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Liability Self-Insurance Fund

Top Most Costly  
Employment Practices  
&  
Law Enforcement  
Liability Claims

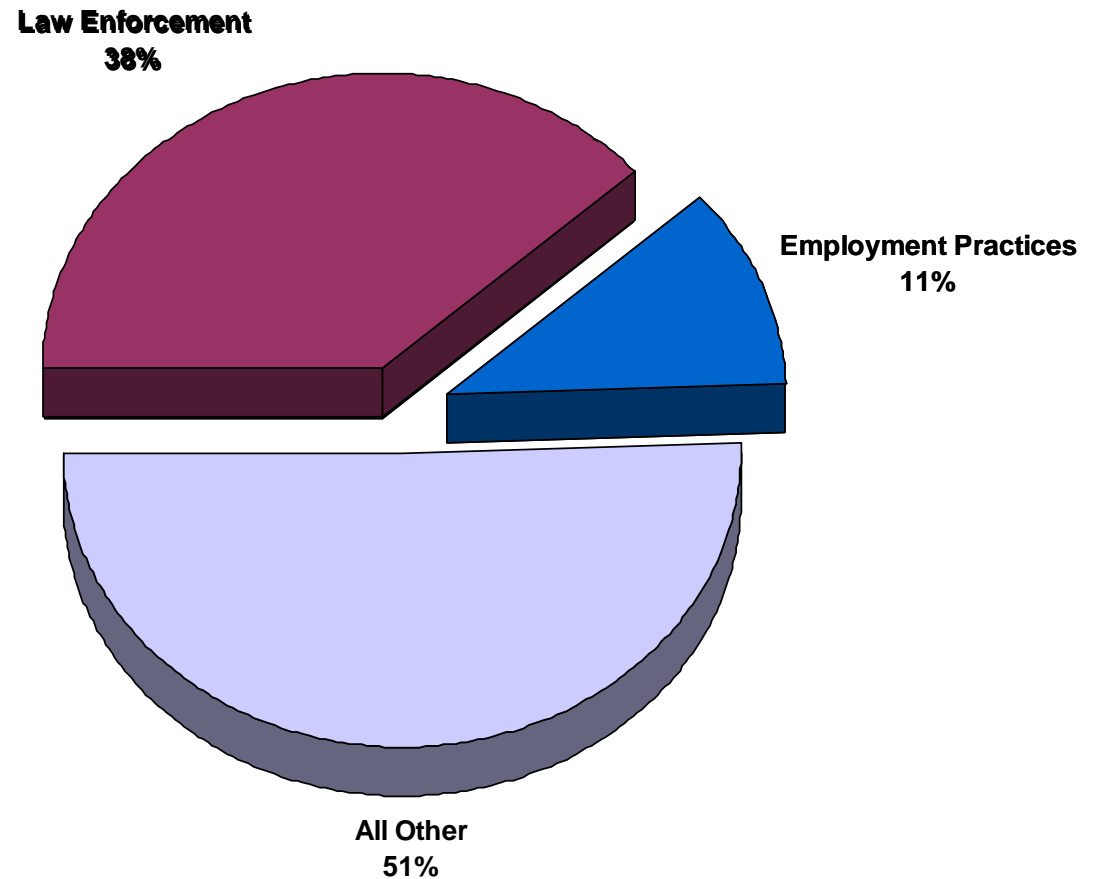


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Over the last ten years, Law Enforcement Liability claims have accounted for 38% of all claim costs.

Employments Practices claims have accounted for 11%.

