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2514 Stenson Dr | Cedar Park TX 78613 | 512-336-1005 | Fax 512-336-1008 | missy@CHAseminars.com

HUMAN RESOURCES GENERAL OVERVIEW
MODULE III

LESSON 1 ~ FAIR LABOR STANDARDS ACT & STATE WAGE-HOUR LAW

Host: Welcome to our program, FLSA and State Wage-Hour Law. The Fair Labor Standards Act, or FLSA, is the federal law that governs workplace wages and hours, requiring strict compliance by employers. Along with state wage-hour laws, the FLSA makes up the body of law that must be followed by each employer. Now during this program, you'll learn the limitation of coverage under the FLSA, and how employees are treated differently, depending on position or level. You'll also learn the pay requirements and applicability of the FLSA, and how employers make important payroll choices. In addition, you'll learn how the FLSA requires employers to document hours and wages of its employees. Watch now as Jason Stern, employment law attorney and consultant, explains the ins and outs of the FLSA and State Wage-Hour Laws.

Jason: Hello, my name is Jason Stern and today I'm going to speak to you about the Fair Labor Standards Act or as it's commonly known, the FLSA. The FLSA is the federal law that governs workplace wages and hours, requiring strict compliance by employers. The FLSA, along with state wage-hour laws, make up the body of law that must be followed by each employer. Because the FLSA covers both employer responsibilities and employee rights, both parties should be aware of how the FLSA affects them. The FLSA functions in two ways: It covers big businesses which contain employees of all companies that have annual gross sales of $500,000 or more. And then, it also works as a "catch-all," covering employees for businesses that have less than $500,000 in annual sales if their work involves something called "interstate commerce." What do we mean by interstate commerce? Well, the term interstate commerce is a catch-all provision used as a basis for federal intervention for any number of government laws, including the Civil Rights Act of 1964. Basically, nearly every job in some way affects interstate commerce. The term has been used to include everything from sending or receiving mail to another state, making telephone calls or receiving them from another state, handling goods that travel to or from other states, or crossing state lines as part of the actual job. Although it's unlikely, it is possible that a small business could be exempt from FLSA coverage. Small business owners who believe their business is exempt from coverage, should double-check with the nearest U.S. Labor Department Wage and Hour Division office or go to www. dol.gov. Because they are not employees, independent contractors are excluded from coverage. However, for purposes of determining whether or not an employee is misclassified as an independent contractor, employers should be aware that the Department of Labor does not use the IRS definition of an independent contractor. In determining status, the Department of Labor focuses on the following four areas: (1) the degree of control over the job; (2) the opportunity for profit or loss; (3) the extent of the worker's investment in equipment; and (4) whether the services require special skills. Think you got it? What would you do in this situation? Let's spend some time talking about exempt and non-exempt employees. Some employees of an FLSA-covered business may be exempt from FLSA minimum wage and overtime pay provisions. Most employees fit into one of the following categories: executive, administrative, professional, outside sales or people in computer-related occupations. Executive, administrative and professional employees are those who are paid a weekly salary in excess of $250 and spend at least 80% of their workday performing duties that require a measure of discretion and independent judgment. Examples of some typical exempt jobs include the following: lawyers, doctors, executives and accountants; department heads, managers and account executives; personnel directors and executive assistants. Examples of some typical non-exempt jobs include: clerks, receptionists and word processors; bank tellers, bookkeepers and trainees. The act of an employer mislabeling low-level employees with lofty titles to make them exempt from the FLSA, can subject them to stiff penalties by the Department of Labor. Outside salespeople are exempt if they: (1) regularly work away from the place of business while making sales or taking orders; and (2) spend no more than 20% of their work time doing work other than selling. Exempt salespeople are usually paid through commissions.

Computer specialists are also exempt, depending on how much they make per hour. As managers, you need to ensure your exempt employees are properly classified as exempt. Federal law and the laws of most states base overtime requirements on individual work weeks. Non-exempt employees must be paid overtime if they work more than 40 hours in a single week. Think you know the difference between exempt and non-exempt employees? What would you do in this situation? Now, let's look at the pay requirements and applicability of the FLSA. The first pay requirement is minimum wage. For businesses covered by the FLSA, all covered non-exempt employees must be paid the current minimum wage. If the state law sets the state minimum wage higher than the federal rate, the higher state rate is controlling on the issue. However, if the state minimum wage rate is lower, the higher federal rate applies. Some cities, towns and counties have also passed their own minimum wage laws, which if higher than the federal rate, would be controlling. Federal law requires employers to display the federal minimum wage poster prominently in the workplace. Our next subject is equal pay for equal work. The Equal Pay Act is an amendment to the FLSA, requiring employers to provide equal pay and benefits to men and women who do either the same job, or jobs that require equal skill, effort and responsibility. It is the job duties, not the job title that determines if the jobs are equal. The U.S. Equal Employment Opportunity Commission enforces the Equal Pay Act provisions. The Equal Pay Act applies to the same employees covered by the minimum wage overtime provisions, but also includes executive, professional and administrative employees. The Equal Pay Act does not prohibit differences based on seniority, merit, incentive or any other factor besides gender. Let's talk about overtime. The FLSA requires employers to pay non-exempt workers at least one and a half times their regular rate of pay for all hours worked over 40 in one week. Be sure to check any applicable state and local overtime laws, as they may override the federal requirements and require even greater protection to its workers. Finally, let's spend some time discussing compensatory time or comp time, as it's called. The practice of granting hour for hour compensatory time, such as giving a worker a day off one week to make up for that worker doing eight hours of overtime during the previous week is not permitted for private sector employees covered by the FLSA. The reason for this is, such an employee should have been paid overtime for his or her previous week. To permit an employer to do this would be unfair to the employee. Employers may however, rearrange work weeks, such as allowing a worker who worked 40 hours Monday through Thursday to have Friday off. This avoids premium overtime pay by giving time off rather than money. If employees work more than 40 hours in a week, it is sometimes possible to reduce worker hours in another week, so the amount of the employee's paycheck remains steady. Compensatory time is only legal if: (1) the time off is given in the same pay period; and (2) the employee is given one and a half hours of time off for each hour of overtime worked. As always, you should check state and local laws that may restrict use of comp time. When in doubt, contact your human resources department or call the State Labor Department. Pay requirements can be tough to grasp. Let's see if you've got it. Let us now look at the importance of making payroll choices. The FLSA doesn't require a specific system of payment structuring. Employees can be paid based on work time, piece rates or any other method, as long as the total pay divided by the number of hours worked, is equal to or greater than the applicable minimum wage. There are two common methods of payment that are used. The first is cash. Payment to employees must be in cash or something that can be readily converted to cash. The second method of payment is commissions. Commissions may take the place of wages for FLSA purposes. When making payroll choices regarding time off, the FLSA does not require employers to pay employees for vacation, sick leave or holidays. When determining payment for work hours completed, the Portal-to-Portal Act requires employers to pay covered employees for any of their time that is controlled by or benefits the employer. This includes the following: Travel time, not including going to or from work; on-call time when on-site; on-call time when off-site, if the employee cannot use that time for his or her own benefit; as well as lectures, meetings, training seminars; and also, meal and rest breaks. So, you've got a lot of choices there. Now, what would you do in this situation? The FLSA requires employers to maintain records for non-exempt employees. The human resources department in most organizations handles this. Such records must include the following: name, address, occupation, gender; the birth date, if the employee is less than 19; the hour and day each workweek began; the number of total hours worked; the total daily and weekly earnings;

