

DVD Video User Guide for “Wake-Up Call: Managers Meeting the Challenge”

Produced by OFM's Risk Management Division and Department of Information Services-Multimedia Productions

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Why Agencies Need to Use the Video

Regardless of size, all agencies are at risk for employment-related complaints, tort claims or lawsuits. *Wake-Up Call: Managers Meeting the Challenge* is designed to raise the awareness of managers on employment practices liability (EPL) issues. Agencies are encouraged to use this training tool to promote loss prevention practices that will reduce the potential for EPL claims and lawsuits. State employees, and the public they serve, benefit greatly when agencies effectively manage this risk.

What Agencies Need to Know About the Video

The video targets managers and supervisors with an overview of EPL loss prevention information. It does not cover specific employment topics or legal information. The video can supplement other required employment-related training if desired, but *must not replace* an agency's designated employment training.

Description of video sections

- **Employment Practices Scenarios: Managers Meeting the Challenge** -- A glimpse of six fictional managers faced with typical employment-related issues who *take the challenge* to address them quickly and effectively. These scenarios can be used to generate discussion on how agency policies or procedures could be applied in a similar situation.
- **Wake-Up Call: Managers Meeting the Challenge-One Manager's Story** -- Follows a fictional new supervisor challenged by an employment situation, featuring discussions with an employee and human resource manager, and a training scene where she learns tips to improve supervisory skills. The story touches on the personal effect of employment issues for managers.
- **Employment Practices: Your Challenge** -- In a brief appearance, Governor Chris Gregoire thanks managers for seeking information on ways to efficiently manage the state work force. She challenges them to develop and practice skills where people are valued and respected, and to create work places that effectively serve Washington's citizens.



The video highlights that managers and supervisors should:

- Manage employees to create a professional work environment and prevent workplace conflict.
- Treat all employees fairly and consistently, and recognize that laws and policies are in place to protect employees' rights if unfair or unlawful behavior occurs.
- Respond to reported concerns and complaints directly without delay. Delays can worsen situations.
- Promptly contact human resource experts when help is needed.
- Recognize that when all members of a work team are successful, so is the manager or supervisor.

In addition to this *User Guide*, [Ten Things You Need to Know about Managing People](#) is a one-page handout document summarizing key information from the video.

How to Effectively Use the Video

Agencies are encouraged to coordinate with their human resource or risk management office when training with the video, which can be used as:

- Part of routine management meetings;
- An addition to leadership or supervisory training sessions;
- An addition to training on specific employment-related topics; or
- Part of one-on-one training or coaching, including performance reviews.

It may be helpful to pause the video after each scenario section to discuss agency-specific policies and procedures for a similar situation. A review and discussion is highly recommended after the retaliation scenario is played. Other discussion topics include:



- Negative effect of non-response.
- Procedure for reporting complaints.
- Procedure for responding to complaints.
- Ways to recognize and discourage inappropriate behavior.
- Ideas for creating a safe and trusting workplace.
- Review of agency legal responsibilities to address complaints.

Where to View or Obtain Additional Copies

Options for obtaining the video

- **OFM-RMD Website** – Stream the video or borrow a copy from the loss prevention video library. Find these options at <http://www.ofm.wa.gov/rmd/loss/riskvideos.asp>.
- **DIS-Multimedia Productions** – Copies \$3 each. Contact Les Profitt at lesp@dis.wa.gov.
- **Reproduce Copies** – Agencies have permission to reproduce copies for in-house training.
- **Questions** – Contact Jolene Bellows, education and safety specialist, Risk Management Division, at 360-902-7312 or jolene.bellows@ofm.wa.gov.

Suggestion: The Risk Management Division recommends that requests for copies be coordinated with your agency's human resource and risk management offices.

