The material provided in these notes is intended for informational and educational purposes only and is not legal advice. Readers should consult with a licensed attorney for legal advice and to address specific concerns.

A basic understanding of federal employment law is critical for every practice owner, manager, and team interviewing member. In most cases, a little preventive maintenance and an awareness of potential problem areas can eliminate or substantially reduce a practice’s exposure to a costly claim or judgment. Conversely, failing to be alert for warning signs of trouble can be disastrous. It is important that practice owners and managers recognize that the cost to the practice in such cases goes well beyond a potential money judgment against the practice. The cost of hiring a lawyer to defend a claim through the initial state labor department or the Equal Employment Opportunity Commission (EEOC), and the potential for a subsequent lawsuit in state or federal court, can cost tens of thousands of dollars. It is also very expensive, and in some instances impossible, to obtain insurance to cover some employment claims. Thus, it is important for owners and managers to obtain a basic understanding of employment law.

The purpose of this session is to focus on situations where a practice owner, manager, or team interviewing member asks questions during interviews or makes personnel decisions that intentionally or unintentionally stray into areas that could expose the veterinary practice to discrimination claims under federal law. I will identify a few situations where personnel decisions have caused EEOC and /or state labor board complaints or lawsuits. This session is designed to bring a sense of awareness to practice owners, managers and team hiring members and is not intended to and cannot identify all areas and issues that practice owners and managers must be knowledgeable about.

**Personnel Decision-Making Approach**

It is important that practice owners and managers focus on six steps that, if followed, will substantially reduce a practice’s exposure to federal employment discrimination-related claims.

1. **Review and comply with policies and procedures.** Written policies and procedures can help veterinary practices of all sizes create consistency in a wide variety of human resource issues. However, written policies and procedures can become a problem if a veterinary practice fails to follow its written policies. Owners should not make policy decisions in the hallway. They should refer HR decisions to the manager or policy manual(s). This is a frequent source of litigation. Veterinary practices must review and evaluate all policies and procedures and update them as necessary. It is important not to adopt a policy unless management is willing to comply with the policy in all circumstances. Before taking action against an employee for a violation of a policy, the practice should consult all applicable policies to ensure that the practice has fulfilled any promises that it has made.

2. **Consider the effect of written job descriptions.** Written job descriptions can assist the practice in hiring, in conducting performance reviews, and in analyzing whether an employee is “qualified.” Having a written job description can assist the practice in determining whether it can “reasonably accommodate” the disabilities of the applicant under the Americans with Disabilities Act (ADA). However, a written job description can create liability issues if it is inaccurate or outdated. If a veterinary practice decides to prepare job descriptions, it must commit to doing the job correctly.

3. **Hire legally.** Veterinary practices must take the hiring process seriously. To ensure compliance with the Americans with Disabilities Act, the Age Discrimination in Employment Act, Title VII, and a variety of other federal laws, practices should review application forms and advertisements, train managers in interviewing skills, and review the policies of the hospital with respect to background checks, information verification, and other screening processes. Veterinary practices should establish a written policy prohibiting discrimination in the hiring process and promptly investigate and resolve allegations in the hiring process.

4. **Give accurate, periodic reviews.** Periodic, accurate reviews are invaluable in both improving performance and documenting deficiencies. Inaccurate reviews that make an employee “feel
good” do not serve the practice well and can expose the practice to liability if it needs to terminate the employee for poor performance at a later date. Veterinary practices should review forms and procedures to ensure objectivity and regularity.

5. "Maintain records. Most veterinary practices maintain personnel files, applicant data, and other records relating to the employees. To ensure compliance with federal, state, and local civil rights and confidentiality laws, every practice should scrutinize its methods of collecting, handling, and storing such records.

6. "Establish a discharge process. Terminations of employment where the veterinary practice and employee agree to the termination, and terminations where the employee is terminated on an involuntary basis, must both be handled properly to avoid claims. This is a high-risk area that can give rise to the following issues: (1) whether the separation from employment violates applicable federal law; (2) whether the veterinary practice’s policies were followed; (3) how and when the final paycheck is prepared and delivered; (4) whether and how the employees must be paid for unused sick, vacation, or personal leave time; (5) how the employee is notified of his or her rights under COBRA or an applicable state law and other applicable laws; (6) how the practice will handle requests for references. Every veterinary practice should develop and follow a procedure for handling these issues in order to limit legal exposure.

