



# Liability & Property Pool Workers' Compensation Fund

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## RISK CONTROL SOLUTIONS

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A Service of the Michigan Municipal League Liability and Property Pool and  
the Michigan Municipal League Workers' Compensation Fund

### REDUCING YOUR EXPOSURE TO CLAIMS OF DISCRIMINATION IN EMPLOYMENT

Claims of discrimination against members of the Michigan Municipal Liability and Property Pool contribute significantly to the total percentage of all claims paid. Most discrimination claims have resulted from member practices in the areas of employment hiring and promotional decisions, sexual harassment, corrective action, and discharge.

#### BASIC RULES FOR REDUCING YOUR EXPOSURE TO DISCRIMINATION CLAIMS

Compliance with recommended league employment practices does not guarantee an absence of discrimination claims. However, it does greatly reduce the exposure to such claims.

***To reduce your risk of discrimination claims, you should:***

- Become familiar with federal and state employment laws. Know how they affect your organization.
- Adopt, train, communicate openly and enforce policy statements about:
  - Equal Employment Opportunity,
  - Sexual Harassment,
  - The Americans with Disability Act,
  - The Family and Medical Leave Act (if applicable to the organization),
  - Violence in the Workplace, and
  - Substance Abuse.
- Review employment documents and practices regularly for consistency and legality. These include: the employment application, job descriptions, offer of employment, medical examinations, employment manuals, personnel files, supervisors' counseling and corrective files, and retention and release of information procedures.
- Comply with the hourly wage and overtime requirements of the Fair Labor Standards Act. Verify compliance with your attorney.
- Post all notices from the Equal Employment Opportunity Commission and the Michigan Department of Civil Rights. Contact local offices for details.
- Review employment practices and decisions periodically with an attorney who specializes in employment law. This is critical for decisions about termination or handling claims of sexual harassment, discrimination or whistleblowing.
- Target recruiting activities to obtain applicants who reflect the community's labor market. Use local sources to attract candidates.
- Set standards such as minimum qualifications, acceptable scores on tests, and medical requirements that are job-related. Make sure these standards do not discriminate against protected classes.
- Treat current employees as well as candidates for employment in the same manner. Review employment decisions regularly for evidence of discrimination against employees because of sex, race, religion, national origin, height, weight, marital status or physical limitations.
- Train personnel to conduct interviews in a structured and objective manner. Individuals who recruit or select employees must know lawful and unlawful employment inquiries and practices. Training must include

guidance on performing background investigations, including the use of social networking or Internet based sources and drug and alcohol screening based on legitimate business need. Review the Michigan Department of Civil Rights Pre-employment Inquiry Guide.

- Make sure supervisors conduct performance appraisals objectively and communicate appraisals with employees. Conduct performance appraisals at least annually and document them properly.
- Train supervisors of the level of discipline they are authorized to dispense and the proper procedures to follow, including for discharge and termination. Supervisors should know how to recognize substance abuse, and mental health crisis. Require all disciplinary action or identified inappropriate behavior to be reported to top management who should monitor that the organization's guidelines and procedures are followed.
- Train all employees on the organization's Equal Employment Opportunity, Sexual Harassment, Americans with Disabilities Act, Family and Medical Leave Act, and other anti-discrimination policies.
- Provide new employees with an appropriate orientation into the work force. Cover all organization rules and regulations as well as policies and procedures, including all safety requirements. Document the orientation.

Following these guidelines is not easy. It requires a significant commitment of time and resources. However, the costs in time and dollars for non-compliance are higher. To streamline the process, you should:

1. Evaluate current employment practices against these guidelines to uncover weaknesses in your policies and procedures.
2. Prioritize corrective measures by determining the areas that are in greatest need of correction or present the greatest exposure to loss.
3. Distribute the responsibility for improving employment practices among qualified individuals within your organization. Use outside assistance where it is beneficial to the process.