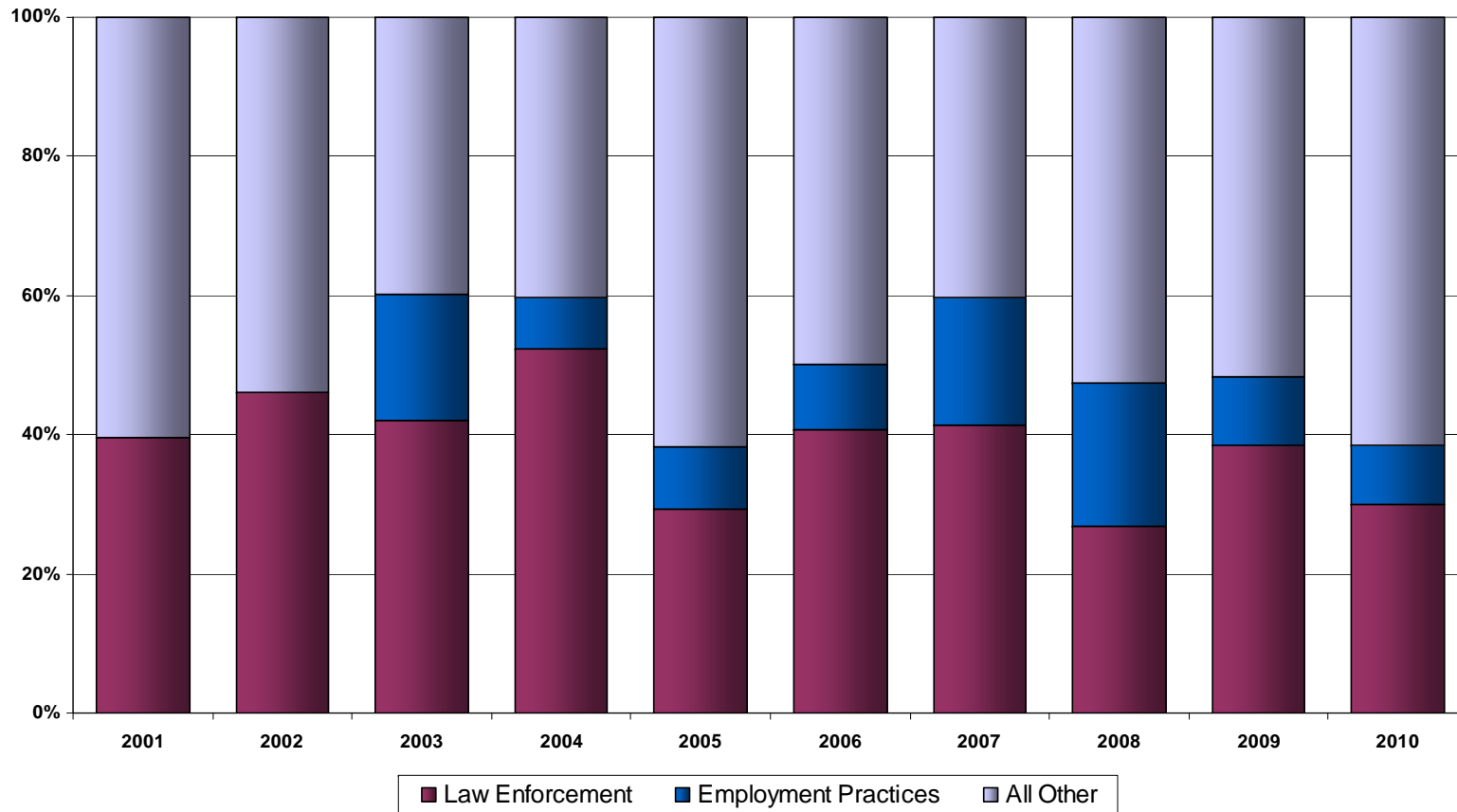
All Other claims (Auto Liability, General Liability, Public Officials Liability and Equitable Defense) have accounted for 51%.





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In 2003, 2004 and 2007, Law Enforcement and Employment Practices claims accounted for 60% of all claims costs.





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## Types of Workplace Discrimination

- Age
- Disability
- Equal Pay / Compensation
- Genetic Information
- National Origin
- Pregnancy
- Racial / Color
- Religion
- Sexual



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## Age

- Treating someone less favorably because of age. The Age Discrimination in Employment Act (ADEA) only forbids age discrimination against those 40 or older.
- No protection for younger workers.
- The harasser can include supervisors, fellow workers and outside clients or customers of the employer.



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## Disability

- Treating an employee or applicant unfavorably because of a disability.
- Medical conditions such as cancer in remission are covered under this section as is any short lived mental or physical condition or impairment.
- Reasonable accommodations are required to be made unless it would cause undue financial hardship on the employer.
- Applies to discrimination against employees who have relatives that have disabilities.
- The harasser can include supervisors, fellow workers and outside clients or customers of the employer.



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## Equal Pay / Compensation

- Those in the same job capacity must be paid the same.
- Cannot discriminate by paying different rates of pay on the basis of race, color, religion or sex, nation origin, age or disability.



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## Genetic Information

- Illegal to discriminate on the basis of genetic information, medical testing results or known medical conditions of employee or the employee's family members.
- Genetic Information must be kept confidential.
- The harasser can include supervisors, fellow workers and outside clients or customers of the employer.