Screening and Interviewing Problems
A common problem area for veterinary practice owners and managers is the screening and interviewing process. Claims and lawsuits can arise from the words and conduct of a hiring veterinarian, manager, or hiring team member toward prospective employees. Employees or rejected applicants most often sue based on federal, state, or local antidiscrimination laws; implied contracts allegedly created during the hiring process; or misrepresentations concerning the terms and conditions of employment. Given these risks, anyone who interviews applicants or otherwise participates in the hiring process should be trained to recognize what can and cannot properly be said to an applicant.

An example is where a veterinarian screens and interviews all job applicants for her veterinary practice, but in this case the veterinarian has had a problem with former employees quitting or taking excessive absences after getting married or having children. As a result, she now screens applicants by asking probing questions during job interviews about the applicants’ (especially associate doctors’) plans to marry and have children. This is a clear case of inappropriate questioning of applicants by the practice. It is illegal under federal law to base any hiring or employment decision on a person’s age, race, national origin, religion, gender, or handicap/disability. The practice is thus exposed to an EEOC or state labor board complaint and may be sued for discrimination. In addition, the ADA prohibits “fishing” for information about an applicant’s physical or mental condition. A practice can only inquire about the person’s ability to perform specific job-related functions.

There are a variety of questions that must be avoided when interviewing a prospective employee. The questions should focus on knowledge, skills, and abilities that relate to the job for which applicant is interviewing.

Some of the questions to avoid are:

- Health issues
- Age (except to ask if the applicant is over the age of 18)
- Race/national origin
- Marital status
- Number and/or ages of children
- Maiden name
- Childbearing, pregnancy, and family obligations
- Medical condition, state of health, or prior illnesses
- Physical or mental disability prior to offer for employment
- Height or weight
- Prior workers’ compensation claims
- Bankruptcies or garnishments
- Arrests
So what can the hiring team ask during an interview?

- **Work experience:** An interviewer can ask the applicant questions about the areas of responsibility of his or her previous job; what he or she liked best or least about the job; what work was the easiest or the most difficult. The interviewer may also ask about a typical day for the interviewee in his or her previous job; about his or her supervisory experience; about how his or her work is related to other jobs; and about raises, promotions, awards, achievements, attendance, reason for leaving, and career goals. Finally, the interviewer may ask about veterinary-specific experience; familiarity with certain equipment and instruments; and, if the position is for an associate doctor, whether he or she is subject to a noncompetition agreement.

- **Training, skills, and knowledge:** The interviewer may ask the applicant to describe a typical day in his or her current job, the single most important idea or accomplishment he or she has contributed in the current job, and how he or she would handle specific types of problems that occur day to day on the job.

- **Personal attitudes:** The interviewer may ask whether the applicant prefers to work alone or with others, or with minimal or direct supervision, and may ask about the applicant’s career goals. He or she may also ask about why the applicant wants the job and can ask about the applicant’s hobbies and interests.

**Health-Related Employee Issues**

Many owners and managers ask employees unnecessary health-related questions. They may ask “How are you feeling today?” or “You don’t act like you are feeling well. Is something wrong?” These questions are normally asked out of a true concern for the welfare of employees. Unfortunately, these types of health-related questions can come back to haunt the veterinary practice. If the employee is later terminated as a result of failure to perform his or her job duties, the employee can allege that he or she was terminated for discriminatory reasons because the practice became aware of a medical disability through the questioning by the supervisor.

These types of questions frequently arise when a supervisor is managing the performance problems of an employee that may or may not stem from a health problem. If a manager has an employee that is frequently tardy or absent, the solution is to have unambiguous policies on personal leave or sick leave and to consistently apply the policy to all employees.

It is also important that the manager address any problem he or she is experiencing with the employee’s performance instead of speculating on the reason for the problem. The owner or manager should never inquire about whether the employee is having a medical issue, thereby instigating a discussion on the medical condition of the employee. If the employee responds to a counseling, warning, or termination for his or her performance problems by giving a medical reason for the failure to perform, the supervisor is advised to comply with the Americans with Disabilities Act by requiring the employee to provide a doctor’s letter outlining job limitations and then evaluating what reasonable accommodations, if any, can be made. A veterinarian or practice manager should not ignore the issue, because if this occurs the practice could later be held by a court to have waived its right to argue that it could not reasonably accommodate the disability.

It is important for veterinarians and practice managers to consider the legal effects of their questioning of employees and job applicants. There may be sincere motivations for the veterinarian’s or manager’s actions, but misguided personnel decisions or questions can be devastating to practices.