## **STATE AND FEDERAL LAWS**

Michigan employers must consider various state and federal statutes when they make employment decisions. Some of the most important are:

- The Civil Rights Acts of 1964 and 1991
- The Americans with Disabilities Act (ADA)
- The Equal Pay Act (EPA)
- The Michigan Handicappers Civil Rights Act (MCRA)
- The Michigan Elliott-Larsen Civil Rights Act
- The Family and Medical Leave Act (FMLA)
- The Pregnancy Discrimination Act
- The Age Discrimination in Employment Act (ADEA)

For more information, you may contact MML Risk Management Services, Loss Control Services, or the appropriate state or federal agency. As with all employment issues, we encourage you to discuss your employment related concerns with an attorney.



### **Important Telephone Numbers**

MML Risk Management Services	800/653-2483
MML Loss Control Services	800/482-2726 or <a href="mailto:losscontrol@mml.org">losscontrol@mml.org</a>
Michigan Department of Civil Rights	313/456-3700 or <a href="http://michigan.gov/mdcr">michigan.gov/mdcr</a>
Equal Employment Opportunity Commission	800/669-4000

**Note:** This document is not intended to be legal advice. It does not identify all the issues surrounding the particular topic. Public agencies are encouraged to review their procedures with an expert or a competent attorney who is knowledgeable about the topic.



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### Discrimination Prevention Self-Assessment

Claims of discrimination can result from practices in all areas of employment. Most frequently, they arise because of the hiring process, promotional and disciplinary procedures, and harassment in the workplace. Openly supporting and enforcing anti-discrimination policies will not guarantee that claims will not arise. It will, however, reduce your exposure to them and minimize the likelihood that employees or applicants will make such claims and be successful in proving discrimination. Your human resource professional should review the following checklist and identify and correct any deficiencies in your practices as soon as possible:

#### **DOES YOUR ORGANIZATION:**

1. Rely on an individual who is knowledgeable about state and federal laws when making employment related decisions? Yes  No
2. Adopt and openly enforce policy statements concerning:
  - Equal Employment Opportunity? Yes  No
  - Sexual and other types of Harassment? Yes  No
  - Family and Medical Leave Act Policy (if required by law)? Yes  No
  - Disability in the Workplace? Yes  No
  - Violence in the Workplace? Yes  No
  - Substance Abuse in the Workplace? Yes  No
3. Train employees and supervisors on anti-discrimination laws? Yes  No
4. Discipline employees who violate anti-discrimination laws? Yes  No
5. Review employment documentation on a regular basis to assure that they meet state and federal guidelines? (Application form, job descriptions, manuals, etc.) Yes  No
6. Post all required state and federal notices? Yes  No
7. Set hiring standards that do not discriminate against a protected group? Yes  No
8. Make all hiring decisions without regard to age, race, sex, and religion, national origin, height, weight, marital status or physical limitations? Consider supervisors' actions. Yes  No

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|-----|---|------------------------------|-----------------------------|
| 9.  | Assure that all individuals -- especially interviewers -- who are involved in the recruitment and selection process are adequately trained on employment laws and discrimination? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 10. | Train all supervisory employees on your organizations policies and procedures?  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 11. | Always follow its policies and procedures consistently?   | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 12. | Monitor and evaluate the effectiveness of anti-discrimination programs and make corrections when needed?  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

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### Conclusions

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If you were able to honestly answer “yes” to all twelve questions and your organization follows most or all of the suggested practices, then your organization has reduced its exposure to future discrimination claims. You should congratulate yourself.



If you were unable to answer “yes” to one or more of the twelve critical questions, your organization may have a greater exposure to discrimination claims. Missing components of one or more of the recommended practices may also indicate a deficiency in your current program. You should take one or more of the following actions:

- Correct any deficiency that may exist;
- Contact your attorney for advice;
- Contact MML Risk Management Services at 800/653-2483; or
- Contact Loss Control Services at 800/482-2726.

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