

Personnel Issues in EMS

- * It is important to supervise with not just your head but with your heart...
 - You can employ (people) and hire hands to work *for* you, but you must win their hearts to have hem work *with* you.
- Tiorio p. 13

1

Issues you face...

- * Uniforms, hourly wage, vehicle maintenance to harassment and more....

2

Conflict

- * One area the must be faced on occasion is that of “conflict resolution”. Sometimes workers just cannot get along.

3

Example

- * Two partners are working on medic 1 for the month. Karen, the senior partner states that she can no longer put up with her “slack EMT partner”.
- * Kyle, the EMT states that he does his job and does not understand her complaint.

4

Example

- * Karen says that Kyle routinely gets out of the unit without grabbing any of the jump equipment.
- * Kyle sites statistics that most calls are non-emergency and that he prefers to “check it out” before lugging a lot of needless equipment into a call.

5

Example

- * Kyle says that by “getting into a call faster” he is saving lives since CPR can be started quickly and he is reducing “wear and tear” on his back (implying that is saving the agency money).

6

Example

- * Karen and Kyle will not resolve this on their own. Other employees have seen this coming for some time.
- * They are all looking to you for an answer.

7

Example

- * **Your job is to resolve this conflict.**

8

General Rules....

- * Do not allow things to become physical
- * Let everyone tell their side of the story
 - Uninterrupted
 - Allow for “cool down” time if needed
- * Be a calming force

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General Rules....

- * Create safety barriers
 - Tables, desks, etc.
- * Know written policies
- * Consider your response (take time)
- * Send parties to separate locations afterward

10

General Rules....

- * Decide (be fair and be responsible)
- * And remember to.....

11

General Rules....

- * **Document everything!**

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Policy....

- * When developing policy, follow some general rules.
 - Purpose?
 - Who will it affect?
 - Is it approved at the top?
 - Are there legal risks?

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Policy....

- * When developing policy, follow some general rules.
 - How will employees react?
 - * Eye wear example
 - Is it adequately documented and disseminated?
 - When will it be reviewed?

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Records

- * In general, employee records should be kept for the life of the employment plus an additional 20 years. Why is that a good idea?

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Records

- * Personal Attendance
 - This records the number of days worked and when as well as those missed and why.
 - This information should be kept secure and held for a long period.
 - * When would this information be useful for the employer and the employee

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Records

- * Example:
 - Employer
 - * Discipline, discharge
 - Employee
 - * Workman's compensation, subpoenas

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Records

- * Access:
 - OSHA
 - * Employees must have access to health records and safety of employer
 - Medical
 - * Must be maintained in a separate secure place with limited access.

18

Records

- * Taxes
 - Employer must have a federal ID to report taxes
 - * *example and missing data*

19

Hiring

- * Application process is affected by several federal laws and or regulations. Some of these are very complicated.

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Application

- * Becoming more of a “hot” area that is subject of increasing numbers of law suits.
- * It is best to have an attorney review policies but this is general information.

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Application

- * It is generally NOT a good idea to try to diagnose psychological problems during an application process.
- * Some agencies can and do use such tests frequently.
 - CIA, FBI, etc.

22

Application

- * It is problematic to use HIV testing as a pre-employment test. Why?
- * What about “genetic” testing to ascertain a predisposition toward a medical problem (e.g., cancer).

23

Unions

- * Do employees have a right to form and or join unions?

24

Unions

- * Do employees have a right to form and or join unions?
- * Yes they do under Section 7 of the National Labor Relations Act (NLRA).
 - Unions can represent them in contract and disciplinary disputes

25

Unions

- * Usually the process is such that when an employee has a “problem” that problem is reported to the union representative first.
- * Then it is passed to a committee or board for resolution.

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Unions

- * What does that mean for EMS agencies?
- * What does that mean for patients?

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News Release

Released: January 09, 2002

- * **Paramedic flu suspensions escalate Toronto** -- Toronto-Nine more Ontario paramedics have been or will be suspended for refusing to get a flu shot. On January 2, the Niagara Emergency Services began suspending those paramedics who have defied provincial legislation forcing them to get a flu vaccine.

28

In a Word...

- * How an employee is categorized carries with it specific legal meaning:
 - At-will
 - Union or non-union
 - Independent
 - Probationary
 - Full or part-time

29

In a Word...

- * **At-will**
 - Can be fired for good cause, bad cause or no cause (except as covered by union contract)

30

In a Word...

- * Independent contractor
 - This depends on the type of work done, the scope of the worker's autonomy, support given by the employer and more.
 - Some "independent contractors" really are not.

31

Rights....

- * Appearance
 - Employers may regulate certain aspects of personal appearance and hygiene.
 - Some examples include
 - * Suits and ties
 - * No rings or dangling earrings
 - * Standard uniforms

32

Rights....