the regular pay rate; total overtime pay; deductions from and additions to wages; total wages paid each pay period; and finally, the date of payment and pay period worked. Unlike other federal laws, the FLSA is not a dangerous minefield and is very straightforward. The more complex issues are usually faced by companies with a large number of lower-level, non-exempt hourly employees. It is these types of companies which traditionally have had difficulty complying with the overtime and comp time provisions of the FLSA. For most companies however, following FLSA provisions is a fairly simple task for the human resources department. However, as a manager, you need to know and be aware of the law. In the event of questions or problems, contact your human resources department or check out the Web site, dol.gov.

Host: As you've seen, the FLSA, along with State Wage-Hour Laws, make up the law that each employer must follow. Because the FLSA covers both employer responsibilities and employee rights, both parties should be aware of how the FLSA affects them. Be sure to access, Reference Materials

LESSON 2 ~ FAMILY AND MEDICAL LEAVE ACT

Host: Welcome to Family and Medical Leave Act. The Family and Medical Leave Act, or FMLA, is an important part of assisting employees in balancing their personal and family lives with the demands of the workplace. During this program, you'll learn about the coverage and conditions under the FMLA. You'll also learn how to resolve issues pertaining to FMLA requests and how to recognize the rights of both employees and employers following an FMLA leave. Watch now as Andrea, an informative waitress, tells new parents, Megan and Jacob, and new company owner, Dan, the intricacies of the Family and Medical Leave Act.

Andrea: This is something you should avoid saying to your waitress.

Dan: I'm going to jump out of an airplane on Saturday. You want to come with me?

Andrea: That's Dan. He just bought a company down the block. Supposedly he's here working on his company's health plan. All I know is that he's been here three times today, eating sweets and drinking coffee. Well, he's a regular. Well, so are these guys.

Jacob: I'm not going to eat that.

Megan: Oh, you don't want that?

Jacob: No, I'm not touching it, it's yours.

Andrea: That's Megan and Jacob. Megan just gave birth to Ben, their first child. She took time off to take care of the baby and she could do that because of the Family and Medical Leave Act. Oh John, just sit wherever you want, hon. This all started about an hour ago when the young couple came in here. Look - you look confused. So let me explain just a little about the Family and Medical Leave Act. It basically allows employees to take up to 12 weeks of unpaid - yeah, unpaid leave for family or medical reasons. And then return to the same or similar job. Margie, I'll bring you the check in just a sec, hon. So it covers businesses with 50 or more employees who work within 75 miles of each other. And that's counting for full and part-time employees. Sometimes a big company, like the one Jacob works for, can have small branches with less than 50 employees. If those branches are far away, say, more than 75 miles from another office, that branch wouldn't be covered by the Act. What else? Oh, you have to have worked for your employer for at least 12 months. Not consecutively. And you have to have worked a fair amount the year before you take the leave. To be exact, okay, get your pencils out, 1250 hours during the 12 months before the leave. And there's a quiz later - really - there is. All of this should be in your employee handbook and in posters on the wall at your workplace. The US Department of Labor has a great book on it as well, "Compliance Guide to The Family and Medical Leave Act of 1993." How do I know all this stuff? Oh, I know lots of things about lots of people. Oh, you need a refill, hon? I'll be right back. See what you would do in this scenario. Hi. Sorry about the wait. I was just explaining about the Family and Medical Leave Act.

Megan: Oh, yeah!

Andrea: So where's the baby?

Megan: Jacob's mother has him. You know this is our first meal out together in months.

Andrea: Really.

Megan: But - so tell me what you were explaining.

Andrea: Oh just the basics. But you know what, I'll bet you two guys would have great insights.
Jacob: Well, I have pretty much have not slept since we took the leave; I doubt my insights would be very insightful.
Megan: Well, it sounds like a like a lack of sleep is to blame. But you know, taking time off for Ben's birth was really - it was very helpful. I do - I wonder now though, if we should have broken it up? You know, instead of taking off big chunks of time.
Jacob: Yeah, I know. We didn't have to take it all right off after the birth. Only in the 12 months following the birth. You know what? I have to go to the bathroom so, excuse me.
Megan: You know, we've got some friends who were able to take their leave together at the same time. Okay, so well, they usually - they work at the same company as Jacob, right. Which would usually make it impossible for them to take leave together because they're a couple, but they did and they adopted this beautiful baby girl from China.
Andrea: Oh, you know I thought if you were married and you worked at the same company then, well you had to take leave at different times?
Megan: Oh, well yes, that's true. But see, they're not married. They live together as boyfriend, girlfriend.
Andrea: Oh, I see. And so, you can take time off for an adoption.
Megan: Oh yes, and you know they were able to take some of their leave before the actual adoption, so they could work on the adoption process.
Andrea: Oh. You know, when I took time off from my last job to take care of Henry, a really important factor was that I was immediate family; his cousin Jane also wanted to take time off to help but you know the Act covers people who have a serious health condition themselves, or if they're caring for a family member, like a child or a parent or a spouse who does.
Megan: Well, or adopted children too. I mean, if our friends' little girl from China were to get sick or injured, they could care for her. The way I understand it is that - let's see, stepchildren, foster children, legal wards are all covered, so the parent doesn't have to be biological. Just as long as the kids are minors, under 18.
Andrea: So, the important thing too is that you have to have - you or the person you are caring for - they have to have what they call, a serious health condition.
Megan: Right, well you know I took time off for prenatal care. And that's considered a serious health condition because it requires ongoing treatment. So, I mean that way even pregnancy can be considered serious. So, did you know that?
Andrea: No.
Megan: It - to me it seems like sort of a broad term. But the way that it was explained to me is, well, okay, there are a couple of examples. One is, if your illness or condition requires inpatient care, then it's considered serious. So if I was seriously injured and I had to stay at the hospital, then - I could take leave under the Act.
Andrea: Right, and then Jacob could take time off from his job to care for you because you're married.
Megan: Yeah and another important thing is if you have a chronic or permanent condition, I mean basically something requiring long-term ongoing treatment, that's also considered a serious health condition.
Megan: Do you know that makes me think of Dan's employee, Jana. Her son has chronic asthma and it's, it is so bad. He spends a lot of time at the hospital.
Andrea: Oh, you know, and that reminds me of something horrible.
Megan: What?
Andrea: Did you hear about Susan, Susan Faber?
Megan: No. What?
Andrea: Well, you two were friends, weren't you?
Megan: Oh my gosh, we go way back.
Jacob: Who are we talking about?
Megan: Ah, Susan Faber.

