

Regular Meeting #39 - 2019
Fairfield County Commissioners' Office
September 26, 2019

Review

The Commissioners met at 8:30 a.m. to review legal issues and pending or future action items and correspondence. Commissioner Levacy called the meeting to order with the following Commissioners present: Steve Davis, Jeff Fix and Dave Levacy. See attached sign in sheet for a list of those present.

- Welcome
- Administration and Budget Update/Carri's List

a. Highlights of Resolutions

Dr. Brown highlighted two resolutions for the meeting on September 26. We had a financial resolution to ensure proper payments prior to month end for Juvenile Court. We had a resolution to appoint Ms. Laura Coholich to the ADAMH Board, following up on earlier conversations and a vacancy that occurred on September 24, 2019.

b. Administrative, Program, and Budget Update

We set a meeting date with the County Recorder. The Board of Commissioners received a proposal for funding from the County Recorder relative to ORC 317.321 - Acquisition or maintenance of imaging and other technological equipment and contract services therefor; proposal to reserve funds. Gene Wood, County Recorder, proposed to fund the acquisition and maintenance of imaging and other technological equipment and contract services therefor; and/or to reserve funds for the office's future technology needs. He requested that \$4.00 of the total fees collected for the filing and recording of a document be placed in the Recorder's Equipment Fund (the county recorder's technology fund).

The proposal was for the period of January 1, 2020, through December 31, 2024. The amount generated would be about \$83,000 annually, and the total fees would be about \$1,040,000 per year, according to the County Recorder. The County Recorder proposed to purchase new equipment and various maintenance services.

The Board of County Commissioners received the proposal on September 25. Therefore, a meeting date was set on October 15 (not sooner than fifteen or later than thirty days after September 25) to meet with the Recorder to review the proposal.

Following the October 15 meeting, the Board of Commissioners will (no later than the fifteenth day of December) approve, reject, or modify the proposal and notify the county recorder of its action on the proposal.

The acquisition and maintenance of imaging and other technological equipment, and other associated expenses and contract services therefor, are governed by contracting provisions of the Ohio Revised Code.

Commissioners' Regular Meeting

A regular meeting of the Fairfield County Board of Commissioners was held on Tuesday, September 26, 2019 beginning at 8:33 a.m., with the following Commissioners present: Steve Davis, Dave Levacy, and Jeff Fix. Commissioner Levacy called the meeting to order with the following Commissioners present: Steve Davis, Jeff Fix and Dave Levacy. See attached sign in sheet for a list of those present.

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Pledge of Allegiance

Commissioner Levacy asked everyone to rise as able, and he led the Pledge of Allegiance.

Announcements

Commissioner Levacy asked if there were any announcements.

Ms. Elsea reminded everyone to sign in so they can get credit for their trainings today.

Public Comment

Commissioner Levacy asked if anyone from the public who would like to speak or offer comments.

There were no public comments.

Approval of Minutes for Tuesday, September 24, 2019

On the motion of Jeff Fix and the second of Steve Davis, the Board of Commissioners voted to approve the minutes for the Tuesday, September 24, 2019 Regular Meeting.

Roll call vote of the motion resulted as follows:

Voting aye thereon: Jeff Fix, Steve Davis, and Dave Levacy

Approval of the Commissioners Resolutions

On the motion of Jeff Fix and the second of Steve Davis, the Board of Commissioners voted to approve the Commissioners' Office resolution to approve the appointment of Ms. Laura Coholic to the ADAMH Board; see resolution 2019-09.26.a.

Discussion: Mr. Fix stated he was excited to have Ms. Coholic join the board. He is impressed with the number and quality of board applicants. He would like to continue to see more high-quality applicants.

Dr. Brown thanked Mr. McCullough for his service to the ADAMH Board and commented how we were all excited to continue to collaborate with him in multiple ways.

Roll call vote of the motion resulted as follows:

Voting aye thereon: Jeff Fix, Steve Davis, and Dave Levacy

Approval of the Juvenile/Probate Resolution

On the motion of Jeff Fix and the second of Steve Davis, the Board of Commissioners voted to approve the Juvenile/Probate Court resolution authorizing the approval of an advance from the general fund to #2745 MSY Pool; see resolution 2019-09.26.b.

Roll call vote of the motion resulted as follows:

Voting aye thereon: Jeff Fix, Steve Davis, and Dave Levacy

Leadership Conference

The Commissioners met at 8:37 a.m. for the 2019 Leadership Conference. Commissioner Levacy called the meeting to order with the following Commissioners present: Steve Davis, Jeff Fix and Dave Levacy. See attached sign in sheet for a list of those present.

- **Ethics – Topics in Review**

Mr. Porter and Ms. Fishel led the group in a discussion of ethics. They used a “game show” model to encourage participation.

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- Proper Public Purpose and Ethics

Dr. Brown reviewed the concept of proper public purpose, documentation of such expenditures, Ohio Ethics law, and an ethical culture, pointing out the two-factor model in the packet for the leadership conference. Positive elements for an ethical culture (which correlates with ethical decisions) are organizational trust, ethical leadership, benevolent orientation, empathy, and speaking out. Negative elements, which are important to avoid, are unfairness, management misbehavior, lack of awareness, selfishness, and fear of retaliation. She reiterated the importance of ongoing discussion about ethics and questions about ethics.

- Cyber Security Overview

Mr. Mark Conrad reviewed cyber security training and security tips. (Please see the attachments.)

- Texting and Public Records

Mr. Fishel led the group in a training concerning texting and public records laws. The sunshine manual is available here: <https://www.ohioattorneygeneral.gov/Legal/Sunshine-Laws>.

- Unlawful Harassment

Ms. Stephanie Schoolcraft presented the attached presentation on Harassment and Discrimination in the workplace.

- Leadership Training- Loss Control

Ms. Stephanie Schoolcraft presented the attached presentation on the use of CORSA Loss Control Services to Avoid Employment Claims.

- United Way Moment

Mr. Porter encouraged everyone to consider the positive work the United Way and United Way agencies accomplish within the community.

- Reflections & Closing Remarks

The Commissioners thanked everyone for attending and shared their thoughts on the leadership conference trainings.

Adjournment

With no further business, on the motion of Jeff Fix and a second of Steve Davis, the Board of Commissioners voted to adjourn at 11:52 a.m.

Roll call vote of the motion resulted as follows:

Voting aye thereon: Jeff Fix, Steve Davis, and Dave Levacy

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The next Regular Meeting is scheduled for Tuesday, October 1, 2019 at 10:00 a.m.

Motion by: _____ Seconded by: _____
that the September 26, 2019 minutes were approved by the following vote:

YEAS:

NAYS: None

ABSTENTIONS: None

*Approved on October 1, 2019

Alah dan

Steven A. Davis
Commissioner


Dave Levacy
Commissioner

Dave Levacy
Commissioner

Jeff Fix
Commissioner

Jeff Fix
Commissioner

Reachel Elsas, Clerk

Rachel Elsea, Clerk

September 2019 Leadership Conference Trainings

	Last Name	First Name	Department	In Attendance
1	Abner	Sarah	JFS	<i>Sarah</i>
2	Argondizza	Francisco	JFS	<i>Francisco</i>
3	Baker	Jane	Walnut Township	
4	Bergstrom	Stacey	JFS	<i>SB</i>
5	Boley	Lisa	DD	<i>Lisa Boley</i>
6	Boone	Jill	Common Pleas	<i>Jill Boone</i>
7	Brooke	Stephanie	JFS	<i>Stephanie Brooke</i>
8	Brown	Carri	Commissioners	<i>CB</i>
9	Brown	Carrie	SWCD	<i>Carrie Brown</i>
10	Brown-Thompson	Amy	Prosecutor	<i>Amy Thompson</i>
11	Bryan	Sandy	JFS	<i>Sandy Bryan</i>
12	Cade	Holly	JFS	<i>Holly Cade</i>
13	Caitro	Giner	Historic Parks Commission	<i>Giner Caitro</i>
14	Carper	Michelle	Clerk of Courts	<i>Michelle Carper</i>
15	Clark	Corey	JFS	<i>Corey Clark</i>
16	Conrad	Mark	IT	<i>Mark Conrad</i>
17	Cook	Darcy	Prosecutor	
18	Cordle	Aunie	JFS	<i>Aunie Cordle</i>
19	Cotner	David	Greenfield Township	
20	Crist	Mandi	Visitation Center	<i>Mandi Crist</i>
21	Culbertson	Melanie	JFS	<i>Melanie Culbertson</i>
22	Davis	Steve	Commissioners	<i>Steve Davis</i>
23	DiMatteo	Danielle	JFS	<i>Danielle DiMatteo</i>
24	Dowdy	Elisa	Sheriff	<i>Elisa Dowdy</i>
25	Dowdy	Elisa	Sheriff's Office	
26	Downour Downour	Cheryl	Engineer	<i>Cheryl Downour</i>
27	Downour	Brandi	JFS	<i>Brandi Downour</i>
28	Drake	Nikki	SWCD	<i>Nikki Drake</i>
29	Duff	Scott	Major Crimes Unit	
30	Elsea	Rachel	Commissioners	<i>RE</i>
31	Ferbrache	Jonathan	SWCD	<i>Jonathan Ferbrache</i>
32	Finney	Cara	JFS	<i>Cara Finney</i>
33	Fix	Jeff	Commissioners	<i>JE</i>
34	Fortner	Sarah	JFS	<i>Sarah Fortner</i>
35	Fox	MaryJo	JFS	<i>MaryJo Fox</i>
36	Fox-Moore	Donna	FACFC	<i>Donna Fox-Moore</i>
37	Frank	Erika	JFS	<i>Erika Frank</i>
38	Fuhr	Jodi	JFS	<i>Jodi Fuhr</i>
39	Gall	Justin	JFS	<i>Justin Gall</i>
	Bigham	Mareq	JFS	<i>Mareq Bigham</i>

40	Getz	Craig	Liberty Township	
41	Grant	Justin	HR	
42	Hampson	Bart	JFS	
43	Henwood	David	JFS	
44	Hoch	Ruth	JFS	
45	Holt	Christina	SWCD	
46	Holton	Laura	JFS	
47	Horacek	Joshua	Prosector	
48	Humphries	Krista	JFS	
49	Hyme	Kathy	JFS	
50	Kaper	Michael	Treasurer	
51	Karns	Sharleen	JFS	
52	Keller	Dennis	JFS	
53	Kemmerer	Ashley	JFS	
54	Klein	Loudan	Regional Planning	
55	Knight	Gina	JFS	
56	Knisley	Staci	Commissioners	
57	Kochis	Jon	EMA	
58	Kochis	Heather	JFS	
59	Kosch	Lonnie	Greenfield Township	
60	Laramée	Ed	Auditor	
61	Lester	Chad	Village of Sugar Grove	
62	Levacy	Dave	Commissioners	
63	Lovas	Lori	Domestic Relations Court	
64	Lucht	Chad	SWCD	
65	Lynch	Suzie	JFS	
66	McCoy	Amy	JFS	
67	McCullough	Todd	Dog Shelter	
68	Merringer	Liz	JFS	
69	Meyer	Branden	Clerk of Courts	
70	Miller	Leah	JFS	
71	Neeley	Dan	JFS	
72	Nelson	Karla	JFS	
73	O'Keefe	Heather	JFS	
74	Phalen	Dave	Sheriff	
75	Picklesimer	Jan	JFS	
76	Porter	Jeff	Human Resources	
77	Rector	Don	Utilities	
78	Reed	Chad	Historic Parks Commission	
79	Riddle	Kristin	JFS	
80	Riffle	Brett	Board of Elections	
81	Romano	Robin	JFS	

Alex Lape
Lisa McKenzie
Thomas Lininger

Robert Romano
Alex Lape
Lisa McKenzie
T.K.

82	Russell	Park	Veterans Service Commission	
83	Searle	Kent	Greenfield Township	Klean
84	Shoemaker	Kelly	JFS	W. S. Smith
85	Smith	Judge Laura	Domest Relations Court	W. S. Smith
86	Smith	Jodi	JFS	Jodi Smith
87	Springer	Tommy	SWCD	JS
88	Stalter	Donna	JFS	D. Stalter
89	Stang	Jacob	JFS	JS
90	Stanton	Casie	JFS	✓ C. Stanton
91	Stemen	Harold	ESC	✓ H. Stemen
92	Stoneburner	Heather	JFS	✓
93	Stoughton	Tom	City of Lancaster	
94	Strickler	Cassie	HR	C. Strickler
95	Szabrak	Rick	Economic Development	R. Szabrak
96	Taylor	Joe	Village of Lithopolis	J. Taylor
97	Thomas	Molly	JFS	M. Thomas
98	Timmer	Judge David	Common Pleas	D. Timmer
99	Turben	Kelly ✓	JFS Clerk of Courts	
100	Uhl	David	DD	
101	VanBibber	Mindy	JFS	M. VanBibber
102	Vandevoort	Judge Terre	Juvenile/Probate	J. Vandevoort
103	Varga	Kate	JFS	K. Varga
104	Varney	Dr. Brian	Coroner	B. Varney
105	Vogel	Tony	Utilities	T. Vogel
106	Wanosik	Elyssa	JFS	E. Wanosik
107	Warner	Catherine	Clerk of Courts	C. Warner
108	Welker	Simon	JFS	S. Welker
109	Welsh	Patrick	JFS	P. Welsh
110	Witt	Kyle	Prosecutor	K. Witt
111	Wolfe	Karen	JFS	K. Wolfe
112	Wyne	Dawn	Greenfield Township	
113	Younkin	Todd	Historic Parks Commission	T. Younkin
114	Carpio	Valery	FSD	
115	Slater	Jon	AUDITOR	J. Slater
116				
117				
118	Alton	Wilton	JFS	W. Alton
119	Shields	Heather	JFS	H. Shields
120	Amari	Amari	COLSA	

No Tammy Drobina

M. Drobina
Muth Maurer

ADAM H
ADAM H

RW
m

Karin Moore



AGENDA

BOARD OF COMMISSIONERS

Commissioners:
Steven A. Davis
David L. Levacy
Mike Kiger

County Administrator
Carri L. Brown

Clerk
Rachel A. Elsea

Leadership Conference – Part 1, 2019 Cybersecurity, Ethics, & CORSA related Training

When: September 26, 2019, 8:30 a.m. – 12:15 p.m.

Location: Wigwam, 10190 Blacklick-Eastern Road NW, Pickerington

Purpose Statement:

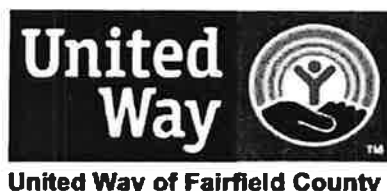
The purpose of the Leadership Conference is for county leaders to further the mission of Fairfield County and improve the organizational knowledge base. This session fulfills three training requirements (Cybersecurity, Ohio Ethics Law, and Unlawful Harassment) and offers additional, relevant training.

AGENDA

8:30 am	Welcome & Announcements	Carri Brown & Commissioners
8:45 am	Cybersecurity Overview	Mark Conrad
9:05 am	Texting and Public Records	Marc Fishel
9:25 am	Proper Public Purpose	Carri Brown
9:40 am	Ethics - Topics in Review	Marc Fishel & Jeff Porter
10:05 am	Break	
10:15 am	Unlawful Harassment	Stephanie Schoolcraft
11:00 am	Break	
11:15 am	Leadership Training – Loss Control	Stephanie Schoolcraft
12:00 pm	Reflections & Closing Remarks	Carri Brown & All Participants
12:15 pm	United Way Presentation & Adjourn	United Way representatives

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P: 740-652-7090 • 614-322-5260 • F: 740-687-6048 • www.fairfieldcountyohio.gov



September 26, 2019

Fairfield County Leadership:

I'd like to take this opportunity to thank each of you and your staffs for your strong support of the United Way of Fairfield County. The support goes much further than the contributions made through payroll deduction or the special events ran to raise money and promote our campaign. The time donated and passion for those in need truly measure the compassion of those who lead and work for Fairfield County.

Please let us know if we can assist by providing a presentation to your department to support your campaign efforts. Contact Beth Craft (bcraft@uwayfairfieldco.org) or myself (sreed@uwayfairfieldco.org) at (740) 653-0643.

Thank you again! **United We Thrive!**

Sincerely,

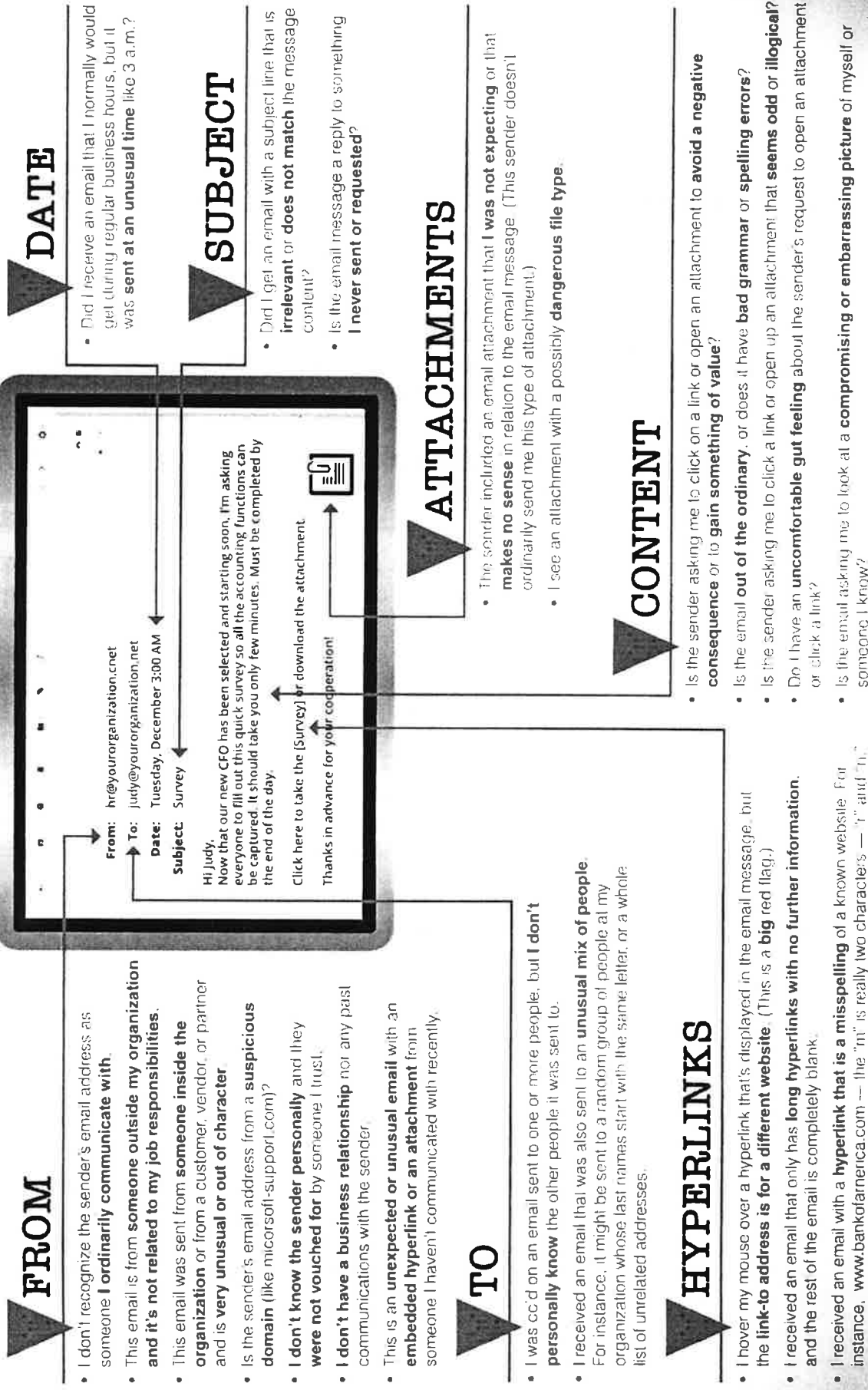
Scott A. Reed, CEO
115 S. Broad St.
Lancaster, OH 43130
(740) 653-0643
www.uwayfairfieldco.org

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5.7.15

A resolution to approve certain expenditures in connection with business meetings and training

WHEREAS, government entities may not make expenditures of public monies unless they are for a valid public purpose, and two main criteria demonstrate whether an expenditure is for a public purpose: First, the expenditure is required for the general good of all inhabitants; second, the primary objective of the expenditure is to further a public purpose, even if an incidental private end is advanced; and

WHEREAS, Fairfield County has historically provided for general fund or local dollar expenditures (and other sourced expenditures, such as grant expenditures, if in compliance with rules, regulations, terms and conditions) of simple food or refreshments in connection with business meetings (such as the Leadership Conferences or training sessions); and

WHEREAS, the general good obtained from the expenditure is efficient operations and attendance of employees at the business meetings or trainings, and while an incidental private end is advanced with simple food purchases, the primary objective is to further a public purpose; and

WHEREAS, the Ohio Attorney General indicated in Opinion 82-006 that because the determination of what constitutes a proper public purpose is primarily a legislative function, such decisions "...must be made in accordance with the procedural formalities governing the exercise of legislative power. Specifically, the decision must be memorialized by a duly enacted ordinance or resolution and may have prospective effect only,"

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, COUNTY OF FAIRFIELD, STATE OF OHIO:

Section 1. That the Fairfield County Board of approves general fund or local expenditures (or other sourced expenditures if in compliance with rules, regulations, terms and conditions) of simple (*de minimis*) food or refreshments in connection with business meetings or trainings, including but not limited to the County Commission hosted leadership conference, JFS all staff meetings, and Human Resources sponsored trainings.

Section 2. The payment for such expenditures shall be supported by an agenda and/or summary of the business meeting or training -and- shall be processed within the normal, customary process.

Cc: County Auditor Jon Slater . .