What Agencies Need to Know about EPL Risk

Possible effects of improper employment practices

Generally, employment practice complaints, tort claims and lawsuits can be based on allegations of discrimination pertaining to a person's protected status (age, sex, race, disability, etc.), wrongful termination of employment, sexual harassment or other employment-related allegations such as retaliation.

Note: While a private citizen could file an employment claim alleging improper action while seeking state employment, the video focuses on state employee claims.

Employment laws that protect employee rights

Federal and state laws establish guidelines on how employment practices are to be addressed in workplaces. Managers and supervisors need to be aware of these laws and recognize that violating them can lead to employee complaints against the agency, including possible legal action.

Federal laws

- **Title VII** – 42 USC § 2000e – <http://www.eeoc.gov/policy/vii.html>
- **Civil Rights Act** – 42 USC § 1981 and following sections – <http://www.eeoc.gov/policy/cra91.html>
- **Equal Pay Act** – 29 USC § 206 (d) – <http://www.eeoc.gov/policy/epa.html>
- **Age Discrimination in Employment Act** – 29 USC § 621 and following sections – <http://www.eeoc.gov/policy/adea.html>
- **Americans with Disabilities Act** – 42 USC § 12101 and following sections – <http://www.eeoc.gov/policy/ada.html>
- **Rehabilitation Act** – 29 USC § 791 – <http://www.eeoc.gov/policy/rehab.html>
- **Uniform Services Employment and Reemployment Act** – 38 USC § 4301 and following sections – <http://www.usdoj.gov/crt/military/statute.htm>
- **Family Medical Leave Act** – 29 USC § 2601 and following sections – <http://www.dol.gov/esa/whd/fmla/>



Washington state laws

- **Washington Law Against Discrimination/Retaliation** – Chapter 49.60 RCW - <http://apps.leg.wa.gov/RCW/default.aspx?cite=49.60>
- **Washington Whistleblower Law** – Chapter 42.40 RCW - <http://apps.leg.wa.gov/RCW/default.aspx?cite=42.40>
- **State Family Medical Leave Act** – Chapter 49.78 RCW - <http://apps.leg.wa.gov/RCW/default.aspx?cite=49.78>

Agency accountability for addressing tort claims

Each agency should have its own internal process in place to address employment complaints, tort claims and lawsuits. Typically, agency staff members follow up and conduct appropriate investigations related to employment complaints. Claims filed with the Risk Management Division are investigated by RMD staff. When a lawsuit is filed, the investigation is conducted by the Attorney General's Office.

What Agencies Need to Know about the Cost Impact of EPL Risk

Workplace conflict that results in tort claims and litigation generates cost for agencies and for individuals. Informing managers and supervisors about the full cost impact of their actions (or inaction) will help them better understand and appreciate the key role they play in EPL loss prevention. The following section provides an overview of agency roles and responsibilities addressing the cost and management of tort liability, including loss prevention. It also breaks down the potential cost impact of claims or lawsuits for the agency, manager or supervisor, and the affected employee.

Overview of EPL costs to state government

Paying for and Managing Tort Claims

OFM Risk Management Division

Tort Claims

[Chapter 4.92 RCW](#) authorizes the Office of Financial Management's Risk Management Division (RMD) to set and collect self-insurance liability program premiums from state agencies to cover general liability (and auto) claims. This program addresses all general liability claims filed against agencies by citizens, and includes state employee employment-related claims. RMD objectively reviews all filed claims and issues decisions based on findings, fairly compensating claimants for damages in cases where liability is supported. Lawsuits are processed through the Office of the Attorney General.

Loss Prevention

[Chapter 43.41.350](#) requires RMD to establish a coordinated safety and loss control program to reduce liability exposure and loss to the state. RMD provides loss prevention assistance to agencies through communication and educational resources, such as the *Wake-Up Call: Managers Meeting the Challenge* video.