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## National Origin

- Illegal to discriminate on the basis of national origin, accent, ethnicity or because of an appearance that they are of a certain ethnic background.
- Includes an employee's spouse or affiliation with a particular ethnic organization or group.
- Illegal to discriminate on the basis of citizenship or immigration status. (they can be required to show Homeland Security documents that they are eligible to work in the US.)
- The harasser can include supervisors, fellow workers and outside clients or customers of the employer.



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## Pregnancy

- Illegal to discriminate on the basis of pregnancy, including providing of benefits, leave time or any other term or condition of employment.
- Family and Medical Leave Act (FMLA) gives additional rights for protection of job while on pregnancy leave.
- The harasser can include supervisors, fellow workers and outside clients or customers of the employer.



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## Racial

- Illegal to discriminate on the basis of race. This includes skin complexion and other physical features or traits. This includes the race of spouse of the employee and any affiliation that the employee may have with a race based or race affiliated organization or group.
- This may include discrimination when the victim and the perpetrator are of the same race or color.
- The harasser can include supervisors, fellow workers and outside clients or customers of the employer.



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## Religion

- Illegal to discriminate on the basis of religion. Includes the spouses religion. Includes connections with religious groups.
- Employer must make reasonable accommodations as long as providing them does not put an undue hardship on the employer.
- The harasser can include supervisors, fellow workers and outside clients or customers of the employer.
- No forced religious activities at work.



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## Sexual

- Illegal to discriminate on the basis of sex.
- The harasser can include supervisors, fellow workers and outside clients or customers of the employer.
- Sexual harassment can include: unwelcomed advances, request for sexual favors and any other verbal or physical harassment that are sexual in nature.
- Comments in general about a particular gender can be considered sex based harassment.



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## Retaliation

- Illegal to take any action in retaliation for someone filing a charge of discrimination.
- Examples include firing, demoting, harassing or any other form of retaliation in response to a charge of discrimination.



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## **Employment Practices Claim #9**

**Allegations: Discrimination based on race.**

**Status: Open – awaiting court decision**

Plaintiff was terminated after being accused of using excessive force with an inmate. Plaintiff was also accused of sexual improprieties with another inmate.

**Total Cost  
\$100,000**



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## Employment Practices Claim #8

Allegations: Discrimination based on race, age & gender. Retaliation

Status: Closed - settled

Plaintiff had filed similar claims in the past. Plaintiff was later fired for insubordination and then filed suit.

**Total Cost**  
**\$101,925**



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## Employment Practices Claim #7

**Allegations:** Sexual Harassment

**Status:** Closed - settled

Plaintiff alleged that her supervisor touched her inappropriately and made unwelcome comments of a sexual nature. Case was complicated by a separate allegation against the same supervisor by another employee.

Depositions confirmed that county personnel were aware of the initial grievance and no direct action was taken.

**Total Cost**  
**\$109,984**



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## **Employment Practices Claim #6**

**Allegations: Sexual Harassment**

**Status: Closed - settled**

This case involved allegations of inappropriate touching and comments of a sexual nature against the same supervisor as in example #7. As in the previous example, a grievance was filed and little or no action was taken to remedy the situation.

**Total Cost  
\$117,482**



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## Employment Practices Claim #5

Allegations: Wrongful Termination,  
Violation of the Fair Labor Standards Act  
and Defamation of Character

Status: Closed settled

**Total Cost**  
**\$140,464**

Plaintiff alleged wrongful termination after being fired for recording meetings without the knowledge of all participants.



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**Employment Practices Claim #4**

**Allegations: Violation of Fair Labor Standards Act**

**Status: Closed - settled**

**Total Cost  
\$1,487,581**

Plaintiff alleged that he was not paid overtime in accordance with the Fair Labor Standards Act.



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## **Employment Practices Claim #3**

**Allegations: Sexual Harassment and Gender Discrimination**

**Status: Closed - settled**

**Total Cost  
\$1,537,092**

Plaintiff alleged sexual harassment by her supervisor. Plaintiff filed a formal claim with her employer a year after the behavior began and alleged that no corrective action was taken and that she was again assigned to work under the same supervisor.



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## **Employment Practices Claim #2**

**Allegations: Racial Discrimination and Wrongful Termination**

**Status: Open - awaiting court decision**

Plaintiff claims that she was terminated in retaliation for filing a grievance alleging that she was discriminated against based on her race.