Andrea: Well, I mean it's bad news. Her partner, Rosa, was in a car accident and now Susan isn't able to take time off to care for her.
Megan: Oh no.
Jacob: That's horrible. Why?
Andrea: Well, under the Act, same sex relationships are not considered spouses. So Susan isn't able to take leave to care for Rosa. But Rosa can take time off because of the accident.
Megan: Wow.
Jacob: Oh man. I hope she recovers. We should give her a call.
Megan: I'll call when I get back.
Andrea: I mean at least Rosa does get time off because she had the accident so she's unable to perform her job. And that makes her eligible and - oh Margie, I'm sorry, I'll be right with you, okay. Um, you two decided what you want?
Megan: Okay, let's see. Could we get two number threes. One with fries for this one here and one with salad.
Andrea: Okay, great. Thanks.
Jacob: Thanks.
Andrea: Thank you.
Andrea: I took family leave, let's see, about four years ago. My husband Henry, he had cancer. Tried to hide it from me too, at first. Well under the Act, you're considered seriously ill if you can't work any longer. Well Henry was sick all the time. He couldn't work anymore. He needed somebody to feed him, wash him, somebody to take care of him. I was really glad I was able to. What would you do if you were in the following situation?
Jacob: Oh wait. You wanted to know about arranging for leave.
Megan: Oh okay. Um, so. In the beginning, I was able to work out a flexible schedule with my boss. I worked reduced days, right and sometimes just reduced hours, but specifically for prenatal care.
Jacob: I think it was very important for Megan that - to come to a mutually agreeable schedule between - for both her and her boss.
Megan: Well and Ed wanted to transfer you to a less involved position.
Jacob: We decided to do something different. But your boss can transfer you if it works out and it's better for everybody at work.
Megan: You know, a problem I see with arranging for leave is, what if you were very sick and you were a private person.
Jacob: Do you remember Thomas?
Megan: Oh yeah.
Jacob: That happened to my job last year. This guy, Thomas, he became really ill and he was transferred to our southern location, but he didn't want anybody to know what was wrong with him.
Megan: Well, it's important to respect the employee's privacy.
Jacob: Another important thing to remember is that if you've accrued paid time off, you can usually work it out with your employer to substitute that paid leave for your unpaid leave.
Megan: Yeah, that's exactly right. It was my choice to substitute my vacation time - to use my vacation time as a substitute because it was my vacation time. But my boss also let me use my sick days during my pregnancy.
Jacob: You can also - if you've accrued paid sick leave and your health condition would usually be covered by paid sick leave as a benefit, you can usually substitute that paid leave for your unpaid leave.
Megan: Well and of course, there's the timing of it all. When do you notify your employer about your leave?
Jacob: If you know ahead of time that you're going to take leave, like for instance you're going to get an operation, you have to give 30 days.
Megan: And otherwise, just be practical. You know you get sick, you go to the doctor, you notify your employer in a couple of days, that's practical.

Jacob: Well, if you're sick or if you have a serious health condition, or you're taking care of somebody who has a serious health condition, you're going to need proof from a doctor.
Megan: Certification that includes the date of onset, an estimate of how long the condition has persisted.
Jacob: The diagnosis, whether inpatient care is needed.
Megan: And the treatment prescribed.
Jacob: Well sometimes, for instance Andrea was telling me that her boss required that the doctor certify that Henry needed help meeting basic medical needs. You know, nutritional, safety, hygiene, you know, transportation, stuff like that.
Megan: Your doctor may also be required to certify that you're unable to work. But, I know that at my company there is a very standard policy for all of this. The process, the forms, it's the same for every employee.
Jacob: Well, and if you would like to get a hold of one of those forms, you can go down to the Department of Labor and get one for free.
Megan: Right. It's form WH-380. Oh, and optometrists, podiatrists and chiropractors can all help complete the form. They're considered practitioners too, so not just your primary doctor.
Jacob: And your employer can ask for a second and, if needed, a third opinion.
Megan: Although they have to pay for it.
Jacob: Yeah.
Megan: Sure. Here's a scenario for you.
Jacob: Hey Dan.
Megan: Hi.
Jacob: How are things?
Dan: Jacob, Megan, how's it going? How are things...hectic. Jana, my VP of Sales, is coming back from her leave. Her son's better but he's still sick.
Jacob: Still sick?
Dan: Oh yeah, his asthma might require special treatment. Anyway, I want to figure out if our health insurance covers it.
Megan: Well, my employer paid all my health premiums when I was on leave with Ben.
Jacob: Yeah, mine too. They're required to, aren't they?
Dan: They're required to, but under certain circumstances they can have you pay back your premiums. Basically, if you decide not to go back to work.
Megan: You know, I thought about not returning to work and caring for Ben full-time for a few years. But if I'd done that, I would have had to pay back all those health insurance premiums.
Dan: Yep, although if you have a relapse of your health condition or if it continues, or, if say your spouse moves far away - out of town, you know, conditions beyond an employee's control, then you don't have to pay it back. Well, anyway, I'll let you two finish your meal. I'll get to work.
Megan and Jeff: Okay, bye.
Jacob: Here's another scenario, what would you do?
Dan: I opened up a new business down the block. I grew up in this neighborhood. But for the past 15 years I've been back East. I was a principal at an architectural firm. I decided to move back, about, oh I'd say four months ago. And I thought...
Andrea: Figured it out yet, hon.
Dan: Almost. I must say everything about Jana, coming back to work, going pretty smoothly.
Andrea: You know, did I mention while I was on leave with Henry, they laid off my entire department at the phone company, so I didn't even have a job when I came back.
Dan: There are exceptions to a smooth return to work. If a job's eliminated, like yours, there's no job to go back to.
Andrea: Well, it was an exception. I mean Megan has had no problems returning to work. Besides, I am much happier working here.

