

# **5 LEGAL ISSUES TO HAVE ON YOUR RADAR SCREEN SO YOU CAN HAVE A GREAT YEAR AT COOPERATIVE EXTENSION**

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## **I. INS AND OUTS OF GETTING SUED AS A UNIVERSITY EMPLOYEE—WHAT THE GENERAL COUNSEL’S OFFICE CAN AND CAN’T DO FOR YOU**

- If sued as part of your position with the University—GCO will represent you.
- Two types of immunity that might come into play in a suit in which you are involved:
  - Sovereign immunity, that is, the State of Arkansas (and thus the University of Arkansas and the UAM) cannot be sued in federal court (unless an exception applies)
  - State of Arkansas and you as an official cannot be sued in state courts because of statutory immunity (again, unless some exception applies)
  - There is one other forum, the Arkansas Claims Commission, where cases involving negligence and contracts are litigated
- If you get sued, let the GCO and your administrators know--also applies to getting FOIA requests, subpoenas, or other legal issues as they arise.
- You would not pay legal fees for GCO services.
- If a verdict were rendered in your case, or a settlement was reached—those monies would be paid by the University and the State, not by you personally.
- You have an obligation to aid in your defense in a case.

## **II. YOUR COMPUTER AND THE FREEDOM OF INFORMATION ACT & YOUR COMPUTER IN LITIGATION—DO’S AND DON’T’S**

- Arkansas has one of the broadest FOIA laws.
- Purpose is to allow the governed an opportunity to see what their government is doing—unless some exception applies.

- There are timing requirements under the FOIA—generally the University has three days to respond to an FOIA request.
- One of the most dangerous areas of FOIA requests come from computer emails.
- Generally, your workplace computer emails will be turned over in an FOIA request.
- University policy is that you DO NOT have an expectation of privacy on your workplace computer.
- Rule: if you don't want it to appear on the front page of the Ark. Dem-Gaz—DON'T PRESS "SEND".
- Also, have a personal email deletion procedure to get old emails off your system.
- Information on your computer may become an issue in litigation.
- If a computer could have discoverable information—GCO will send out litigation hold letter.
- Can't destroy or delete material once you've received one of these litigation hold letters.
- If you do destroy, this is called spoliation of evidence—just like throwing away the exonerating DNA sample in a murder case—law simply does not allow this without severe consequences to the individuals spoiling the evidence for the trial.

### **III. DISCRIMINATION, SEXUAL HARASSMENT AND RETALIATION IN THE WORKPLACE**

- **Discrimination**—especially for administrators—when hiring, terminating, promoting, making job assignment decisions--do not discriminate on the basis of race, gender, age, national origin, parental/marital status, religion, or sexual orientation.
- Make contemporaneous documents for decisions you make & evaluations you give.
- Use objective criteria.
- Biggest mistake—always giving high performance evaluations and then turning around and firing someone for incompetence. Better make a clear paper trail of what is happening.

- **Sexual Harassment**
- Be professional with other staff and clients.
- In our jobs, we deal with many different people, so what passes for playfulness in one culture may be considered inappropriate in another.
- Sexual banter leads to problems...just stay professional.
- If you feel you are a victim of sexual harassment, report per University policy.
- Investigations are done professionally, quickly, and confidentially.
- It is illegal to harass another based on another protected criteria: race, age, national origin, parental/marital status, religion, or sexual orientation.
- **Retaliation**—this is really where the litigation is happening right now.
  - Can form an independent legal basis for a federal civil rights claim.
  - Don't discriminate against someone who reports or participates in a civil rights claim involving race, gender, age, national origin, parental/marital status, religion, or sexual orientation.

#### **IV. VOLUNTEER LIABILITY**

- Federal and state law provides sovereign immunity to volunteers acting in scope of volunteer activities for the State.
- If volunteer acts outside the scope of program, then he can lose this immunity.
- If volunteer causes harm in negligent manner and is insured, then the volunteer loses his immunity to the amount of insurance coverage limits.

#### **V. BEING ASKED FOR ADVICE—ARE YOU BECOMING AN EXPERT WITNESS?**

- Go over policy.
- Go over how this plays out in context of litigation.
- Clients are asking you for information based upon your expertise.

#### **VI. CLOSING—POINTS TO TAKE AWAY**

1. As to being sued as an employee of the University
  - GCO is there to help you.

- We can best help you if you know your policies and have followed them.
  - Let us know when something legal is going on: If you are served with a complaint (that initiates a lawsuit), an FOIA request, a subpoena to appear in court or at a deposition—let your administration know so your administration can let us know you've received the document and we can get to work on it.
2. FOIA and litigation and your computer
    - Your computer can be your worst enemy. Rule: if you don't want it to appear on the front page of the Ark. Dem-Gaz—DON'T PRESS SEND.
    - Also, have a personal email deletion procedure to get old emails off your system.
  3. Discrimination, Sexual Harassment and Retaliation
    - Document, document, document the reason for a decision.
    - Make the document contemporaneously with events.
    - Use objective criteria as much as possible when making decisions.
    - Don't retaliate if someone complains of discrimination or sexual harassment.
  4. Volunteer Liability
    - Federal and state law provides sovereign immunity to volunteers acting in scope of volunteer activities for the State.
    - If volunteer acts outside the scope of program, then he can lose this immunity.
    - If volunteer causes harm in negligent manner and is insured, then the volunteer loses his immunity to the amount of insurance coverage limits.
  5. Being asked for advice—Are you becoming an expert witness
    - Follow your university procedures.
    - Call the GCO and your administrators and ask.