**Total Cost  
\$225,000**



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## **Employment Practices Claim #1**

**Allegations: Gender Discrimination,  
Wrongful Termination and Retaliation**

**Status: Open - awaiting court decision**

Plaintiff claims that she was terminated in retaliation for filing a grievance alleging that she was discriminated against based on her gender.

**Total Cost  
\$340,000**



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## Law Enforcement Claim #10

Allegations: Wrongful Death

Status: Closed - settled

Jail suicide. Corrections officer was advised by a doctor and the inmates parent that the inmate was suicidal. Corrections officer was distracted and forty-five minutes later the inmate was found hanging in his cell.

**Total Cost**  
**\$313,310**



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**Law Enforcement Claim #9**

**Allegations: Lack of Medical Care**

**Status: Closed - settled**

Plaintiff inmate alleged that medications were denied or were not given timely resulting in seizure episodes.

**Total Cost**  
**\$358,257**



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## Law Enforcement Claim #8

Allegations: Wrongful Death, Deliberate Indifference to Medical Needs and Lack of Medical Care

Status: Closed settled

**Total Cost**  
**\$400,324**

Inmate was unresponsive when arrested and booked into jail without being medically checked. The next morning the inmate was having seizures and was transported to the hospital where he died several days later.



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**Law Enforcement Claim #7**

**Allegations: Various Civil Rights Violations, Improper Sexual Contact with Jail Staff**

**Status: Closed - settled**

**Total Cost  
\$446,219**

Inmate alleged inappropriate sexual contact with several jail staff members and that she was handled roughly while in custody.



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## **Law Enforcement Claim #6**

**Allegations: Wrongful Death, Deliberate Indifference to Medical Needs**

**Status: Open - pending**

**Total Cost  
\$475,000**

Inmate was arrested on alcohol related charge and placed in cell. Other inmates informed the jail staff that the inmates was acting strange was was having seizures. The jail staff was slow to respond and inmate died.



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## **Law Enforcement Claim #5**

**Allegations: Wrongful Death**

**Status: Open – pending**

Inmate was arrested on domestic violence and intoxication charges and placed in cell with blanket, towels and a jumpsuit even though the jail staff was warned that the inmate was suicidal. Inmate was later found to have hanged himself with items in his cell.

**Total Cost  
\$525,000**



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## **Law Enforcement Claim #4**

**Allegations: Excessive Force**

**Status: Closed - settled**

Inmate alleged that he was not allowed to wash off pepper spray for a period of time resulting in physical and mental injuries. Investigation revealed that use of pepper spray seemed to be more frequent in this jail and that there could be similar claims filed.

**Total Cost**  
**\$541,337**



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**Law Enforcement Claim #3**

**Allegations: Sexual Misconduct**

**Status: Closed - settled**

Several female inmates alleged sexual improprieties against fellow inmates and jail staff.

**Total Cost**  
**\$604,236**



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## Law Enforcement Claim #2

Allegations: Wrongful Death

Status: ~~Closed~~ - settled

Inmate was arrested for failure to appear and was placed in a cell. Inmate later became combative and agitated and was shackled to a rail with his hands behind him. Inmate was not monitored and was later found to be dead while still shackled. Jailer falsified the log book to show that the inmate was monitored.

**Total Cost**  
**\$701,774**



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**Law Enforcement Claim #1**

**Allegations: Wrongful Death**

**Status: Closed - settled**

High speed pursuit of burglary suspects into another state. Fleeing suspects ran a red light and struck plaintiff's automobile resulting in three deaths.

**Total Cost**  
**\$878,635**



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Nickie Roth, CSP, ARM, CIE

Regional Loss Control Manager

Assistant Vice President-SE Region

Meadowbrook Insurance Group, Inc.



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To Impact the future, we must look at the  
Past Employment Practices Losses!

Causes of Employment Practices Losses?

1. Sexual Harassment
2. Wrongful Termination



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# Loss Control is effective only if we have controls!

There are 2 types of Controls.....

- Procedural Controls
- Physical Controls



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**Lets look at each of the Employment  
Practices Liability loss drivers and  
determine the controls needed?**



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## Causes of Employment Practices Losses:

### 1. Sexual Harassment

- In today's society and legal climate, there must be a high level of control at each and every public entity!
- Policies and Procedures must be implemented and followed!



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- What is sexual harassment?
- What laws apply?
- Avoiding sexual harassment



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## What is Sexual Harassment?

- Unwelcome sexual conduct
- Conduct not solicited
- Conduct not incited
- Conduct regarded as undesirable
- Conduct regarded as offensive.



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## Types of Sexual Harassment?