Dan: That's good. You know, I had a partner at my old firm, who got - well, he became very ill, so he took a leave. And while he was gone, work slowed down. Almost to a standstill. So that when he recovered, we were faced with a terrible decision.
Andrea: Why?
Dan: Well it would have cost substantial economic harm if we'd taken him back. You see, he was among the highest paid employees, and under the Act, if an employee is among the highest paid 10% in the company and his return would cause substantial economic harm, I don't mean just minor costs or inconveniences. But well, here, here's the words the Act uses, "substantial and grievous injury." Anyway, if letting an employee come back would be that harmful on a company, you can ask him not to come back, formally, in writing.
Andrea: So he didn't come back?
Dan: No, not to the firm. I wrote him a long letter explaining the reason for his termination. It was nothing personal, he was good and I think he understood. Of course we paid his health insurance premiums while he was on leave, we had too, but he didn't come back to the firm.
Andrea: So did the guy end up back on his feet?
Dan: Oh, on both feet. You know that new airport...
Andrea: Oh, yeah sure.
Dan: ...terminal in the building, he is the architect.
Andrea: It's funny how things work out, isn't it? Look I have to give John his check so why don't you give the audience the scenario while I am gone.
Dan: Sure, I'd be glad to. Let's go.
Andrea: The 15 weeks I got off really helped. Taking care of Henry, spending some time away from answering phones and reevaluating my priorities.
Dan: 15 weeks, you got 15 weeks off. The Act only provides for 12.
Andrea: Well, the state law here also provides for family and medical leave, most states do.
Dan: Does an employer have to comply with one or the other or both?
Andrea: Well when the state laws conflict with the Family and Medical Leave Act, the law providing greater protection for the employee, is the one you go with. So I got 15 weeks off instead of 12.
Dan: I'll be, I hadn't even thought of that. That would mean that the state laws from my old firm was must have been the same, or less. I'd better check on that.
Andrea: Certainly. You need to check up on them, in case the state laws expand the employee's rights. So need anything else?
Dan: No, thanks. Whoa, you better bring me my check, I got to call a pilot friend of mine.
Andrea: Going on a trip?
Dan: Yeah, I'm going to go skydiving.
Andrea: You sky dive.
Dan: I sure do.
Andrea: I just took my first tandem jump last month and I can't wait to jump again.
Dan: You did.
Andrea: Yes.
Dan: Next Saturday, I am going to jump out of an airplane. Would you like to come with me?
Andrea: Yeah, I'd love to.
Host: As you've seen, it's important for employees and employers to know their rights under the Family and Medical Leave Act. A little time in familiarizing yourself with the FMLA can help you plan accordingly and make your return to the workplace smoother and easier. For additional resources on Family and Medical Leave Act, be sure to access Reference Materials

LESSON 3 ~ FREEDOM OF SPEECH IN THE WORKPLACE

Host: Welcome to our program, Freedom of Speech in the Workplace. You might think you're free to say anything you want within the workplace. But what you might not know is that your right to free speech is limited in the private workplace. During this program, you'll learn the First Amendment and constitutional protections for public employees. You'll also learn limits on public employees' free speech

rights. In addition, you'll learn differing rights of public and private employees. Watch now as Ann Kiernan, an employment law attorney and consultant, explains the basics of free speech and how it impacts you and your employees in the workplace.

Bill: Hey, I can say what I want at work, right? It's a free country, right?

Doug: Well, that question isn't as simple as you may think. If you work for the government - federal, state, county or municipal - the First Amendment of your United States Constitution protects an employee's right to speak out on matters of public importance at work. However, the First Amendment does not apply in the private workplace, so free speech rights of non-government employees can be severely limited.

Ann: The First Amendment to the United States Constitution says, "Congress shall make no law abridging the freedom of speech." The Fourteenth Amendment passed after the Civil War, applies this provision of the Bill of Rights to the states and their political subdivisions - counties, cities, towns, etc. But despite that absolute-sounding language, the Supreme Court has never interpreted the First Amendment that way. As the Supreme Court said in a 1919 opinion, "The most stringent protection of free speech would not protect a man falsely shouting 'fire' in a crowded theater and causing a panic." The idea that employees may be entitled to freedom of speech at work is only about 50 years old. In the 1950s and '60s, the Supreme Court began to apply First Amendment protections to public employees, holding in various cases that: A state could not require its employees to swear a loyalty oath denying past affiliation with Communists; that the government could not deny employment because of previous membership in a particular party; that a state could not bar employment on the basis of membership in subversive organizations. But those protections apply only to public employees, since the Constitution is a restriction on government in powers, and does not apply at all to private enterprise. The Supreme Court held in 1970 that a private employer could restrict employee speech without violating the First Amendment, since there's no state or federal government action involved.

Interviewer: So, does the First Amendment mean government workers can say anything they want at work?

Ann: Well, not necessarily. While the government can restrict citizen speech only in the most rare of circumstances, it has substantially more leeway in its role as employer. For more than a 100 years, the law has recognized that the government has a legitimate purpose in promoting efficiency and integrity in the performance of official duties, and in maintaining appropriate discipline in public service. As a result, it well established that government employers have the right to manage their offices without intrusive oversight from the judiciary, another branch of government. Fundamentally, unless a public employee makes false statements, knowingly or recklessly, his or her exercise of the right to speak on issues of public importance cannot be the basis for dismissal or other discipline. As the Supreme Court said, "This is essential in maintaining the public interest in having free and unhindered debate on matters of public importance - the core value of the Free Speech Clause of the First Amendment." And government entities cannot condition employment on an employee's surrender of their constitutional rights. The Supreme Court has established a three-part test for deciding whether or not a public employee was fired or otherwise disciplined in violation of constitutional free speech guarantees: (1) The employee was speaking on a matter of public concern; (2) the court balances the employee's interest as a citizen in talking about matters of public concern, against the government employer's interest in running an efficient operation; and (3) the employee's protected speech was a motivating factor in the decision to discharge the worker. The employee always bears the burden of showing that his or her speech deserves First Amendment protection.

Interviewer: Whether a public employee's workplace speech addresses a matter of public concern is the first hurdle. If the speech does not, the case is over. How does the Supreme Court define "public concern?"