- * Appearance
 - Employers should be cautious about conflicting with religious and or cultural practices.
 - What would be an example of such a conflict?

33

Rights....

- * Appearance
 - Employers may control aspects of hygiene such as perfumes and body odors.

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Rights....

*August 26, 2003 (Murfreesboro, Tennessee) — No BO on the JOB. That's the new policy for city workers in Murfreesboro, Tennessee.
The City Council has adopted a regulation that workers may not have -- quote -- "an odor generally offensive to others."
It seems one city employee has what's described as a problem with personal hygiene, despite repeated counseling.
The new rules don't spell out exactly what constitutes offensive body odor. But Councilman Toby Gilley says, "We'll know it when we smell it."

http://abclocal.go.com/wls/news/strange/082603_ap_sn_bodyodor.html

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Freedom...

- * Employees have a guaranteed right to freedom of expression. That right must be broad but it must not infringe on the rights (i.e. safety) of others. What is an example?

36

Freedom...

- Employees have a guaranteed right to freedom of expression. That right must be broad but it must not infringe on the rights (i.e. safety) of others. What is an example?
- * What about an employee who wants to walk around the station signing a racist song (e.g., the original “My old Ky Home”)?

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Freedom...

The sun shines bright in the old Kentucky home
'tis summer, the darkies are gay,
the corn top's ripe and the meadow's in the bloom
while the birds make music all the day.
The young folks roll on the little cabin floor
all merry, all happy, and bright.
By'n by hard times comes a-knocking at the door,
then my old Kentucky home, good night.

<http://www.ket.org/underground/resources/oldkyhome.htm>³⁸

ADA

- * This act covers approximately 45 million people.

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ADA

- * The act is divided into five divisions known as *titles*.

40

ADA

- * Title 1
 - Employment provisions regardless of national origin

41

ADA

- * Title 1
 - Person has a “disability” if they have:
 - * Physical or mental impairment that substantially limits major life activities AND OR
 - * A record of such an impairment AND OR
 - * Is regarded (treated) as if they have such an impairment

42

ADA

* Title 1

- Major life activities include:
 - * Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing and learning.

43

ADA

* Title 1

- So..... A person is covered by ADA if they have such an impairment today, in the past or if they are treated if they do.
- This idea of “treated as if....” can be important.

44

ADA

* Title 1

- For example: if an employee (p. 34) has a neurological disorder that causes him or her to jerk their head and neck and the employer discriminates against the employee ----- the ADA covers the employ

45

ADA

* Title 1

- OR if an employee is rumored to be HIV positive and is fired because of it. The ADA would then cover the employee.

46

ADA

* Title 1

- An employee with a disability cannot be disallowed from a position unless it would require unreasonable accommodations OR if the employee poses a risk.
- The employer must show that no reasonable fix for this risk was available.

47

ADA

* Title 1

- Reasonable fixes are:
 - * Things that enable a qualified person with a disability to be considered for a position that will not place an undue hardship on the business.

48

ADA

- * Title 1
 - Reasonable fixes include:
 - * Shifting job duties
 - * Reassignment of personnel
 - * Acquisition or modification of equipment
 - * Training
 - * Interpreters and or readers

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ADA

- * Title 1
 - Pre-employment physicals
 - * This may not be used to discriminate against persons with disabilities
 - * Asking applicant if they are “covered by the ADA” is forbidden and or asking what disability the applicant suffers

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ADA

- * Title 1
 - EMS may conduct “*fit for duty*” exams if the exam relates directly to job related duties
 - * Having a written job description is important
 - * It defines critical job characteristics.

51

ADA

- * Title 1
 - Alcohol and other drug testing prior to a job offer is allowed. The use of drugs is not a disability.
 - Such testing is not considered a medical examination.

52

ADA

- * Title 1
 - However, after a person is “clean”, they are covered under the act.

53

ADA

- * Title 2
 - Prohibits discrimination against persons with disabilities

54

ADA

- * Title 2
 - Covers any state or local government (or their departments) and Amtrak

55

ADA

- * Title 2
 - Prohibits discrimination in ground transportation (including buses, trains, taxis and other vehicles).
 - Owners must convert vehicles unless there is an undue burden and OR make such changes upon vehicle replacement.

56

ADA

- * Title 2
 - Air transportation is covered under a different act.
 - * Air Carriers Access Act

57

ADA

- * Title 3
 - Addresses public accommodations (public and private) and telecommunications

58

ADA

- * Title 3
 - Covers entities like:
 - * Stores, government offices, medical facilities and other public areas

59

ADA

- * Title 3
 - It means that these public places must provide their goods and or services so that they are accessible to persons with disabilities UNLESS doing so presents an undue hardship or a risk.

60

ADA

- * Title 3
 - Public places must provide (unless exempted) services or adaptations like:
 - * Interpreters
 - * Amplifiers
 - * Readers
 - * Ramps
 - * Etc.