- Unwelcome sexual advances
- Requests for sexual favors
- Verbal or physical sexual contact



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## Quid Pro Quo

- Made explicitly or implicitly
- Made a term or condition of employment
- Used as a basis for decision making
- May occur after only one event



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## Hostile Work Environment

- Unreasonably interferes with work performance.
- Creates intimidating, hostile, or offensive work environment.
- Created usually after repetition of offensive behavior.
- Perception vs intent



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## What Factors Determine Hostile Work Environment?

- Verbal or physical
- Frequency
- How offensive
- Co-worker vs supervisor
- Participation by others
- Directed at one or more parties



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## Possible Offensive Behaviors?

- Remarks
- Touching
- Advances
- Suggestions
- Slurs
- Jokes
- Postures
- Insults
- Stereotyping
- Questioning



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## Who Can be a Victim?

- Woman
- Man
- Co-workers
- Supervisor
- Subcontractor
- Anyone



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## Who Can Create Sexual Harassment?

- Men
- Women
- Co-worker
- Supervisor
- Customer
- Contractor
- Anybody!



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## Employee Sexual Harassment Issues

- Was the work environment altered?
- Did the employee feel the incident was hostile, intimidating or offensive?



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## Employer Sexual Harassment Issues

- Did the employer know of the incidents?
- Should the employer have known?
- What did the employer do to prevent them?
- What did the employer do to stop the incident?



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## Employer Obligations

- Prevent discrimination in the workplace
- Provide a safe & healthy environment
- Investigate and resolve complaints
- Restore injured employees
- Provide awareness & training



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## Limiting Your Exposures?

- Sexual harassment policy
- Investigation and remedial actions
- Education and awareness
- Documentation
- Often you win or lose in court based on the documentation!



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## Key Harassment Policy Elements:

- In writing
- Defined
- Need to complain
- Two complaint routes
- Investigation procedure
- Discipline
- Retaliation



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## Employee Awareness

- Policy to all employees
- Include in personnel manuals
- Posted on bulletin boards
- Openly enforce policy
- Prohibited behaviors discontinued
- Employees feel free to raise issues
- Periodic reminders



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## Investigation Procedures:

- Should be included in policy
- Investigate all allegations
- Document every charge and resolution
- Maintain as confidential as possible
- Ask who, what, where, when
- Be as thorough as possible
- Maintain regular contact with victim



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## Remedial Actions:

- Prohibit known behaviors
- Take prompt action to stop behavior
- Restore victim to “whole”
- Protect victim from retaliation
- Apply discipline up to discharge
- Make follow-up inquiries



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## Documentation:

- Training and education
- All discussions & notices
- All known incidents
- Remedial steps taken
- ↖ Do not include in victim's personnel file.
- ↖ Place record of disciplinary actions in harasser's file.
- ↖ Assure confidentiality.



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## Case Study:

You are the sheriff of your county. Sally, the dispatcher, comes to you to report that Mike, one of the deputies, has been harassing her and she wants it to stop. Sally has worked for the county for several years and is an excellent employee. Sally indicates that Mike hangs around her area and makes sexual comments about her clothes and how good they look on her. She says that he has been doing this for several months, and, even though she asked him to stay away from her, he persists in this behavior.



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## Your Observations:

You notice that Sally's uniform blouse is very tight. You have observed Sally in the past telling off color jokes.

You are also aware of that Mike has been involved in other incidents similar to the one involving Sally. In the past, the former sheriff had to "talk" to Mike. Mike and the former sheriff were good friends. There is no documentation in his file.



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It is now several months later. You have taken actions against Mike. You have also talked to Sally about her clothing and joke telling.

Sally comes to you again and tells you that Mike has been commenting on her clothing again. Mike is now Sally's supervisor. You also notice that Sally's performance has been slipping with frequent errors and complaints from the citizens about her short temper.



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It is now six months after the second incident. Mike had been disciplined; he is no longer a supervisor and is on a different shift as Sally.

You receive a call from Sally's new supervisor. He says that Sally turned in a letter of resignation today and went home, saying she would not come back to work. She gave no reason why she quit.



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While interviewing Sally, she tells you that she quit and went home because of Mike. According to Sally, as Mike was walking out the door after his shift, he made comments to the other deputies that, if elected to the county commission this year, his brother will work to eliminate all the dispatchers and have sworn deputies operate the 911 system. Sally believes that Mike purposely made these comments in retaliation to her complaints about sexual harassment. Sally tells you she can no longer work in this hostile work atmosphere and feels she is under undue stress because of Mike and his retaliatory comments.