Ann: The Supreme Court has defined "public concern" as "relating to any matter of political, social or other concern to the community." Opinions from the Supreme Court and Federal Appeals Court around the country have established that speech about subjects such as the following will qualify as "public concern": Employee complaints about sexual harassment; good-faith protest of racial discrimination; voicing concerns about possibly illegal bidding procedures; allegations of corruption, mismanagement,

unethical behavior; reporting environmental violations; speaking with state legislators about inaccurate budget practices; complaining about a supervisor's request to hide a file; reporting use of computers to download pornography. But, as the Supreme Court has recognized, government offices could not function if every employment decision became a constitutional matter. As the Court said, "The First Amendment does not require a public office to be run as a roundtable for employee complaints over internal office affairs." If the public employee's speech involves a matter of public concern, the next step is to apply the Supreme Court's Balancing Test, which measures the employee's interest in speaking on a matter of public concern against the government employer's interest.

Interviewer: What are some of the factors to consider?

Ann: Some of the factors considered are: Maintaining discipline by supervisors; keeping harmony among co-workers; preserving personal loyalty and confidence when needed for a proper close working relationship; maintaining the employee's proper performance of daily duties; public impact of the statement; impact of the statement on the operation of the government office or program; the time, place, the manner of the worker's statement; whether the employee's position demanded such a high level of confidentiality that dismissal is justified, even for perfectly accurate public statements; whether the employer's grievance procedure required the worker to submit his or her complaints to supervisors for action before going public; and, whether a statement that is knowingly or recklessly false deserves First Amendment protection at all.

Interviewer: If the employee's speech meets the first two parts of the Supreme Court's standard, the remaining issues are: Was that speech a motivating or substantial factor in the discipline or discharge? If so, would the government employer have taken the same action, even if the employee had never spoken out?

Ann: According to the Supreme Court, the policy behind this part of the test is to make sure that a borderline or marginal employee can't prevent the employer from assessing his performance record and reaching an appropriate discipline or termination decision, simply because the employee has engaged in some First Amendment protected speech.

Frank: I can't believe that the State University fired me for that memo that I wrote.

Victor: What you said was pretty strong!

Frank: All I did, was explain financial mismanagement within the University. I didn't realize the press would get hold of that memo.

Victor: What you did was make confidential information public. It's still considered insubordination.

Interviewer: Since neither the federal nor state constitutions govern the private sector, non-governmental employees have a very limited right to express their opinions.

Ann: Yes, that's true. However, as a manager, you should always use good judgment when speaking to your employees, to co-workers or on behalf of your company.

Gloria: Hey Jen, so this is it, they really are letting you go.

Jen: Yeah, they are. I mean, I was making a presentation at a conference and everybody tells jokes during presentations.

Gloria: So what's the big deal?

Jen: Well, now they're saying that my joke was offensive to a particular ethnic group and it raises credibility issues with the company. Some of our customers were in the audience and they really were upset with my remarks and now they think the company endorses racism. I guess I really messed up this time.

Ann: Of the 50 states, only Connecticut has a statute that bars both public and private employers from disciplining or discharging employees in retaliation for exercising their First Amendment rights. But the Connecticut law specifically excludes employee activity that interferes with job performance or the working relationship between employer and employee. And the Connecticut Supreme Court has limited that law's protection to employee statements about matters of public concern. For the past 25 years, the National Labor Relations Board has said that employer rules forbidding workers from discussing wages and other working conditions are unfair labor practices in violation of the National Labor Relations Act. This part of the law applies even to non-unionized companies, and even if there is no union involved at all. Companies that have enforced these rules, have been ordered to reinstate

affected workers with back pay, attorneys' fees, as well as to rescind their rules against worker discussions and to post a notice to all employees telling them about the unfair labor practice charge and its resolution. Further, under state and federal anti-discrimination laws, employers have a duty to prevent employees from expressing opinions in a way that abuses or harasses co-workers.
Doug: I understand you said some derogatory comments to both Mara and Eric.
Bill: Hey, I was just speaking my mind. Is that against the law now?
Doug: It's against our company policy to express opinions in a way that abuses or harasses co-workers and it's my responsibility as your manager to make it stop. So no more derogatory comments, got it?
Bill: Yeah, I got it.
Ann: In several controversial cases, courts have actually issued injunctions barring the workplace use of racial slurs and ethnic names. Constitutional scholars have expressed grave doubts about the use of state or federal judicial power to restrain speech, but the Supreme Court has not yet decided the issue, and, under whistle-blower protection laws, which exist in nearly every state, workers cannot be demoted, discharged or otherwise retaliated against because they refuse to do something illegal on the job, or reported unlawful conditions. The various state and federal laws differ about whether workers must follow internal grievance procedures first or go directly to the press, police or government enforcement agency. Most employers have far better things to do with their time than police employee conversations on the job. And most employees are never called on the carpet for something they said at work. But it's important for supervisors and managers to understand the legal ramifications of restricting employee speech.
Host: As you've seen, it's important for employers to understand an employee's First Amendment right to free speech in the workplace and to understand the differences between public and private employees. For additional resources on Freedom of Speech in the Workplace, be sure to access Reference Materials.

LESSON 4 ~ FREEDOM OF RELIGION IN THE WORKPLACE

Host: Welcome to our program, Freedom of Religion in the Workplace. Freedom of religion is a fundamental principle in this country, and exercising that freedom in everyday life, includes the workplace. Over the past ten years as the American workforce has become more diverse, federal claims of religious discrimination and harassment on the job have increased substantially. Now during this program, you'll learn about religious discrimination and harassment on the job. You'll also learn about accommodating religious beliefs and practices and the limits on accommodation obligations. In addition, you'll learn your role as a manager and what you can do to avoid religious discrimination and harassment. Watch now as Ann Kiernan, an employment law attorney and consultant, explains the basics of religious freedom in the workplace, and what you need to know as a manager to avoid religious discrimination and harassment.
Interviewer: Ann, how is religious discrimination defined?
Ann: Title VII of the federal Civil Rights Act of 1964 makes it unlawful for employers with 15 or more employees to, "fail or refuse to hire, or to discharge any individual, or otherwise discriminate against any individual, with respect to compensation, terms, conditions or privileges of employment, because of such individual's religion." State laws also bar religious discrimination on the job in almost every state. Most of the time, whether or not a practice or belief is religious, is not an issue. But the U.S. Supreme Court and the Federal Equal Employment Opportunity Commission, the EEOC, also define as religious, "moral or ethical beliefs as to what is right and wrong, which are sincerely held with the strength of traditional religious views." Whether or not any religious group espouses the belief, and even if the religious group to which the employee belongs does not accept the belief, it may still be protected by the law. In addition, atheists and agnostics cannot be discriminated against or harassed because of their disbelief or lack of religion.
Interviewer: What are some examples of unlawful religious discrimination?
Ann: There are quite a few. For example, refusing to hire those of a particular faith, imposing stricter requirements on job applicants of a particular faith. Giving advantages to employees who go to your church, synagogue, mosque, temple. Enforcing lesser discipline against employees who go to your