Betty Montgomery Auditor of State

Bulletin 2004-002

Date Issued: February 25, 2004

TO: All County Auditors, Commissioners & Prosecutors
All Independent Public Accountants

FROM: Betty Montgomery
Ohio Auditor of State

SUBJECT: Expenditure of Public Funds for a Proper Public Purpose

This Bulletin is issued as a clarification to Auditor of State Bulletin 2003-005. Specifically, our Office has received numerous inquiries from county officials regarding the intended meaning of the term "legislative authority" as used in Bulletin 2003-005. The Bulletin stated in pertinent part, "Thus, to avoid an audit finding, the Auditor of State will require that expenditures of public funds for coffee, meals, refreshments, or other amenities have prior authorization by the appropriate legislative authority." There appears to be a great deal of confusion surrounding the meaning of "appropriate legislative authority." It is our hope that this Bulletin will serve to address this concern.

Auditor of State Bulletin 2003-005 referred to 1982 Ohio Attorney General Opinion No. 82-006, which was intended to address the expenditure of funds by local political subdivisions for the purchase of meals, refreshments and other amenities (flowers, token retirement gifts, or meritorious service awards). Specifically, a prior Auditor of State sought clarification whether such expenditures are supported by a "public purpose." The Ohio Attorney General indicated in Opinion 82-006 that because the determination of what constitutes a proper public purpose is primarily a legislative function, such decisions "... must be made in accordance with the procedural formalities governing the exercise of legislative power. Specifically, the decision must be memorialized by a duly enacted ordinance or resolution and may have prospective effect only."

In addition, Attorney General Op. No. 82-006 addressed how several terms are to be viewed, including the terms "legislative bodies" and "legislative power." The Attorney General opined that:

In its strictest sense the term "legislative bodies" refers to the traditional bodies empowered to make laws, such as Congress, state legislatures and municipal councils. Courts have recognized ... that the governing bodies of other political subdivisions are at times called upon to exercise legislative powers or functions... legislative power can mean something broader than the usual

power to enact laws. A governmental body may be deemed to exercise a legislative function when it promulgates policies, standards, regulations or rules of general application and prospective operation and when the body's decision is appropriately based on considerations similar to those a legislature could have invoked....

More recently, Ohio Attorney General Opinion No. 2003-029 addressed the issue of whether particular county departments may approve their own travel policies. This opinion was issued in response to a request by the Athens County prosecutor on behalf of the county auditor. The Attorney General concluded that that county auditor does not have the authority to establish a travel policy for offices other than his or her own. The Attorney General stated, "Rather, each county officer, board, or department may establish a travel policy for the agency's officers and employees. A board or appropriate office or department head has the discretion, subject to R.C. 325.20, to set the specific terms of the policy, including the amount of expenses that may be incurred, and the nature of the items that may be reimbursed." And furthermore, "Any travel policy must, of course, comply with the limitation that public funds may be spent only for a public purpose." Atty. Gen. Op. No. 2003-029.

In accordance with the above Attorney General Opinions, an independently elected official has the power to establish his or her own travel policy. Expenditures made pursuant to that policy, and made otherwise in accordance with law, are at the discretion of the independently elected official.

We find it proper to extend this reasoning in general to the types of expenditures (meals, refreshments and other amenities) contemplated by AOS Bulletin 2003-005. However, these officials (county prosecutors, judges, auditors, sheriffs, engineers, coroners, clerks of county courts, treasurer, recorder) should have written policies that are in place prior to making expenditures to justify that the expenditures are for a proper public purpose. The effective date of the policy and any amendments to the policy should be clearly indicated.

With regard to departments and agencies, for which the Board of County Commissioners is the proper authority to establish policies and approve expenditures, these entities should obtain the prior approval of the county commissioners through a resolution demonstrating a proper public purpose before making the types of expenditures contemplated by AOS Bulletin 2003-005. We also consider that each county should determine the manner in which approval for entities under the control of the county commissioners is to be made. For example, a county may decide that a general resolution for all such entities is appropriate, or that the policy of each county entity, department or agency under its control must be approved individually. This may also include the adoption of a resolution which permits an entire category or categories of future expenditures for amenities.

We will audit in accordance with the written policies that are established by each of the independently elected county officials and by the board of county commissioners for itself and the entities under its control. However, policies should be writing and in effect prior to the making of an expenditure. The effective date of the original policy and the date of any amendment of the policy should be clearly indicated.

As always, we encourage you to consult with your county prosecutor for guidance on any specific concerns that you may have involving the matter of expenditures for a proper public purpose.

Questions concerning this bulletin should be addressed to the Legal Division of the State Auditor's Office at (800) 282-0370.

A handwritten signature in black ink that reads "Betty Montgomery". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Betty Montgomery
Ohio Auditor of State

Betty Montgomery Auditor of State

Bulletin 2003-005

Date Issued: October 20, 2003

TO: All County Auditors, Commissioners & Prosecutors
All City Auditors, Finance Directors, Council Members & Treasurers
All Independent Public Accountants
All School District Treasurers
All Township Clerks & Trustees
All Village Fiscal Officers, Council Members & Clerks

SUBJECT: Expenditure of Public Funds/Proper "Public Purpose"

As you may know, government entities may not make expenditures of public monies unless they are for a valid public purpose. This Bulletin addresses the requirements necessary to ensure that an entity's expenditure of public funds is for a proper public purpose.

Ohio Attorney General Opinion 82-006, which is attached for reference, addresses the expenditure of funds for public purposes. This opinion, citing the Ohio Supreme Court case of State ex rel. McClure v. Hagerman, 155 Ohio St. 320 (1951), provides guidance as to what may be construed as a public purpose. There are two criteria that demonstrate whether an expenditure is for a public purpose. First, the expenditure is required for the general good of all inhabitants. As stated in McClure, "[g]enerally, a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants" Id. at 325. Second, the primary objective of the expenditure is to further a public purpose, even if an incidental private end is advanced.

The determination of what constitutes a public purpose is primarily a legislative function. As such, the decision to expend public funds "... must be made in accordance with the procedural formalities governing the exercise of legislative power. Specifically, the decision must be memorialized by a duly enacted ordinance or resolution and may have prospective effect only." 1982 Op. Atty. Gen. No. 82-006 (emphasis added). With due deference to local control generally, the Auditor of State's Office will only question expenditures where the legislative determination of a public purpose is manifestly arbitrary and incorrect. The Auditor of State's Office does not view the expenditure of public funds for alcoholic beverages as a proper public purpose and will issue findings for recovery for such expenditures as manifestly arbitrary and incorrect.

Thus, to avoid an audit finding, the Auditor of State's Office will require that expenditures of public funds for coffee, meals, refreshments, or other amenities have prior authorization by the appropriate legislative authority. If such prior authorization has been given, the Auditor of State's Office will not question the expenditure in the course of an audit unless there is a clear indication that the legislative determination is arbitrary and incorrect. Please note, however, the use of public funds to purchase alcohol will be considered arbitrary and incorrect and will be cited by the Auditor of State's Office.

Also note, for offices that do not have a legislative approval process for these types of expenditures, these principles still apply.

Questions concerning this bulletin should be address to the Legal Division of the State Auditor's Office at (800) 282-0370.

Sincerely,


Betty Montgomery
Ohio Auditor of State

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF OHIO**OPINION No. 82-006****1982 Ohio AG LEXIS 99****March 1, 1982****Syllabus:**

1. Coffee, meals, refreshments and other amenities are fringe benefits which may properly be provided by units of local government to their employees as a form of compensation, if authorized by the officer or body having the power to fix the compensation of such employees.
2. Municipal funds may be expended to purchase coffee, meals, refreshments or other amenities for municipal officers, employees or other persons, if the legislative body of the municipality has determined that such expenditures are necessary to further a public purpose and if its determination is not manifestly arbitrary or unreasonable.
3. The governing body of a political subdivision other than a municipality may expend public funds to purchase coffee, meals, refreshments and other amenities for its officers or employees or other persons if it determines that such expenditures are necessary to perform a function or to exercise a power expressly conferred upon it by statute or necessarily implied therefrom and if its determination is not manifestly arbitrary or unreasonable.
4. Since the decision to expend public funds to purchase coffee, meals, refreshments or other amenities is a legislative decision, [*2] it must be memorialized by a duly enacted ordinance or resolution and may have prospective effect only.

Request by: William J. Brown, Attorney General

Opinion:
The Honorable Thomas E. Ferguson
Auditor of State
88 East Broad Street, 5th Floor
Columbus, Ohio 43215

I have before me your request to clarify two opinions of this office which address the expenditure of public funds by local political subdivisions for the purchase of meals, refreshments, and other amenities for public officers and employees. Your specific questions are as follows:

1. Is the analysis set forth in 1981 Op. Att'y Gen. No. 81-052 applicable to units of local government other than boards of education, thus enabling them to provide coffee, meals, refreshments, and other amenities to their employees as fringe benefits?
2. Does the analysis set forth in 1975 Op. Att'y Gen. No. 75-008 correctly require that under no circumstances may public moneys be expended by a political subdivision for meals, refreshments or other amenities for officers and employees of the political subdivision or third parties, in the local area?
3. If the answer to the preceding question is in the negative, what criteria should be applied by the Bureau [*3] of Inspection and Supervision of Public Offices in determining, as required by R.C. 117.10, whether "public money has been illegally expended" as a result of such expenditures?

You have indicated that your first question arises as a result of paragraph three of the syllabus of 1981 Op. Att'y Gen. No. 81-052, which states: "A board of education, pursuant to its general power to compensate its teaching employees, may expend public funds to provide its teaching employees with free lunches at the school cafeteria or with cash payments for early retirement or for longevity of tenure with the employing school district." Your specific question is, therefore, whether employees of the various public employers throughout the state may be given fringe benefits, such as coffee, meals, and refreshments, as part of their compensation.

My conclusion in Op. No. 81-052 that a board of education could expend public funds to provide its teaching employees with certain amenities or benefits rested in large part on the Ohio Supreme Court's decision in *Ebert v. Stark County Board of Mental Retardation*, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980). As I noted in Op. No. 81-052, the Ebert court [*4] spoke in general, unlimited terms and the rationale in Ebert, accordingly, "necessarily extends to any creature of statute and establishes the proposition that the power to employ includes the power to fix any fringe benefit — absent constricting statutory authority." n1 Op. No. 81-0552 at 2-202.

n1 I recently noted, however, one exception to this general rule. In 1981 Op. Att'y Gen. No. 81-056 I opined that Ebert does not extend to state agencies since the General Assembly has not given individual state agencies the power to determine the compensation payable to their employees.

Of course, because a municipality is not a creature of statute, the analysis in Ebert does not apply to the fixing of compensation by a municipal corporation for its employees. Because compensation is a matter of substantive local self-government, a municipal ordinance concerning compensation of municipal employees would supersede any statutory provision in conflict with the ordinance. See *Northern Ohio Patrolmen's Benevolent Association v. City of Parma*, 61 Ohio St. 2d 375, 402 N.E.2d 519 (1980). The rationale set forth in Op.

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No. 81-052 does not, therefore, apply to municipalities [*5] as a restriction on their authority to compensate municipal employees.

In order to answer your first question, it is necessary to determine whether meals, refreshments and other amenities n2 (including coffee) are fringe benefits which may properly be provided to employees of local government units as "compensation," provided, of course, that there are no constricting statutory provisions. As I noted in 1977 Op. Att'y Gen. No. 77-090, there is no precise statutory or common law definition of the term "fringe benefit" as it relates to public employees. I indicated therein, however, that a fringe benefit is commonly understood to mean something that is provided at the expense of the employer and is intended to directly benefit the employee so as to induce him to continue his current employment. *Madden v. Bower*, 20 Ohio St. 2d 135, 254 N.E.2d 357 (1969). I am unable to be any more precise at this time. I do not, however, believe this imprecision is problematic with respect to your inquiry, since I am confident that there is little room for doubt in concluding that the illustrative amenities set forth in your request are properly viewed as fringe benefits when provided by an [*6] employer as an inducement to his employees to continue their current employment. See, e.g., 1981 Op. Att'y Gen. No. 81-082 (dental and eye care insurance as a fringe benefit); 1981 Op. Att'y Gen. No. 81-052 (free lunches and cash payments for early retirement or for longevity of tenure as fringe benefits).

n2. After receiving your request, I contacted your office to seek clarification of what might be encompassed by the term "other amenities." It is my understanding that this term was intended as a reference to such non-food items as flowers for sick employees or relatives of employees, token retirement gifts, or meritorious service awards.

In response to your first inquiry, it is, therefore, my opinion that coffee, meals, refreshments and other amenities are fringe benefits which may properly be provided by units of local government to their employees as a form of compensation, provided that there is no overriding statutory restriction to the contrary. Of course, in order for such benefits to be properly provided, they must be properly authorized by the local officer or body having the power to fix the compensation for such employees, and should be uniformly granted [*7] to all similarly situated employees. See *Berenguer v. Dunlavey*, 352 F. Supp. 444 (D. Delaware 1972), vacated as moot, 414 U.S. 895 (1973); Op. No. 81-082.

Your second question seeks clarification of the circumstances under which a political subdivision may expend public moneys for meals, refreshments and other amenities for its officers, employees or third parties. Since I have already discussed in response to your first question the legal basis for providing such amenities to employees as a form of compensation, I shall assume for the purposes of this inquiry that these amenities are not intended to be provided to the employees of the political subdivision as a form of compensation.

You specifically seek clarification of Op. No. 75-008, where I concluded that a board of education may not expend public funds for lunches or dinners for persons attending a local meeting of such board. Only two factual assumptions were evident in that opinion. First, the meals were being provided to members of the board of education, who are public officers. Second, the meetings in question took place in the home district and did not involve travel away from headquarters. Assuming [*8] no additional facts, I still am of the opinion that the provision of meals in such situation would not constitute a valid public purpose. This is not the same as saying, however, that under no circumstances may public moneys be expended by a political subdivision for meals, refreshments or other amenities, in the local area.

You have asked what criteria should, then, be applied in determining, as required by R.C. 117.10, whether "public money has been illegally expended" as a result of such expenditures. The relevant inquiry is whether the expenditure in question constitutes a "public purpose." Unfortunately, the problem of deciding what constitutes a public purpose has always been difficult. The courts have attempted no absolute judicial definition of a public purpose but have left each case to be determined by its own peculiar circumstances. The Ohio Supreme Court has, however, offered the following general guidelines to be applied in determining whether a particular expenditure constitutes a public purpose. *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320, 98 N.E.2d 835 (1951). First, the test is whether the expenditure is required for the general good of all the [*9] inhabitants. "Generally, a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants...." *Id.* at 325, 98 N.E.2d at 838. Second, if the primary objective is to further a public purpose, it is immaterial that, incidentally, private ends may be advanced. Third, the determination of what constitutes a public purpose is primarily a legislative function, and a legislative determination of a public purpose will not be disturbed except where such determination is palpable and manifestly arbitrary and incorrect. Asked to consider whether a municipal corporation could expend its funds to pay the cost of membership in an association of municipal finance officers, the McClure court summarized the proper inquiry as follows:

"There is no universal test for distinguishing between a purpose which is public or municipal and, therefore, a proper object of municipal expenditure and one which is private and, therefore, an improper object to which to devote public money. Each case must be decided in the light of existing conditions, with respect to the objects sought to be accomplished, [*10] the degree and manner in which that object affects the public welfare, and the nature and character of the thing to be done; but the court will give weight to a legislative determination of what is a municipal purpose, as well as widespread opinion and general practice which regard as city purposes some things which may not be such by absolute necessity, or on a narrow interpretation of constitutional provisions. * * * It has been laid down as a general rule that the question whether the performance of an act or the accomplishment of a

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specific purpose constitutes a 'public purpose' for which municipal funds may be lawfully disbursed rests in the judgment of the municipal authorities, and the courts will not assume to substitute their judgment for that of the authorities unless the latter's exercise of judgment or discretion is shown to have been unquestionably abused."

McClure, 155 Ohio St. at 325-26, 98 N.E.2d at 838 (quoting 64 C.J.S. 334, 335, § 1835b). Thus, the provision of meals, refreshments or other amenities, although invariably conferring a private benefit, may be a permissible expenditure of public funds, if the legislative authority has determined that the expenditure [*11] is necessary to further a public purpose. Confronted with a situation in which such a legislative determination has been made, you may not find that public money has been illegally expended, within the meaning of R.C. 117.10, unless you have reason to believe that such determination is "palpable and manifestly arbitrary and incorrect." McClure, 155 Ohio St. at 325, 98 N.E.2d at 838 (quoting 37 Am. Jur. 734-35, § 120). On the other hand, if you have reason to believe that the legislative body has abused its discretion in determining that a public purpose has been served by the expenditures in question, then it is your duty to make a finding in accordance with R.C. 117.10 so that a court may review the matter.

Reference is made throughout the foregoing analysis to the question conferred upon "legislative bodies" to determine what constitutes a public purpose. This terminology is understandable because the public purpose cases have traditionally been concerned with the power of municipalities to undertake certain functions. I understand your present inquiry to be broader, however, and to include counties, townships, school districts and other political subdivisions. It is, [*12] therefore, necessary to determine whether the term "legislative bodies" can encompass the governing bodies in political subdivisions other than municipalities.

In its strictest sense the term "legislative bodies" refers to the traditional bodies empowered to make laws, such as Congress, state legislatures and municipal councils. Courts have recognized, however, that the governing bodies of other political subdivisions are at times called upon to exercise legislative powers or functions. For example, in *Stein v. Erie County Commissioners*, 16 Ohio Misc. 155, 241 N.E.2d 300 (C.P. Erie County 1968), the court held that, when creating a regional airport authority under the provisions of R.C. Chapter 308, the county commissioners were acting in a legislative capacity. Similarly, in *Morgan County Commission v. Powell*, 292 Ala. 300, 305, 293 So.2d 830, 834 (1974), the court held that, "[i]n the aspect of appropriating money from the county treasury, a county governing body must be deemed as exercising a legislative power." Similarly, the adoption of zoning ordinances and maps is traditionally regarded as a "legislative act." See, e.g., *County of Pasco v. J. Dico, Inc.*, [*13] 343 So.2d 83 (Fla. App. 1977); *Board of Supervisors v. Lerner*, 221 Va. 30, 267 S.E.2d 100 (1980). One court has found a board of education to be a "legislative body." *Andeel v. Woods*, 174 Kan. 556,

258 P.2d 285 (1953). In *Allstate Insurance Co. v. Metropolitan Sewerage Commission*, 80 Wis.2d 10, 258 N.E.2d 148 (1977), the court held that the decisions of a metropolitan sewerage commission with respect to planning and designing sewer systems were "legislative acts" for which the commission was immune from tort liability. As these cases suggest, legislative power can mean something broader than the usual power to enact laws. A governmental body may be deemed to exercise a legislative function when it promulgates policies, standards, regulations or rules of general application and prospective operation and when the body's decision is appropriately based on considerations similar to those a legislature could have invoked. *Board of Supervisors v. Department of Revenue*, 263 N.W.2d 227, 239 (Iowa 1978).

Relying on this broader definition of what constitutes a legislative function, I find no reason to restrict the public purpose analysis, illustrated by *McClure*, [*14] to municipalities only. It is my opinion that a decision properly made by the appropriate governing body of a county, township, school district or other political subdivision to expend public funds to provide coffee, meals, refreshments or other amenities is to be subjected to the same analysis. This does not mean, however, that other political subdivisions are on exactly the same footing as municipalities. Political subdivisions other than municipalities are creatures of statute and have only such powers as are expressly granted or necessarily implied. See, e.g., *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (board of county commissioners, as creature of statute, has only powers expressly conferred by statute). Consequently, such political subdivisions may make "legislative" decisions only with respect to matters in which they have been authorized to act by the General Assembly. The provision of meals, refreshments and other amenities by such political subdivisions is permissible, therefore, only if the governing body has reasonably determined that the provision of such amenities is necessary to the performance of a function [*15] or duty or to the exercise of a power expressly conferred by statute or necessarily implied therefrom. See 1930 Op. Att'y Gen. No. 2170, vol. II, p. 1241.

Additionally, since the decision to expend public funds for meals, refreshments or other amenities for persons other than employees is in a sense a legislative decision, it must be made in accordance with the procedural formalities governing the exercise of legislative power. Specifically, the decision must be memorialized by a duly enacted ordinance or resolution and may have prospective effect only. See *Department of Revenue*, 263 N.W.2d at 239. See, e.g., *McClure*, supra.

In specific response to your questions, it is, therefore, my opinion, and you are advised, that:

1. Coffee, meals, refreshments and other amenities are fringe benefits which may properly be provided by units of local government to their employees as a form of compensation, if authorized by the officer or body having the power to fix the compensation of such employees.

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1982 OPINIONS

OAG 82-006

2. Municipal funds may be expended to purchase coffee, meals, refreshments or other amenities for municipal officers, employees or other persons, if the legislative [*16] body of the municipality has determined that such expenditures are necessary to further a public purpose and if its determination is not manifestly arbitrary or unreasonable.
3. The governing body of a political subdivision other than a municipality may expend public funds to purchase coffee, meals, refreshments and other amenities for its officers or employees or other persons if it determines that such expenditures are necessary to perform a function or to exercise a power expressly conferred upon it by statute or necessarily implied therefrom and if its determination is not manifestly arbitrary or unreasonable.
4. Since the decision to expend public funds to purchase coffee, meals, refreshments or other amenities is a legislative decision, it must be memorialized by a duly enacted ordinance or resolution and may have prospective effect only.

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Common Findings for Recovery

Proper Public Purpose & Documentation

- **Example:** During the audit period, purchases were made from the Academy's bank accounts for which supporting documentation was not on file and approval of the Governing Board could not be verified. The following transactions were unsupported:
 - Food - \$1,600
 - Gasoline - \$5,000
 - Travel - \$12,000
 - Fed Ex - \$1,100
 - Retail - \$25,000
 - Internet/Computer - \$5,200
 - Cell Phone - \$9,200
 - Utilities - \$1,700



Dave Yost

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Common Findings for Recovery

Proper Public Purpose & Documentation

- **Example:** During the audit period cash withdrawals were made from the School's bank account for which supporting documentation was not on file and approval of the Governing Board could not be verified. A total of \$27,200 in ATM withdrawals and checks made payable to "cash" were unsupported.
- Think about who would be liable for this.
- How could documentation have changed the outcome?



