

AWC Member Expo

Employment Risk Basics & Foundational HR Practices

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Welcome!

Charlotte Archer

- 15 years legal support for municipalities throughout Washington
- Open Government / Public Records
- Employment / Labor
- Police Advising
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Disclaimer:

While I am a City Attorney, I am not your attorney. This presentation is for informational purposes only and does not constitute legal advice. You should consult with your own attorney for advice regarding your specific situation.



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Our Discussion Today

Today we will look at the most common employment-related risks facing public entities in Washington, and how simple, proactive HR practices can significantly reduce legal risk and strengthen workplace culture.

We'll explore:

- Tips for developing clear job descriptions,
- How to provide consistent, meaningful performance reviews, and
- Methods to ensure your employee handbooks and personnel policies are up-to-date.



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Poll 1

What is your role at your agency?

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Common Employment-Related Risks

Common Claims

- Wrongful termination
- Discrimination (age, race, gender, disability, etc.)
- Retaliation (for whistleblowing, complaints, etc.)
- Harassment
- Failure to accommodate

Why public entities are uniquely vulnerable:

- High public scrutiny
- Complex regulatory requirements
- Elected officials / staff interactions

The Landscape of Risk:

Hyde v. State: A Cautionary Tale in Employee Retaliation Law

- Fiscal analyst filed anonymous whistleblower complaint with SAO.
- SAO investigation confirmed no misconduct.
- Employee brought retaliation claim for reprimands, reassignments and negative evaluations after filing complaint.
- Jury awarded \$1.9 million, including \$1.24 million for emotional harm.

The Whistleblower Auditor: *Allen v. WWU*

- Employee hired as Director of the Office of the Internal Auditor for WWU.
- Employee fired after investigating and reporting “fraud” to federal and state authorities that staff and faculty granted false academic credentials to 20 students.
- Agency argued termination based on performance deficiencies but had no documentation.
- Jury awarded more than \$2.9 million in damages for whistleblower retaliation.

The Landscape of Risk:

Hutson v. Clark County: Allegations of Discrimination in Public Works

- Three Latino employees of the Clark County Public Works Department claimed racist remarks on a weekly basis.
- Jury awarded \$600,000, plus \$1.3 million in attorneys' fees.
- Returned to work, alleged hostility and retaliation – placed on administrative leave for investigation.
- Clark County settled for \$2.24 million in lost wages, damages, and attorneys' fees (and agreement not to work for agency in the future).

Fired on the Heels of Disclosing Disability: *John Doe v. WSDOT*

- EEOC investigation found reasonable cause to believe decision to terminate five days after employee's disclosure of disability was in violation of ADA.
- WSDOT settled for \$60,000 and adopted procedures for requesting accommodations for a disability, plus mandatory training for staff.
- "Employers who make employment decisions based on stereotypes and assumptions about disabilities are violating the rights of workers and risk enforcement action and potential litigation."

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The Landscape of Risk: Changing Rules

Obligation to Protect Employee from Bullying Customer: *Christian v. Umpqua Bank*

- Customer frequently left notes for employee, wrote lengthy love letters.
- Employee sued for sex discrimination under WLAD
- Court held conduct constituted harassment as an escalating pattern
- Employer took no corrective measures: no safety plan, no discussion with customer, no steps "reasonably calculated to end the harassment."

Liability for Online Hostile Work Environment: *Okonowsky v. Garland*

- Co-worker posted sexually harassing comments about employee on Instagram while off-duty; bulk of followers were co-workers
- Ninth Circuit reversed summary judgment for employer, and "reject[ed] the notion that only conduct that occurs inside the physical workplace can be actionable, [due to] ubiquity of social media and the ready use of it to harass and bully both inside and outside of the physical workplace."

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The Landscape of Risk: Direction from the Courts

Testing the Boundaries of Religious Accommodation: *Suarez v. State*

- Probationary employee refused mandatory overtime during Sabbath.
- Terminated for unreliability, brought wrongful termination claim and violation of Washington Law Against Discrimination (WLAD).
- Supreme Court upheld termination, finding accommodating would constitute “undue hardship”.

Brooks-Joseph v. Seattle: Dismissal due to lack of supporting evidence

- Seattle City Light employee's discrimination and hostile work environment claims dismissed on summary judgment.
- SCL provided evidence that employee was not qualified for promotional positions.
- Evidence showed duties reassigned for valid reason and no disparate treatment.
- Single racially-motivated comment does not establish pervasive harassment necessary to create an abusive working environment.

