(60 minutes)

**Materials**
- National Pork Board Barn Culture Tool Kit for Rules and Regulations on the Laws Covered in the Workshop
- "Labor & Employment Laws of the 50 States" - https://www.law.cornell.edu/wex/table_labor
- Legal Basics Participant Guide
- Legal Basics PowerPoint presentation

**Facilitator Actions Pre-Session**
Before attending this session, request attendees to access National Pork Board Barn Culture Tool Kit and review the rules and regulations for the following topics:
- Employment eligibility
- Employment of minors
- Occupational Health and Safety Administration
- Worker Protection Standards
- Discrimination and harassment policies (Title VII law)
- Age Discrimination in Employment (ADE)
- Americans with Disability Act (ADA)
- The Family and Medical Leave Act (FMLA)

Print a copy of participant guide for each participant

**Welcome / Introduction / Objectives (5 Min)**
*Distribute participant guide as session begins*

**STATE:**
- Welcome, everyone, to our next session in Human Resources Management topics. Today's topic, legal basics, will review the primary legal risks associated with human resource management. Minimizing legal risks serves two important purposes:
  1. Lawsuits are typically time consuming, stressful, and expensive. Proactively working to prevent lawsuits from current and former employees is just as important as winning lawsuits.
  2. Even more important, in minimizing human resources risks, you also build a safe, positive environment free from discrimination where employees can use their skills, knowledge, and experience to meet business goals. A positive workplace supports and improves employee performance, and encourages them to thrive and do their best, which ultimately benefits your hog operation.

- In today’s session we’ll cover:
  - The steps you can take to protect yourself and minimize legal risk.
  - The brief review of common labor laws that apply to hog operations.
  - A discussion of representative farm scenarios that involve these laws.
How to Minimize Legal Risk (10 min)

STATE: During the course of our HR sessions, you may have already seen that we've covered several basic principles that will help you minimize legal risk in your hog operation.

1. The first and foremost recommended practice is to list the advice of a qualified employment attorney. Your attorney can help you assess your human resources risks and recommend specific actions to take to reduce them.

2. The second recommendation is to familiarize yourself with both the federal and state laws that apply to human resources management. Laws and regulations vary by business type, location, and size, and will change over time. State laws often vary, so it is important that you are aware of the applicable laws for the state (or states) in which you do business, and that you consult your attorney or the human resources department.

There are other recommended practices that can help you minimize risk.

Ask participants to turn to page 2 of their Guide. Next, read the list out loud and ask participants to fill in the underlined words in the blank spaces. Suggested comments for some items are included below:

3. Implement policies, procedures, and practices that identify the expectations and standards of behavior in the workplace. Include measures to manage risk and handle problems and violations.

ASK: Why is it Important to have policies and standards in place?
Expect to hear and reinforce that consistent policies and practices that are clearly communicated help all employees and management know what is acceptable behavior, and what is not. The Barn Culture Tool Kit is an excellent resource to help you create and implement an employee handbook. Be sure to train supervisors and managers on how to carry out the policies uniformly and consistently.


ASK: What can happen if you do not have clear documentation?
Expect to hear or reinforce: You need clear, appropriate documentation to establish the basis for performance and employment decisions you may make. If legal action is taken, you will then have a record of what transpired. Without the documentation, you have only your word about what happened and then the employee's word. To minimize risk, you want to ensure that every person with responsibility for supervising or managing people have been trained in how to provide proper documentation.

5. Develop a good filing system and keep organized, complete employee records.

Additional comments: You will find guidelines for establishing and maintaining employee records in the Barn Culture Toolkit.

6. Subscribe to a newsletter on labor laws and regulations to receive regular updates.
Small Group Activity
Have participants work in their table groups or divide participants into small groups—you can just assign people.

**ASK:** Please take a few moments now to work in your small groups to identify what other steps you can take to minimize legal risks on your farm and create a positive work environment for your employees. Record your answers on page 2 of your Guide.

**Expect to hear and reinforce the following points:**
1. Provide a safe working environment.
2. Recruit and hire employees based on job requirements.
3. Quickly and appropriately deal with harassment or discrimination complaints.
4. Follow the progressive disciplinary process documentation when an employee's performance does not meet standards or expectations.
5. Do not terminate an employee in the heat of the moment. Use the cooling-off period. Remove the employee from the workplace; if necessary, put the employee on paid leave.
6. Terminate employees "for cause" only, even if your operation is in an "at will" state that allows either the employer or employee to end the employment relationship without notice.
7. Avoid terminations at sensitive periods: such as after the death of an immediate family member or during a holiday.
8. Remove poor supervisors and managers from their positions, particularly if they are verbally abusive, do not enforce policies and practices consistently, or fail to follow policy guidelines themselves.
9. Ensure that employees receive timely, appropriate feedback on their performance.
10. Treat all employees with respect, honesty, and integrity, as you would wish to be treated.

**STATE:** All of the practices we've just discussed can help you maintain a safe, productive work environment. Now that we've looked at general practices, we'll take another look at common labor laws that can create legal risks.

