



**Progressive
HUDDLE**


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Top 10
Supervisor
Slip-Ups

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Why is this Important?

- Employers are liable for acts of their representatives, including supervisors, if those individuals, because of the nature of their duties, are deemed to be authorized to act on behalf of the company.
- It is not uncommon for employers to be liable for conduct that they were not aware of or did not officially endorse.
- Supervisors form the front-line for many compliance issues. The actions of the supervisors can actually undermine or even override written policies.
- In situations involving harassment or retaliation, the Supervisor may even face personal liability

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Top 10 Slip Ups

- **#1: Failing to Manage Time Tracking**
 - One of the company's best defenses to a wage and hour class action is having accurate time records. Completing time records in an accurate manner is a job duty that supervisors must repeatedly stress to their workers. The time records should show the ACTUAL start and stop times, as well as any meal breaks.
 - Supervisors should review time records to ensure they are accurate, to ensure that they are fully completed, and should counsel employees who fail to follow the time tracking policies.
- **#2: Punishing complaining employees**
 - Retaliation claims can expose supervisors to personal liability in addition to creating exposure for the company. Supervisors must ensure that actions taken against complaining employees are based on legitimate business reasons and are clearly documented.
 - Watch out for "favors" that are requested by the complaining employee.

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- **#3: Mismanaging Leaves of Absence**
 - Supervisors can obligate a company based on misrepresenting available leave rights. Supervisors should ensure that employees are referred to the appropriate Human Resources representative if the employee requests a leave of absence.
 - Supervisors must be on the look out for employees who may be entitled to disability protections. Watch for employees who complain about being able to perform tasks, employees who appear unable to perform, or other indicators that might signal a disability issue. All such information MUST be reported to Human Resources since the supervisor's knowledge may trigger accommodation obligations on the part of the company.
 - If employees are out on a leave, Supervisors must ensure that they are not contacted with regard to work issues or questions and should not punish or penalize employees when they return.

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- **#4: Inconsistent Treatment**
 - Treating certain employees differently can expose the company to discrimination liability. Different treatment might mean treating some employees better (Favoritism) or it might mean treating some employees worse (Harassment/Discrimination). In either event, Supervisors need to ensure that no particular protected group is singled out for better/worse treatment.
 - Common areas of discrepancy: Scheduling preference, micro-managing, policy enforcement and write-ups
- **#5: Failing to manage & document performance issues!**
 - Incomplete records can impair the company's ability to discipline or terminate a poor performer without facing liability for wrongful termination, retaliation, or other claims.

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- **#6: Inappropriate behavior**
 - Supervisors can land both themselves and the company in hot water if they engage in inappropriate behavior in the workplace. Remember that not all "harassing" conduct involves angry, abusive, or demeaning behavior.
 - Watch For: Jokes, Teasing, Nicknames, Emails, Texts, Pranks, Music, Pictures, Social Media interaction, etc.
 - Supervisors need to: 1) watch for any of these types of conduct; 2) immediately report any such conduct to Human Resources or upper management; 3) counsel any employee who engages in such behavior; and 4) lead by example.
 - Supervisors need to be attuned to employee complaints. Employees often use other words to voice concerns ("I don't like her," "I want a transfer," "I can't work with those people,"). Supervisors must be able to read between the lines to ensure that inappropriate behavior is identified and corrected.

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- **#7: Failing to report matters ("I can fix this myself!")**
 - Companies often end up in litigation because issues that needed to be addressed by management go unreported. Whether the issue involves a safety concern, interpersonal conflicts among staff, performance, or any other complaint, the "Fix It Myself" approach is rarely effective and may leave the company exposed to liability for failing to properly respond.
- **#8: Pre- and Post-Shift Work Activity**
 - Employees are protected from "off-the-clock" work. Supervisors must ensure that employees are not being permitted to perform work tasks either before or after their shift begins. Supervisors need to regularly remind employees that "off the clock" work is not permitted by the company.
 - In the event that additional help is needed, Supervisors should manage staffing levels and should ensure that any employee who works extra time reports that time on the time sheet.

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- **#9: Failing to strictly enforce meal & rest period requirements**
 - Meal and rest claims continue to remain popular for class action lawsuits. It is critical for Supervisors to enforce the company's meal policy in a manner that does not expose the company to claims of late, missed, or short meal periods.
 - Supervisors must: 1) ensure the opportunity to take breaks is provided; 2) not discourage workers from taking breaks; 3) manage staffing such that breaks can be taken; and 4) document instances when breaks are missed.
- **#10: Failing to enforce company policies**
 - Supervisors who turn a blind eye to policy violations undermine the company's ability to enforce that policy. In some cases, courts have found that the "operational reality" that resulted from the Supervisor's instruction was the actual policy in effect, even though the written policies were different.

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Practical Tips:

- Make sure Supervisors are familiar with company policies and procedures
- Train Supervisors on how to respond to employee complaints, safety issues, performance issues such as excessive absence, and other likely scenarios
- Ensure that supervisors are trained regularly with regard to sexual harassment
- Regularly remind Supervisors of their responsibility to report matters to Human Resources rather than try to fix problems themselves
- Ensure that Supervisors are managing and documenting performance



Questions???

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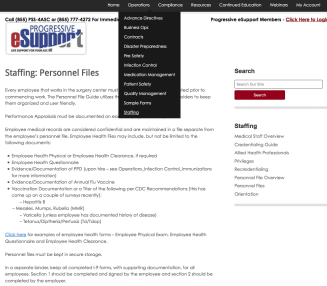
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Available on Progressive eSupport

- Staffing/Personnel Files: Guide to make sure your employee files are current and up-to-date



The screenshot shows the Progressive eSupport interface for Staffing/Personnel Files. It includes a navigation menu with options like Home, Questions, Compliance, Research, Current/Former, and My Account. The main content area is titled 'Staffing: Personnel Files' and contains several sections: 'Even employees that work in the surgery center are considered employees. The following are the Guide's relevant human resources and Job Details', 'Performance Appraisals must be documented on or before the end of the appraisal period', 'Progressive Health Services can conduct confidential and non-confidential searches from the employee's personnel file. Employees health history includes, but not be limited to the following documents:', a list of document types (Employee Health Questionnaire, Evidence of Documentation of PPD, etc.), and a 'Click here' link for more information. A search bar is also visible on the right side of the page.

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 - Visit www.progressivesurgicalsolutions.com/esupport
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The logo for Progressive eSupport features the word 'PROGRESSIVE' in a blue, blocky font above 'eSupport' in a larger, blue, stylized font. Below the logo is the tagline 'LIFE SUPPORT FOR YOUR ASC'.

Mark your calendars...

PROGRESSIVE HALF TIME
Friday April 29, 2016
 11AM PT/2PM ET

DISCRIMINATION AND HARASSMENT IN THE WORKPLACE

Katy Raytis, Esq
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FREE for eSupport members!!



The illustration shows a 3D-rendered character wearing a blue hard hat and a white safety vest, standing next to a laptop. The laptop screen displays the 'Progressive HALF TIME' logo.

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Monday July 18, 2016

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TO BE DETERMINED

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