

Westmont College Leadership Roundtable
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Everything Old is New Again

Beth Cauwels, Director of Human Resources
Toya M. Cooper, Esq., College Counsel

WHAT'S UP IN EMPLOYMENT LAW?

- NEW STUFF
 - Hiring, Wages, and Harassment...Oh My!
- OLD BUT STILL INTERESTING STUFF
 - Leaves, Marijuana, and Gambling...say, what?!?
- MANAGEMENT MYTHS DISPELLED
 - Common misconceptions of management...you'll want to know this stuff!

WHAT'S NEW IN 2019

- New in California:
 - BAN THE BOX EXPANDS
 - Prohibits juvenile related inquiries in background checks.
 - All background checks are made POST offer and all offers are *contingent* upon passing the check. You may NOT ask anything about criminal history.
 - You will have to wait an additional **10 days** before moving on to others when a candidate appeals the background check results.

CHANGES IN HIRING PROCESS

- You must provide the range for the role to an interviewee when asked.
- You may NOT inquire about current or previous earnings.
- You can and should ask about salary expectations after you clarify the pay range.
- The RECRUITING MANAGER'S TOOLKIT has questions to use and information for hiring managers.

BE AWARE OF EMPLOYEE RIGHTS PROTECTING VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING

- Employees who are a victim of domestic violence, sexual assault, or stalking may take time off from work for specified purposes related to addressing the domestic violence, sexual assault, or stalking.
- Be careful if an employee needs time off and it sounds as if one of the above could be the reason for leave. Let HR know right away.

ELIMINATION OF WAGE DISPARITIES

- Employees may NOT be paid at rates less than the rates paid to employees of the opposite sex, RACE AND ETHNICITY for substantially similar work when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions.

NOT NEW, BUT STILL VERY IMPORTANT

- LEAVES, LEAVES AND MORE LEAVES
- We must reasonably accommodate employees with disabilities, including those that are not obvious – these may include anxiety, diabetes, high blood pressure, back pain, migraines, asthma, depression.
- Employees need not ask directly for an accommodation, nor put it into writing. They may simply say they are struggling.
- Do NOT ask for condition details, but do ask how they are doing.
- Ask if the dates of request are negotiable – planned FML's require 30 day's advance notice.
- Examples of accommodations: taking time off/flexible leave, modifying work schedules or equipment, requesting reassignment to an open role, needing more time or help to complete work, bringing support animals to the work place, etc.
- If intermittent leave is approved you will need to communicate: the call in procedure, how to notify you of schedule changes, how you will contact them, what notice is required before return to work.

REASONS AN EMPLOYEE MAY BE ELIGIBLE FOR LEAVE:

- Their own medical condition including complications related to fertility and pregnancy, drug and alcohol rehabilitation
- To care for a member of their family
- To bond with a newborn, foster or adopted child
- If a family member is on active duty and becomes injured or ill, or to complete military service, or to have time off due to notice of family member deployment
- A work related injury
- To donate an organ/bone marrow
- If one is a victim of sexual assault, domestic violence, stalking, or part of legal proceedings related to such
- Bereavement

WHAT MUST YOU DO?

- Be sure you and the employee have talked to HR before they leave so that they are aware of their benefits, and the college is in compliance with regulations.
- Whether or not the employee has sick or vacation leave or wants a leave are NOT the criteria for contacting HR

HOW HIPAA RELATES TO LEAVES

- HIPAA protects employee medical records and personal health information. This includes the need for accommodation, sharing via email the need for or details of a medical condition or leave etc.
- When in doubt, do NOT share such information with any others except HR.

QUESTIONS SUPERVISOR MAY BE ASKED AND HOW TO ANSWER

- Employees have the right to copies of their paychecks and wage records.
 - This is available on Web Advisor. Formal requests go to Payroll.
- Employees that need to express milk have special lactation space requirements.
 - Find them a location that meets the employee's needs. Talk with HR about what the location must include.
- Employees may want to change their work hours to attend school or sports events.
 - Review the handbook policy on Make Up Time requests, unpaid time off for school visits, etc. Do not allow employee to falsify work hours.

MORE THINGS SUPERVISOR MAY BE ASKED AND HOW TO ANSWER

- Employee would like to skip lunch to leave early- if they voluntarily waive their permitted and encouraged meal break they will not be paid a meal break penalty.
 - If you ask them to work through or take a late lunch after the time period required, you will need to complete the penalty form in PR and pay them for an additional hour of time. Be aware of when a meal period is due.
 - Do not ask staff to work through meals unless absolutely necessary.

THINGS SUPERVISOR MAY BE ASKED AND HOW TO ANSWER

- Employees want to use their extensive sick leave for their children, spouse or parents.
 - Dependent care is equal to $\frac{1}{2}$ the annual sick leave accrual- typically 7.5 days a year max. Otherwise vacation is used for others illness.
- Employee wants to leave early for vacation and use personal leave.
 - PL is not paid vacation and cannot be added to vacation time.
- Employee submits time sheet with same info each pay period, when their working hours differ.
 - Never sign a timesheet that is inaccurate.
 - Never change a timesheet without asking employee to initial the change.