**Common Labor Laws that Apply to HR Operations** (10 min)

**STATE:** We'll open our discussion with four laws that defines the requirements for employment, health and safety standards, and worker protection standards. These include:
- Employment eligibility
- Employment of minors
- Occupational Safety and Health Administration (OSHA)
- Workers Protection Standards (WPS)

**ACTIVITY:** Ask participants to turn to page 3 in the Participant Guide and match the law with its corresponding information. Allow a minute or two for individual work.

<table>
<thead>
<tr>
<th>1. Laws about employment eligibility</th>
<th>A. Standards for use of protective gear and equipment features vary from state to state and task to task.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Laws for employment of minors</td>
<td>B. Federal law permits Social Security cards, permanent resident cards, alien registration receipt card photographs, and other designated documents as acceptable proof.</td>
</tr>
<tr>
<td>3. Occupational Safety and Hazard Administration (OSHA) standards</td>
<td>C. These standards help reduce the risk of pesticide poisonings and injuries among agricultural workers.</td>
</tr>
<tr>
<td>4. Workers Protection Standards (WPS)</td>
<td>D. These laws vary from state to state based on age, hours worked, and the classification of the job being performed.</td>
</tr>
</tbody>
</table>

**Key:** 1 - B; 2-D; 3-A; 4-C To finish the activity, ASK participants to volunteer their answers.
ASK: What actions do you take in your hog operation to meet the requirements of the OSHA and WPS?

Expect to hear and reinforce: posting of information alerting employees to proper usage, dangers, and emergency measures; training of employees and supervisors on proper usage, dangers of, and emergency actions; issuing of required safety gear, such as goggles, steel-toed boots, protective gloves, and monitoring of equipment usage; documentation for any accidents or non-compliance. Participants may have other examples to include.

ASK: What are the risks to the operation for non-compliance with any of these major labor laws?

Expect to hear: Fines and penalties; repeat audits from federal and state agencies; health and safety risks to employees; injuries; workers' compensation claims; increased expenses; the reputation as an unsafe place to work, which then makes hiring qualified workers challenging; and, the danger and expense of lawsuits.

Four Labor Laws You Need to Know (15 min)

STATE: We'll now move our attention to four key laws designed to protect current and prospective employees from harassment and discrimination in the workplace. These laws include:

- **Title VII - Discrimination and Harassment**
  Passed in 1964, Title VII is the oldest of these laws and protects employees from harassment and discriminatory employment practices based on an individual's race, color, religion, sex, or national origin.

- **Age Discrimination in Employment Act (ADEA)**
  This law protects workers age 40 or older from harassment and discriminatory employment practices based on age.

- **Americans with Disabilities Act (ADA)**
  This law protects an individual from harassment and discriminatory employment practices based on the employee's disability. An employer has a duty to reasonably hold an individual, or in violation of the Act.

- **The Family Medical Leave Act (FMLA)**
  FMLA provides job protection for an eligible employee who must take time off due to his / her own serious health condition, that of a family member, or for the birth or adoption of a child. Employees may take up to 12 weeks in a year, and generally, the employer must restore the employee to the same or equivalent position upon return to the workplace.

Discussion

STATE: Sexual harassment and discrimination are the most frequent type of complaints in the workplace.

There are two legal definitions of harassment which you may be familiar with:

1a. **ASK: What is quid pro quo?**

   *Quid pro quo* means "something for something." Quid pro quo harassment occurs when a job benefit is directly tied to an employee's submission to unwelcome sexual advances.

1b. **ASK: What is a hostile work environment?**

   Hostile work environment harassment occurs when an employee is subjected to unwelcome comments of a sexual nature, offensive sexual materials, or unwelcome physical contact with a regular part of the work environment. Supervisors, managers, co-workers and even customers can be responsible for creating a hostile environment.

   Usually a single isolated incident will not be considered hostile environment harassment, unless it is extremely outrageous and egregious. The courts typically look to see whether the conduct is both serious and frequent.
2. **ASK:** What are some examples of "quid pro quo" harassment?
   *Expect to hear or reinforce:* A supervisor promises an employee to promote if the employee will go out on a date with the supervisor. A supervisor threatens to fire a person if she does not have sex with him.

3. **ASK:** Is sexual harassment really about sex?
   *Expect to hear that sexual harassment may be about the harasser's need to exhibit power and / or control over another individual.*

**STATE:** Research has shown that sexual harassment is more likely to occur in environments where obscenities, sexual joking, sexually explicit graffiti, and sexually degrading posters or items are common. The objects need not be directed at any one person. Instead the objects create an offensive environment, one that is consistent with the hostile work environment.