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Common Findings for Recovery

Proper Public Purpose & Documentation

- **Example:** During the audit period payments were made to Bob Jones in the amount of \$9,257. No employment records could be located for Bob Jones, and the purpose of the payments was not clear. Additionally, no Governing Board approval could be located.
- Was Bob Jones a contractor or consultant?
- Again, documentation was essential.
- When re-creating fiscal records, it is often impossible to determine the purpose of an expenditure.



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portion of the improvement to be financed by assessments. Therefore, in specific answer to your question, the cost factor in the cost-benefit ratio found in R.C. Chapter 6131 includes only those costs which are to be assessed against the owners of land which is benefited by the improvement.

Therefore, it is my opinion, and you are advised, that:

1. A board of county commissioners may expend funds it receives through the Federal Community Development Program to construct a drainage improvement.
2. The cost factor in the cost-benefit analysis required by R.C. Chapter 6131 includes only those costs which are to be assessed against landowners pursuant to that Chapter.

OPINION NO. 82-006

Syllabus:

1. Coffee, meals, refreshments and other amenities are fringe benefits which may properly be provided by units of local government to their employees as a form of compensation, if authorized by the officer or body having the power to fix the compensation of such employees.
2. Municipal funds may be expended to purchase coffee, meals, refreshments or other amenities for municipal officers, employees or other persons, if the legislative body of the municipality has determined that such expenditures are necessary to further a public purpose and if its determination is not manifestly arbitrary or unreasonable.
3. The governing body of a political subdivision other than a municipality may expend public funds to purchase coffee, meals, refreshments and other amenities for its officers or employees or other persons, if it determines that such expenditures are necessary to perform a function or to exercise a power expressly conferred upon it by statute or necessarily implied therefrom and if its determination is not manifestly arbitrary or unreasonable.
4. Since the decision to expend public funds to purchase coffee, meals, refreshments or other amenities is a legislative decision, it must be memorialized by a duly enacted ordinance or resolution and may have prospective effect only.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, March 1, 1982

I have before me your request to clarify two opinions of this office which address the expenditure of public funds by local political subdivisions for the purchase of meals, refreshments, and other amenities for public officers and employees. Your specific questions are as follows:

1. Is the analysis set forth in 1981 Op. Atty Gen. No. 81-052 applicable to units of local government other than boards of education, thus enabling them to provide coffee, meals, refreshments, and other amenities to their employees as fringe benefits?

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2. Does the analysis set forth in 1975 Op. Att'y Gen. No. 75-008 correctly require that under no circumstances may public moneys be expended by a political subdivision for meals, refreshments or other amenities for officers and employees of the political subdivision or third parties, in the local area?
3. If the answer to the preceding question is in the negative, what criteria should be applied by the Bureau of Inspection and Supervision of Public Offices in determining, as required by R.C. 117.10, whether "public money has been illegally expended" as a result of such expenditures?

You have indicated that your first question arises as a result of paragraph three of the syllabus of 1981 Op. Att'y Gen. No. 81-052, which states: "A board of education, pursuant to its general power to compensate its teaching employees, may expend public funds to provide its teaching employees with free lunches at the school cafeteria or with cash payments for early retirement or for longevity of tenure with the employing school district." Your specific question is, therefore, whether employees of the various public employers throughout the state may be given fringe benefits, such as coffee, meals, and refreshments, as part of their compensation.

My conclusion in Op. No. 81-052 that a board of education could expend public funds to provide its teaching employees with certain amenities or benefits rested in large part on the Ohio Supreme Court's decision in Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980). As I noted in Op. No. 81-052, the Ebert court spoke in general, unlimited terms and the rationale in Ebert, accordingly, "necessarily extends to any creature of statute and establishes the proposition that the power to employ includes the power to fix any fringe benefit—absent constricting statutory authority." Op. No. 81-052 at 2-202.

Of course, because a municipality is not a creature of statute, the analysis in Ebert does not apply to the fixing of compensation by a municipal corporation for its employees. Because compensation is a matter of substantive local self-government, a municipal ordinance concerning compensation of municipal employees would supersede any statutory provision in conflict with the ordinance. See Northern Ohio Patrolmen's Benevolent Association v. City of Parma, 61 Ohio St. 2d 375, 402 N.E.2d 519 (1980). The rationale set forth in Op. No. 81-052 does not, therefore, apply to municipalities as a restriction on their authority to compensate municipal employees.

In order to answer your first question, it is necessary to determine whether meals, refreshments and other amenities¹ (including coffee) are fringe benefits which may properly be provided to employees of local government units as "compensation," provided, of course, that there are no constricting statutory provisions. As I noted in 1977 Op. Att'y Gen. No. 77-090, there is no precise statutory or common law definition of the term "fringe benefit" as it relates to public employees. I indicated therein, however, that a fringe benefit is commonly understood to mean something that is provided at the expense of the employer and is intended to directly benefit the employee so as to induce him to continue his

¹ I recently noted, however, one exception to this general rule. In 1981 Op. Att'y Gen. No. 81-056 I opined that Ebert does not extend to state agencies since the General Assembly has not given individual state agencies the power to determine the compensation payable to their employees.

² After receiving your request, I contacted your office to seek clarification of what might be encompassed by the term "other amenities." It is my understanding that this term was intended as a reference to such non-food items as flowers for sick employees or relatives of employees, token retirement gifts, or meritorious service awards.

current employment. Madden v. Bower, 20 Ohio St. 2d 135, 254 N.E.2d 357 (1969). I am unable to be any more precise at this time. I do not, however, believe this imprecision is problematic with respect to your inquiry, since I am confident that there is little room for doubt in concluding that the illustrative amenities set forth in your request are properly viewed as fringe benefits when provided by an employer as an inducement to his employees to continue their current employment. See, e.g., 1981 Op. Att'y Gen. No. 81-082 (dental and eye care insurance as a fringe benefit); 1981 Op. Att'y Gen. No. 81-052 (free lunches and cash payments for early retirement or for longevity of tenure as fringe benefits).

In response to your first inquiry, it is, therefore, my opinion that coffee, meals, refreshments and other amenities are fringe benefits which may properly be provided by units of local government to their employees as a form of compensation, provided that there is no overriding statutory restriction to the contrary. Of course, in order for such benefits to be properly provided, they must be properly authorized by the local officer or body having the power to fix the compensation for such employees, and should be uniformly granted to all similarly situated employees. See Berenguer v. Dunlavey, 352 F. Supp. 444 (D. Delaware 1972), vacated as moot, 414 U.S. 895 (1973); Op. No. 81-082.

Your second question seeks clarification of the circumstances under which a political subdivision may expend public moneys for meals, refreshments and other amenities for its officers, employees or third parties. Since I have already discussed in response to your first question the legal basis for providing such amenities to employees as a form of compensation, I shall assume for the purposes of this inquiry that these amenities are not intended to be provided to the employees of the political subdivision as a form of compensation.

You specifically seek clarification of Op. No. 75-008, where I concluded that a board of education may not expend public funds for lunches or dinners for persons attending a local meeting of such board. Only two factual assumptions were evident in that opinion. First, the meals were being provided to members of the board of education, who are public officers. Second, the meetings in question took place in the home district and did not involve travel away from headquarters. Assuming no additional facts, I still am of the opinion that the provision of meals in such situation would not constitute a valid public purpose. This is not the same as saying, however, that under no circumstances may public moneys be expended by a political subdivision for meals, refreshments or other amenities, in the local area.

You have asked what criteria should, then, be applied in determining, as required by R.C. 117.10, whether "public money has been illegally expended" as a result of such expenditures. The relevant inquiry is whether the expenditure in question constitutes a "public purpose." Unfortunately, the problem of deciding what constitutes a public purpose has always been difficult. The courts have attempted no absolute judicial definition of a public purpose but have left each case to be determined by its own peculiar circumstances. The Ohio Supreme Court has, however, offered the following general guidelines to be applied in determining whether a particular expenditure constitutes a public purpose. State ex rel. McClure v. Hagerman, 155 Ohio St. 320, 88 N.E.2d 835 (1951). First, the test is whether the expenditure is required for the general good of all the inhabitants. "Generally, a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants. . . ." *Id.* at 325, 88 N.E.2d at 838. Second, if the primary objective is to further a public purpose, it is immaterial that, incidentally, private ends may be advanced. Third, the determination of what constitutes a public purpose is primarily a legislative function, and a legislative determination of a public purpose will not be disturbed except where such determination is palpable and manifestly arbitrary and incorrect. Asked to consider whether a municipal corporation could expend its funds to pay the cost of membership in an association of municipal finance officers, the McClure court summarized the proper inquiry as follows:

"There is no universal test for distinguishing between a purpose which is public or municipal and, therefore, a proper object of municipal expenditure and one which is private and, therefore, an improper object to which to devote public money. Each case must be decided in the light of existing conditions, with respect to the objects sought to be accomplished, the degree and manner in which that object affects the public welfare, and the nature and character of the thing to be done; but the court will give weight to a legislative determination of what is a municipal purpose, as well as widespread opinion and general practice which regard as city purposes some things which may not be such by absolute necessity, or on a narrow interpretation of constitutional provisions. * * * It has been laid down as a general rule that the question whether the performance of an act or the accomplishment of a specific purpose constitutes a 'public purpose' for which municipal funds may be lawfully disbursed rests in the judgment of the municipal authorities, and the courts will not assume to substitute their judgment for that of the authorities unless the latter's exercise of judgment or discretion is shown to have been unquestionably abused."

McClure, 155 Ohio St. at 325-26, 98 N.E.2d at 838 (quoting 64 C.J.S. 334, 335, §1835b). Thus, the provision of meals, refreshments or other amenities, although invariably conferring a private benefit, may be a permissible expenditure of public funds, if the legislative authority has determined that the expenditure is necessary to further a public purpose. Confronted with a situation in which such a legislative determination has been made, you may not find that public money has been illegally expended, within the meaning of R.C. 117.10, unless you have reason to believe that such determination is "palpable and manifestly arbitrary and incorrect." McClure, 155 Ohio St. at 325, 98 N.E.2d at 838 (quoting 37 Am. Jur. 734-35, §120). On the other hand, if you have reason to believe that the legislative body has abused its discretion in determining that a public purpose has been served by the expenditures in question, then it is your duty to make a finding in accordance with R.C. 117.10 so that a court may review the matter.

Reference is made throughout the foregoing analysis to the discretion conferred upon "legislative bodies" to determine what constitutes a public purpose. This terminology is understandable because the public purpose cases have traditionally been concerned with the power of municipalities to undertake certain functions. I understand your present inquiry to be broader, however, and to include counties, townships, school districts and other political subdivisions. It is, therefore, necessary to determine whether the term "legislative bodies" can encompass the governing bodies in political subdivisions other than municipalities.

In its strictest sense the term "legislative bodies" refers to the traditional bodies empowered to make laws, such as Congress, state legislatures and municipal councils. Courts have recognized, however, that the governing bodies of other political subdivisions are at times called upon to exercise legislative powers or functions. For example, in Stein v. Erie County Commissioners, 16 Ohio Misc. 155, 241 N.E.2d 300 (C.P. Erie County 1968), the court held that, when creating a regional airport authority under the provisions of R.C. Chapter 308, the county commissioners were acting in a legislative capacity. Similarly, in Morgan County Commission v. Powell, 292 Ala. 300, 305, 293 So.2d 830, 834 (1974), the court held that, "[i]n the aspect of appropriating money from the county treasury, a county governing body must be deemed as exercising a legislative power." Similarly, the adoption of zoning ordinances and maps is traditionally regarded as a "legislative act." See, e.g., County of Pasco v. J. Dico, Inc., 343 So.2d 83 (Fla. App. 1977); Board of Supervisors v. Lerner, 221 Va. 30, 267 S.E.2d 100 (1980). One court has found a board of education to be a "legislative body." Andeal v. Woods, 174 Kan. 556, 258 P.2d 285 (1953). In Allstate Insurance Co. v. Metropolitan Sewerage Commission, 80 Wis.2d 10, 258 N.W.2d 148 (1977), the court held that the decisions of a metropolitan sewerage commission with respect to planning and designing sewer systems were "legislative acts" for which the commission was immune from

tort liability. As these cases suggest, legislative power can mean something broader than the usual power to enact laws. A governmental body may be deemed to exercise a legislative function when it promulgates policies, standards, regulations or rules of general application and prospective operation and when the body's decision is appropriately based on considerations similar to those a legislature could have invoked. Board of Supervisors v. Department of Revenue, 263 N.W.2d 227, 239 (Iowa 1978).

Relying on this broader definition of what constitutes a legislative function, I find no reason to restrict the public purpose analysis, illustrated by McClure, to municipalities only. It is my opinion that a decision properly made by the appropriate governing body of a county, township, school district or other political subdivision to expend public funds to provide coffee, meals, refreshments or other amenities is to be subjected to the same analysis. This does not mean, however, that other political subdivisions are on exactly the same footing as municipalities. Political subdivisions other than municipalities are creatures of statute and have only such powers as are expressly granted or necessarily implied. See, e.g., State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (board of county commissioners, as creature of statute, has only powers expressly conferred by statute). Consequently, such political subdivisions may make "legislative" decisions only with respect to matters in which they have been authorized to act by the General Assembly. The provision of meals, refreshments and other amenities by such political subdivisions is permissible, therefore, only if the governing body has reasonably determined that the provision of such amenities is necessary to the performance of a function or duty or to the exercise of a power expressly conferred by statute or necessarily implied therefrom. See 1930 Op. Att'y Gen. No. 2170, vol. II, p. 1241.

Additionally, since the decision to expend public funds for meals, refreshments or other amenities for persons other than employees is in a sense a legislative decision, it must be made in accordance with the procedural formalities governing the exercise of legislative power. Specifically, the decision must be memorialized by a duly enacted ordinance or resolution and may have prospective effect only. See Department of Revenue, 263 N.W.2d at 239. See, e.g., McClure, *supra*.

In specific response to your questions, it is, therefore, my opinion, and you are advised, that:

1. Coffee, meals, refreshments and other amenities are fringe benefits which may properly be provided by units of local government to their employees as a form of compensation, if authorized by the officer or body having the power to fix the compensation of such employees.
2. Municipal funds may be expended to purchase coffee, meals, refreshments or other amenities for municipal officers, employees or other persons, if the legislative body of the municipality has determined that such expenditures are necessary to further a public purpose and if its determination is not manifestly arbitrary or unreasonable.
3. The governing body of a political subdivision other than a municipality may expend public funds to purchase coffee, meals, refreshments and other amenities for its officers or employees or other persons if it determines that such expenditures are necessary to perform a function or to exercise a power expressly conferred upon it by statute or necessarily implied therefrom and if its determination is not manifestly arbitrary or unreasonable.
4. Since the decision to expend public funds to purchase coffee, meals, refreshments or other amenities is a legislative decision,

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it must be memorialized by a duly enacted ordinance or resolution and may have prospective effect only.

OPINION NO. 82-007**Syllabus:**

1. A sheriff, and his deputies, owe a duty of ordinary care to prisoners in their custody. If their actions fall below this standard, they may be found liable by a court.
2. Boards of county commissioners have been protected from suit by the doctrine of sovereign immunity, and individual members of such boards have been protected by the doctrine of official immunity.
3. "The common law doctrine of governmental or sovereign immunity may, consistent with Section 16, Article I of the Ohio Constitution, be abolished or altered by the judicial branch of government." *Schenkolewski v. Cleveland Metropark System*, 67 Ohio St. 2d 31, 426 N.E.2d 784 (1981) (paragraph one, syllabus).
4. A prisoner engaged in a work release program whereby the prisoner is allowed to leave the jail in order to continue employment held prior to sentencing is not an employee of the county for the purpose of the Ohio Workers' Compensation Act.
5. A prisoner engaged in a trustee program whereby the prisoner works in or about the county jail under the direct supervision of the sheriff and deputy sheriffs is not an employee of the county for the purpose of the Ohio Workers' Compensation Act.

To: James R. Unger, Stark County Prosecuting Attorney, Canton, Ohio
By: William J. Brown, Attorney General, March 1, 1982

I have before me your request for my opinion, which presents the following questions:

- (1) Is the sheriff or any of his deputy sheriffs liable for injuries sustained by a prisoner engaged in a "work release" program whereby the prisoner has continued employment held prior to sentencing and is not under the supervision of the sheriff or deputy sheriffs while engaged in such employment?
- (2) What is the respective liability of the Board of County Commissioners based on the same facts set out in question number one?
- (3) Are prisoners engaged in employment under the "work release" program "employees" within the meaning of the Workers' Compensation Act so as to be entitled to compensation under the Act for injuries they have incurred while working in the above program?
- (4) If such prisoners are covered under the Workers' Compensation Act, what statute(s) or constitutional provision(s) would authorize the Board of County Commissioners to enter into a contract with the Ohio Bureau of Workers' Compensation for the purpose of extending benefits under the Act to prisoner employees involved in the work release program?

Policy and Procedure for Credit and Vendor Cards

CREDIT & VENDOR CARDS

Employees who are issued a County credit card may only use it for work related purposes. No employee may use a County credit card for personal use.

General Rules Applicable to all Cards

1. Two forms must be completed in order to be in compliance with County policy on Credit Cards/Vendor (company specific) cards: 1.) Credit Card Key Department Contact Agreement, and 2.) Credit Cardholder User Agreement. Both forms are on the Fairfield County Intranet under Auditor's Office forms, or by calling the Auditor's Office Finance Department at 681-5509.
2. An appointing authority must designate a key department contact that will review, reconcile, approve, insure sufficient funding is available, and match supporting documentation to the vendor's billing statement. The key department contact will also be the primary contact person with the vendor and receive the monthly billing statements addressed to them directly. The contact person will work directly with the vendor to resolve erroneous charges, disputed items, and in tracking credits. The purchaser(s) will provide the invoices to the key department contact in sufficient line item detail and notes to determine the business purpose of the transaction. The key department contact will forward the statement and supporting documentation for payment, in the prescribed time frame to pay the vendor without late fees or interest charged. Most typically, the key department contact will be the person with an established relationship with the Auditor's Office in paying bills.
3. The key department contact will notify the Auditor's Office of all credit cards taken out and in circulation, along with the authorized user(s) of the card. Any cards issued in the name of the department and available for multiple users must be stored in a secure area with limited access.
4. Misuse of the card will result in revocation and the County will seek restitution for any inappropriate charges. The department/employee must accept responsibility for protection and proper usage of the card for work-related purposes only. All transactions must be for a proper public purpose.
5. Every effort should be made when establishing vendor accounts to insure the County is treated as tax-exempt, as well by purchasers at the actual point of sale.
6. If an individual cardholder is terminating from the department, the card must be returned to the key department contact which will then cancel the account and destroy the card.

Policy and Procedure for Credit and Vendor Cards

Credit Cards

Credit cards such as (Visa, MasterCard, and Discover, etc.) are governed by ORC 301.27, require Board of Commissioner approval, are for very specific and limited categories of work-related expenses listed below, and do not permit late fees or finance charges as allowable expenses, unless authorized by Board of Commissioners. Allowable expenses include:

1. Food expenses
2. Transportation expenses
3. Gasoline and oil expenses
4. Motor vehicle repair and maintenance expenses
5. Telephone expenses
6. Lodging expenses
7. Internet service provider expenses
8. Expenses for children being provided temporary emergency care by the agency

NOTE: Use of a county credit card for any use other than permitted above is a violation of ORC 2913.21.

Under no circumstances shall the "cash back" or "cash withdrawal" option be used and alcohol, entertainment, personal services expenditures are strictly prohibited.

Vendor (company specific) Cards

An appointing authority may authorize employees to make small purchases with a Vendor card (used only with a specific company) for administrative convenience. An appointing authority will establish reasonable dollar limits by transaction or period of time with each vendor according to need, minimizing the County liability and exposure to misuse. Cards are not to be used to circumvent the bidding process. No card may ever be used for cash advances.

Cards may be issued in the name of the department allowing multiple employees to sign out, or in the name of a specific individual. In both cases, safekeeping of the card, and usage limited to an authorized individual(s) is paramount. Any items ordered must be shipped to a Fairfield County work location, as shipments to home addresses are never allowed. All charges are to be paid in the current billing period avoiding any late fees or interest charges.

Employees may not use frequent flyer miles earned for County travel for personal use.

Employees who earn frequent flyer miles while on travel for the County shall turn those miles in to their appointing authority.



A Two-Factor Model of Ethical Culture

A CONCEPTUAL FRAME FOR ETHICAL SYSTEMS' CULTURE SURVEY
CATERINA BULGARELLA, PH.D.

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Making Progress in the Field of Business Ethics

Over the past 15 years, behavioral science has provided practitioners with a uniquely insightful perspective on the organizational elements companies need to focus on to build an ethical culture. Pieced together, this research can be used to address the growing challenges business must tackle today.

Faced with unprecedented complexity and rapid change, more and more organizations are feeling the limitations of an old-fashioned approach to ethics. In this new landscape, the importance of a proactive ethical stance has become increasingly clear. Not only is a strong focus on business integrity likely to reduce the costs of misconduct, but it can afford companies a solid corporate reputation, genuine employee compliance, robust governance, and even increased profitability.

The need for a smarter, deeper, and more holistic approach to ethical conduct is also strengthened by the inherent complexity of human behavior. As research continues to shed light on the factors that undermine people’s ability to ‘do the right thing,’ we are reminded of how difficult it is to solve for ethics without addressing the larger challenge of organizational culture.

The components that shape the culture of an organization exercise a constant and unrelenting influence on how employees process information, make decisions, and, ultimately, respond to ethical dilemmas. This is why, in order to help business achieve a deeper and more systematic ethical focus, we must understand the ingredients that make up an ethical culture.

Understanding the Ingredients of an Ethical Culture

Consolidating major research on business integrity and ethical behavior, Ethical Systems has focused on measuring ethical culture in a valid and reliable way. This effort has entailed extracting the most important elements of culture measurement generated by academic research and subjecting these elements to additional empirical validation. Ten areas of assessment have resulted from this work. These areas clarify the do’s and don’ts companies must address if they wish to build a strong focus on ethics.