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ADA

- * Title 4
 - Prohibits discrimination against persons with disabilities

62

ADA

- * Title 4
 - Covers telecommunications issues like the “telecommunications relay service”.
 - Requires that federally funded programs be closed captioned.

63

ADA

- * Title 5
 - Covers a lot of miscellaneous material
 - Requires that state and federal agencies comply with the act
 - Lists conditions that are NOT covered

64

ADA

- * Title 5
 - Conditions that are NOT covered
 - * Gender identity
 - * Sexual orientation
 - * Sexual deviance (e.g., pedophilia)
 - * Voyeurism
 - * Compulsive gambling
 - * Current illegal drug use
 - * More

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ADA

- * Remember a person has a “disability” if they have
 - Physical or mental impairment that substantially limits major life activities AND OR
 - A record of such an impairment AND OR
 - Is regarded (treated) as if they have such an impairment

p. 40

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ADA

- * Title 5
 - That protection extends not only to the person with the disability but also to “individuals associated with or having a relationship to the qualified individual with the disability.”

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ADA

- * Title 5
 - This includes family members, long time partners (relationship partners), and others with a significant relationship. This was written to be broadly interpreted.

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ADA

- * Title 5
 - ADA notices and information must be posted:
 - * In a prominent place and
 - * At a reading level understandable by the population of workers.

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ADA

- * Title 5
 - ADA prohibits discrimination in:
 - * Recruiting and filling positions
 - * Hiring, promotion and tenure
 - * Pay rates and other compensation
 - * Job assignment
 - * Leaves of absence
 - * Training
 - * Any other term of employment

p. 41

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ADA

- * Title 5
 - ADA allows:
 - * Testing for illegal drug use
 - * Anti-smoking campaigns

p. 41

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ADA

- * Title 5
 - Persons who file a claim must do so:
 - * Within 180 days of the alleged event OR
 - * within 300 days in states with approved enforcement agencies such as the Human Rights Commission

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ADA

- * Title 5
 - EEOC
 - * Has 180 days to investigate the allegation and to issue a "right to sue" notice
 - * Employee then has 90 days to file suit

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ADA

- * Title 5
 - EEOC
 - * Penalties vary but can include \$50,000 for the first violation and \$100,000 for subsequent violations AND
 - * Requirements that the business "fix it".
 - *Some tax incentives may help defray costs*

p. 42

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ADA

- * Title 5
 - EEOC
 - * Punitive damages are not available against local and state governments.

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ADA

- * General Questions: Who must comply?
 - All private sector employers
 - Federal government, Congress
 - Local, state and territorial governments
 - Employment agencies
 - Labor unions
 - Joint labor-management committees
 - Religious organizations

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ADA

- * General Questions: Who must comply?
 - All private sector employers
 - Federal government, Congress
 - Local, state and territorial governments
 - Employment agencies
 - Labor unions
 - Joint labor-management committees
 - Religious organizations
 - * May provide preference to "same faith" persons

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ADA

- * General Questions: Who is protected?
 - All individuals (this is not restricted to citizens only) who have a disability, have a record of one or who are treated "like" they have one.

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ADA

- * General Questions: What is a disability?
 - Physical and or mental impairment that substantially limits major life activity
 - Record of such an impairment
 - Perception of such an impairment

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ADA

- * General Questions: What is a disability?
 - There is a three question test determines if it is a “disability”
 - * Nature of impairment
 - * Length of time impairment will last
 - * Long-term impact of impairment

p. 47

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ADA

- * General Questions: What is a disability?
 - There is a three question test determines if it is a “disability”
 - * It is not a disability if it only restricts a person from one particular type of work but must impair them in a broader way.

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ADA

- * General Questions: What is a disability?
 - Physical impairment
 - * Condition or anatomical loss affecting following body systems:
 - Musculoskeletal
 - Special sense organs
 - Respiratory
 - Cardiovascular
 - Reproductive
 - Etc.

p. 46

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ADA

- * General Questions: What is a disability?
 - Mental impairment
 - * “condition such as mental retardation, organic brain syndrome, emotional (and) or mental illness and specific learning disabilities.”

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ADA

- * General Questions: What is a disability?
 - An impairment is viewed as existing regardless of whether or not the patient is receiving treatment (medication) for it.
 - * An example would be a seizure patient who takes Phenobarbital OR a person with an artificial limb

p. 46

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ADA

- * General Questions: What is a disability?
 - It is clear that HIV and AIDS are protected.
 - Other contagious conditions may not be required to receive accommodation
 - * For example, an employer might not be forced to retain an employee with active TB

p. 46

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ADA

- * General Questions: Expressly excluded?
 - People using illegal drugs (until they are “clean”)
 - Homosexuality and bisexuality (these are not recognized as “impairments”)
 - Transvestitism, transexualism, gender identity and more (see earlier slide)

p. 49

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ADA

- * General Questions: OK to ask?
 - Are you “covered by the ADA”?
 - * Not as a part of the application.
 - Do you take AZT?
 - * No.
 - What workman’s compensation claims have you filed?
 - * No.

