



Workplace Equity & Anti-Discrimination Policies and Procedures for Your Farm Business

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Introduction

Human resource management is of increasing importance for today's livestock operations. Several aspects of employee supervision can challenge managers and owners, including the increasingly complex federal and state regulations surrounding employee management. Workplace equity and anti-discrimination policies are of particular interest to livestock operations, which may face unique circumstances. Adding confusion for many operators are the intersections between various laws and regulations, especially those related to discrimination, workplace equity, and harassment. Certainly, prevention of discrimination and inequity are less costly than dealing with costly litigation or time-consuming and expensive complaints.

An equitable workplace is one where employment decisions are based on an employee's performance, not on prohibited factors such as race, color, religion, gender or other illegal reasons. Discrimination occurs when employment decisions such as hiring, firing, pay, task assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment are made on the an illegal basis, rather than on the employee's job performance.

A variety of federal and state anti-discrimination laws may affect your operation. At the federal level, the Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make employment discrimination illegal. Many states also have laws and agencies to enforce those laws. State laws differ by state and often differ from federal law.

Failing to address discriminatory practices in the on-farm workplace may open the operation to an expensive, time-consuming lawsuit. Discrimination could be directly related to acts that would constitute harassment (see harassment-focused fact sheet). Harassment occurs when an employee is the recipient of offensive conduct that is so severe it creates an intimidating, hostile, or offensive work environment. Offensive conduct can include, but is not limited to offensive jokes, slurs, threats, intimidation, mockery, insults, or offensive objects or pictures. Certainly, what is offensive may differ across individuals, adding confusion. However, managers/owners/operators must remain vigilant to protect themselves and pursue practices that avoid offensive conduct by any individuals on their farm. Incidences of harassment could morph into discrimination if such harassment *appeared to or was perceived to* influence job-related assignments, promotions, pay, etc. Admittedly, it is difficult to determine perceptions or appearances, so documentation and record keeping is key in being able to document policies and procedures on your farm to an outside party, should the need arise.

There are several Federal laws and regulations pertaining to equity that business owners should be aware of.

Major Federal Laws and Regulations Pertaining to Equity¹

Title VII of the Civil Rights Act of 1964 makes it illegal to discriminate based on race, color, religion, national origin, or sex. The **Pregnancy Discrimination Act**, an amendment to Title VII, made it illegal to discriminate against women because of pregnancy, childbirth, or a related medical condition. The **Equal Pay Act of 1963** makes it illegal to pay men and women different wages for equal work in the same workplace. Furthermore, the **Age Discrimination in Employment Act of 1967** makes it illegal to discriminate against persons who are 40 or older because of their age. These laws also make it illegal to retaliate against employees who complain about discrimination, file discrimination charges with the EEOC, or participate in investigation or lawsuit regarding discrimination.

American with Disabilities Act of 1990 (ADA) made it illegal to discriminate against a qualified person with a disability. The ADA is applicable to covered entities, or employers, with 15 or more employees. Employers must make reasonable accommodations for the qualified individual, whether that person is an applicant or existing employee, unless doing so would impose an undue hardship on the operation of the business.

The Family Medical Leave Act (FMLA) requires covered employers, those who employ 50 or more employees for 20 or more workweeks in the current or preceding year, to grant eligible employees unpaid leave of absence for family related issues like the birth of a child, serious health conditions, or a close family member's serious health condition².

State workers compensation laws prohibit harassing an employee to discourage him or her from filing a workers' compensation claim, harassing him or because of a filed claim, or firing an employee who has made a worker's compensation claim.

A more detailed description of the ADA, FMLA, and workers compensation laws can be found in the PIG publication entitled *How to Keep Your Organization- and yourself- Out of Court*³, the ADA website⁴, the FMLA website⁵ or by contacting an attorney in your state.

Recall, that in addition to these federal laws individual state laws vary widely and that every farm business should seek to familiarize themselves with state-specific laws or to seek legal advice from an attorney familiar with your state's regulations.