church, synagogue, mosque or temple. Burdening atheists with more weekend work than others. Denying promotions and advancements to employees who wear clothing expressing their faith. Mandating participation in a blood drive by employees whose religion forbids medical procedures. Requiring employees to wear uniforms or costumes that offend their religious beliefs, and firing or otherwise retaliating against employees who complain about religious discrimination or harassment.
Interviewer: Harassment is a form of discrimination. How is religious harassment defined?
Ann: Well, in analyzing religious harassment, the courts use the legal principles developed in sexual harassment cases. According to the EEOC, the two principal kinds of religious harassment are: Coercing employee participation or non-participation in religious activities and hostile work environment.
Interviewer: Tell us about coercion.
Ann: You cannot insist that employees participate in religious activities or hold particular beliefs as a condition of continued employment, promotion, preferred job assignments or any other term or condition of employment. Further, you cannot insist on employees not having particular religious beliefs or not participating in religious activities outside work. For example, in a recent religious harassment case, an employee alleged she was fired after her boss told her she had a choice of God's way or Satan's way, and if she chose the latter, she wouldn't expect to be working for him much longer. Even if you don't mean to be coercive as a supervisor or manager, you must be careful in your statements and actions concerning religion, to make sure that they cannot be considered coercive by a reasonable person.
Jim: I think Michael has been talking to his boss about me. He's trying to get me fired.
Interviewer: Why do you think that?
Jim: It's because I don't share the same religious views that he has.
Interviewer: What? You can't get fired for that!
Jim: He's been putting the pressure on me for some time now. Last week he said he didn't see me at his church services but he expects to see me there this weekend. This just isn't right.
Interviewer: The second kind of religious harassment is hostile work environment. How is this determined?
Ann: As with sexual harassment, employees are protected from a religiously hostile environment. An unlawful hostile work environment is created when there is discriminatory behavior or comments based on religion that is unwelcome to the employee, and is severe or frequent, and the employee knows, or should know about the harassment and doesn't act to stop it. For example, two employees have an argument in the office. In the heat of the moment, one makes a derogatory comment about the other's faith. When tempers cool, no more is said. Well that's the end of it; one statement usually is not enough, unless it is so severe that is alters the insulted employee's conditions of employment. Now, repeated verbal attacks and sabotage certainly does create a hostile work environment.
Michael: Jim, I'm really disappointed you didn't attend services at my church last weekend.
Jim: Well I just don't have the same religious beliefs that you have, Michael.
Michael: We've been over this before. The manager and I attend the same church and we think you should, too. You need to change your pagan ways. Otherwise, I just don't see you working here.
Ann: Unless the supervisors immediately stop the verbal attacks and sabotage, there is a hostile work environment. As soon as the manager or supervisor knows of the harassment, the employer is automatically on notice, since supervisors and managers are corporate agents. An employer that takes prompt and effective action to stop religious harassment, may avoid liability for the harassment.
Paula: I overheard you giving Jim a hard time about not attending services at your church, and I understand this has been going on for some time.
Michael: Did Jim come running to you because he got his feelings hurt?
Paula: No, actually I spoke to Jim about what I had overheard, and I want you to understand that this company will not tolerate any kind of religious discrimination or harassment. It must stop immediately. Now I want you also to review our company's policy on harassment. Do you understand?
Michael: Sure, I understand.

Ann: Here's another example of religious harassment, from a different angle. In a recent case, a fired worker sued for religious discrimination. But the evidence showed that the ex-employee had pestered his co-workers about religion to the point they complained to management. He passed out Bibles unsolicited, including to a Muslim co-worker who turned him down, then he badgered the Muslim about his religion. He showed a Bible passage about homosexuality to a lesbian employee, and told her she was going to hell. The employer warned him to stop, and fired him when he didn't. The court ruled that although the employee was fired because of his religious proselytizing, there had been no unlawful discrimination. The employee's actions and statements were persistent and unwelcome, and amounted to religious harassment of his fellow employees, which did not have to be tolerated.
Interviewer: Employers also have to reasonably accommodate the religious practices of employees and applicants, unless it would create an undue hardship on the employer. Tell us about reasonable accommodation.
Ann: Well, employees and applicants most often ask for accommodation because their religious practices conflict with the work schedule. Ways that a manager can accommodate these conflicts include: voluntary substitutions and swaps; flexible arrival, departure and break times; floating or optional holidays; allowing workers to make up time lost due to religious observances; lateral transfers; change of job assignments; and alternate times for tests, examinations and other selection procedures.
Interviewer: I have this religious function I'd like to attend if I can have next Friday off. I'd make up the time. Is that okay?
Paula: Yeah, I think we can accommodate that. You seem to be all caught up on your projects; we'll work it out.
Interviewer: Thanks, Paula.
Interviewer: What are some other types of reasonable accommodation?
Ann: Some other examples include: Allowing employees to wear religious head coverings at work, such as yarmulkes, turbans or hijabs (head scarves); exempting Sikhs, Orthodox Jews and others with religious objections from work rules banning beards; allowing Rastafarians to keep their dreadlocks, despite a dress code that limits men to collar-length hair; permitting Muslim women to wear ankle-length dresses, rather than company uniform pants; and workers who ask for accommodation for their religious beliefs must also cooperate in finding an accommodation.
Interviewer: What's the relationship between undue hardship and religious discrimination?
Ann: Well, an employer's obligation to accommodate religious beliefs is not infinite. It stops when it causes an employer undue hardship. Undue hardship can be cost, such as regular payment of overtime or premium wages to substitutes. However, employers are expected to bear the normal administrative expenses, such as those involved in rearranging schedules or additional payroll processing. Disruption of a bona fide seniority system, whether or not a union contract is in effect, would be an undue hardship; and violation of other law, such as when an employer refuses to hire an applicant with religious objections to providing a Social Security number.
Ron: You see Paula, it's against my religion to travel on an overnight trip with a woman other than my wife. I know it's an important business trip, but is there any possible way you could send someone else?
Paula: Well Ron, I understand why you can't travel. But this is Claire's account and she has to go, and you're the only person with the technical expertise to help her with the presentation.
Ron: But isn't that a violation of freedom of religion?
Paula: No Ron, it's not. As a matter of fact, it would create an undue burden on the company and the sales team. This is our largest account and we can't lose it.
Interviewer: What can you do as a manager to avoid religious discrimination and harassment?
Ann: First and foremost, follow your company's harassment policy. Check your employee handbook or the human resources department with any questions. Do everything you can to prevent religious discrimination or harassment from happening. And if it does occur, take immediate action. Next, don't make any hiring, work assignments, promotion or termination decisions based on someone's religious beliefs, period. Also, make an effort to reasonably accommodate the religious practices of your employees and applicants, unless it creates an undue hardship.