4. **ASK:** As a manager, what can you do to help prevent complaints of sexual harassment and discrimination?
   *Expect to hear that managers have to be proactive, vigilant, and diligent in adopting the practices we mentioned earlier. A clear company policy prohibiting harassment and discrimination in the workplace needs to be drawn up and communicated to all employees.*

   *Employees need to receive training on what constitutes harassment and discrimination and how to report complaints.*

   *Managers need to be trained in how to address complaints immediately, and consult with their attorney or human resources department to ensure the complaints are investigated and appropriate actions taken, as warranted from the investigation.*

5. **ASK:** We have been talking about a hostile work environment as a legal definition of sexual harassment. When could the term "hostile work environment" also apply to other kinds of workplace harassment?
   *Expect to hear that the term "hostile work environment" would also apply when an employee experiences workplace harassment because of the offensive, intimidating, or oppressive environment generated by a harasser based on race, religion, national origin, age, disability.*

6. **ASK** participants to turn to page 5 in the Guide and follow along as you read this FMLA example:
   A worker with three years of employment in the operation tells her supervisor that she must have surgery in the next month and will be unable to return to work for at least eight weeks. The supervisor said the worker will need to get back to work sooner than that because there's too much work to do.

6a. **ASK:** What is your reaction to the supervisor's response to the employee's need for eight weeks' leave FMLA?
   *Expect to hear that the supervisor should not have commented that the employee needed to get back to work sooner than eight weeks. The supervisor does not have the authority to determine when the employee returns to work. The employee must have her physician release to return to work after her surgery.*

6b. **ASK:** What information should the supervisor have provided to the employee?
   *If the operation has an HR department, the supervisor should have directed the employee to the representative there for the FMLA forms that she will complete to have her leave approved. If the operation does not have an HR department, the supervisor can access the "Employment Links" resources and print out a copy of the forms to give to the employee to complete.*
Scenario 1: Title VII: Sexual Harassment and Harassment (10 min)

Mary started her new job just two days ago and feels a little uneasy because of the language being used by her male co-workers while at work. It seems like every sentence has a four-letter word included in it. Frustrated, she decides to tell her about the situation. When she does, the manager simply tells her not to worry and that he will take care of it. He tells her that she should not be uptight about these things, because they are all a team, and every once in a while things get out of hand.

A couple more days go by and the situation does not seem to improve; in fact, it is even worse. The female worker decides to go back to the manager’s office to confront him about the situation. When she arrives at his office, the manager asks her come in and sit down as he closes his office door. As she tries to tell her manager of the situation, she feels his presence on her back as he puts his hands on her shoulders. Trying not to appear bothered by the gesture, she tries to continue when she feels the manager gets closer and closer while rubbing her shoulders. She does not know what to do.

Discussion

• What should Mary do?

• Should Mary have allowed her boss to put her hands on her shoulders?

• Is there anyone else Mary can tell about the situation?

• How would you handle the situation if you were the manager?

Scenario 2: Age Discrimination in the Workplace (5 min)

A supervisor regularly called one worker “the old man” in team meetings. He let everyone know that “the old man had the best wrinkles of anyone he’d ever seen at that age.” When the supervisor made out the work assignments, he often said, “I need to take it easy on the old man, you know. Don’t want to give him a heart attack.” The employee works steadily and completes task according to procedure, but at times, will hold the others up. He does not want to work his way up. He is content where he is.

The supervisor learned that another worker, an energetic 25-year old with solid knowledge of hog operations, has submitted his application to work at the farm. When the supervisor terminated “the old man”, he was not surprised when a new employee showing up to work at the farm.

The older worker has not been able to find work and now must pay all health care and insurance costs. He has been advised to consult an attorney.

Discussion

ASK:

1. What did the supervisor do that might lead to a person who believed that Jack’s age was a factor in the termination?

   Expect to hear or reinforce: The supervisor specifically referred to Jack as “the old man” and commented on his wrinkles and gray hair. When he handed out assignments, he appeared to give Jack less challenging assignments, to treat him as if he had a heart condition.

   From the scenario we have no indication the supervisor gave Jack any specific feedback about improving his performance or speeding up the pace of his work.
2. What factor did Jack's performance play in his termination?
Expect to hear or reinforce that we know that Jack was a steady worker, who completed tasks but sometimes held others up. He was not interested in promotions or moving up, but rather he was contented where he was. We do not know for sure, though his performance was the primary factor in his termination, but it may have been a contributing factor.

3. Based on the information in the scenario, how justified was Jack’s termination?
Participants may have mixed reactions to this question. However, the supervisor’s specific remarks about Jack’s age, his wrinkles and gray hair, and his health (i.e., not wanting to “give him a heart attack”) indicate that Jack’s age was a concern to the supervisor. Plus, they demonstrate bias against Jack’s age, which would likely be presented evidence of discrimination if Jack pursued legal action.

Close (5 min)

STATE: Today we discussed legal basics, not only to prevent and win lawsuits, but more importantly, to build a safe, positive environment free from discrimination where employees can use their skills, knowledge, and experience to meet business goals.

A positive workplace supports and improves employee performance, and encourages them to thrive and do their best- which ultimately benefits your hog operation.

You will notice there is an Action Plan on the last page of your participant guide.

ASK: What will you intentionally take action on, and by when?
Ask them to write it down on the Action Plan and prepare to share with the group.