State Agencies

Tort Claims

State agencies are required to budget for and to pay to the Office of Financial Management for liability coverage. OFM's self-insurance liability program is used to pay for claims filed against state agencies. Both number and total cost of tort claims affect the amount agencies are charged for this liability coverage. Claim cost totals include both payments for indemnity and Office of the Attorney General defense costs. Agencies may have additional budget costs outside of the self-insurance liability program if an employment case settlement involves claims such as ones based on payment of back wages.

Loss Prevention

[Chapter 43.41.350](#) indicates that state agencies shall provide top management support and commitment to safety and loss control, and develop awareness through education, training and information sharing. Agency risk managers assist the management team in directing loss prevention activities, such as preventing or mitigating EPL risk.

Important: *Claim or lawsuit payments cover indemnity awards and agency defense costs. Even when agency liability is not supported and an indemnity payout is avoided, the agency will likely incur defense costs, which are factored into the agency's self-insurance liability program premium.*

Agency costs

- Costs paid directly from agency budgets (such as back wages, employer pension contributions etc.).
- Increased self-insurance liability program premiums (based on number and cost of claims).
- Attorney fees of the prevailing party.
- Indirect costs such as agency staff time and other resources to investigate and resolve workplace disputes or assist in the defense of a tort claim or lawsuit.
- Reduced reputation (the effect of negative news headlines). This is difficult to quantify but agencies must recognize this cost and the need to mitigate or prevent it.

Manager or supervisor costs

- Potential disruption to work unit and decreasing efficiency to the agency mission.
- Failure to meet agency goals and deadlines.
- Loss of valued employees who choose to leave the work unit due to the conflict distraction.
- Personal legal liability (depending on the circumstances of the case).
- Termination or demotion.

Employee costs

- Personal injury (pain, suffering, anguish, humiliation, etc.).
- Need to seek alternative workplace or employment.
- Damaged reputation and self-esteem issues.
- Difficulty in interpersonal relationships.
- Lost income (back pay and future income).
- Reduced or lost benefits such as health care and retirement.



What Agencies Need to Know about Preventing EPL Risk

Organizational elements that contribute to EPL loss prevention

When accessed and used effectively, the following contribute to EPL loss prevention:

- Written policies and procedures that address roles, duties and performance expectations.
- Human resource services.
- Leadership training and development.
- Job performance reviews designed to capture accurate and fair evaluations of job performance (including guidance on developing employee skills for peak performance).

Resources that help managers and supervisors understand employment laws and practices

Agency human resource staff members provide:

- In-depth knowledge of employment laws and state policies.
- Coordination with Office of the Attorney General staff.
- Employment services and information for managers and employees.

The Washington State Department of Personnel provides:

- Employment information and resources for managers - <http://www.dop.wa.gov/Pages/ManagersSupervisors.aspx>.
- Leadership/supervisory training resources to improve managerial skills - <http://www.dop.wa.gov/training/AdditionalServices/Pages/TrainingManagersInformation.aspx>

Agency-specific Intranet sites (if available) provide:

- Guidance, information or tools tailored to agency practices and needs.

Washington State Human Rights Commission

The commission's mission is to "eliminate and prevent discrimination through the fair application of the law, the efficient use of resources, and the establishment of productive partnerships in the community." It carries out its mission by enforcing the Law Against Discrimination ([Chapter 49.60 RCW](#)). It works to prevent and eliminate discrimination by investigating civil rights complaints and providing education and training opportunities throughout the state. More information is available at <http://www.hum.wa.gov/>.

United States Equal Employment Opportunity Commission

The commission enforces the following federal laws: Title VII of the Civil Rights Act of 1964, Equal Pay Act of 1963, Age Discrimination in Employment Act of 1967 (ADEA), Title I and Title V of the Americans with Disabilities Act of 1990, Sections 501 and 505 of the Rehabilitation Act of 1973 and the Civil Rights Act of 1991. The EEOC also provides [oversight and coordination](#) of all federal equal employment opportunity regulations, practices and policies. Visit its website at <http://www.eeoc.gov/>.