SPEAKING OF HARASSMENT PREVENTION – CA SB 820& AB 3109

- Settlement and severance agreements that prohibit testimony or disclosure of facts related to harassment claims; arguably “#Me Too Movement” motivated
- Void and unenforceable as a matter of public policy
- Carve-Outs
 - Agreed upon settlement amount
 - Claimant request for confidentiality
 - Neither carve out applicable to responding party government entity/official

SPEAKING OF HARASSMENT PREVENTION – PROPOSED TITLE IX REGULATIONS

- Stated new rule objective
 - Replace non-binding “guidance”
 - Provide greater clarity re: institutional legal obligations and reporting and responding party rights
 - Increase control for reporting parties
 - Ensure fair process for reporting and responding parties
- Anticipated Timeline & Notes
 - Extent to which rule applies to employee-respondents
 - Right to “live hearings” and direct cross-examination
 - Timeline to finalization: Unknown

SPEAKING OF HARASSMENT PREVENTION – CA SB 1343

- Training on the prevention of sexual harassment for all supervisory employees since 2009. New training requirements for all employees.
 - 1 hour on the prevention of sexual harassment to include:
 - Online or classroom interactive training
 - Including definitions of what constitutes “abusive conduct” (bullying)
 - Identification of classes protected from harassment
 - Completed by January 1, 2020

OLD BUT STILL INTERESTING – MARIJUANA & THE WORKPLACE

- Recreational Marijuana – You still CANNOT do that on campus
 - Remains a Schedule I drug under federal law; possession and cultivation are unlawful.
- Federal Drug Free Schools and Communities Act
 - Enhanced penalties for commission of drug violations in school zones.
 - Loss of student financial aid for violation of drug laws.
 - Even the recreational laws have limitations on amounts permitted, context for use, and age.
- Charitable Raffles, Opportunity Drawing – What to do?
 - Paying for a chance to win something of value.

OLD BUT STILL INTERESTING – “LOOK, CAN I HOLD A RAFFLE OR NOT?”

- A raffle is paying for a chance to win something of value.
- With the exception of specifically exempt organizations (nonprofit) that meet registration requirements and the state lottery, they are unlawful. . .unless:
 - We modify the “rules” to participate:
 - Pay/give consideration
 - For a chance to win something of value
 - Call it an opportunity drawing

OLD BUT STILL INTERESTING – “LOOK, CAN I HOLD A RAFFLE OR NOT?”

- Provide a general and indiscriminate distribution of tickets
- Advertise no payment of any kind is necessary to win
 - e.g., You want to use an opportunity drawing as incentive for people to complete a survey
- Provide survey and entry ticket to all
- Enter all participants

MANAGEMENT MYTHS DISPELLED

- PERFORMANCE APPRAISALS ONLY HAPPENS ONCE A YEAR
 - Coaching and feedback should occur all year long. Written appraisals should occur at least once a year.
- I CANNOT TAKE CORRECTIVE ACTION (DISCIPLINE) AGAINST AN EMPLOYEE WHO HAS MADE A COMPLAINT AGAINST THE COLLEGE.
 - Legitimate, adverse employment action does not violate the law. But remember, timing is everything in retaliation complaints. This reminder highlights the importance of ongoing feedback and formal documentation of serious performance concerns.
 - There are those acts that warrant immediate adverse action, even in the absence of previous documentation/conversation.
- I HAVE TO TREAT EVERY EMPLOYEE EXACTLY THE SAME
 - Be mindful of similarly situated employees in terms of benefits in the terms and conditions of employment. There may be reasons for treating similarly situated employees differently. Be able to articulate a rationale for doing so that is not unlawful or demonstrative of favoritism.
- IF AN EMPLOYEE WANTS ME TO KEEP A COMPLAINT PRIVATE, I AM OBLIGATED TO DO SO.
 - Make HR aware of a complaint, especially if it relates to unlawful discrimination or harassment.

MORE MANAGEMENT MYTHS

- I DO NOT NEED TO COUNT SICK LEAVE AS LEAVE FOR LEGAL PURPOSES. IT IS ONLY HR'S PREFERENCE THAT I DO SO.
 - Circumstances requiring an employee to need more than 3 days away from work, a different work schedule, or intermittent attendance as a function of illness constitutes a leave. Employers are legally required to provide ALL individuals in those circumstances with certain information about their rights. Please contact HR before time off begins if any of your staff are confronted with these circumstances.
- MANAGERS WHO DELEGATE GIVE UP TOO MUCH CONTROL OVER QUALITY AND OUTCOMES.
 - Managers need to coach and guide their staff, but not control work. Collaboration and teamwork engages, encourages creativity, and fosters accountability. Determine what is needed, not necessarily how to get there.

QUESTIONS, ANSWERS, COMPLAINTS?

- Something we didn't cover that you're interested in learning about?
- Something about management you may believe to be true, but you're not sure?
- Human Resources is there for you and Beth Cauwels is your able partner and guide:
 - bcauwels@Westmont.edu; extension 6101
- Toya Cooper is your legal counsel...
 - ...until Friday: tcooper@Westmont.edu; extension 6832