

KAMER
ZUCKER
&
ABBOTT
ATTORNEYS AT LAW

**6th ANNUAL
LABOR
&
EMPLOYMENT
SEMINAR**

Kamer Zucker & Abbott is pleased to announce its 6th Annual Labor and Employment Seminar. This year's program will provide important information on a wide variety of topics affecting employers, including some of the most recent legal developments at both the federal and state levels. Specifically, this year's presentation will focus on leave of absence issues, discipline and discharge, wage and hour, and workplace privacy.

In addition, we have brought back this year, by popular demand, our mock trial which has traditionally enjoyed overwhelming positive feedback from our attendees. This year's twist, however, is that we will be presenting a mock arbitration hearing, presided over by Arbitrator Gregory J. Kamer. The cast of characters for the arbitration will feature many of our support staff and attorneys, and it should be a very entertaining and informative presentation.

We anticipate a very successful program this year, and we hope that you can make arrangements to join us.



**Friday, October 17, 2003
Caesars Palace
8:00 a.m. to 3:30 p.m.**



Don't Ask, Don't Tell: Workplace Privacy

Edwin A. Keller, Jr.

The Scenario:



- TNA Controller, Krisie Krisis, is distraught since being passed over for promotion
- She took 2 months of leave for psychiatric treatment
- Krisie is suspected of sending threatening e-mails to top execs



The Scenario:

- TNA Security Director, Rocky Waters, undertakes investigation without consulting HR Director Ben Wright and shares sensitive info with former TNA executive



The Scenario:

- Krisie discloses psychiatric condition in a health questionnaire used by TNA to obtain health insurance from Sky High Insurance and kept in her personnel file
- Rocky obtains info on Krisie's prescriptions from Sky High and psychotherapy notes from Dr. Freud's assistant



The Scenario:

- Rocky searches Krisie's private office, purse, company laptop, office e-mail, locked file cabinet, as well as her car when it was in the employee parking lot





HIPAA Privacy Regs

- Protected Health Information "PHI"
- Employers not directly covered unless self-insured
- Indirectly covered if sponsoring a health benefit plan

HIPAA Privacy Regs

- Create privacy policies for “PHI”
- Restrict access to “PHI”
- Train employees who may have access to “PHI”






HIPAA Privacy Regs

- Do not use "PHI" for employment related actions
- Have penalties for violations of privacy policies







HIPAA Privacy Regs

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- Employer's self-funded plans must comply with all HIPAA privacy protections
 - Detailed safeguards
 - Privacy officer
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HIPAA Privacy Regs

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- No private cause of action, but could be basis of state tort claims
 - Enforced by HHS' Office of Civil Rights
 - Civil and Criminal Penalties
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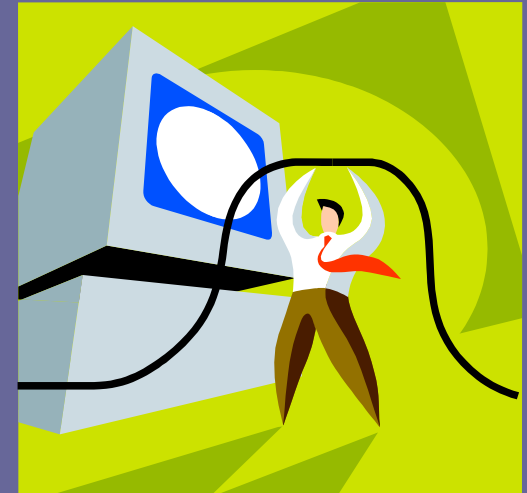


HIPAA Privacy Regs

- Do not cover medical information gathered to comply with FMLA, ADA, and workers comp
- Use HIPAA compliant consent forms when seeking medical information from health providers

Employee's Privacy "Rights"

- Employees have limited privacy rights in the workplace
- Law looks to see if employee has "reasonable expectation of privacy"



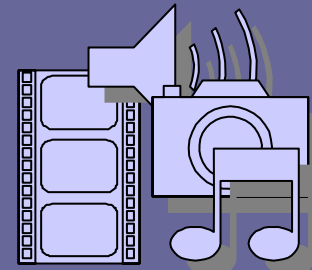
Employer's Right to Manage

- Monitor Performance
- Investigate Misconduct
- Protect sensitive business information
- Prevent Harassment



Combating Potential Threats

- Surveillance
- Security Guards
- Searches
- Inspections
- Monitoring



Electronic Monitoring

- Computers
- E-Mail
- Telephones
- Voice mail
- Internet Usage



Privacy Torts



- Constitutional violations for public employers
- Invasion of Privacy
- Intentional Infliction of Emotional Distress



Privacy Torts



- Defamation
- Assault & Battery
- False Imprisonment



Legal Issues with Electronic Monitoring

- Nevada Wiretap Statutes
- Federal Wiretap Statutes
- Electronic Communications Privacy Act "ECPA"
 - Interception of data
 - Accessing stored data



Proactive Steps



- Remove expectations of privacy by written policies and notices
- Obtain employee consent
- Implied Consent
 - Employee Handbooks
 - Pop-up Screens
 - Warning Notices



Proactive Steps



- Create and distribute well-drafted policies on:
 - E-Mail Use
 - Computer and Internet Use
 - Inspections and Searches
 - Workplace Violence Protections
 - Zero Tolerance Harassment Policies
 - Surveillance



Protecting the Electronic Workplace



- When introducing new technology into the workplace or when creating policies ask:
 - How will technology be used?
 - Who will have access?
 - How will the technology be monitored?



Protecting the Electronic Workplace



- How will employees be informed of the monitoring process?
- How will any expectations of privacy be disabused?
- Can the technology be used to harass?
 - If so what protections will be put in place?



Protecting the Electronic Workplace



- Policies should include:
 - Right of access provision and disclaimer of any right to personal privacy
 - Reasons for policy, including harm to employees, customers, and business systems
 - Detailed descriptions of permitted and prohibited uses



Protecting the Electronic Workplace



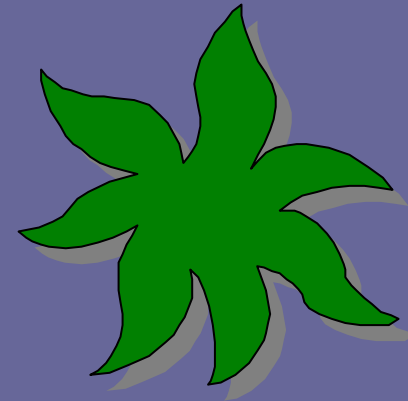
- Reference non-harassment obligations
- Provide guidelines for proper business etiquette
- Periodic redistribution and training
- Versions translated into primary language of employees



Off Duty Conduct



- Employee Fraternalization and Dating Policies
- Use of Lawful Products
- Medical Marijuana



Thank you
for your attention!