The ten areas of measurement tap into key elements of culture, including leadership behavior, organizational ethos, social contract, individual perceptiveness, and employee response to observed misconduct. Because the measures across these dimensions were found to successfully predict unethical behavior, they are uniquely relevant to the objective of measuring ethical culture. That is, Ethical Systems’ approach is different from an attempt to gauge culture with the more generic goal of simply surfacing common patterns of behavior across the organization.

As shown in Table 1, the ten areas of measurement can impact a company’s focus on ethics in profound ways. Five areas capture the prerequisites business need to meet to develop a strong ethical orientation. We call them Disqualifiers because their presence undermines the emergence of a genuine focus on ethics. Companies that score high on the Disqualifiers present foundational weaknesses that should be addressed thoroughly and way before any other type of culture work is started.

The other five areas denote qualities and dynamics consistent with a robust ethical orientation. We call them Qualifiers because the higher a company scores on them, the stronger its ethical focus.

Culture Dimension	Disqualifiers	Qualifiers
<i>Social Contract</i>	Organizational Unfairness	Organizational Trust
<i>Leadership Behavior</i>	Abusive Manager Behavior	Ethical Leadership
<i>Organizational Ethos</i>	Selfish Orientation	Benevolent Orientation
<i>Individual Perceptiveness</i>	Lack of Awareness	Empathy
<i>Response to Misconduct</i>	Fear of Retaliation	Efficacy & Speaking Out

Table 1. A Two-Factor Model of Ethical Culture.

Not only are the five culture dimensions highlighted in the model necessary to characterize an organization’s focus on ethics, but they are also important to understand the types of gut checks employees make to decide if the culture in which they work is ethical or not. According to ethical intuitionism, people use basic moral modules (e.g., fairness, care, loyalty) to determine if something is ethical.¹ Experiencing unfairness, abusive manager behavior, a selfish attitude, and/or retaliation will likely fail employees’ elementary expectations about ethical conduct, leading them to conclude that their organization’s culture is unethical. This, in turn, may have an impact on their level of moral engagement. In contrast, experiencing trust, ethical leadership, a caring attitude, and empathy will be consistent with expectations of ethical conduct, helping employees view their organization as being ethical. A review of the five dimensions follows below. See Appendix 2 for a full image of the framework.

Social contract refers to a set of shared perceptions about how the organization relates to people and people relate to each other. If employees are treated unfairly or observe the organization applying standards and policies in a way that shows preferential treatment, they’ll likely experience organizational injustice and some level of dishonesty/hypocrisy. In contrast, if employees experience trust (the Qualifier in this category), the prevailing perception will be that the organization and its members will not harm each other. Tan and Tan (2000), for example, defined trust as “an employee’s feeling of confidence that the organization will perform actions that are beneficial, or at least not detrimental, to him or her.”² That is, a social contract based on trust will likely strengthen the organization’s ethical focus by reinforcing the perception of a shared code of conduct.

Leadership behavior captures the influence of leadership and management on the organization’s ethics. Do leaders engage in behavior that strengthens or weakens a company’s ethical orientation? This is a fundamental question as, traditionally, leadership has been associated with the ability to influence and motivate others (e.g., House, 1994; Mosley, Pietri, and Megginson, 1996).³ Moreover, leadership

¹ Graham, J., Haidt, J., Koleva, S., Motyl, M., Iyer, R., Wojcik, S. P., & Ditto, P.H. (2012) Moral foundations theory: The pragmatic validity of moral pluralism. *Advances in Experimental Social Psychology*.
² Tan, H. H., & Tan, C. S. (2000). Toward the differentiation of trust in supervisor and trust in organization. *Genetic, Social, and General Psychology Monographs*, 126(2), 241-260.
³ House, R. J. (1994). Path-goal theory of leadership: Lessons, legacy, and a reformulated theory. *The Leadership Quarterly*, 7 (3), 323-352.
 Mosley, D.C., Pietri, P.H. & Megginson, L.C., (1996). *Management: Leadership in action* (5th ed.). New York: Harper Collins Publishers.

can have a profound impact on how the organization's culture changes and evolves over time (Schein, 1992; Avolio & Avolio, 1993).⁴

Organizational ethos refers to deep-rooted beliefs that organizational members hold about themselves and others. This dimension overlaps with Arnaud's and Schminke's notion of ethical climate (2012)⁵, encompassing basic assumptions about behavior (e.g., selfish vs. benevolent). Ethos runs deeper than what people perceive on the level of daily experiences and other transient factors. Selfish versus benevolent assumptions can affect how employees process information and respond to others. They can impact the priorities people set. And they can influence the way employees frame ethical dilemmas, use resources, and engage with each other.

Individual perceptiveness captures the level of insight individuals bring to bear upon ethical challenges. Awareness of ethical issues is a necessary precondition of ethical decision-making. Butterfield, Treviño, and Weaver (2000) defined moral awareness as "a person's recognition that his or her potential decision or action could affect the interests, welfare, or expectations of the self or others in a fashion that may conflict with one or more ethical standards."⁶ Lack of awareness is not only detrimental to one's ability to make ethical decisions, but also indicative of an immature culture. In contrast, empathy (the Qualifier in this category) underscores emotional and/or cognitive perspective-taking (McDonald & Messinger 2011)⁷, foretelling a more thoughtful and mindful response to ethical challenges.

Response to misconduct is an area that highlights how people react when they observe unethical behavior. Because this dimension is immediately relevant to ethical outcomes, it can be viewed as an acid test of a company's ethical focus. Do people fear retaliation? Do they feel a sense of agency over ethical outcomes? Do they speak up if they observe misconduct? A culture grounded in ethics presupposes that employees perceive a certain level of control over ethical outcomes, and that there exist resources that can help them take action against unethical occurrences. In contrast, if people fear retaliation, the organizational culture will probably lack key ethical components (Mayer, Nurmohamed, Treviño, Shapiro, & Schminke, 2013)⁸, making it all the more difficult for employees to report misconduct and actively contribute to a strong ethical focus.

Each of the five areas of measurement in the Dual-Factor Model is characterized by a Disqualifier and a Qualifier. A company's standing across the five areas must be understood in relation to both the

⁴ Schein, E.H. (1992). *Organizational culture and leadership* (2nd ed.). San Francisco: Jossey-Bass.

Avolio Howell, J.M. and Avolio, B.J. (1993). Transformational leadership, transactional leadership, locus of control and support for innovation: Key predictors of consolidated business unit performance. *Journal of Applied Psychology*, 78, 891-902.

⁵ Arnaud, A., & Schminke, M. (2012). The ethical climate and context of organizations: A comprehensive model. *Organization Science*, 23(6), 1767-1780.

⁶ Butterfield, K. D., Treviño, L. K., & Weaver, G. R. (2000). Moral awareness in business organizations: Influences of issue-related and social context factors. *Human Relations*, 53, 981-1018.

⁷ McDonald N.M., Messinger D.S. (2011) The development of empathy: how, when, and why. In: Acerbi A., Lombo J.A., Sanguinetti J.J., (Eds.). *Free Will, Emotions, and Moral Actions: Philosophy and Neuroscience in Dialogue*. IF Press; Vatican City: 2011.

⁸ Mayer, D.M., Nurmohamed, S., Treviño, L.K., Shapiro, D. L. Schminke, M. (2013). Encouraging employees to report unethical conduct internally: It takes a village. *Organizational Behavior and Human Decision Processes*, 121, 89-103.

Qualifiers and the Disqualifiers. Two questions are critical in this respect: 1. Does the company meet the minimum requirement in each area? 2. If it does, how effectively is the company building ethical assets across the five dimensions of ethical culture? A discussion of the psychological and behavioral underpinnings of the Disqualifiers and Qualifiers follows below.

The Disqualifiers: Meeting Minimum Requirements

Let's imagine being at the helm of a newly founded company and having to make sure the culture is imprinted with a strong ethical orientation. What are the dynamics and practices we need to avert or stave off in order to set the right foundations? This is what the Disqualifiers highlight—the don'ts companies must avoid if they wish to foster an ethical culture. The guidance the model provides in this respect is straightforward: Organizations should minimize all five Disqualifiers because each of them, one way or the other, is at odds with basic moral expectations. Not only will companies that score high on the Disqualifiers be viewed as having weak business ethics, but they will lack the foundations on which strong ethical practices are built.

Organizational Unfairness

Research indicates that employees are likely to pay attention to how the organization distributes outcomes and resources, as well as to how organizational processes and policies are implemented (Lind & Tyler, 1988).⁹ Distributive and procedural unfairness can cripple a company's attempt to build a strong ethical culture for a variety of reasons:

1. Justice operates as a basic motive (Tyler, 1991),¹⁰ raising the symbolic meaning and evaluative relevance of any form of unfairness people experience at work;
2. Procedural and interactional injustice violate shared expectations of reciprocal moral obligations (Cropanzano, Goldman, & Folger, 2003)¹¹;
3. When agreed-upon rules and procedures are violated, people feel a loss of personal control (Cropanzano, Rupp, Mohler, & Schminke, 2001),¹² as well as a threat to their social status (Tyler and Blader, 2000)¹³.

Because organizational unfairness endangers basic motives, contradicts shared obligations, and portends negative personal consequences for employees, its performance as a Disqualifier of ethical culture should be monitored closely.

Abusive Manager Behavior

⁹ Lind, E. A., & Tyler, T. R. (1988). *The social psychology of procedural justice*. New York: Plenum Press.

¹⁰ Tyler, T. R. (1991). Psychological models of the justice motive: Antecedents of distributive and procedural justice. *Journal of Personality and Social Psychology*, 67, 850–863.

¹¹ Cropanzano, R., Goldman, B., Folger, R. (2003). Deontic justice: The role of moral principles in workplace fairness. *Journal of Organizational Behavior*, 24, 1019–1024.

¹² Cropanzano, R., Rupp, D. E., Mohler, C. J., & Schminke, M. (2001). Three roads to organizational justice. In J. Ferris (Ed.), *Research in Personnel and Human Resources Management* (Vol. 20, pp. 1–113). Greenwich, CT: JAI Press.

¹³ Tyler, T. R., Blader, S. L. (2000). *Cooperation in groups: Procedural justice, social identity, and behavioral engagement*. Philadelphia: Psychology Press.

Abusive manager behavior entails the inappropriate exercise of managerial power over employees. Ashforth (1997)¹⁴ used the term “petty tyranny” to capture a constellation of abusive behaviors, such as arbitrary decision-making, employee belittlement, intolerance of dissent, and capricious punishment. Keashley, Trott and McLean (1994)¹⁵ highlighted the harmful emotional impact of abusive manager conduct—such as yelling, humiliating, using derogatory terms, backstabbing, and so on—on the employee’s sense of competence and/or self-esteem. Behavior that falls in this category is unethical because it violates shared norms. It is unfair because it is enacted as a result of a power differential. And it is abusive because it causes harm in a context in which the target doesn’t have adequate control over the means, processes, and resources needed to rectify the situation.

In addition to being a blatant breach of interactional justice, this type of conduct can have an enduring negative impact on the organization’s culture due to the influential role managers play on their employees’ work life. Even when ethical leadership trickles down from the top (Mayer, Kuenzi, Greenbaum, Bardes, & Salvador, 2009),¹⁶ it may be hard for people to discount the behavior of an abusive manager and the negative consequences that ensue from an experience that has such moral intensity¹⁷. It is also difficult for the organization to control the negative learning that takes place when people observe a consistently unethical model of conduct (Bandura, 1978)¹⁸. Finally, if the manager’s behavior goes unpunished, employees may easily conclude that the organization doesn’t place much value on ethics.

Selfish Orientation

A selfish orientation entails putting one’s own interests and gains before those of others (Palmer, 2000)¹⁹. In an organizational culture with such an orientation, people are predominantly concerned with securing and/or protecting personal outcomes. For example, employees may believe that their own survival and tenure in the organization requires defending their own turf above all else.

Though a focus on individual results doesn’t have to be at odds with ethical outcomes (Lu, Zhang, Rucker, & Galinsky, 2017)²⁰, selfish motives, such as the desire for rewards or social status, can increase the likelihood of unethical behavior (Edelman & Larkin, 2015; Kern & Chugh, 2009)²¹. Furthermore, they

¹⁴ Ashforth B.E. (1997). Petty tyranny in organizations: A preliminary examination of antecedents and consequences. *Canadian Journal of Administrative Sciences*, 14, 126-140.

¹⁵ Keashly L., Trott V., MacLean L.M. (1994). Abusive behavior in the workplace: A preliminary investigation. *Violence and Victims*, 9, 125-141.

¹⁶ Mayer, D. M., Kuenzi, M., Greenbaum, R., Bardes, M., & Salvador, R. (2009). How low does ethical leadership flow? Test of a trickle-down model. *Organizational Behavior and Human Decision Processes*, 108, 1-13.

¹⁷ Jones, T. M. (1991). Ethical decision-making by individuals in organizations: An issue-contingent model. *Journal of Communication*, 28 (3), 12-29.

¹⁸ Bandura, A. (1978). Social learning theory of aggression. *Journal of Communication*, 28 (3), 12-29.

¹⁹ Palmer, A. (2000). Cooperation and competition: A Darwinian synthesis of relationship marketing. *European Journal of Marketing*, 34(5/6), 687-704.

²⁰ Lu, J., Zhang, T., Galinsky, A. D., Rucker, D. D. (2017). On the distinction between unethical and selfish behavior. *Atlas of Moral Psychology*.

²¹ Kern, M. C., & Chugh, D. (2009). Bounded ethicality: the perils of loss framing. *Psychological Science*, 20(3), 378-384.

Edelman, B., & Larkin, I. (2015). Social comparisons and deception across workplace hierarchies: Field and experimental evidence. *Organization Science*, 26(1), 78-98.

may dilute the organization's effort to create a shared ethos and successfully align self- and organizational interests.

The negative effect of a selfish orientation on a company's ethos and risk of misconduct will manifest in different ways. For example, if people are predominantly driven by self-interest, they may choose to ignore what is right to achieve what is most beneficial to them. Or, they may fail to hold others accountable, should that entail a cost or get in the way of a gain. Or, they may gloss over ethical problems that are not immediately relevant to their goals. In this type of organizational environment, the beliefs, assumptions, and values that govern individual action and decision-making are centered upon what is right and good for oneself, rather than what is right and good for all.

Lack of Awareness

Moral awareness—the ability to recognize the moral implications of a challenge, situation and/or decision—is a critical component of moral reasoning and ethical decision-making (Rest, 1986; Clarkeburn, 2002)²². This is why lack of awareness is a Disqualifier of ethical culture. If employees cannot discern the ethical nature of certain issues, the organization is missing a key ingredient to build a strong ethical focus. Not only will people lack the resources to contribute to the organization's discourse on ethics, but they will be less likely to engage in ethical decision-making (Treviño, 1986)²³.

The detection of low ethical awareness among employees is also an indication that the culture, as the system of formal and informal levers that regulate and foster ethical conduct (Brown & Treviño, 2006; Kaptein, 2008)²⁴, is not operating as it should. Even if people had little moral sensitivity to begin with, an organization committed to ethics would take action to raise employees' awareness of ethical issues through conversations, training, communications, and other interventions.

Fear of Retaliation

What does it mean for people to fear retaliation? It means that they expect that others in the organization (e.g., managers, colleagues) will inflict negative consequences on them, should they report an ethical breach. That is, fear of retaliation underscores the belief that some stakeholders may engage in unethical behavior to silence employees who speak out—an expectation squarely at odds with an ethical culture. As such, this Disqualifier should be used as a *prima facie* indicator of the organization's ethical orientation. Not only does fear of retaliation signal the presence of bad behavior, but it also suggests that those good behaviors that foster ethical conduct are less likely to occur. For example, when fear of retaliation is widespread, employees will be less likely to hold each other accountable. As a result, they may avoid raising important questions about ethical issues, downplay their managers' guidance, or discount the value of E&C training. As noted by Mayer et al. (2003), it takes a village to

²² Rest, J.R. (1986). *Moral Development: Advances in research and theory*. New York: Praeger.

Clarkeburn, H. (2002). A test for ethical sensitivity in science. *Journal of Moral Education*, 31(4), 439–53.

²³ Treviño, L. K. (1986). Ethical decision-making in organizations: A person-situation interactionist model. *The Academy of Management Review*, 11(3), 601–617.

²⁴ Brown, M. E., Treviño, L. K., (2006), Ethical leadership: A review and future directions. *The Leadership Quarterly*, 17, 595–616.

Kaptein, M. (2008). Developing and testing a measure for the ethical culture of organizations: The corporate ethical virtues model. *Journal of Organizational Behavior*, 29, 923–947.

create a culture in which people feel comfortable speaking up. That starts with eliminating all type of retaliatory behavior in the workplace.

The Qualifiers: Building Ethics in Organizations

If the Disqualifiers highlight the practices and dynamics an organization must avoid in order to build an ethical culture, the Qualifiers clarify what companies need to do to foster a strong ethical orientation. Keeping the Disqualifiers at bay while nurturing the Qualifiers is the most effective strategy to achieve a culture grounded in ethics. Not only are the Qualifiers consistent with intuitive modules people use to evaluate whether the culture is ethical or not (e.g., fairness, care, loyalty, etc.), but they are instrumental to the creation of a strong focus on ethics.

Organizational Trust

Trusting relationships are key to an ethical culture. When an individual is perceived as trustworthy, this means that people have confidence in her ability, benevolence, and integrity (Mayer, Davis, & Shoorman, 1995)²⁵. If trust is prevalent in the organization, people are more likely to hold positive expectations about each other's reliability, motivations, and conduct (Korsgaard, Brower & Lester, 2015)²⁶.

This positive climate can help employees take risks when working with each other, letting trust fill the gaps. And this is why trust is a Qualifier of ethical culture: It makes it easier for organizational members to care about each other; it demands a shared commitment toward the same rules; it encourages a sense of moral obligation toward the law (Lilly, Duffy, & Wipawayangkool, 2016)²⁷. In short, when organizational trust is high, employees are more concerned with doing the right thing because they know that others are taking risks with them and they are taking risks with others.

Ethical Leadership

Given that employees look for ethical guidance, leaders who consistently engage in ethical conduct can play an influential role on the culture of the organization (Brown, Treviño, & Harrison, 2005)²⁸. In particular, leaders who become legitimate role models by demonstrating honesty, considerateness, and fairness have the personal assets to convincingly steer the organization's focus towards ethics (Brown et al., 2005).

²⁵ Mayer, R. C., Davis, J. H., & Shoorman, F. D. (1995). An integrative model of organizational trust. *The Academy of Management Review*, 20 (3), 709-734.

²⁶ Korsgaard, M. A., Brower, H. H. & Lester, S. W. (2015). It isn't always mutual: A critical review of dyadic trust. *Journal of Management*, 41(1), 47-70.

²⁷ Lilly, J., Duffy, J.A., & Wipawayangkool, K. (2016). The impact of ethical climate on organizational trust and the role of business performance: If business performance increases, does ethical climate still matter? Institute of Behavioral and Applied Management, All Rights Reserved.

²⁸ Brown, M. E. Treviño, L.K., Harrison, D. A. (2005). Ethical leadership: A social learning perspective for construct development and testing. *Organizational Behavior and Human Decision Processes*, 97,117-134.

But ethical leadership does not stop at demonstrating integrity (Hogan, Curphy, & Hogan, 1994)²⁹, caring for employees (Howell & Avolio, 1992)³⁰, and applying fair standards (Tyler, 1986; Tyler & Degoey, 1995)³¹. It also requires making ethical principles salient and prominent, engaging in constructive two-way communications on ethical issues (e.g., speaking with and listening to employees), taking responsibility for both good and bad results, and holding people accountable to ethical standards (Brown et al., 2005).

Having leaders commit to these behaviors pays off. Not only does ethical leadership lead to a host of positive outcomes (e.g., satisfaction with leadership, perceived leader effectiveness, employee dedication, organizational identity, employee self-efficacy, etc.), but it reduces the risk of negative ones (e.g., employee deviant behavior, misconduct, etc.). This is why ethical leadership is a key Qualifier of ethical culture: It is a foundational system that organizations must cultivate if they wish to be ethical.

Benevolent Orientation

A benevolent orientation indicates a concern with the common good: People are not simply interested in themselves, but are also focused on how the organization and their actions within it may affect others, and even society at large. Such an orientation is instrumental to an ethical culture because it redefines what is good and right in less myopic and selfish terms.

The positive impact of a benevolent orientation can be multifold. When people make decisions that have ethical implications, they use criteria and frames. The criteria they use (i.e., egoism, benevolence, principled-ness) and the frames they apply (i.e., impact on self, peers, or society at large) will affect how ethical issues are treated and resolved (Victor & Cullen, 1988)³². This is why organizations that cultivate a benevolent orientation are positioned to achieve a higher level of moral development. They may embrace a larger, more complex purpose, ponder challenges from different angles, and tackle ethical questions with greater humility and openness. This, in turn, can help employees avoid petty and parochial ways of thinking, strengthening their moral sensitivity and deepening their awareness in the face of new challenges and dilemmas.

Empathy

Empathy, the capacity to take perspective and put oneself in other people's shoes, works as an ego-depleting state in which people engage by choice, according to the most recent research (Cameron, Inzlicht, & Cunningham, 2015)³³. If empathy is the ability to put oneself into the shoes of others,

²⁹ Hogan, R., Curphy, G. J., & Hogan, J. (1994). What we know about leadership: Effectiveness and personality. *American Psychologist*, 49, 493–504.

³⁰ Howell, J. M., & Avolio, B. J. (1992). The ethics of charismatic leadership: Submission or liberation. *Academy of Management Executive*, 6, 43–54.

³¹ Tyler, T. R. (1986). The psychology of leadership evaluation. In H. W. Bierhoff, R. L. Cohen, & J. Greenberg (Eds.), *Justice in Social Relations*. NY: Plenum.

Tyler, T. R., & Degoey, P. (1995). Collective restraint in social dilemmas: Procedural justice and social identification effects on support for authorities. *Journal of Personality and Social Psychology*, 69, 482–497.

³² Victor, B., & Cullen, J. B. (1987). A theory and measure of ethical climate in organizations. *Research in Corporate Social Performance and Policy*, 9, 51–71.

