



Professional Liability: Legal and Personal Liability Issues

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Overview

- I. Areas of Liability
- II. Types of Insurance
- III. Course and Scope of Employment
- IV. You've Been Sued

I. Areas of Liability

- 🏛️ Discrimination (and Affirmative Action)
- 🏛️ Sexual Harassment
- 🏛️ Disabilities
- 🏛️ Retaliation
- 🏛️ Confidentiality
- 🏛️ Defamation
- 🏛️ Ethics
- 🏛️ Travel



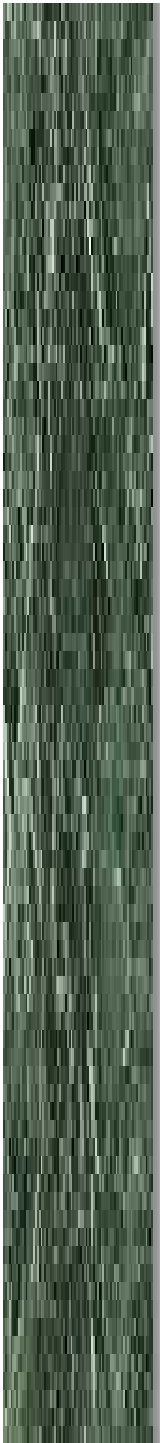


Discrimination

- Failure to hire, promote, pay, college admission, scholarships or other different treatment based on the following protected groups:
 - ✦ Gender and pregnancy
 - ✦ Disability
 - ✦ Race and national origin
 - ✦ Religion
 - ✦ Age
 - ✦ Military status
 - ✦ Sexual orientation (voluntarily adopted by several institutions)

Current Status of Affirmative Action

- 5th Circuit - must show SPECIFIC DISCRIMINATION to use race preferences
- Diversity and general societal discrimination not enough
- Race scholarships from private foundations ok, with no government involvement
- Texas v. Lesage - 1999 Supreme Court, students must show they would have been admitted to challenge race based admissions
- Presidential election pivotal



Disability – basic rules:

- Cannot discrimination against **qualified individuals** who can perform **essential functions** with or without **reasonable accommodations**
- Accommodation must be requested
- May require documentation of disability
- Accommodations need not be retroactive
- Reasonable accommodation not preferred specific accommodation
- Temporary disabilities not covered

Sexual Harassment

- 3 types of sexual harassment
 - ✦ Quid pro quo
 - ✦ Hostile environment
 - ✦ Sexual favoritism
- Criminal violation for public employees





Retaliation

- The University can be liable for retaliation, despite initially acting in an appropriate manner. Situations where employees or students may charge retaliation include:
 - ✦ Exercising constitutional rights (such as freedom of speech, press, association or religion)
 - ✦ Filing worker's compensation claim
 - ✦ Joining or refusal to join a union
 - ✦ Active duty in military forces
 - ✦ Service on a jury
 - ✦ Reporting an alleged violation of law to an appropriate law enforcement authority – Whistle Blowers Act
 - ✦ Refusing to perform an illegal act
 - ✦ Using Family Medical Leave Act



Confidentiality

- There are **criminal sanctions** for releasing confidential information and not releasing public information. (State Law)
- It is illegal to ask a requestor the reason for their records request.
- Examples of confidential records
 - ✦ Student records
 - ✦ Medical records
 - ✦ Trade secrets
 - ✦ Highly unwarranted invasion of privacy
- Most records are public. If in doubt, check with General Counsel immediately. There is a 10-day time clock.
- FERPA does not create a personal cause of action
- There are state laws on **records retention** and improper **destruction of records**.



Defamation

- A statement that tends to subject someone to hatred, distrust, ridicule, contempt or disgrace.
- Elements of a cause of action for defamation
 - ✦ Statement must be false, although there may be a claim for invasion of privacy
 - ✦ Injures a person's reputation
 - ✦ Published to a third party
 - ✦ Not a privileged communication

(more...)

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- Two types of defamation
 - ✦ Libel (written)
 - ✦ Slander (spoken)
- Examples
 - ✦ Publicly accusing an employee of plagiarism or theft
 - ✦ Publicly stating a student cheated
- Protected statements – reporting misconduct to appropriate officials within the University when the report is made in good faith
- Remember to state “facts” not “opinions”



Ethics









- Conflicts of interest
 - ✦ Nepotism
 - ✦ Personal pecuniary interest
- Computer crimes
- Misappropriation of government equipment
- Misuse of official information
- Bribery and accepting gifts
- Tampering with a government record

Travel



- Personal car = personal liability insurance
- Official driver of fleet vehicle = University liability insurance
- Most rentals are personal, unless it went through Purchasing
 - ✦ If you used your credit card, it's personal
 - ✦ Collision damage waiver insurance on a rental is reimbursable by the State

II. Types of Insurance

-  Comprehensive General Liability (CGL)
-  Directors' and Officers' Liability (D & O)
-  Professional Liability Insurance
-  Auto Liability (work & personal)
-  Collision Damage Waiver (car rentals)
-  Participant Accident Insurance
-  Workers' Compensation
-  Personal Homeowners' Insurance

III. Course and Scope of Employment

Official Capacity

- Suit against the office, usually for injunctive relief

Personal Capacity

- Suit against you personally for damages
 - ✦ Compensatory (lost income and benefits or mental anguish) and punitive or exemplary damages

State Employee Indemnification

- \$100,000/\$300,000 and good faith

IV. You've Been Sued

Representation

- Usually determined by your employment
 - ✦ State University – Attorney General
 - ✦ Private University – Institution's counsel or outside counsel
 - ✦ Community Colleges – Institution's Counsel or outside counsel
- Other sources
 - ✦ Your personal attorney

(more...)

Lawsuit stages

- Pre-litigation demand letters
- Petition filed with the Court
- Petition served on Defendants
- Motion practice
- Discovery
- Mediation
- Trial Preparation
- Appeals