Paula: So John, what kind of a retreat is it?
John: It's a church retreat, it's something my wife and I love to do and it's really important for us.
Paula: Now you do know that you are scheduled to work this weekend shift, and I know how important the retreat is to you, but we really need you this weekend. Have you come up with any ideas of how we can cover your shift?
John: Absolutely. I've already talked with Carlos and he said he'll work my shift for me.
Paula: Well, it sounds like you have it covered, so why don't you let me talk to Carlos, to make sure he can cover for you, and I'll also need to talk to human resources, so I'll get back to you.
John: Thanks a lot, Paula. I really appreciate it.
Ann: There are more than 1,500 different religious denominations in the United States and more than 90% of working Americans believe in God. Religious diversity in the workplace is here to stay. By understanding the proper role of religion at work, you will help create the kind of workplace environment that enables your employees to be productive and that respects their deeply held beliefs and practices.
Host: As you've seen, religion in the workplace presents complicated issues for managers. It's important for you to understand your role in providing your employees with a workplace free of religious discrimination and harassment. For additional resources on Freedom of Religion in the Workplace, be sure to access Reference Materials.

LESSON 5 ~ DRUG AND ALCOHOL ABUSE IN THE WORKPLACE

Host: Welcome to our program, Drug and Alcohol Abuse in the Workplace. Substance abuse is a leading problem within the American workplace. It not only impacts efficiency and productivity, but also increases health care costs, absenteeism and conflicts amongst employees. During this program, you'll learn how to identify substance abuse in the workplace. You'll also learn the types of drug testing and the regulations for testing. In addition, you'll learn what you can do as a manager to support a drug- and alcohol-free work environment. Watch now as Ann Kiernan, an employment law attorney and consultant, explains the impact of drug and alcohol abuse in the workplace and what you need to know to balance essential employee privacy with the needs of your business.
Interviewer: Ann, can you describe how substance abuse is impacting the workplace?
Ann: Substance abuse is an international public health issue and the American workplace is certainly not exempt from the problems caused by drug and alcohol abuse. According to national studies, almost 75% of illegal drug users are employed. One out of every ten Americans has an alcohol problem, and more than one-fifth of full-time workers reported binge drinking in the past month. Twelve percent of workers say they used illegal drugs in the past year.
Interviewer: How does substance abuse of employees impact the costs of running a business?
Ann: Well first, the health care costs for employees with alcohol problems are twice those of other employees. Then there's the cost of absenteeism. Heavy drinkers and illicit drug users are far more likely than others to skip work, to have worked for three or more employers in the past year. In addition, substance-abusing employees can create friction among co-workers, divert management from productive activities, damage equipment, cause accidents or safety hazards, make poor decisions, and harm the company's image and reputation.
Interviewer: Can you explain what you need to know about drug testing and employee privacy rights?
Ann: A huge testing industry has sprung up, administering more than six million workplace drug tests last year. Ironically, alcohol testing programs are only half as prevalent, although workers are three times more likely to report dependence on alcohol than illicit drugs. Make sure you're aware if your company conducts drug testing and in what circumstances. There are five principal types of testing: Pre-employment; asking new hires to submit to testing before employment. Routine or periodic, such as during an annual physical. Reasonable suspicion of drugs or alcohol. You need to have specific observations of behavior that indicate your substance abuse policy has been violated. Random testing; this refers to selecting employees for testing at random and without notice, or it could include all employees on a date selected. Post accident; this testing occurs after an employee has had an on-the-job accident that caused a fatality, serious injury or property damage. There are federal constitutional protections involved with drug testing. The Fourth Amendment prohibits unreasonable searches and

seizures, and has been the source for many challenges to drug and alcohol testing programs. Although the Supreme Court has decided that drug tests by employers in highly regulated industries are "searches" in the constitutional sense, it has not required search warrants or even individualized suspicion of wrongdoing. In its two decisions on workplace drug testing, the Supreme Court upheld the right of the Federal Railroad Administration to require post-accident testing of railway employees, even when there was no reason to suspect that drug or alcohol use had contributed to the accident. The Supreme Court also approved the Customs Service plan to test all employees who were required to carry guns, and all who sought jobs involved in drug interdiction and enforcement. Now since constitutions are limitations on the power of the government, not private enterprise, the Fourth Amendment's protections are normally limited to government employees. Private sector employees are covered only when their company is subject to such intense regulation that the company is deemed to engage in "state action." There are also state constitutional protections. Ten states protect the right to privacy in their constitutions, but as with the federal constitution, these protections generally apply only to government workers. However, some states have extended them to the context of all workers in the context of drug and alcohol testing. In those states, suspicion-less tests are illegal, except for workers involved in safety-sensitive jobs: transportation, public water treatment, etc. The California courts have gone even further, and have declared that off-duty drug testing is a violation of workers' constitutional privacy rights. Because applicants have less privacy protection than employees, pre-employment screening is allowed for all positions, not just for safety-sensitive jobs.

Interviewer: Now aside from constitutional restrictions on testing, you need to be concerned about federal, state and local regulations and what are these regulations?

Ann: Let's look first at the federal laws. Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex or national origin. Testing programs must be applied objectively and equally to all workers. In one case, an employee who had religious objections to having her hair cut, was exempted from her employer's normal hair testing requirement, and allowed to substitute blood or urine for testing. The court held this was a reasonable accommodation of her religious beliefs. Now although every method of drug testing involves medical samples and analysis, drug tests are excluded from the definition of medical examinations under the Americans With Disabilities Act. Federal regulations mandate that workers in safety-sensitive transportation jobs, be subject to drug and alcohol testing. Transportation workers, you know, (air, railroad, mass transit, maritime, trucking and pipeline) involved in an accident, causing death, injury or substantial property damage, must be tested for both alcohol and drugs.

Interviewer: Can you tell us about state laws?