³³ Cameron, D., Inzlicht, M., Cunningham, W. A. (2015). Empathy is actually a choice. *New York Times*, July 10, 2015.

cognitively and/or emotionally, and if it is a deliberate behavior that bears personal costs, it must entail a deeper state of awareness.

First, people must become responsive to their surroundings to choose to care. Second, the cognitive and emotional shift that allows an individual to take on another person's experience or perspective requires a non-trivial level of presence and reflection, as suggested by the ego-depleting effects empathy has been found to have on people.

This is why empathy works as a Qualifier of ethical culture. If employees are empathetic, they are more apt to take cognitive and emotional perspective. This, in turn, can help them evaluate what is at stake from the vantage point of others and more fully consider the impact of their behavior on their peers and the organization. That is, their moral and ethical focus is bound to grow and develop, opening the way to the organization's own moral development and ethical growth.

Efficacy & Speaking Out

In an ethical culture, not only is doing the right thing the appropriate, normative standard, but people should feel confident that they can exercise meaningful agency over the achievement of ethical outcomes. This is why efficacy, the perception that one can have a positive influence on ethical occurrences, and speaking up, the act of reporting ethical issues or breaches, are critical Qualifiers.

Together, these two elements are characteristic of an organizational environment in which employees can take action to stop and/or prevent instances of unethical behavior. Efficacy, in particular, suggests that the culture provides employees with internal and external resources (Bandura, 1997)³⁴ that increase their control over the organization's ethics. In this context, speaking up, a potentially costly course of action due to the challenge it poses to authority and/or peer loyalty, underscores a person's choice to exercise control. Despite the social costs of 'snitching', people who care about the organization's ethics and who believe that their action can help correct course will speak out and take other steps to counter an unethical outcome.

Conclusions

The Two-Factor Model clarifies the dimensions and areas organizations must monitor, measure, and manage to foster a culture built on ethics. The model offers specific guidance for designing systems that create a strong ethical focus, highlighting both Disqualifiers and Qualifiers of ethical culture.

The Disqualifiers operate as minimum requirements. They represent the ethical debt companies must pay off in order to create the foundations for a strong ethical focus. In contrast, the Qualifiers embody the active investments organizations need to make to build ethical assets upon those foundations.

We recommend that companies, small and large, use the model to measure and manage their culture proactively. This, in turn, will help them reap a host of positive benefits. As our analyses suggest, keeping the Disqualifiers low and increasing the level of the Qualifiers is likely to reduce the occurrence

³⁴ Bandura, A. (1997). *Self-efficacy: The exercise of control*. New York: Freeman.

of various types of unethical conduct. For example, our results showed that both Disqualifiers and Qualifiers affected important outcomes, such as concealing wrongdoing, lying to supervisor, stealing from company, falsifying reports, etc. These results are important because they demonstrate the tangible ways in which the model can benefit companies that are committed to strengthening their ethical orientation.

In addition, we also found that both the Qualifiers and the Disqualifiers highly correlated with ethical decision-making, a critical outcome for organizations that wish to reduce their risk of misconduct. Treviño (1986)³⁵ framed ethical decision-making as a key antecedent of ethical behavior. Similarly, Hunt and Vitelli (1986)³⁶ offered a model according to which ethical judgement affects intentions, which, along with situational constraints, shape behavior. Dublinsky and Loken (1989)³⁷ also highlighted the impact of ethical decision-making on intentions and behavior. All in all, these frames corroborate the notion that an individual must be able to make ethical decisions in order to behave ethically. The first and most fundamental contribution an ethical culture can make, therefore, has to do with increasing the likelihood of ethical decision-making among employees.

Finally, a strong ethical focus will also have a positive impact on employees' organizational commitment—a key precursor of employee engagement and loyalty. Several studies found a positive relationship between ethical culture and/or ethical climate and organizational commitment (Khong & Nhu, 2015; Moore & Moore, 2014; Cullen, Parboteeah, & Victor, 2003)³⁸, highlighting the beneficial impact that a culture focused on ethics is likely to have on employees' attitudes and their loyalty to the organization.

Though ethical cultures are not built overnight, the systematic and methodical application of the guidance and insights the Two-Factor Model provides can advance corporate practices in meaningful and remarkable ways. Not only will organizations that heed the advice offered by the model be more likely to build strong ethical assets, but they will be better positioned to achieve sustainable long-term growth.

³⁵ Treviño, L. K. (1986). Ethical decision-making in organizations: A person-situation interactionist model. *Academy of Management Review*, 11, 601-617.

³⁶ Hunt, S. D., & Vitell, S. (1986). A general theory of marketing ethics. *Journal of Macromarketing*, 6(1), 5-16.

³⁷ Dublinsky, A. J., & Loken, B. (1989). Analyzing ethical decision making in marketing. *Journal of Business Research*, 19(2), 83-107.

³⁸ Khuong, M. N., & Nhu, N. V. Q. (2015). The effects of ethical leadership and organizational culture towards employees' sociability and commitment—A study of tourism sector in Ho Chi Minh City, Vietnam. *Journal of Advanced Management Science*, 3(4), 329-336.

Moore, H. L. & Moore, T. W. (2014). The effect of ethical climate on the organizational commitment of faculty members. *Journal of Academic and Business Ethics*, 9, 3-15.

Cullen, J. B., Parboteeah, K. P., & Victor, B. (2003). The effects of ethical climates on organizational commitment: A two-study analysis. *Journal of Business Ethics*, 46(2), 127- 141.

Appendix 1 (Research Process & Methodology)

In 2016 and 2017, a team of researchers collaborating with Ethical Systems, a research collaboration housed at the NYU-Stern School of Business, convened to determine the appropriate constructs for what constitutes ethical culture. The project consisted of two phases: 1) the team first determined which are the most important constructs and outcomes to be assessed at an organization, and then created a survey-based culture assessment that draws from the existing academic literature and; 2) the team then collected data on the initial survey measures through pilot studies in two companies, as well as through company-agnostic online surveys (where respondents indicated which types of companies they worked for, but did not disclose the name or other details). The data from these studies has been used to develop a framework for ethical culture in organizations, which we describe in this paper.

The team of researchers who comprised the Ethical Systems culture working group are social scientists who have each studied certain components of ethical culture.³⁹

In the first phase, the working group conceptualized the relevant constructs of ethical organizational culture (e.g., fairness, trust, etc.). They then reviewed the academic literature to collect corresponding measures (i.e., survey items). Validated survey measures did not yet exist in the literature for every component that the team wished to measure. A literature review and summary of the existing measures in the academic literature is beyond the scope of this paper, but can be found in Treviño, Haidt, & Filabi (forthcoming, 2018).

Based on this initial research, the group then designed a survey for pilot testing that drew from these measures, and also included additional measures for constructs they wished to validate. The survey was designed to assess the ethical culture of an organization, specifically attempting to uncover the mindsets and behaviors. As such, respondents were asked about various components of ethical culture including their observations of misbehavior in the workplace (e.g., stealing from the company, violating the Code of Conduct, etc.). The data collected comprised of 1,358 respondents. All respondents first completed general demographic information (gender, seniority in the company, tenure), including their geographic location and function in the organization. Next, respondents completed the pool of culture survey items developed in phase one. The order of assessment for the constructs was randomized, as were the order of items for each individual construct.

The data was then analyzed for reliability of each of the individual constructs, and composite scores were created for those constructs that were assessed with multiple items. The researchers used linear regression to assess the predictive utility of each culture construct on the following outcomes: 1) observations of misconduct in the workplace; 2) ethical decision-making; and 3) employee commitment to the organization. Each of these outcomes adds value to the goals of an organization. Ethical decision-making is a critical outcome because it is a key antecedent to ethical behavior. Employee commitment is a precursor to employee engagement and loyalty, and thus reduced employee turnover. And finally, observations of misconduct provide evidence of corruption and unethical behavior. For purposes of these pilot tests, employees were asked about observations relating to violations of workplace policies and codes generally, as well as observations of specific misconduct in the workplace

³⁹ The Ethical Systems Culture Working Group members include (in alphabetical order): Michael Brown, Jonathan Haidt, David Mayer, Marshall Schminke, Sean Stevens, Ann Tenbrunsel, Jeffrey Thomas, Linda Trevino, and Siyu Yu

including behaviors such as padding an expense account, giving kickbacks, sexual harassment, misuse of confidential (or Insider) information, among a list of approximately 30 others.

Appendix 2 (Framework Image)





1

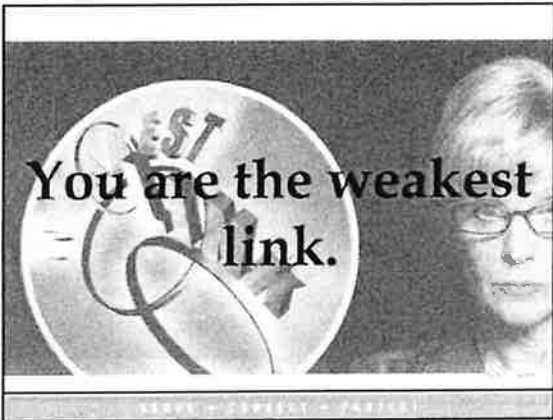


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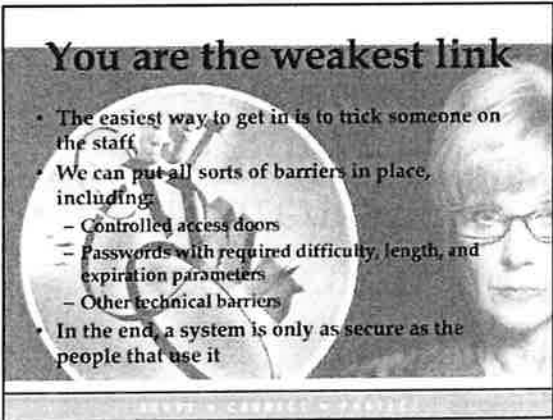


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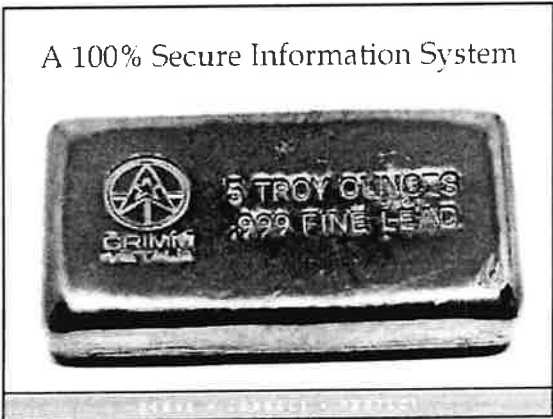
9/19/2019



4




5



6

The Threat Landscape

- What percentage of successful cyberattacks were caused by someone falling for a phishing attack?
- **90% - 95%** of successful cyberattacks are caused by a successful phishing attack.




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The Threat Landscape

- What will the projected cost of cybercrime be in 2021?
- **\$6 trillion**, up from \$3 trillion in 2015




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The Threat Landscape

- How many businesses are targeted by spear-phishing attacks each day?
- Over **400** businesses are targeted by spear-phishing attacks each day.




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The Threat Landscape

- Security awareness training can reduce the risk of a data breach by what percentage?
- Security awareness training can reduce the risk of a data breach by 70%.




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The Threat Landscape: Social Engineering

- **Social engineering** is the art of manipulating, influencing, or deceiving you into taking some action that is not in your own best interest or in the best interest of your organization.




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Security Tip

- Pretexting involves creating a fabricated scenario to gain your trust and get information from you under false pretenses. They can often be very convincing. These types of attacks are on the rise so it's important to be vigilant and never give information over the phone or in person unless you have confirmed their identity.




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The Threat Landscape: Social Engineering

- Digital
 - Phishing:** The process of attempting to acquire sensitive information such as usernames, passwords, and credit card details by masquerading as a trustworthy source and using bulk email, which tries to evade spam filters. Emails claiming to be from popular social websites, banks, auction sites, or IT administrators are commonly used to lure the unsuspecting public. It's a form of criminally fraudulent social engineering.
 - Spear Phishing:** A small, focused, targeted attack via email on a particular person or organization with the goal to penetrate their defenses. The spear phishing attack is done after research on the target and has a specific personalized component designed to make the target do something against his or her own interest.




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13

Security Tip

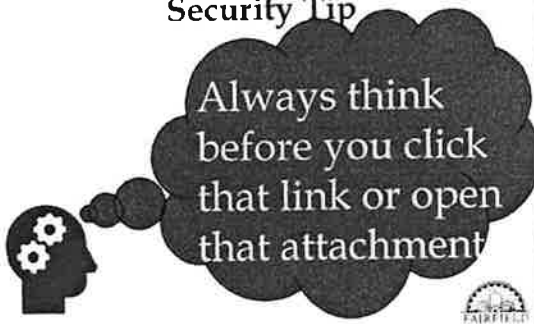
- One trick that bad guys use a lot is called CEO Fraud. CEO Fraud involves a scam in which cybercriminals impersonate executives in order to fool an employee into executing unauthorized wire transfers, or sending out confidential tax information. A sense of urgency is usually employed, pressuring the victim to act before thinking. According to FBI statistics, CEO fraud is now a \$12 billion scam.




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Security Tip



Always think before you click that link or open that attachment



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The Threat Landscape: Social Engineering

- In-person
 - **Tailgating:** Technique used by information thieves to bypass physical access controls by following closely behind an authorized person or by getting an authorized person to open a door for them.
 - **USB Attack:** A USB flash drive is left outside to be picked up or mailed, marked to look official. A curious person plugs it into a computer to see what is on it.
 - In a Google experiment, out of 300 USB flash drives intentionally distributed throughout the campus of a major university, about half were picked up, connected to a computer, and the files they contained were opened, some within 6 minutes.




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Security Tip

- Stop, look, and think before plugging in any external media into your computer. Only use media from a trusted source.




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The Threat Landscape: Social Engineering

- In-person
 - **Phone Attack:** Also called voice phishing or vishing. Someone calls and tries to con you into giving out confidential information.
 - **Smishing:** SMS Fishing, i.e., phishing via text messaging.




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Security Tip

- When faced with a possible in-person attack, it's better to be firm than insecure.




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Security Tip

- Even if a message you are reading contains your password or your account number, it can still be fraudulent.




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The Threat Landscape

- File types
 - Even text files can be weaponized.
 - All that you can do is verify that the file is legitimate.
 - Do not use the contact information in the message itself for verification.



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The Threat Landscape

- Mobile devices
 - 50% of employees use their own laptops
 - 68% of employees use their own smartphones
 - 69% of employees use their own tablets
- If these devices get malware (malicious software), your organization's network could be compromised.




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The Threat Landscape

- Websites
 - Gambling, sexually explicit, and free downloads are the most notorious for spreading malware.
 - However, even valid websites can be a threat.




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Security Tip

- Never connect to an open WiFi unless you are using a VPN. It's too easy for hackers to trick you and gain access to your device. Just never do it if you want to stay secure.



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The Threat Landscape

- Social media sharing
 - Never share your travel plans.
 - Never share sensitive information.
 - Never share anything that could be useful in conning you or your co-workers.
- Be aware of fake social media profiles, which can be created in an attempt to trick you into sharing information or accepting malicious links.




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Security Tip

- Make sure you understand your organization's policy regarding sharing information on social media.



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Social Engineering Red Flags

FROM

Check the email address of the sender. Does it match the name of the person you are expecting to hear from? If not, be suspicious.

TO

Check the email address of the recipient. Does it match the name of the person you are expecting to hear from? If not, be suspicious.

HYPERLINKS

Check the links in the email. Do they lead to the website you are expecting to hear from? If not, be suspicious.

ATTACHMENTS

Check the attachments in the email. Do they match the name of the person you are expecting to hear from? If not, be suspicious.

CONTENT


Check the content of the email. Does it match the name of the person you are expecting to hear from? If not, be suspicious.

DATE


Check the date of the email. Does it match the name of the person you are expecting to hear from? If not, be suspicious.

SUBJECT

Check the subject of the email. Does it match the name of the person you are expecting to hear from? If not, be suspicious.



KnowBe4



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9/19/2019

Example 1: Sent To My Gmail Account

• Envelope information:

RE: password - mygmail


Marc Codyvaldez

<ziijjordanaki@outlook.com>

Tue, Jul 24, 2018 at 4:22 PM

To: "mygmail@gmail.com"

mygmail@gmail.com




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Example 1: Sent To My Gmail Account

I know that, password is one of your personal password. Lets get straight to the point. You do not know anything about me whereas I know alot about you and you must be wondering why you're getting this mail, correct?

The truth is, I actually installed malware on adult vids (sexually graphic) and you know what, you accessed same sex website to experience fun (know what I mean?). When you were busy watching video clips, your web browser started functioning as a RDP (Remote Computer) having a key logger which provided me access to your system and also your web cam access. Immediately after that, the software obtained every one of your contacts from your fb, and e-mail.




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Example 1: Sent To My Gmail Account

First Choice is to disregard my email message. Let us see what will happen if you choose this option. I will certainly send out your video to your entire contacts including close relatives, co-workers, and so forth. It won't help you avoid the humiliation you and your family will feel when friends and family learn your sordid videotape.


Second Option is to send me \$5000. We will name it my "confidentiality charges". Now Lets see what happens if you pick this choice. Your dirty secret remains your secret. I'll delete the sextape. After you you pay me my fees, You can freely keep your routine life and family as though nothing ever happened.



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Example 1: Sent To My Gmail Account

Important: You have *one day* in order to make the payment. (I have a unique pixel in this email, and right now I know that you have read through this message). Don't tell anyone what you will be using the Bitcoins for or they might not give it to you. The process to get bitcoin usually takes a *couple of days* so do not put it off.



VIEW • CONTACT • POSTING

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Example 2: Sent to many staff

From: Strong, Susan <strong@strongsecurity.com>
Sent: Monday, September 16, 2019 9:44 AM
To: Strong, Susan <strong@strongsecurity.com>
Subject: IT Technical Service (Admin Desk)

Dear Staff, Employees,


Today, September 16th, 2019, we're migrating the entire email account of employees and staff into the Outlook 2019 Office Webmail. As a result, all active employees and staff must connect and sign up for an urgent update and migration to improve the security and efficiency of current open e-mail.

Please all employees and staff should [click here](#) to switch to Outlook Webmail 2019 for employees and staff.

Note that this migration to Outlook 2019 applies to all emails in this service. We double all unlinked and monitor e-mail accounts that have not been migrated within the next 24 hours without further notice.

Best regards,

External e-mail administrator
Outlook service for employees and internet service
Copyright 2019



VIEW • CONTACT • POSTING

32

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Best regards,

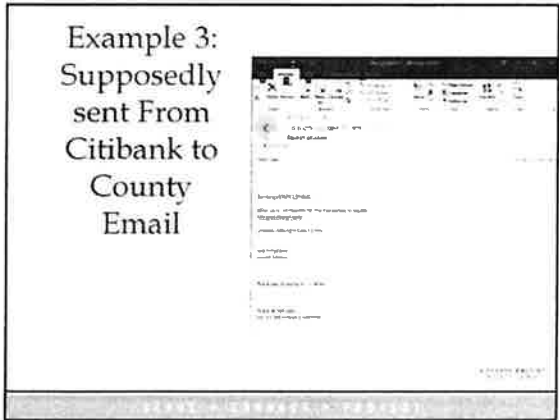
External e-mail administrator
Outlook service for employees and internet service
Copyright 2019



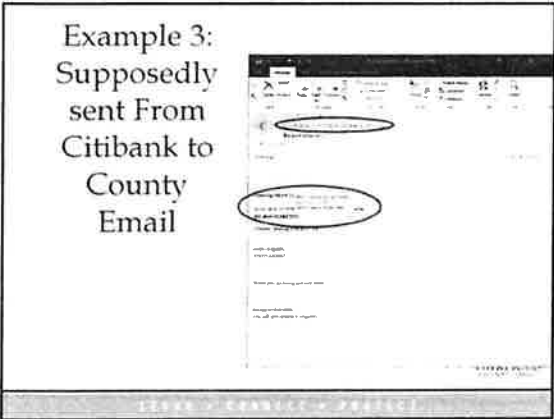
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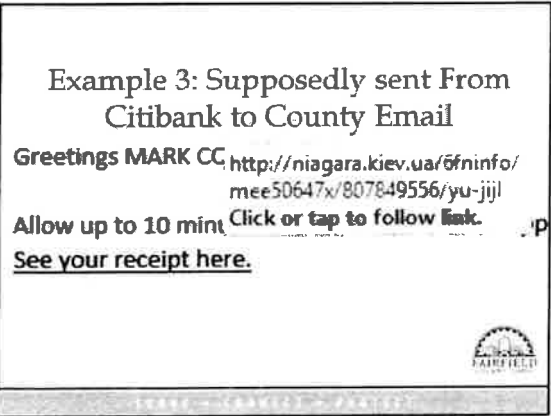
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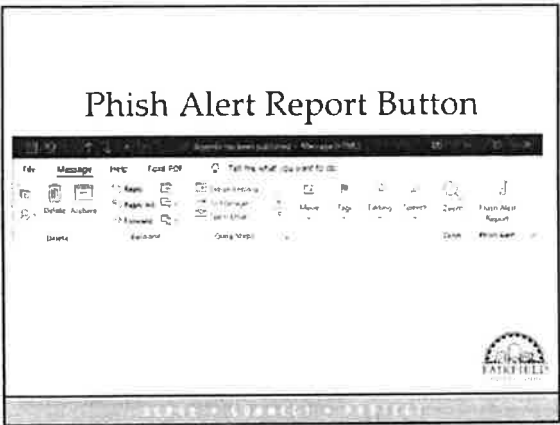
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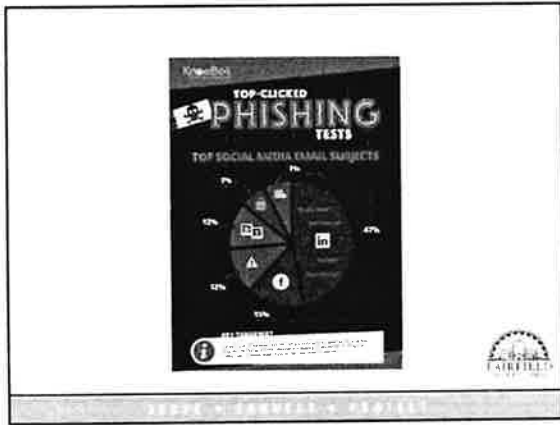
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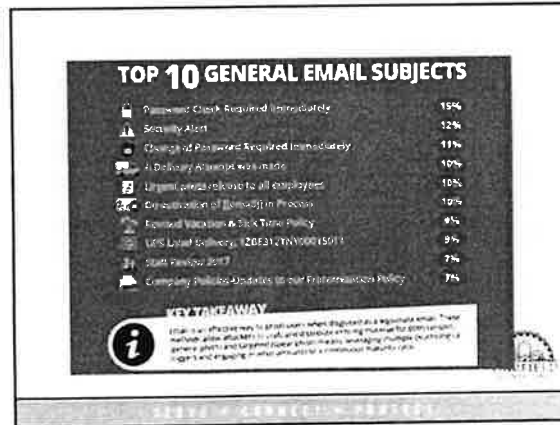
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9/19/2019



COMMON "IN THE WILD" ATTACKS

- Phishing: An attempt to trick a user into revealing sensitive information, such as a password or credit card number.
- Social Engineering: An attempt to trick a user into revealing sensitive information, such as a password or credit card number.
- Malware: A program designed to damage or disrupt a computer system.
- Denial of Service: An attempt to prevent a computer system from being available to its intended users.
- Identity Theft: An attempt to steal a user's identity and use it to commit fraud.
- Ransomware: A program that encrypts a user's data and demands a ransom for its return.
- Business Email Compromise: An attempt to steal a company's funds by impersonating a high-level executive.
- Insider Threats: An attempt to steal a company's data or disrupt its operations by an employee.