Poll 2

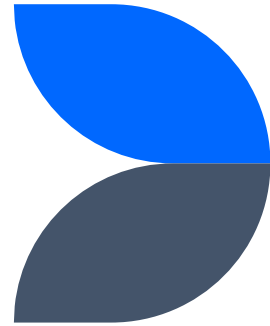
Which of these risks (common claims) worries you the most?

Scan this QR code or go to pe.app/carcher to respond.



Most lawsuits stem from preventable issues.

So, how do we proactively prevent these risks? It starts with the building blocks of employment: **job descriptions and performance evaluations.**



The Power of Job Descriptions

Key roles of a job description:

- Defines expectations clearly
- Outlines essential functions
- Supports hiring, onboarding, performance reviews, and terminations

Legal significance:

A well-crafted job description is your first line of defense in any employment dispute.

Best practices:

- Keep them current (review annually)
- Align with actual duties, not just generic tasks
- Include physical requirements and working conditions
- **Tip:** Involve employees and supervisors in the regular review process to ensure accuracy.



The Power of Job Descriptions

Establish essential functions under the Americans with Disabilities Act (ADA) and Washington Law Against Discrimination (WLAD)

- Helps defend failure-to-accommodate or disability discrimination claims if duties are properly defined. Courts defer to pre-existing (but not post-hoc) job descriptions when evaluating ADA claims.
- If lifting 50 lbs. is listed as an “essential function,” employer can justify rejecting someone who can’t perform it, even with accommodation.

Provide support for hiring and promotion decisions

- Protects against claims of discrimination or favoritism when selection is clearly tied to job-specific qualifications.
- Documenting required skills, education, licenses, etc. can help justify why one applicant was selected over another.

The Power of Job Descriptions

Prevent “Misrepresentation” Claims and Associated Discontent

If duties aren’t described accurately, employees might later claim they were misled or set up to fail.

A public employee hired as an “analyst” sues for constructive discharge because their job turned out to be mostly clerical.

Updated descriptions provide a fair basis for performance reviews. Employees see that evaluations are based on actual job duties, not outdated or irrelevant standards.

Allow you to Deftly Navigate “Working Out of Class” Disputes

If a description clearly outlines managerial or professional duties, the employer can better justify “exempt” status and when to pay for “out of class” work

If the duties are vague or not followed in practice, disputes arise, and courts may side with the employee.

Poll 3

When were your job descriptions last updated?

Scan this QR code or go to pe.app/carcher to respond.



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Building Better Job Descriptions: Clear, Current, and Compliant

1. Review the Current Job Description

Start by reading the existing description carefully. Note outdated duties, unclear language, or missing essential functions. Identify any new responsibilities or tasks that have emerged.

2. Consult Relevant Stakeholders

Talk to the employee(s) currently holding the position for input on their actual day-to-day duties. Engage supervisors or managers to understand performance expectations and changes in operational needs. Consult HR, legal, and union representatives (if applicable) to ensure compliance and alignment with collective bargaining agreements.

3. Analyze the Position Against Organizational Needs

Consider whether the role's focus or scope has shifted (e.g., more tech skills needed, supervisory duties added). Ensure the description reflects the agency's current mission and goals.

4. List Essential Functions and Duties, Physical and Environmental Requirements, Specify Required Qualifications and Skills

Specify core tasks and responsibilities, using active, precise language ("manages," "coordinates," "analyzes," etc.). Avoid overly broad or vague terms like "other duties as assigned" without context. Include education, certifications, licenses, experience, and any required skills or abilities. Clearly state physical demands (lifting, standing, etc.) and working conditions.

5. Implement and Regularly Revisit

Regularly schedule reviews (e.g., every 2-3 years) to keep descriptions current. Link job descriptions to performance evaluation criteria to keep assessments fair and focused.



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Performance Evaluations: Your Most Important Risk-Reduction Tool

Why performance reviews matter:

Creates documentation trail

- Under Washington's Law Against Discrimination (WLAD), pretext is often key; performance evaluations help rebut claims that the employer's reasons were false.

Identifies issues early

- Well-conducted evaluations give employees a fair chance to improve.

Provides a legal foundation for discipline or termination

- Missing, inconsistent, or biased evaluations are a major legal risk

Engage and motivate employees

- When supervisors take time to give thoughtful feedback, employees feel their work is noticed. Even constructive criticism shows the employer is invested in the employee's success.