Even if you are not subject to Federal laws and regulations (for example, due to business size or number of employees) you may be subject to state laws or regulations.

Some states include additional prohibited reasons for discrimination. For example, the Illinois Human Rights Act prohibits discrimination based on, in addition to those covered by the EEOC, sexual orientation, military status, marital status, or order of protection status⁶. Other states have lower requirements for number of employees to be subject to the state's anti-discrimination laws. For example, in Massachusetts, employers with six or more employees are prohibited from discriminating against employees and applicants⁷.

Example Situations

The EEOC provides examples of the prohibited reasons and contexts for discrimination.

- **Age:** Failing to hire a person over the age of 40 solely because of the person's age⁸
- **Disability:** Not allowing a disabled employee to attend a beneficial training seminar because the company would have had to pay a small fee (a fee that did not cause undue hardship to the company) to reasonably accommodate the employee's disability. For example, hiring a sign language interpreter⁹
- **Genetic:** Firing an employee because you learn about his or her genetic information in the form of a family medical history¹⁰
- **National Origin:** Denying employee raises for employees from a certain race or ethnicity¹¹
- **Pregnancy:** Denying sick leave to a pregnant employee while allowing sick leave to an employee who had surgery¹²
- **Race:** Assigning employees of a certain race to menial tasks based on a stereotype that those employees cannot perform other tasks¹³

- **Religion:** Offering fringe benefits to employees because they were not of a certain religion, while denying fringe benefits to employees of that religion¹⁴
- **Retaliation:** Firing employee because he or she reported harassment or repeatedly calling the employee a “rat” or “snitch” for reporting harassment¹⁵
- **Gender:** Paying men more than women for the same job at the same location¹⁶
- **Sexual Harassment:** Firing a female employee who refused unwanted sexual advances¹⁷

Preparedness: Employer Actions Towards an Equitable Workplace

Document! Document! Document! The Importance of Documentation

The first step to avoiding difficulty and documenting a clear effort towards workplace equity is to establish an anti-discrimination policy for your farm business. State and federal laws and regulations may already require your company to have an antidiscrimination policy. However, even if an anti-discrimination policy is not required, it can still be valuable in that it can help you prevent a lawsuit by promoting equity and fighting discrimination in the workplace. Furthermore, an antidiscrimination policy can provide important documentation and defend a lawsuit. Your employee handbook is a logical place for your antidiscrimination policy. To be most effective, employees should read, understand, and acknowledge they have received the handbook (or the anti-discrimination policy, if it is in a separate document). It is imperative that employers have proof that employees have received and understood the anti-discrimination policy (as well as other key policy information provided in the employee handbook); a signed statement indicating the employee understood is helpful. Be cognizant that language barriers, literacy levels, or education may limit understanding of policies in some employees. Be sure that in these cases policies are clearly explained and employees acknowledge in a documentable way that they have understood.

A sample employee handbook for pork producers, Swine Employee Handbook 2012¹⁸ is provided through the Pork Information Gateway. It contains a sample anti-discrimination policy, which may be adapted for your operation. Beware, this and other sample anti-discrimination policies may not fully comply with your particular state’s requirements. Be sure to check your own state’s laws or have your policy reviewed by an attorney prior to distributing it to your employees.

It is important to remember antidiscrimination policies and procedures are only valuable and helpful in the sense they help prevent and defend suits if you follow them! The best strategy is prevention.

If you have additional questions ...

Federal and state regulations governing employee issues and treatment can be complicated, complex, and change rapidly. Consider having your handbook reviewed by an attorney familiar with your state’s regulations and your farm business. If you need advice as to how to locate an attorney familiar with agricultural businesses in your geographic location, consider reaching out to local Extension personnel or commodity organizations for recommendations.

The information in this fact sheet is intended general educational purposes. This fact sheet does not constitute legal advice; usage of the material does not create an attorney-client relationship. Anyone seeking legal advice should contact a licensed attorney in the state(s) in which their operation does business.

References:

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