KEY TAKEAWAY


These attacks are effective in that they try to get the target to either avoid a negative consequence or get something of value. Also, a single-stage attack is easier to accomplish than multi-stage because it exploits an immediate psychological trigger with impulse.

Mark E. Conrad
Information Technology Director
Fairfield County, Ohio

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Proverbs 4:16 *The Message*

Evil people are restless
unless they're making trouble;
They can't get a good night's sleep
unless they've made life miserable for
somebody.




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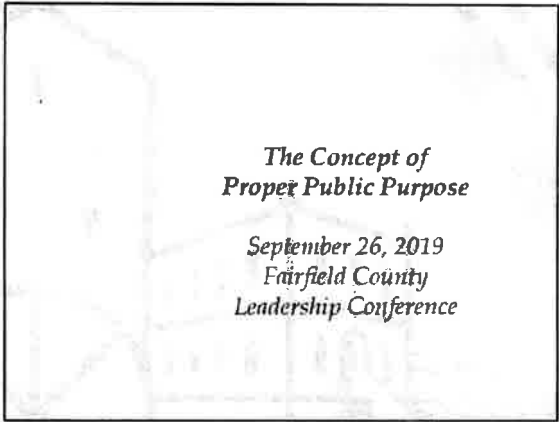
Questions?

Mark E. Conrad
Information Technology Director
Desk: 740-652-7076
Mobile: 740-243-4933
Email:
mark.conrad@fairfieldcountyohio.gov

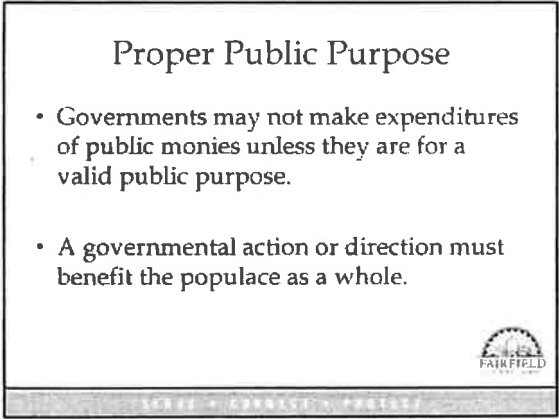


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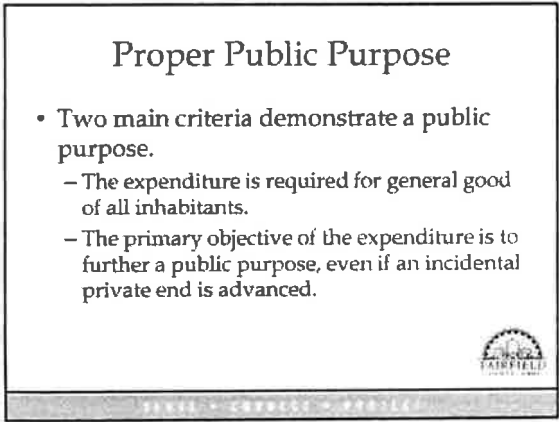
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9/19/2019

Examples of Proper Public Purpose

- Infrastructure improvements
- Salaries of public employees for performing public services
- Benefits & training for such employees
- Contracts for services to benefit the public
- Equipment, software, hardware, & supplies for public offices




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46

Proper Public Purpose

- Government entities may not make expenditures of public monies unless they are for a valid public purpose. *State ex rel. McClure v Hagerman*, 155 Ohio St. 320 (1951)
- Typically, the determination of what constitutes a "proper public purpose" rests with the judgement of the governmental entity, **unless such determination is arbitrary or unreasonable.**
- Even in a purchase is reasonable, Ohio Attorney General Opinion 82-006 indicates that it must be memorialized and be approved **BEFORE** the purchase is made.
- Policies




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Example - Finding for Recovery *Proper Public Purpose*

AOS Technical Bulletins 2003-005 and 2004-002 discuss the requirements imposed by case law & AG Opinions.




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Example - Finding for Recovery

Proper Public Purpose & Documentation

- Most findings for recovery are due **lack of documentation**
- An expenditure may be for a proper public purpose, but lack of documentation makes it impossible to justify the expenditure
- Credit cards & lack of itemized receipts can be problematic
- Sam's Club, Office Max, Target, Restaurants, Grocery Stores, and Gasoline - personal or private?
- Transparency/Documentation (Payroll)




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Example - Finding for Recovery

Proper Public Purpose & Documentation

- **Example:** during the audit period, purchases were made from an Academy's bank accounts for which supporting documentation was not on file and approval of the Governing Board could not be verified. The following transactions were unsupported:
 - Food - \$1,500
 - Gasoline - \$5,000
 - Travel - \$12,000
 - Fed Ex - \$1,100
 - Retail - \$25,000
 - Internet/Computer - \$5,200
 - Cell Phone - \$9,200
 - Utilities - \$1,700



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Questions arise regarding purchases of food or refreshments connected with business meetings or trainings

- Enabling legislation
- Public Purpose of Meeting/Training
- Documented with agendas, attendance records, minutes, summaries
- Approved at management level, documented
- Simple, *de minimis* expenditures
- Packet of Information - Review
- Questions? *Ask before you purchase*




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Correct Documentation & Analysis
- Simple Food and Refreshments

- Meeting/Training agenda with purpose statements, attendance records, & minutes or summary
- Procurement steps - lowest cost
- De Minimis analysis - low in value, minimal; examine frequency; simple
- Open discussion





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Real Life Examples

Under what circumstances is it PPP to make an expenditure for:

- Lunch for staff
- Incentives for contractors
- Training
- Note cards for staff to use to thank members of the public or partners




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54

Credit Card Usage

- A county credit card can only be used for specific purposes per the ORC
- Credit cards cannot be used for different purposes, *even if such expenditures are reimbursed*




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Some allowable purposes ORC 2913.21

- Food
- Transportation
- Gasoline/oil
- Motor vehicle repair
- Telephone
- Lodging
- Internet service provider
- Expenses for children in temporary care




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Credit Card Usage

- Is it okay to use a county credit card for:
 - Airline tickets for required travel out of state?
 - Emergency repair of a bus?
 - Hotel expenses for an elected official to attend a conference?
 - Ordering office supplies online?
 - Registering for a conference fee online?
 - Paying for a webinar?

Discuss...




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Mission related expenses

- Avoid "Mission creep"
- How does the decision impact the mission?

Mission Statement




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Takeaway/ Assignment

1. **Packet** of information (county specific)
2. **Share** with all staff - increase understanding of proper public purpose
3. Maintain **standing agenda items** about proper public purpose & ethics
4. **Reach out** with any questions

Organizational knowledge improves;
leadership is cultivated




FAIRFIELD COUNTY

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Questions & Answers

Carri Brown
County Administrator
740 652 7096



FAIRFIELD COUNTY

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Use of CORSA Loss Control Services to Avoid Employment Claims

2019

PRESENTED TO YOU BY

County Risk Sharing Authority

209 East State Street

Columbus, Ohio 43215-4309

Phone: (614) 221-5627

Toll Free: (888) 757-1904

Fax: (614) 220-0209



Benjamin S. Albrecht – balbrecht@fisheldowney.com
Jennifer H. George – jgeorge@fisheldowney.com
Stephanie L. Schoolcraft – sschoolcraft@fisheldowney.com

FISHEL DOWNEY ALBRECHT & RIEPENHOFF LLP
7775 Walton Parkway, Suite 200 | New Albany, Ohio 43215
P (614) 221-1216 | F (614) 221-8769

A Service Program of the County Commissioners Association of Ohio

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I. INTRODUCTION

- A.** Every year scores of civil lawsuits and administrative charges are filed by employees (current and former) as well as applicants. The number of lawsuits and charges filed increase annually and this trend will likely continue. For example, the Equal Employment Opportunity Commission (EEOC) reported a 30% increase for 2018 in the number of individuals who contacted the EEOC regarding filing a discrimination charge.

https://www.eeoc.gov/eeoc/newsroom/wysk/2018_highlights.cfm

CORSA provides property and liability coverage which includes coverage of human resource related claims for counties. CORSA was incorporated in the State of Ohio in 1987 as a nonprofit corporation. CORSA membership currently consist of 66 counties and 42 multi-county facilities and county affiliated entities.

Based on 30 years of experience insuring against and defending employment lawsuits, CORSA created, implemented, and continually enhances risk management services and litigation avoidance techniques available to member counties. Thanks to your County's hard work and use of CORSA's risk management services from 2008 to 2018, the total cost of employment lawsuits filed against CORSA member counties decreased by 55%. It is important to note that from 2008 to 2018 the total number of lawsuits filed against CORSA member counties increased by 16%. The three most common claims filed against CORSA member counties are: 1. Wrongful Termination; 2. Discrimination/Harassment; and 3. Hostile Work Environment.

CORSA's comprehensive approach to risk management protects county office holders and staff, reduces staff workload, and improves operational efficiency. CORSA's Risk Management Services are provided to members at no additional cost. We encourage all members to take advantage of the resources and tools provided by CORSA to assist in human resource management and litigation avoidance.

CORSA HR resources and services should in no way be considered as a replacement for those provided by the County Administrator, County Prosecutor, HR management, HR consultants, or outside counsel. CORSA HR services are intended to assist member counties establish and maintain effective HR programs. Consult with your County Administrator, HR, Prosecutor's Office, or legal counsel before change or implementation of employment policies or practices.

- B.** There are numerous bases upon which employees can file an employment related claim. Federal and state law provide several bases upon which to file employment related civil lawsuits.

1. Common federal law causes of action include:
 - a. Violations to Title VII and Civil Rights Act Amendments involving an employee's race, gender, religion, national origin, et. al.
 - b. Interference with an employee's right to take leave under the Family and Medical Leave Act ("FMLA") and/or retaliation for taking FMLA leave.
 - c. Violations of the Americans with Disabilities Act ("ADA").
 - d. Violations of the Age Discrimination in Employment Act.
 - e. Unlawful discrimination occurs when an individual's compensation, terms, conditions, or privileges of employment are negatively impacted due to that individual's membership in a protected class.
 - f. Unlawful harassment is a subset of discrimination and occurs when abusive and harassing behavior is directed at an individual due to his membership in a protected class and adversely affects the individual's terms, conditions or privileges of employment.
 - g. A hostile work environment is created when an employee feels uncomfortable or scared to be in his or her work space due to offensive behavior, intimidation or abuse by a coworker or superior.
2. Common state law causes of action include:
 - a. Ohio Rev. Code Ann. § 4112.02. Ohio's analogous antidiscrimination statute is typically interpreted and applied co-extensively with the federal antidiscrimination statute (Title VII of the Civil Rights Act of 1964).
 - b. Termination of Employment-at-Will that Violates Clear Public Policy. Ohio has long followed the general rule among American jurisdictions presuming that employment relationships are "at-will" and thus terminable by either party regardless of cause. The general presumption of at-will employment is then subject to certain exceptions established by statute, e.g., race, sex, religion or national origin. Ohio courts have also recognized a tort action available to those terminated for purposes that violate a clearly established public policy.

3. Retaliation Claims:

- a. The framework set forth in *McDonnell Douglas* as modified for retaliation cases requires that the employee demonstrate that:

- i. S/he had engaged in statutorily protected activity;
- ii. S/he was thereafter subjected by [his] employer to adverse employment action; and,
- iii. Causal link existed between the protected activity and adverse employment action.

NOTE: A plaintiff need not prove discrimination or harassment to successfully assert a cause of action for retaliation.

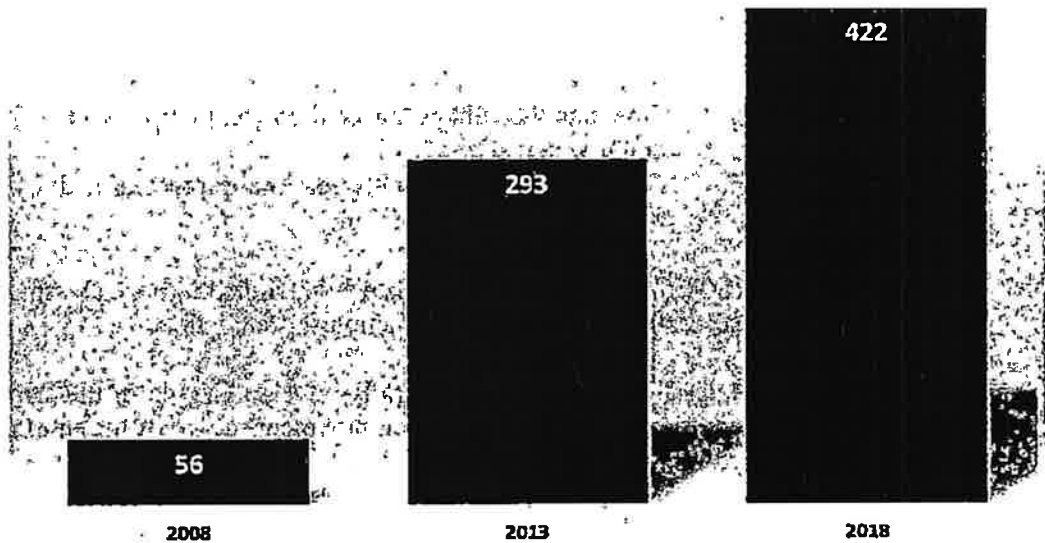
- b. **Materially Adverse:** A materially adverse change in the terms or conditions of the individual's employment caused by the employer's actions.
- c. **Temporal Proximity:** The adverse employment action must occur "very close" to the time that the employer first learned of the employee's protected activity.
- d. **Common Adverse Actions:** Such actions include constructive discharge, termination, demotion, decreased salary, lower job title, or material loss of benefits or responsibilities. It must be more than a mere inconvenience or alteration of job duties.
- e. **Case Law:** *Burlington Northern & Santa Fe Railway Co. v. White*, 546 U.S. 1060 (2006). The Court held that in a retaliation claim, the plaintiff must prove that the employer's actions were "materially adverse" to the employee or applicant. The Court stated that "in the present context that means that the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination."

C. Evolution of CORSA Risk Management Resources & Services:

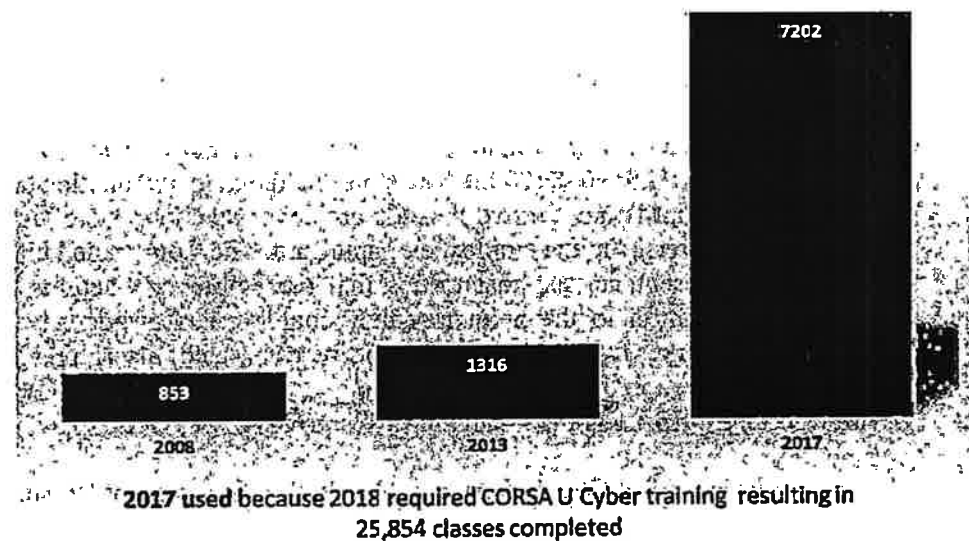
1. Evolution of CORSA Primary HR Risk Management Resources & Services:

In 2008, CORSA's risk control services primarily consisted of the HR Helpline and CORSA University online training. Over the last decade, use of these services and resources has increased significantly as illustrated by the following graphs:

CORSA HR Hotline Calls



CORSA University Courses Completed



CORSA has implemented several additional risk management resources and services since 2008 including but not limited to: in-person HR training; Best Practice Personnel Policy Manual; HR Toolkit; and law enforcement specific resources and training. (See Appendix for a full listing of CORSA Risk Control Services).

CORSA services are intended to assist member counties with reduction of risk and litigation avoidance from the hiring process to post-employment issues.

Again, CORSA HR resources and services should in no way be considered as a replacement for those provided by the County Administrator, County Prosecutor, HR management, HR consultants, or outside counsel. CORSA HR services are intended to assist member counties establish and maintain effective HR programs. Consult with your County Administrator, HR, Prosecutor's Office, or legal counsel before change or implementation of employment policies or practices.

II. THE HIRING PROCESS

- A.** When making a hiring decision, it is as important to do all that you can do to hire the "right" person or individual. In seeking to hire the right person it is necessary to review your hiring practices to ensure they are thorough, effective, and in compliance with all applicable laws. A sound hiring process will yield quality employees and avoid legal headaches. CORSA offers several no cost services and resources that you can take advantage of during the hiring process.
 - 1.** CORSA Hiring Issues Outline: When creating or updating your hiring process you should consider a review of CORSA's Hiring Issues Outline at www.corsa.org which provides a comprehensive overview and resources to create an effective and legally compliant hiring process. CORSA's Hiring Issues Outline will assist with:
 - a.** Recruitment
 - b.** Job Descriptions
 - c.** Job Applications (What should and should not be on your job application)
 - d.** Interview Questions (Legally permissible and impermissible questions)
 - e.** Reference Checks
 - f.** Use of Social Media in the Hiring Process
 - g.** Applicants with Criminal Backgrounds
 - 2.** CORSA Best Practices Personnel Policy Manual: CORSA's award winning HR Policy Manual provides members yet another exceptional risk management tool when drafting or revising personnel policy manuals. The Ohio Public Employment and Labor Relations Association (OHPELRA) and National Public Employment and Labor Relations Association (NPELRA) awarded CORSA Pacesetter Awards in recognition of innovative leadership which has resulted in positive impact to public sector labor relations and human resources. The Best Practices Personnel Policy Manual is a tool to create or revise a policy manual that meets the needs of

an individual county. CORSA counties have limited legal consultation available to them to assist with implementation of policies. Please contact Benjamin Albrecht, Fishel Downey Albrecht Riepenhoff, at (614) 221-1216 for assistance.

CORSA Best Practices Personnel Policy Manual contains several sample policies relative to the hiring process including:

- a. Discrimination/Harassment
 - b. Equal Employment Opportunity
 - c. Nepotism
 - d. Americans with Disabilities
 - e. Classification Status
 - f. Probationary Period
 - g. Attendance & Leave
 - h. Fair Labor Standards Act
3. CORSA HR Toolkit: CORSA created the HR Toolkit, accessible at www.corsa.org, to assist in the effective application of workplace policies and procedures. The sample forms and documents are just that, samples that can be used as a tool to create and utilize forms or documents that meet the needs of each individual member.

CORSA's HR Toolkit contains several template forms relative to the hiring process including:

- a. Application for Employment
- b. Background Investigation & Release
- c. BCI Background Checks
- d. Required Employment Postings

III. EMPLOYEE TRAINING

- A. Train, train, train. Training during all stages of an employee's career is vital to success of the employee and agency. Training programs vary greatly depending on numerous factors such as: job duties; agency needs; the individual employee; stage of an employee's career; etc. At a minimum, training should occur at the following stages:
- 1. New hire/promotion: Generally this is the most comprehensive training an employee will receive as they are likely unfamiliar with the agency, their role, the essential job duties, etc. Accordingly, an employee should receive training that includes: receipt of written policies/procedures; testing of their knowledge; demonstration by a supervisor/trainer of desired performance; job shadowing; progression through a standard training schedule.

2. **As needed and routine training:** With technology, agency and public needs ever-changing, the way work gets done is constantly evolving. With new processes and programs, employers must provide appropriate training to ensure employees are able to discharge their duties. Regardless, training should be provided on a routine basis to reinforce desired performance (e.g. productivity) and agency values (e.g. anti-discrimination). The CORSA HR Toolkit page 16 provides a schedule of top 10 employment law training topics.
3. **Performance Improvement Plans ("PIP"):** Occasionally, an employee may, for a host of reasons, fail to maintain adequate performance over a period of time. Training is often conducted as part of a PIP. In lieu of or in conjunction with discipline, placing an employee on a written PIP can benefit both the employee and employer. PIPs should be tailored to the specific needs of the situation, but at a minimum should include: performance standards; training to be provided; scheduled reviews by management; objective measurement of performance; and employee feedback. PIPs assist employees in once again being successful. Alternatively, PIPs will support disciplinary decision to the extent employee performance does not improve. The CORSA HR Toolkit page 22 provides a template PIP.