Performance Reviews That Work

Common mistakes:

- Skipped reviews
- Using vague / generic language
- Overly positive ratings ("everyone is 'meets expectations'") and avoiding negative feedback
- Inconsistencies between review, job description, and actual performance
- Inconsistencies between departments and employees
- Inflated ratings
- Surprising the employee at evaluation time
- Failing to document employee feedback

Best practices:

- Build trust through transparency by creating a culture of regular, honest feedback
- Set clear goals
- Document progress and concerns
- Be honest and specific
- Tie reviews to job descriptions

Pro Tips for Performance Evaluations

Gather Documentation Throughout the Year

Keep a log/file of:

- Accomplishments
- Performance issues
- Compliments or complaints
- Attendance or conduct concerns

This helps you to avoid relying solely on memory at evaluation time.

Use Specific Examples

Reference actual projects, observed behaviors, or incidents, no generalities.

Focus on examples that are:

- Recent
- Relevant
- Objective and known to the employee

“Submitted monthly reports late 4 out of 6 months” is better than “needs to improve reliability.”

Include Goals and Professional Development

Address professional development goals (training, skills, certifications).

Ask about the employee’s career aspirations and offer support.

Include a clear, time-bound, measurable goals.



Employee Handbook: Key to Defending a Workplace Dispute

Out-of-date employment policies pose a significant legal risk to public employers.



Employee Handbooks as a Guidepost

Must-have sections:

- Anti-discrimination and harassment
- Ethics and Code of conduct
- Leave Policies: if you have an informal flex time practice, you can expect some *shifty* behavior.
- Whistleblower and Grievance Procedures
- Social Media / First Amendment Rights
- Disability Accommodation Process
- Employee safety, including accident reporting, workplace safety rules, security in the workplace.
- Drug/Alcohol Use and Testing

Purposes of the handbook:

- Communicate policies and confirm receipt
- Establish expectations for performance and conduct
- Reinforce the organizational culture and expectations
- Provide a legal defense by documenting preventative measures

Is Your Employee Handbook:

- Clear and defensible?
- Distributed and acknowledged (in writing)?
- Regularly reviewed for compliance with laws?
- Consistent with collective bargaining agreements?
- Consistently enforced across all managers and departments?

Pro Tips for Employee Handbook

Address Technology, AI, and Social Media Use

Include rules about appropriate use of computers, phones, and internet.

Expectations regarding social media conduct both on and off duty.

Clear language regarding monitoring and employer rights.

Transparent Investigative Procedures

Use of administrative leave by employer.

Employee rights during investigation and discipline (e.g., right to representation, appeal rights).

Clear explanation of progressive discipline steps, and grounds for discipline, suspension, or termination.

Procedures for documentation (and PRA implications).



Up-to-Date Personnel Policies

Personnel policies communicate expectations, promote fairness and reduce the employer's risk.

Best practices:

- Legal review every 1-2 years
- Internal audit of policies annually
- Training staff on changes and get signed acknowledgements
- Ensure consistency across all materials (e.g., job descriptions, handbooks, policies)

Why regular updates matter:

- Law changes (e.g., WLAD, FMLA, ADA, wage laws)
- Organizational changes
- Key step for risk mitigation



Are your Policies:

- Out of date with current laws?
- Overly broad or vague?
- Too rigid and include unworkable disciplinary language?
- Too siloed? Is *retaliation* only referred to in the anti-harassment policy?
- Violative of free speech protections?
- Inconsistently enforced?



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Level-up Your Policies

Local governments should consider adopting policies that help prevent the public's harassment of their employees.

- Restrict certain areas of the building to employees only.
- Implement a policy defining unacceptable behavior/harassment.
- Assign a manager to handle disruptive individuals, protecting front-line staff or regularly targeted individuals.
- Secure a restraining order to prevent a harassing individual from entering government buildings (with carve out so they can continue to access public services).

But what if:

- ❖ *The alleged harasser is an elected official?*
- ❖ *The harassment occurs during public comment at a public meeting?*



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**Your risk exposure
increases every year
a policy goes
unchecked.**

Let's wrap it up with some key
takeaways and time for your questions.



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Takeaways & Next Steps

- Shared understanding of common employment risks is key to utilizing preventative tools.
 - Use job descriptions to set and defend expectations
 - Conduct honest, consistent performance reviews
 - Maintain a clear, current employee handbook
 - Regularly review and update personnel policies
- **The best defense against legal risk is a strong offense: consistent, fair, and well-documented HR practices.**



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Poll 5

What is one action you'll take after today's session?

Scan this QR code or go to pe.app/carcher to respond.



Questions?



Thank you!

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