**Do you think Sally has a case?**



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## Causes of Employment Practices Losses:

### 2. Wrongful Termination

- In today's society and legal climate, there must be a high level of control at each and every public entity!
- Policies and Procedures must be implemented and followed!



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## Positive Employment Practices

- Discrimination Laws
- Diversity in the workplace
- Termination Policy
- Termination Process



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## The Civil Rights Act

Prohibits discrimination based on:

- Race
- Color
- Religion
- Sex
- National Origin



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## Terminations Must Be For Proper Reasons?

- Performance Based Issues
- Unilateral job elimination/Downsize



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## Improper Terminations

- Civil & criminal actions
- Compensatory damages
- Punitive damages
- Attorney fees
- Monetary fines
- Time & wasted resources



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## Termination Policy

- A written termination policy and procedure should be developed and be implemented.
- The termination policy should be communicated to all new and existing employees.
- The policy should be administered by the Human Resources Department.
- The policy should follow ADA, Civil Rights and other non-discrimination laws and policies.



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## Types of Workplace Discrimination

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- Disability
- Equal Pay / Compensation
- Genetic Information
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- Pregnancy
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- Religion
- Sexual



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## Termination Process

- Documented
- Follow Termination Policies
- Maintained in Employees Personnel File
- Spell out the PURPOSE for the termination
- Exit interview with Human Resources



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## Termination Process

- Some terminations are a result of 1 event
- Some terminations are a result of 2 or more events
- All events should be documented and signed by the employee
- The written documentation should be maintained in the employee's personnel file



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## Termination Process

Keep and build documentation as if the document will be used in court (discoverable) during the termination process and write the termination documentation as if you are building a defense.....because YOU ARE!!!



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## To Impact the future, we must look at the Past LAW ENFORCEMENT Liabilities!

Causes of Law Enforcement Liabilities?

1. Suicide/Failure to monitor.
2. Failure to administer medical care
3. Excess Force
4. Sexual Contact
5. Pursuit



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## Suicide/Failure to monitor.

- Policy to monitor must be in place
- Monitoring must be documented
- Supervisors must audit performance for compliance
- No such thing as checking too much
- When in doubt, check them out



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## Failure to Administer Medical Care

- Document medical needs during the intake screening process
- Address all medical needs
- Inmates are not often truthful? But when there is a medical need, the need should receive documented attention
- May warrant further monitoring, additional care or treatment



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## Excess Force

- Policies and procedures should be developed and implemented
- Jailers Association, IACP, or other standards for the use of force should be followed
- Use of force should be documented
- Use of force should be supervised
- Always good to have 2, 3 or more jailers present when the use of force is needed.



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## Sexual Contact

- *Do we really need to address this? Do Jail employees not know there are possible civil and criminal consequences for contact of a sexual nature?*
- Implement a Sexual Contact Policy to strictly forbid any jail employee to have contact of a sexual nature between a jail employee and an inmate
- Signed Sexual Contact Policy by every jail employee maintained in the employee's personnel file prohibiting contact of a sexual nature between a jailer and an inmate
- Signed Sexual Contact Policy should contain language that any contact of a sexual nature between a jail employee and an inmate will not be tolerated. Any investigation that determines the jail employee violated the Sexual Contact Policy will result in the immediate termination and may result in civil actions, criminal actions or both.



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## Pursuit

- Written policy when to engage and when not to engage.
- Training and Supervision
- Several excellent model policies to choose from (IACP and others).
- Policy must be followed.
- *If the person is a bad guy, the behaviors will continue and we will catch them another day. It is sometimes better to not endanger the officer, the subject and the public.*



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## Employment Practices Liabilities and Law Enforcement Liabilities

- Are risks that need controls
- The better the control, the better the result
- Controls save lives, time and money



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- Five veteran loss control staff members in Alabama dedicated to assisting ACCA members with your loss control and safety efforts.
- Conduct Safety Audits and visits annually
- Analyze frequency and severity loss trends
- Resources, programs, training videos and DVD's



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As Meadowbrook Consultants, we are here to help!

We are like coaches on the sidelines. We have the Risk Management Skills and Safety knowledge.

We enjoy assisting our customers.

In sports terminology, *we can help plan your plays.....but you have to run the ball.* Our goal, is like your goal, to win!



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Employment Practices Losses  
and  
Law Enforcement Losses  
are in  
YOUR Hands