B. CORSA Services & Resources Assist Member Counties with Employee Training

1. **Online Training:** CORSA provides member counties with online supervisory and non-supervisory employee training at no cost to our members. Available 24/7, from any Internet connected computer with speakers. With CORSA University, it's never been so easy to deliver, document and manage your training. CORSA University empowers you to centralize your training administration and reporting-from any browser, at any location. CORSA U can be accessed at:

<https://www.localgovu.com/corsa/>

CORSA U online training offers several courses (1 hr. or less) covering several topics for both supervisory and non-supervisory employees including:

- a. Human Resources (Harassment, Ethics, Bullying, Social Media, etc.)
- b. Information Technology
- c. Safety & Equipment
- d. Defensive Driving
- e. Law Enforcement

2. In-Person Driver Training Classes

Auto accidents makeup 51% of all CORSA county claims. CORSA offers in-class defensive driving courses designed to meet the needs of most drivers operating motor vehicles on behalf of member counties. These courses provide drivers the tools necessary to safely operate a motor vehicle while at work. All courses offered by CORSA are available to member counties at no cost to the county.

The basic course which is offered to fit the needs of all drivers, except law enforcement officers who normally operate marked cruisers and whose primary responsibilities include road patrol, is the Coaching Systems Coaching the Experienced Driver course.

Specialized courses are also available to member counties to meet unique needs. One of these courses is the Coaching the Maintenance Vehicle Operator course. This course while designed primarily for dump truck operators, fits the needs of CDL drivers who may also operate other heavy equipment on and off the road.

Also, available is the Coaching the Emergency Vehicle Operator II Police course. This course is designed specifically for law enforcement officers whose specific duties involve road patrol and driving under emergency conditions.

Classes must have at least 10 attendees. The annual number of driver training classes conducted since 2008 increased by 17%. Despite a 19% increase in the annual number of auto claims since 2008 the costs of auto claims decreased by 30% from 2008 to 2018.

IV. MANAGEMENT, CORRECTIVE ACTION, AND TERMINATION

- A. Supervisors/Managers set standards, communicate the standards, develop employees, correct poor performance or inappropriate conduct, investigate and address workplace problems, and administer corrective action as well as removal. Management of employees is a rewarding, but challenging endeavor. Supervisors/Managers must be given sufficient resources and support during the process. Several CORSA resources and services can supplement your county's management, corrective action, and termination of employees.
 1. CORSA Outlines: Several management related outlines that provide a comprehensive overview of management topics that are accessible at www.corsa.org including:
 - a. Disciplining Difficult Employees
 - b. Prevent Employment Claims Before They Occur

- c. Managing FMLA Leave & Responding to Employee Abuse/Misuse
- d. Americans with Disability Act
- e. Conducting Effective Investigations
- f. Discipline Standards
- g. Discrimination and Harassment
- h. Engineering Employee Performance
- i. Attendance and Leave Usage
- j. Managing Toxic Employees
- k. Social Media in the Workplace
- l. Workplace Violence and Bullying

2. CORSA HR Toolkit & Best Practices Personnel Policy Manual provide several template policies, notices, and forms to assist with corrective action and overall employee management, including:¹

- a. Performance Evaluations
- b. Computer Use and Social Media Policies
- c. Drug & Alcohol Policy (Including Medical Marijuana)
- d. FMLA, Vacation, Sick, Military, and Personal Leave Policies
- e. Family Medical Leave Forms
- f. Americans with Disability Checklists
- g. Fitness for Duty Letters
- h. Discrimination, Harassment, and Hostile Workplace Complaint Forms
- i. Paid Administrative Leave Letter
- j. Notice of an Investigatory Interview
- k. Pre-Disciplinary Hearing Notice
- l. Classified Employee Disciplinary Checklist
- m. Disciplinary Flowchart for Non-Union Public Employees
- n. Last Chance Agreement
- o. SPBR 124.34 Order
- p. SPBR Notice of Appeal
- q. Termination Checklist

3. The CORSA HR Helpline was created 12 years ago to provide members with sound legal advice to insure prompt and accurate assistance with HR situations that may result in a claim/lawsuit. Such issues include:

- a. Disciplinary action pending
- b. FMLA and other leave concerns or questions

¹CORSA HR resources and services should in no way be considered as a replacement for those provided by the County Administrator, County Prosecutor, HR management, HR consultants, or outside counsel. CORSA HR services are intended to assist member counties establish and maintain effective HR programs. Consult HR, Prosecutor's Office, or legal counsel before change or implementation of employment policies or practices.

- c. Terminations
- d. Civil Service questions
- e. Harassment claims
- f. Discrimination and Retaliation allegations
- g. Attendance

The Helpline is meant to be used in circumstances where decisions that could lead to claims must be made immediately. The Helpline does not include appearances by contracted legal counsel in legal proceedings. The Helpline also does not apply to issues arising out of collective bargaining agreements or negotiations, including the above listed examples if they are governed by a collective bargaining agreement.

Elected officials, department heads and supervisors that have a role with employment activities may access the Helpline for assistance. Counties north of I-70, please email or call David Smith at Mazenec, Raskin and Ryder (MRR) 440-424-0016, dsmith@mrrlaw.com. Counties south of I-70, please email or call Jeffrey Stankunas at Isaac Wiles 614-221-2121, jstankunas@isaacwiles.com.

V. POST-EMPLOYMENT ISSUES

A. Use of CORSA HR services and resources prepare counties to properly handle post-employment issues such as:

1. Employment References

- a. Ohio's Reference Checking Law - O.R.C. §4113.71. Provides a qualified immunity for employers. Not liable for harm sustained as a result of providing information pursuant to a reference check unless the reference information is:
 - i. False with deliberate intent to mislead, in bad faith or for a malicious purpose; or
 - ii. Given as a result of unlawful discrimination.

2. Unemployment Claims.

- a. Remember that you may still incur costs even after an employee is terminated due to the employee's receipt of unemployment compensation. Purpose of unemployment is to serve as a "safety net" for the unemployed individual who is actively seeking employment. The program is designed to be pro-employee. In order to prevail, the employer must prove "just-cause" for the removal of the employee.

3. **Workers' Compensation Claims.**

- a. Employers are prohibited from retaliating against employees for seeking and/or receiving Workers' Compensation. Workers' Compensation claims approved by the Bureau of Workers' Compensation outlive the employment relationship. Employers are wise to thoroughly review employment matters where an employee has an approved Workers' Compensation claim to avoid running afoul of the law.

4. **Employment Claims (administrative and/or lawsuits).**

Always consider the possibility of future claims by employees, or former employees, especially when terminating the employment of an employee. Litigation can be brought in many venues: County Common Pleas Court, Municipal Court, Small Claims Court, Federal District Court, etc. Employment litigation is often either filed in Federal District Court in the first instance or ends-up there shortly after it is initiated.

- a. **Litigation:** Litigation is confusing for many non-attorneys. Because they are unfamiliar with the process, employers often do not immediately recognize timelines that are important in defending a lawsuit. There can be severe consequences of missing deadlines in litigation, including the Court granting default judgment against you. It is important for employers to understand the basic process of civil litigation. The following outlines the basic steps of a typical civil lawsuit that is applicable to most types of litigation a business owner/professional will encounter:

- i. **Complaint:** The Plaintiff (person suing) files a document called a Complaint stating certain allegations and alleging the right to something (e.g. money, property, injunction, etc.);
- ii. **Service and Summons:** Within a certain amount of time after filing the Complaint (six months in Ohio), the Plaintiff must "serve" the Complaint upon the Defendants (those being sued). The Complaint will be accompanied by a Summons (a document ordering the Defendant(s) to appear in Court);
- iii. **Answer:** Within approximately one month of being served with the Summons and Complaint, the Defendant(s) must Answer the allegations of the Complaint in a formal document filed with the Court. In Ohio, the Defendant has

28 days to answer. In Federal Courts, the Defendant has 20 days to answer. The Defendant should contact an attorney immediately after receiving a Complaint in order to protect his/her rights. The attorney will most likely want to meet with the Defendant to discuss the case before filing the Answer;

- iv. Discovery: After the Answer, and, in some cases, status conferences are held or motions are filed, Discovery will begin. Discovery is literally the process of discovering facts and information relevant to your case from the opposing party and others. This is the stage in the litigation where depositions will occur, if at all;
 - v. Trial: After the Complaint, Answer, Discovery, and any motions that may be filed by either party and ruled upon by the Judge, the case will then be set for trial. Trial does not usually happen immediately. In many employment cases in Federal Court, for example, trial will be set up to a year, or longer, after the date the case was originally filed. Litigation of some types of commercial litigation can take years to complete.
- b. Administrative Proceedings: In many employment matters, the Plaintiff must first "exhaust administrative remedies." Basically, if the Plaintiff is alleging a violation of any one of certain types of employment laws, he/she must first file the case in the appropriate administrative agency.
- i. EEOC: For employment matters, the case will most likely be filed in the Equal Employment Opportunity Commission ("EEOC"). The U.S. Equal Employment Opportunity Commission ("EEOC") is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.
 - ii. OCRC: The Ohio Civil Rights Commission ("OCRC") is Ohio's counterpart to the EEOC. As a quasi-judicial, administrative agency of the state, the general powers and duties of the Commission are to receive, investigate, render

formal determinations, and conciliate charges of unlawful discrimination in the areas of employment, housing, public accommodations, credit and institutions of higher education.

- iii. **Initiating a Charge:** An employee initiates his/her case at the agency level by filing a “charge” of discrimination, retaliation or harassment. If the employer receives a “charge” or notification from the OCRC, it should contact an attorney immediately. Cases are often resolved at this agency level without the case proceeding to Court.

Harassment and Discrimination

2019

PRESENTED TO YOU BY

County Risk Sharing Authority

209 East State Street

Columbus, Ohio 43215-4309

Phone: (614) 221-5627

Toll Free: (888) 757-1904

Fax: (614) 220-0209



FD
AR FISHEL DOWNEY
ALBRECHT & RIEPENHOFF LLP
Attorneys at Law

Benjamin S. Albrecht – balbrecht@fisheldowney.com
Jennifer H. George – jgeorge@fisheldowney.com
Stephanie L. Schoolcraft – sschoolcraft@fisheldowney.com

FISHEL DOWNEY ALBRECHT & RIEPENHOFF LLP
7775 Walton Parkway, Suite 200 | New Albany, Ohio 43215
P (614) 221-1216 | F (614) 221-8769

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I. BASIC UNDERSTANDING OF LAW

A. What is The Difference Between Harassment and Discrimination?

1. **Unlawful discrimination** occurs when an individual's compensation, terms, condition, or privileges of employment is negatively impacted due to that individual's membership in a protected classification.
2. **Unlawful harassment** is a subset of discrimination and occurs when abusive and harassing behavior is directed at an individual due to his membership in a protected class and adversely affects that individual's terms, conditions, or privileges of employment.
 - a. Is all discrimination and harassment unlawful?
 - b. Are there other forms of unlawful harassment?

II. Categories of Unlawful Discrimination AND Harassment

A. What Are the Protected Classes?

1. Sex/Gender
 - a. Gender Identity?
 - b. Sexual Orientation?
 - c. Pregnancy?
2. Race/Color
3. National-Origin/Citizenship
4. Religion
5. Age
6. Disability
7. Genetics
8. Military Status

Sample CORSA Discrimination and Harassment Policy

- The County is committed to providing a facility that is safe and free from unlawful discrimination and harassment. Unlawful discrimination or harassment is behavior directed toward an employee because of his membership in a protected class such as: race, color, religion, sex, national origin, age, ancestry, disability, genetic information, or military status. Unlawful discrimination and harassment is inappropriate and illegal and will not be tolerated. All forms of unlawful discrimination and harassment are governed by this policy and must be reported and addressed in accordance with this policy.

Scenario #1(a): An employee comes to you and indicates she is pregnant. As a result, she needs a light duty assignment. What do you do?

Considerations:

- Is pregnancy a protected class?
- Is she eligible for a light duty assignment?

Caselaw:

***Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015)**

UPS denied light duty accommodations to a pregnant employee, citing their policy of only extending light duty or reassignments to employees who were injured on the job or to employees qualifying as disabled within the meaning of the Americans with Disabilities Act. The employee brought suit, alleging the policy resulted in disparate treatment for pregnant workers compared to other employees who were similarly situated in their inability to work. The employee alleged that UPS's actions were in violation of the Pregnancy Discrimination Act, which prohibits employers from discriminating against individuals based on an employee's pregnancy.

The Supreme Court held that individual pregnant workers bringing these types of disparate treatment claims may show disparate treatment through indirect evidence, and may do so using a modified *McDonnell-Douglas* analysis. Under this analysis, the individual pregnant worker can make out a prima facie case of discrimination by showing:

- (i) The worker belongs to a protected class (i.e. she is or was pregnant);
- (ii) She sought accommodations from her employer;
- (iii) The employer did not accommodate her; and
- (iv) The employer accommodated other employees similar in their ability or inability to work.

Once the worker has met these four elements, the employer can then show that it did not accommodate the employee based on legitimate, non-discriminatory reasons. The Court made it clear that those reasons cannot include that it is more expensive or less convenient to accommodate pregnant workers. Once the employer has offered a legitimate reason, the worker can then show that these reasons are pretextual.

- Is she entitled to leave?

Sample CORSA Family and Medical Leave Policy

- Eligible employees may request time off for family and/or medical leave of absence with job protection and no loss of accumulated service provided the employee meets the conditions outlined in this policy and returns to work in accordance with the Family and Medical Leave Act of 1993.

Scenario #1(b): A female employee at the County Engineering Department (the only female employee) frequently complains to her coworkers that the snow plow she is assigned to for this year's snow runs is the oldest in the Department's fleet. Every time she gets called out on a run in the early winter months, she reiterates her complaints to every coworker she sees. She tells everyone the assignment is because she is the only woman in the Department. In reality, the supervisor made the plow assignments based on seniority, as required by the Department's CBA, and the female employee was the least senior employee.

The supervisor is notified of these complaints. In January, the employee submits a doctor's note to her supervisor, which details that the employee needs a snow plow that contains an ergonomically adjustable seat because the employee's legs are becoming numb while driving. The note is from a reputable doctor and establishes that it is medically necessary for the employee to use a vehicle with the adjustable seat. The supervisor is suspicious because only the newest snow plows have such seats and he thinks the employee is just trying to get reassigned and get special treatment. He grants her the accommodation, but tells her that she does not get special treatment at the department because she is the only female employee in their division, and that she should stop making everything about her gender.

- What protected classes are implicated here?
- Should the Department have granted the accommodation in light of the supervisor's suspicion?
- Is the supervisor's comment problematic? Why or why not?

III. SETTING STANDARDS IN THE WORKPLACE

A. Why Do We Care About Harassment?

1. One in four workers claim to have been in a romantic relationship with a colleague.
2. One in three relationships result in someone being fired.
3. 17% of employees who remain, get transferred.
4. 5% of office affairs lead to litigation.

B. How Do We Set Standards?

1. Understand what is unlawful.
 - a. Conduct that unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment is unlawful. Harassment is a subset of discrimination that protects employees from harassing behavior in the workplace as a result of the employee's membership in a protected class. The theory behind harassment is that abusive and harassing behavior can adversely affect the terms, conditions or privileges of employment, thereby violating Title VII.
 - b. Workplace conduct in the nature of lewd or explicit sexual remarks, innuendoes, jokes, gestures, touching, discussions of sexual activity, indecent exposure, whistles, display of obscene or suggestive pictures or cartoons, pornographic posters, requests for dates or sexual favors, displayed swastikas or rebel flags.

Caselaw:**Franchina v. City of Providence, 881 F.3d 32 (1st Cir. 2018):**

Plaintiff, a firefighter for the City of Providence, was constantly harassed by her co-workers. Plaintiff was also spit on, propositioned for sex, shoved, and in one instance had the blood and brain matter of a suicide victim thrown on her. Plaintiff filed suit against the City for harassment and discrimination under Title VII of the Civil Rights Act and after a jury trial was awarded \$700,000.

The First Circuit Court of Appeals upheld the jury award, holding that the Plaintiff's treatment by the City was a violation of Title VII. The Court outlined the "sex-plus theory" under Title VII, which occurs when an employer classifies employees on the basis of gender plus another characteristic, in this case the Plaintiff's sexual orientation. The Plaintiff showed that the basis of the discrimination was both her gender and her identification as a lesbian. The Court found that women who were perceived as willing to sleep with their male co-workers were treated better than those who were not. As the Court concluded, "employers should be cautioned that turning a blind eye to blatant discrimination does not generally fare well under anti-discrimination laws like Title VII."

2. Establish a policy.

CORSA Sample Discrimination and Harassment Policy

- **Definitions.**

Unlawful discrimination occurs when individuals are treated less favorably in their employment because of their membership in a protected classification. An employer may not discriminate against an individual with respect to the terms and conditions of employment, such as promotions, raises, and other job opportunities, based upon that individual's membership in that protected class.

Harassment is a form of discrimination. Harassment may be generally defined as unwelcome conduct based upon a protected classification. However, harassment becomes unlawful where:

1. Enduring the offensive conduct becomes a condition of continued employment.

2. The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

CORSA Sample Discrimination and Harassment Policy

- By way of example, sexual harassment is one type of unlawful harassment. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
 1. Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment.
 2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. Harassment on the basis of an employee's membership in any protected classification (as set forth above) is unlawful, will not be tolerated, and must be reported.

- a. Are these Examples of Unlawful Harassment?

Scenario #3: My supervisor is creating a hostile work environment by yelling at me?

Scenario #4: My supervisor is creating a hostile work environment by making jokes, comments, and gestures about having an affair with me? She has also indicated she can provide me a better assignment if I go on a date with her?

- Quid Pro Quo ("This for That")

The employee's submission to harassment was an express or implied condition for receiving job benefits or the employee's refusal to submit to supervisor's harassment resulted in tangible job detriment. By definition, quid pro quo claims can only be brought against a supervisor or someone with supervisory authority over the complaining individual. The Supervisor need not be the employee's direct supervisor to impose liability, but must have the ability to affect the employee's terms & conditions of employment.

Scenario #5(a): I used to date a supervisor and we broke up three (3) weeks ago. However, he keeps calling, driving by my house, and asks about going out again. I keep saying no. I want to file a complaint. Is this improper by the supervisor?

CORSA Sample Workplace Romances Policy

- To avoid concerns of sexual harassment, preferential treatment and other inappropriate behavior, employees are required to inform [At Least Two, No More Than Four Designees, Title, Phone Number] if they currently are, or if they intend to become, romantically involved with a co-worker. Such relationships are not necessarily prohibited, but must be appropriately addressed. Should the County determine that a conflict exists between an employee's employment and a personal relationship with a co-worker, the County will attempt to work with the employees to resolve the conflict. Should operational needs prevent resolution, the relationship must cease or one or both of the parties must separate from employment. Supervisors are expressly prohibited from engaging in romantic or sexual relationships with any employee they directly, or indirectly, supervise.

Scenario #5(b): You investigate the allegation, and the supervisor shows you several explicit emails, texts, and photos from the employee? Does that make a difference?

IV. WELCOMENESS-- DEFENSE TO HARASSMENT?

A. Factors to Consider:

1. Whether the complaining employee solicited or incited the behavior;
2. Whether the conduct was regarded as undesirable or offensive;
3. Whether the complaining employee told the harasser to stop; and
4. Who instigated the behavior?

Note: Acquiescence does not necessarily mean consent. To be held to have "welcomed" the behavior, the complaining employee must have voluntarily participated in the conduct. Keep in mind that a fear of reprisal or job detriment may silence or coerce an employee – an employee who "plays along" so as not to upset her supervisor or co-worker is not a voluntary participant. Additionally, the

“welcome” or “voluntary” defense is more suspect if the harasser has authority over the complaining employee.

B. Remember:

1. Make sure the policy has various ways to report allegations;
2. Make sure supervisors and HR know their responsibilities; and
3. Don't promise confidentiality.

V. CAN THIS HAPPEN OFF-DUTY?

A. Employees Must Understand That Conduct Off-Duty Is Just as Actionable.

Off-Duty Conduct

CasekawL

***Satterfield v. Karnes*, 736 F. Supp. 2d 1138, 1159 (S.D. Ohio 2010).**

The court considered whether an obscene phone call that took place after hours and outside of the workplace should be taken into consideration in deciding a hostile work environment claim. The court acknowledged that the 6th Circuit had not yet taken a position on the issue of whether off premises, after-hours conduct by a non-supervisory employee may be considered in this analysis. However, the court went on to quote *Duggins v. Steak 'n Shake*, stating “when an employee is forced to work for, or in close proximity to, someone who is harassing her outside the workplace, the employee may reasonably perceive the work environment to be hostile.” The court considered the phone call in the “totality of the circumstances.”

***Gelpi v. AutoZoners, LLC*, 2014 WL 1224457 (N.D. Ohio March 24, 2014).**

The Court awarded summary judgment to the employer on an employee's claim alleging she was subject to a hostile work environment as a result of sexual harassment. Plaintiffs bringing these claims must prove that the alleged harassing conduct is unwelcome. Here, Gelpi alleged that sexual jokes and banter that occurred in the workplace were offensive to her. The Court evaluated Gelpi's Facebook page to show that she was actually very comfortable with sexual humor because there were numerous posts containing sexual references and jokes. The Court concluded the employee could not prove the harassing conduct was unwelcome because based on her Facebook posts, and the fact that she was Facebook friends with nearly all of her coworkers including the alleged harassers, other employees could reasonably believe she liked sexual humor.

