discipline

Know your Policies!

- ▶ What response is required to particular conduct? (Due Process)
 - ▶ Progressive Discipline
- ▶ Document everything!
 - ▶ Even verbal warnings should be documented
- ▶ Is there a grievance procedure?
 - ▶ Follow procedure carefully
 - ▶ If a step is being skipped, make sure both parties agree
- ▶ Is the employee part of a Union or Civil Service?
 - ▶ Does a Collective Bargaining Agreement apply?

Written Warnings

What to Include:

- ▶ Date
- ▶ Name of Employee
- ▶ Name/position of Supervisor
- ▶ Description of the Incident
- ▶ Type of Discipline
 - ▶ Mention past discipline
- ▶ Include any supporting documentation/ paperwork
- ▶ Avoid making legal conclusions
 - ▶ Be careful of disability considerations
- ▶ Copy the employee
- ▶ Copy the personnel file

Termination of Employee

- ▶ Reasons for termination: just cause
 - ▶ Be cautious of probationary periods
- ▶ **G.L.c. 121B, § 29:** No employee of any housing authority, except an employee occupying the position of executive director, who has held his office or position ... for a total period of five years of uninterrupted service, shall be involuntarily separated therefrom except subject to and in accordance with the provisions of sections forty-one to forty-five, inclusive, of said chapter thirty-one to the same extent as if said office or position were classified under said chapter.
- ▶ **G.L.c. 31, § 41:** Before such action is taken, such employee shall be given a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority.

Termination of Employee

- ▶ Employees with less than 5 years:
 - ▶ Meet with the employee in person.
 - ▶ Pick a neutral location
 - ▶ Have a witness
 - ▶ Keep it short
- ▶ Have a letter drafted
- ▶ Provide the employee with their final paycheck including all vacation, PTO and comp time paid out
- ▶ Consider doing it at the end of the day
- ▶ Don't forget to ask for LHA property back
- ▶ G.L.c. 31, section 41 Hearing
 - ▶ Notice in Writing
 - ▶ Hearing Officer/ ED from another LHA

Termination of Employee

Considerations

- ▶ Is the employee part of a protected class?
- ▶ When to put the employee on Paid Administrative Leave
 - ▶ Need to get them out of environment but not ready to terminate
 - ▶ Perform an investigation?
 - ▶ Haven't determined next steps
 - ▶ Need time to determine wages/ cut check