Ann: Sure! Many states regulate drug and alcohol testing of employees. Some of these laws establish laboratory certification standards; provide employees with the right to rebut test results or be retested; provide incentives for employers to adopt testing programs; limit workers' compensation awards to employees injured as the result of drug or alcohol use on the job; require employers to offer rehabilitation and treatment; and disqualify users from unemployment benefits. Some states ban random testing or require individualized suspicion before testing, while other states provide protection to employers who make employment decisions based on drug tests. In addition, some states require an employer to allow a worker who tests positive the first time to enter a rehab program, instead of termination.

Interviewer: Explain disability law issues.

Ann: While the Americans with Disabilities Act, the ADA, excludes current users of illegal drugs from coverage, it also provides that a user who has been rehabilitated cannot be discriminated against because of the past history of drug use. However, the federal appellate courts have consistently held that the mere completion of rehab is not enough. To take advantage of the ADA's "safe harbor" provision, the employee must also refrain from using drugs for a significant period of time. Most states also exclude drug addicts from coverage. In sharp contrast, alcoholics are apparently covered under the ADA, even if they're still drinking. They are also covered under most states' disability discrimination laws. Some states, however, specifically exclude alcoholism from the statutory definition of disability. The ADA does protect the privacy of employees taking legal drugs. Under the ADA, you generally

cannot force employees to reveal what legal drugs they're taking, since you can only ask for medical information if it's job-related and consistent with business necessity. So, you could properly ask a machine operator if she's taking any medication that may make her drowsy while she's working, since that's a safety and business necessity. But you couldn't ask a clerical worker about his medications. All you can ask in that situation is whether he's able to perform the essential functions of his job, with our without a reasonable accommodation. Even as part of a workplace drug test, workers cannot be asked what legal prescription drugs they're taking. There are simply too many medications that are specific to a particular disease or disability. Once you know a worker is taking insulin, for example, the company has got a pretty good idea the worker's got diabetes, but if a drug screen comes back positive, you can and should ask the employee if he or she had been on a medication that could have caused the positive result. However, drug- or alcohol-related misconduct remains a legitimate basis for employee discipline or discharge, under both federal and state laws. Employers do not have to accommodate or tolerate poor performance, unauthorized absences, insubordination, disruptive behavior, safety violations or violence from workers, even if that misconduct is caused by a covered disability. In one recent case, a federal appeals court upheld an employer that fired an alcoholic manager because of his short temper. In another appellate decision, an alcoholic chief of medicine, who was at work at the hospital while intoxicated, was held not to be qualified under the ADA.

Interviewer: What can you do as a manager to support a drug- and alcohol-free work environment?

Ann: There's plenty a manager can do. I recommend the following: Step 1: Review your company's substance abuse policy.

Doug: So you've heard, we've been asked to go over our company's substance abuse policy before attending training on it. Can I review the policy with you before we go in?

Jeff: Yeah, sure.

Doug: All right, let's see if I remember. Our policy explains that drug and alcohol use on the job is not permitted, period. Some of the reasons are: It keeps the workplace safe, better productivity, higher quality and it reduces the liability for the company.

Jeff: That's right. Okay, my turn. Also, as managers we need to make sure all employees understand what will happen if they violate the policy. We need to make sure they understand the drug and alcohol testing procedures, and the consequences of a positive test result.

Doug: And, our company has an Employee Assistance Program, the EAP program which is confidential and will not jeopardize employment or advancement. However, participation will not shield employees from disciplinary action for unacceptable job performance or rule violations.

Jeff: I think we got it!

Doug: Let's go!

Ann: Step 2: Attend training.

Gloria: As a supervisor or manager, you are key to the success of our company's substance abuse policy. Since you are in direct contact with your employees, you can detect any work problems that may indicate substance abuse.

Doug: Okay, I understand that. But what should we be doing specifically?

Gloria: In order to do your job properly, you need to understand the company's substance abuse policy, be able to explain it to your employees and know when to take action.

Jeff: Are there any limits as to what we can do?

Gloria: Good question. Yes, there are limits to your responsibilities. Now as a supervisor or manager, you are responsible for observing and documenting any work problems and discussing with the employees what needs to be done to correct them, but it is not your responsibility to diagnose or treat any alcohol or drug problems.

Jeff: That helps, thanks.

Ann: Step 3: Educate your employees.

Doug: Our company has an ongoing commitment to a drug- and alcohol-free workplace. This is not a one-time thing. So let's go over our policy. The policy explains the consequences of using drugs and alcohol. The abuse of alcohol and the use of drugs on or off the job will not be permitted. Drugs and

alcohol affects our company's productivity, product quality, absenteeism, health care costs and accident rates.
Ann: Step 4: Provide employees assistance.
Jeff: Last year I had someone on my team that was struggling with a drinking problem.
Doug: Really? What did you do?
Jeff: Well, first I reminded her that employees are a very vital part of our business, and I told her that from time to time, stuff like this kind of happens.
Doug: What else did you say?
Jeff: I told her about the Employees Assistance Program and that it's purely confidential. You know I've learned that it's better to help employees in situations like this, as opposed to just disciplining or firing them. You know recovering employees can be productive and effective members of our team.
Doug: Yeah, I've heard that the Employee Assistance Program can be cost-effective because they reduce accidents and absenteeism and raise productivity.
Jeff: It sure can. It sure helped this employee. She's become one of my top performers.
Ann: Step 5: Follow your company's drug testing program.
Doug: Since we have drug and alcohol testing at our company, I'd like to explain the procedures and the consequences of testing positive. I also want to make sure you are aware of the procedures that ensure the accuracy of the testing, and that all testing is confidential.
Ann: Be clear on the answers to these questions whenever drug testing is involved: Who can you test? (Only applicants? All employees? Only employees in safety-sensitive positions?) When can you test? (On hiring? After all accidents? After only some accidents? When an employee behaves abnormally? As part of an annual company physical?) What can you test for? (For alcohol? For all illegal drugs?) What do you do if an applicant tests positive? (Refuse to hire? Tell the applicant why you're not hiring him or her? Allow the applicant to be retested? Allow the applicant to reapply and be retested after, say six months?) What do you do if an employee tests positive? (Fire everyone who tests positive? Refer them to counseling and treatment after the first one, but fire after the second positive? Or allow employees more than one chance?) Drug and alcohol abuse in the workplace remains a complex problem. By understanding how to balance essential worker privacy and disability rights against business needs, you will avoid personal and corporate liability, while promoting a healthy and productive workforce.
Host: As you've seen, you need to know how to identify potential substance abuse in your workplace. You also need to understand your company's drug and alcohol testing program and how to administer it. In addition, always keep in mind your employees' privacy rights to avoid potential liability. For additional resources on Drug and Alcohol Abuse in the Workplace, be sure to access Reference Materials.