CORSA Sample Discrimination and Harassment Policy

- Unlawful discrimination or harassment that affects an individual's employment may extend beyond the confines of the workplace. Conduct that occurs off duty and off premises may also be subject to this policy.
- Unlawful discrimination and harassment does not generally encompass conduct of a socially acceptable nature. However, some conduct that is appropriate in a social setting may be inappropriate in the workplace. A victim's perceived acquiescence in the behavior does not negate the existence of unlawful discrimination or harassment. Inappropriate conduct that an employee perceives as being "welcome" by another employee may form the basis of a legitimate complaint.

Scenario #6(a): We were at a bar after work and a co-worker touched me inappropriately. Is this harassment?

Concerns:

- Off-duty
- Impact on the workplace
- Welcomeness
- Sexual in nature
- See Policy

Scenario #6(b): I am friends with my supervisor on Facebook. He appears to be a member of a "hate group." I am an African-American female. My supervisor has recently denied my leave requests and gave me a poor evaluation score. Is this harassment or discrimination?

Scenario #6(c): A member of the public comes into the office and makes sexual, suggestive gestures and comments. Do we have to stop it?

CORSA Sample Discrimination and Harassment Policy

- Coverage
This policy covers all employees, supervisors, department heads and elected officials. Additionally, this policy covers all suppliers, subcontractors, residents, visitors, clients,

volunteers and any other individual who enters County property, conducts business on County property, or who is served by County personnel.

VI. WHAT AM I REQUIRED TO DO IN THE EVENT OF AN ALLEGATION OF HARASSMENT AND/OR DISCRIMINATION?

A. Investigate

B. Prompt Remedial Action

Scenario #7(a): A new supervisor is hired by the County Building Department. The supervisor has the authority to hire assistants and write them up, but cannot fire, demote, or transfer his assistants without approval from the County's Human Resources Director. Shortly after his hire, the supervisor starts making lewd and obscene comments to one female building inspector, one female office manager, and one female administrative assistant. He inappropriately touches the female building inspector while inspecting an office building together. The supervisor also shows the office manager pornography on his phone. Finally, he massages the administrative assistant shoulders and lets his hands "slip" to inappropriately touch her chest. The supervisor engages in similar actions for the next three months, but the three female employees stay silent. After hearing about the hand slip from the administrative assistant, the female building inspector has enough and reports the supervisor to the Director of the Building Department.

- What is the first thing the Director should do?
- Is an investigation appropriate?
- If yes, what should you do with the building inspector?
- The female employees?

Caselaw:

Kalich v. AT&T Mobility, LLC, 679 F.3d 464 (6th Cir. 2012).

A male employee cannot prevail on a sexual harassment claim against his employer, based on his allegation that his male supervisor repeatedly subjected him to inappropriate comments. Specifically, he claimed that his supervisor said things to him such as "I like your glasses - you should change your name to Virginia or Margaret" and "Do you not eat? You look like a girl" and "You know you can sew." The supervisor also made comments about the employee's dog, noting its small size, and saying "How cute. It figures." The supervisor also referred to the dog as Fluffy or Princess. The supervisor also called the employee a necrophiliac and said in front of others that the employee had sex with dead people. The employee alleged that the supervisor made these comments because he knew or suspected that the employee was homosexual and was trying to "bring him out of the closet."

In order to establish a claim for unlawful hostile work environment sexual harassment, the plaintiff employee must prove that “but for the fact of his sex, he would not have been the object of harassment.” In addition, to prove “same sex harassment,” the plaintiff must show that the alleged harasser: (1) made sexual advances or acted out of a sexual desire for the plaintiff; (2) was motivated by a general hostility towards the presence of men in the workplace; or (3) treated women more favorably than men in the workplace. In this case, the Court found the supervisor’s conduct to be “crude, bullying and despicable,” but not unlawful. There was no evidence that the employee was singled out or treated differently than other employees because of his gender. The supervisor never made any sexual advances toward him or indicated a sexual interest in him, and the supervisor did not have a general hostility to men in the workplace. Instead, he was generally rude and disrespectful of all of the employees he supervised. The Court also noted that the Employer properly investigated the employee’s complaints and took adequate remedial measures, which involved discipline, required training and removal of the supervisor from the employee’s chain-of-command.

Compare *Kalich* with *EEOC v. Boh Bros. Const. Co., LLC*, 731 F.3d 444 (5th Cir. 2013), en banc.

The Court found that a male employee could bring a same-sex harassment claim against a male supervisor. The supervisor called the employee a “p****”, “f*****”, and “princess” 2-3 times each day, would come up from behind and simulate anal sex with the employee, showed the employee his genitalia, and once, when the employee was in his car sleeping, told him that if the car was not locked the employee would have ended up with “his d*** in his mouth.” Employer had no policies regarding sexual harassment, other than to discourage it, and when the Plaintiff complained of the harassing behavior to his supervisor, the supervisor only did a 20 minute investigation, took no notes, and merely informally interviewed the supervisor.

The Court stated the 3 ways to prove same-sex harassment are not the only ways; plaintiffs can use evidence of sex-stereotyping (gender stereotyping), which is discrimination or harassment based on the fact that an individual fails to conform to traditional gender stereotypes, and is prohibited under Title VII. The Court found there was sufficient evidence to support same-sex harassment, and affirmed the jury’s verdict in favor of the employee.

CORSA Sample Discrimination and Harassment Policy

- **Complaint Procedure**

- Employees who feel they have been subject to unlawful discrimination or harassment by a fellow employee, supervisor, or other individual otherwise affiliated with the County shall immediately report the conduct, in writing, to [At Least Two, No More Than Four Designees, Title, Phone Number], each of whom shall have the authority and responsibility to work directly with [Someone Outside the Office] to investigate and take appropriate action concerning the complaint. Similarly, employees who feel they have knowledge of discrimination or harassment, or who have questions or concerns regarding discrimination or harassment, shall immediately contact [At Least Two, No More Than Four Designees, Title, Phone Number]. Late reporting of complaints and verbal reporting of complaints will not preclude the County from taking action. However, so that a thorough and accurate investigation may be conducted, employees are encouraged to submit complaints in writing and in an expedient manner following the harassing or offensive incident. All supervisors are required to follow up on all claims or concerns, whether written or verbal, regarding unlawful discrimination and harassment.
- Although employees may confront the alleged harasser at their discretion, they are also required to submit a written report of any incidents as set forth above. When the County is notified of the alleged harassment, it will timely investigate the complaint. The investigation may include private interviews of the employee allegedly harassed, the employee committing the alleged harassment and any and all witnesses. Information will be kept as confidential as practicable, although confidentiality is not guaranteed. All employees are required to cooperate in any investigation. Determinations of harassment shall be made on a case-by-case basis. If the investigation reveals the complaint is valid, prompt attention and disciplinary action designed to stop the harassment and prevent its recurrence will be taken.

C. Why Do I Need to investigate?

Scenario #7(b): Think back to the Building Department scenario. The Building Department Director notifies the County's Human Resources Director about the sexual harassment allegations. The HR Director decides to put the supervisor on paid leave pending the investigation. As part of the investigation, the HR Director interviews each woman, learns the supervisor has been engaging in this conduct for a few months, determines the allegations are substantiated, and terminates the supervisor. The female employees file an EEOC claim, alleging a hostile work environment even though the supervisor is terminated.

- Is the County still subject to liability since the women worked in this environment for multiple months?
- Were the actions of the HR Director appropriate?
 1. Vicarious liability can be imputed to the Employer.
 - a. One defense to vicarious liability is that the Employer exercised reasonable care to prevent and promptly correct any sexually harassing behavior. Proof that an employee's allegations were investigated and properly handled can protect the Employer from vicarious liability.

Caselaw:

***Burlington Indus. v. Ellerth*, 524 U.S. 742 (1998).**

The Plaintiff worked for Burlington for 15 months as a salesperson before quitting, allegedly because of the constant sexual harassment of one of her supervisors. The supervisor allegedly continuously harassed her and threatened to retaliate against her by denying tangible job benefits if she did not give in to his advances. However, the supervisor never acted on these threats. The Plaintiff filed suit, and the question before the Court was whether the employer was vicariously liable for the hostile work environment created by its supervisor. The Court ultimately held that Burlington could be held vicariously liable for the supervisor's actions, but remanded the case to provide the company the opportunity to provide a defense, such as that it exercised reasonable care to prevent and promptly correct the behavior.

2. Employer obligations:

- a. Once an Employer is put on notice it must act.
- b. Supervisors and employees must know the policies and establish/follow expectations.
- c. Understand obligations during investigation:
 - i. Scope of investigation depends upon the allegations
 - ii. Piper
 - iii. Garrity
 - iv. Union representative
 - v. Document all of the steps
- d. No retaliation against the accuser.
 - i. Materially adverse change to a term and condition of employment
 - ii. Temporal proximity
 - iii. Is there a link between protected activity and the action against the accuser?

3. Examples of adverse actions:

- a. Constructive discharge, termination, demotion, decreased salary, lower job title, or material loss of benefits or responsibilities. It must be more than a mere inconvenience or alteration of job duties.

Scenario #8: A new male Prosecutor is elected. Within the first few months, the Prosecutor decides he wants his employees to use a time clock. He also notifies all office employees he will begin to check employee internet history because he feels like too much time is being wasted messing around on the internet. The Prosecutor is also someone who likes to pull pranks on people; he likes to jump out of closets and scare his co-workers, and also messes with employee's desks while they are not in the office. The following year, Susan, a victim's advocate, notices that only she and the office's 4 other female employees are actually required to use the new time clock. The office's male employees initially started out using it, but stopped over time. She suspects the Prosecutor told the men they did not need to use the time clock. Susan also notices that the Prosecutor never asks the male employees any questions about their internet

usage and does not monitor their internet history. Susan also notices that the Prosecutor does not pull any pranks on any male employees.

One day, the Prosecutor comes to talk to Susan. He is holding an AR-15 rifle that is evidence in a case. He stands over her desk, holding the rifle, and starts making off-color jokes and makes a few references to the gun being loaded. Susan, terrified, complains about the Prosecutor's conduct to a friend, who is also a Sheriff's Deputy. The Sheriff's Deputy notifies the Prosecutor he is investigating the Prosecutor's conduct with the rifle following a complaint from Susan. That same day, the Prosecutor tells Susan she is terminated. Susan sues for gender discrimination, hostile work environment, and retaliation.

- Was Susan subject to a hostile work environment?
- Do you think she was discriminated against?
- Do you think the Prosecutor retaliated against her?

CORSA Sample Discrimination and Harassment Policy

- Retaliation

Anti-discrimination laws prohibit retaliatory conduct against individuals who file a discrimination charge, testify, or participate in any way in an investigation, proceeding, or lawsuit under these laws, or who oppose employment practices that they reasonably believe discriminate against protected individuals, in violation of these laws. The law also prevents retaliatory conduct against individuals who are close personal friends or family members with an individual who engaged in protected conduct. The County and its supervisors and employees shall not in any way retaliate against an individual for filing a complaint, reporting harassment, participating in an investigation, or engaging in any other protected activity. Any employee who feels he has been subjected to retaliatory conduct as a result of actions taken under this policy, or as a result of his relationship with someone who took action under this policy, shall report the conduct to [At Least Two, No More Than Four Designees, Title, Phone Number] immediately. Disciplinary action for filing a false complaint is not a retaliatory act.

Scenario #9(a): A JFS Director is accused of various acts of misconduct by her Administrative Assistant. After returning from administrative leave with pay at the conclusion of the investigation, the Director wants to fire the Administrative Assistant. Can she?

Considerations:

- Review Discipline Policy
- Did the Assistant violate other rules?
- Is termination how others in similar situations were treated?
- Was she honest during the process?

CORSA Sample Discrimination and Harassment Policy

- False Complaints

Legitimate complaints made in good faith are strongly encouraged; however, false complaints or complaints made in bad faith will not be tolerated. Failure to prove unlawful discrimination or harassment will not constitute a false complaint without further evidence of bad faith. False complaints are considered to be a violation of this policy.

Scenario #9(b): The Director does not fire the Administrative Assistant, but rather gives a poor performance evaluation.

- Is this retaliation?

Scenario #9(c): The Investigation does not find any unlawful harassment or discrimination. However, the Director engaged in improper behavior in violation of other policies.

- Is she still able to be disciplined?

Scenario #9(d): The Director engaged in unlawful harassment.

- Must she be terminated?

CORSA Sample Discrimination and Harassment Policy

- Corrective Action

If the County determines unlawful discrimination, harassment, or retaliation has taken place, appropriate corrective action will be taken, up to and including termination. The corrective action will be designed to stop the unlawful conduct and prevent its reoccurrence. If appropriate, law enforcement

agencies or other licensing bodies will be notified. Any individual exhibiting retaliatory or harassing behavior towards an employee who exercised a right under this policy, or who is a close personal friend or family member of someone who exercised a right under this policy, will be subject to discipline, as will any employee who has knowledge of unlawful conduct and allows that conduct to go unaddressed.

VII. WHAT SHOULD SUPERVISORS DO?

- A. Report Immediately:** Report the behavior to your employer immediately. Delay can hamper an investigation and allow the harassment to escalate.
- B. Confront the Harasser:** Inform him or her that you are offended by his/her conduct and to stop it immediately.
- C. Keep Notes:** Report the offensive behavior, noting the time, place, and substance of each incident and any witnesses.
- D. Follow Your Policy:** Know it and follow it.
- E. File an Internal Complaint:** If the unlawful conduct continues, submit a complaint to your supervisor, or if necessary to your harasser's supervisor, and send a copy to the harasser.
- F. Monitor Own Conduct:** Be careful of your own conduct, and make certain that it is not inconsistent or ambiguous - don't laugh at an unwelcome joke one day, then cry foul the next day. If it is offensive, tell them so immediately. Do not smile or flirt back.
- G. Supervisors Must be Self-Aware: Are You Engaging in Unlawful Conduct?**
 - 1. Would you be embarrassed to see your remarks or behavior reported in the newspaper or described to your spouse?
 - 2. How would you view this behavior if it was directed by someone else toward your spouse, significant other, child or parent?
 - 3. Do not assume your coworkers or employees enjoy comments about their appearance, hearing sexually or racially oriented jokes or comments, being touched, stared at, or propositioned. It may not be considered a compliment.
 - 4. Recognize that everyone may have different thresholds as to what they consider offensive.

5. Develop awareness that another person's heritage or cultural background may result in different reactions or conduct.
6. Politely explain personal sensitivities to those who may not understand.

VIII. OTHER ISSUES

A. OCRC/EEOC Charges

The Ohio Civil Rights Commission and Equal Employment Opportunity Commission provide additional avenues for employees to pursue actions against their Employer.

B. Grievances

Employee grievances can hurt the employer in many different ways. For example, if the employee ultimately prevails, he/she may be owed backpay, etc. The extra cost of outside counsel to represent the Employer, as well as the cost of an arbitrator, lost work time due to employees testifying, and the possibility of the grievance negatively impacting workplace office morale all are additional risks of grievances that should not be overlooked.

Check the language in your grievance procedure. Recent caselaw prohibits grievance procedures from requiring an employee to hold his or her grievance in abeyance if the employee also files an EEOC/OCRC Claim. This would likely also extend to any FLSA claims an employee reports to the Department of Labor.

Caselaw:

Watford v. Jefferson County Pub. School, 840 F.3d 448 (6th Cir. Sept. 1, 2017).

Joyce Watford was terminated from her position as a teacher for the Jefferson County Public School District. Watford was the member of a union, the Jefferson County Teachers Association, so she also filed a grievance, alleging her termination was based on race, sex, and age discrimination. Watford filed an EEOC charge as well, about four months after she filed the grievance.

The CBA between the School District and the Teacher's Association permitted employees to file a grievance alleging he or she was discriminated against but requires that grievance proceedings be held in abeyance if the employee also files a charge of discrimination with the EEOC.

After Watford was notified her grievance would be held in abeyance pending the results of her EEOC charge, Watford filed a second EEOC charge. In the second charge, Watford argued that holding her grievance in abeyance was retaliation for filing an EEOC charge. The EEOC issued a decision finding there was reasonable

cause to believe that holding the grievance proceedings in abeyance was retaliation for filing an EEOC claim.

Watford filed a lawsuit, alleging the CBA provision that required grievances to be held in abeyance was retaliatory on its face, among other claims. After filing the lawsuit, Watford filed additional EEOC claims against the Teacher's Union and the School District.

The lower court found the School District and Teacher's Union were entitled to summary judgment on Watford's claims, which Watford appealed.

The Sixth Circuit reversed in favor of Watford, finding the CBA was retaliatory on its face because holding grievance proceedings in abeyance would dissuade an employee from making a discrimination charge because filing a charge of discrimination was likely to stall the grievance proceedings indefinitely. The Sixth Circuit also found both the School Board and the Teacher's Union's conduct, holding the grievance in abeyance, constituted an adverse employment action.

The Court reasoned the CBA's language gave Watford two choices: choose the CBA's grievance procedure or file an EEOC charge. Those choices, though, did not actually give Watford options because, "many reasonable employees would be dissuaded from filing an EEOC charge, preferring instead to resolve their claims quickly outside of the judicial process."

C. Public Records Law

Employers should keep in mind that all of the steps in the investigation process will most likely be public record and therefore available upon request.

So, don't promise confidentiality!

D. Workplace Bullying

1. Definition

- a. Any behavior that is repeated, systematic and directed toward an employee or group of employees that a reasonable person under the circumstances would expect to victimize, humiliate, undermine or threaten another employee and which creates a risk to health and safety.
- b. Attitude distinguished - Employers cannot discipline someone for his/her attitude, defined as "a mental position or a feeling or emotion with regard to a fact or state" (Webster's 9th New Collegiate Dictionary). However, attitude manifests itself in behaviors and

employers can, and should, discipline for any behavior that does not meet the standards expected in the agency.

2. A Common Problem for Employers

- a. Common complaints falling under this category include: being excluded from work related gatherings; others being consistently late to your meetings; being given the "silent treatment"; receiving rude treatment; given little or no feedback; being yelled at or talked to in a hostile manner; being the target of rumors and/or others will not deny the falsity of those rumors, etc.
- b. While some of the aforementioned behavior seems innocuous, employees and employers should be aware of the frequency with which the behaviors occur, whether the behaviors are targeted toward a certain individual or group, and note any escalation of the behavior or incidents. It is significantly easier to address these behaviors early on rather than allow them to become part of the culture.

3. Characteristics

a. Verbal Abuse

- i. Shouting, swearing, using foul language, spreading gossip, blaming the employee, threatening job loss, unwarranted criticism, putting employee down in front of others, teasing.

b. Non-verbal Abuse

- i. Ignoring employee, consistent failure to follow-up, excluding employees from meetings and social events, treating employee rudely, unreasonable work demands, rolling eyes.

4. Harassment vs. Bullying

- a. Harassment or discrimination in the legal sense involves actions or inactions taken against an individual for legally impermissible reasons (race, color, sex, age, religion, national origin, disability status, military status).
- b. Bullying often does not occur because of a protected status, which can make it difficult to pursue legally.

5. Personality Clashes vs. Bullying

- a. Clash in perceptions, goals or values versus attempts to demean a co-worker.**
- b. Does anyone stand to gain out of the interaction?**



CORSA Risk Management Services

CORSA is a property and liability risk sharing pool established by CCAO in 1987 when commercial liability insurance was either unavailable or unaffordable. The vast majority of counties, municipalities, townships and schools in both Ohio and across the country purchase their property and liability coverage through risk sharing pools. CORSA provides members with comprehensive property and liability coverage and high-quality risk management services at a stable and competitive cost.



Available Services and Benefits

- HR Helpline
- Award-Winning Model Personnel Policy Manual
- On-Location Training Seminars
- HR Tool Kit
- On-Line Training (CORSA University)
- Broadcast Email
- Cyber Security
- Property Appraisals
- Preventive Maintenance Program (Facility Dude)
- Contract Review
- In-Person and Online Defensive Driving Classes
- Loss Control Surveys
- Flood Risk Control
- Departmental Risk Control Training

CORSA Loss Control Staff:

Frank Hatfield
Risk Control Manager
614-220-0639 (office)
614-560-1474 (cell)
fhatfield@ccao.org

Jim Hale
Risk Control Consultant
614-246-1630
jhale@ccao.org

Ken Hilty
Risk Control Law Enforcement
614-357-6966
khilty@ccao.org

HR Helpline:

Counties located north of I-70
Mazanec, Raskin and Ryder
David Smith
440-424-0016

Counties located south of I-70
Isaac Wiles
Jeff Stankunas
614-221-2121

209 E. State Street, Columbus, Ohio 43215
Tel: 888-757-1904 or 614-221-5627 Fax: 614-220-0209
www.corsa.org



Law Enforcement & Corrections Risk Management Services

CORSA provides members with comprehensive property and liability coverage and high quality risk management services at a stable and competitive cost.

In response to an increasing risk and liability placed upon law enforcement and corrections, CORSA created a law enforcement/corrections help desk in 2010. This help desk provides assistance with expert advice on legal, law enforcement/corrections matters through services from Legal Liability Risk Management Institute. (LLRMI)



Available Services and Benefits

- Best Practice Law Enforcement and Corrections Policies
- Policy Review & Revision with LLRMI
- Regional Law Enforcement and Corrections Training Seminars
- Online Training from LLRMI (Bridge)
- MILO Decision-Based Training Simulator
- Leadership Perspective Classes
- NAMI Classes
- Performance Reviews for Law Enforcement & Corrections Operations
- Law Enforcement & Corrections Help Desk
- HR Helpline for employee issues
- Online Training (CORSA University)

CORSA Loss Control Staff:

Frank Hatfield
Risk Control Manager
614-220-0639 (office)
614-560-1474 (cell)
fhatfield@ccao.org

Ken Hilty
Risk Control Law Enforcement
614-357-6966
khilty@ccao.org

Milo Training:

Steve Flory
419-769-1133
countylinefirearms@yahoo.com

HR Helpline:

Counties located north of I-70
Mazanec, Raskin and Ryder
David Smith
440-424-0016

Counties located south of I-70
Isaac Wiles
Jeff Stankunas
614-221-2121

LLRMI/Help Desk:

For more information please
contact Ken Hilty

209 E. State Street, Columbus, Ohio 43215
Tel: 888-757-1904 or 614-221-5627 Fax: 614-220-0209
www.corsa.org