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ADA

- * General Questions: OK to not hire/retain?
 - Do you have to hire or retain an employee with a contagious disease (like TB)?
 - * No. Although you should show that no reasonable accommodation could ameliorate the danger.
 - Can I share any of the employees medical information with the staff?
 - * Only when there is a legitimate need to know. These files must be kept confidential and separate from other general paperwork.

p. 52

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ADA

- * General Questions: Insurance?
 - Can I exclude my disabled employees from the company’s medical insurance policy?
 - * Not if you offer the plan to the other employees.
 - Can I refuse to hire an employee because their disability is not covered in the plan?
 - * No. However, the plan’s *preexisting conditions* requirements may be enforced.

p. 50

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ADA

- * General Questions: 911 technology?
 - Does the 911 center have to have TDD equipment (or something similar)?
 - * Yes.
 - This covers help for hearing and speech impaired callers.

p. 54

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ADA

- * General Questions: 911 technology?
 - Telephone companies also must have “relay services” available at rates similar to voice services.
 - These must be available 24-hours per day.

p. 54

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ADA

- * General Questions: Physical changes?
 - My building has a narrow doorway. However, that door dates back to the *early days*. Do I have to remove/widen it?
 - * Yes. Unless you can show that to do so would create an undue hardship. There may be tax incentives to help pay for it (for private industry).

p. 56

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ADA

- * Specific Questions?
 - A prospective employee enters your office in a wheelchair. The person is applying for a job as a field paramedic. Can you ask “How do you expect to do this job?”

p. 62

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ADA

- * Specific Questions?
 - A prospective employee enters your office in a wheelchair. The person is applying for a job as a field paramedic. Can you ask “How do you expect to do this job?”
 - * Yes. If the disability is obvious.

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ADA

- * Specific Questions?
 - A prospective employee enters your office for a job interview. Can you ask about their criminal history (“Have you ever been convicted of any crimes?”)

p. 62

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ADA

- * Specific Questions?
 - A prospective employee enters your office for a job interview. Can you ask about their criminal history (“Have you ever been convicted of any crimes?”)
 - * Yes. This is not likely to breach the area of “disability” so it is OK.

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ADA

* Specific Questions?

- A prospective employee enters your office for a job interview. Can you ask about their job related certifications? (“Are you certified as a ……” OR “Why haven’t you ever gotten your certification as a ……”)

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ADA

* Specific Questions?

- A prospective employee enters your office for a job interview. Can you ask about their job related certifications? (“Are you certified as a ……” OR “Why haven’t you ever gotten your certification as a ……”)

*** Yes. This can be done at the pre-offer stage. This is not likely to breach the area of “disability” so it is OK.**

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ADA

* Specific Questions?

- A prospective employee enters your office for a job interview. Can you ask about their absences from the job? (“How many days were absent from your last job?”)

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ADA

* Specific Questions?

- A prospective employee enters your office for a job interview. Can you ask about their absences from the job? (“How many days were absent from your last job?”)

*** Yes. BUT you may not ask “How many days were out sick.” since this may lead to information about the disability.**

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ADA

* Specific Questions?

- A prospective employee enters your office for a job interview. Can you ask about whether or not they are currently using illegal drugs?

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ADA

* Specific Questions?

- A prospective employee enters your office for a job interview. Can you ask about whether or not they are currently using illegal drugs?

*** Yes.**

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ADA

- * Specific Questions?
 - A prospective employee enters your office for a job interview. Can you ask about whether or not they are currently using legal drugs?

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103

ADA

- * Specific Questions?
 - A prospective employee enters your office for a job interview. Can you ask about whether or not they are currently using illegal drugs?
 - *No. This could lead to the person's disability which may not be asked during the application process (unless the applicant brings it up).

p. 62

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ADA

- * Specific Questions?
 - A prospective employee enters your office for a job interview. Can you still administer applicants agility tests?

p. 63

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ADA

- * Specific Questions?
 - A prospective employee enters your office for a job interview. Can you still administer applicants agility tests?
 - *Yes. As long as the tasks used are related to job related tasks as noted in the job description. Fitness tests are OK as well.

p. 63

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ADA

- * Specific Questions?
 - A prospective employee enters your office for a job interview. Can you still administer psychological tests?

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ADA

- * Specific Questions?
 - A prospective employee enters your office for a job interview. Can you still administer psychological tests?
 - *Yes. BUT unless you have a good reason for using them and have the expertise to defend the results..... Don't do it!

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* Stop here.

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