



The United Synagogue of Conservative Judaism Guide To Ethical Employment Practices

Joint Subcommittee

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The USCJ Employment Guide

Introduction

This employment guide expresses our concern for employees of our member *kehillot*. Its purpose is to assist congregations in recruiting, maintaining and severing relationships with employees within the framework of Conservative/Masorti Judaism's shared Jewish values. A companion piece, the *Kehilla Employee Handbook*, serves as a template for specific language for a *kehilla* to use in its hiring, drawing on the lessons of this guide.

A previous USCJ publication addressed contractual relationships with clergy and other professional staff¹. This document addresses employer-employee relationships which are non-contractual or "at will." In that situation there is an expectation that either the employee or employer may end the employment relationship at any time and for any reason. That expectation may be modified in circumstances where an employee manual describes specific steps that the employer will go through prior to terminating the relationship with an employee. It may also be challenged if there were verbal promises that employment will be for a specific length of time. In order to maintain an employment-at-will workplace, employers should remind employees in writing about the employment-at-will relationship at the time of hiring.

It is not our intent in this guide to supplant legal authorities based on local or federal labor law in the United States, Canada or elsewhere. It is also not intended to create policies for *kehillot* which are not already expressed in their employee manuals or in other personnel documents. It does, however, underline our concerns for the welfare of employees and our expectation that they will be treated with the dignity mandated by Jewish tradition. In short, it is a statement of moral principles, not legal requirements; is not intended to be legally binding on any *kehilla*; it is not intended to create any legal duty to any employee which the *kehilla* does not otherwise have under applicable law.

Dr. Jack Fein, Esq.
Principle Author, for the Committee

Ethical Principles

The tradition expressed in the *Torah, Talmud* and rabbinic literature requires that we treat employees with dignity and value the fruits of their labor. The relationship of the *kehilla* to its employees must be guided by the values of *derekh eretz* (respect for others), *kavod ha-briyot* (honor due to another human being), and recognition that all people are created *b'tzelem elohim* (in the spiritual image of the Divine).

Kehillot teach the community by example as well as by precept. The relationship between a congregation and its employees should be marked by observance of the agreement between the parties and of the spirit of *tzedek* (righteousness), *mishpat* (justice), and *p'sharah* (compromise) with which Judaism has resolved human problems throughout the ages.

The *Choshen Mishpat*, the section of the classic Jewish law code *Shulchan Arukh*, which outlines Jewish business ethics and practice, is a heavily studied section of *halakha* (Jewish law). Members of the Jewish community are required to obey the "laws of the land"² and the Torah commands employers to pay employees promptly and accurately because their lives depend on it³.

In the earlier part of the 20th century, Jews played a significant role in the American labor movement. The demographics of the labor movement, however, have shifted since those earlier days. Even while Jews retain a historical connection to the American labor movement, Jews — by virtue of their economic and educational ascent — are under-represented in the union rank and file, which now consist primarily of workers in blue collar and non-management positions. The question for our *kehillot* now is: given that more of us find ourselves hiring low-wage employees than being low-wage employees, how will we translate our historical connection to the labor movement into our new roles as owners and managers?

Conservative /Masorti Judaism often looks to the Committee on Jewish Law and Standards (CJLS) to clarify *halakha* and its application. *Teshuvot* published by the CLS speak to issues of fair employment and help shape our contemporary ethical framework.

A responsum authored by Rabbi Jill Jacobs⁴ and approved by the CJLS (May 28, 2008)

provides the following guidance. "... In addition to the professional staff such as rabbis and cantors who serve our congregations, low-wage workers are also members of our communities. Maintenance staff, whom we pay directly or hire through contracting companies, keep our buildings clean; security personnel ensure our safety; and food service staff make our dinners and *kiddushes* (*sic*) run smoothly. Many members of our community also own or manage businesses that employ low wage workers in service, production, or other roles. If we are to live our values in our business practices, we should look to *halacha* for guidance in determining how much to pay these employees, how to treat them, and how to approach unionization issues."

There was general agreement⁵ within the CJLS that our tradition requires Jewish employers to treat their employees with dignity and respect; that they must pay their employees on time; that they must not knowingly put their employees' lives at risk; and that they should comply with federal labor laws. The ideal employer-employee relationship is "one of trusted partnership, in which each party looks out for the well-being of the other, and in which the two parties consider themselves to be working together for the perfection of the divine world."

In a partial dissent⁶ six members of the Committee felt that it was inappropriate for Jewish employers to discriminate against employees who choose not to join unions and voted against adopting the politically-charged "card check" procedure in lieu of secret ballot elections.

Aside from the imperative to promote traditional core values described in the *teshuvot*, USCJ was one of the founding members of the *Hechsher Tzedek* (now *Magen Tzedek*) Commission^{7,8}. The group came to being in reaction to alleged abuses of both animals and employees in the kosher meat processing industries. The scandal resulted in a set of standards, known as *Magen Tzedek*, assuring consumers and retailers that kosher food products have been produced in keeping with exemplary Jewish ethics in the areas of labor practices, animal welfare, environmental impact, consumer issues and corporate integrity. The scrutiny devoted to labor practices focused our particular concern for the treatment of employees in the kosher food industry. This effort would have little credence however, if we simultaneously neglected the employees within our own *kehillot* and those of the vendors with whom our *kehillot* interact.

The *Magen Tzedek* certification was originally intended to qualify businesses with nonexempt employees (i.e., non-supervisory employees who are subject to U.S. and Canadian federal wage and hour laws). These standards also mirror fair labor practices⁹ that should apply to all employees of our *kehillot* and USCJ itself. The standards generally exceed legislative minimums, irrespective of a *kehillah's* size and whether it is considered exempt from Federal or local statutes.

Selecting an Employee

Our *kehillot* have a religious mission and serve the Jewish community. Policies should be developed which are sensitive to the particular mission of the *kehillah*, but which also seek to avoid inappropriate discriminatory hiring practices.

In order to justify exemptions from anti-discrimination legislation, *kehillot* need to be thoughtful and precise in their description of each staff position. It is critical that each *kehillah* clearly articulate the inherent requirements of each position in light of the mission of the organization. That is, some positions might require a commitment to Judaism, while other support positions may only require a familiarity with Jewish religious practice and a willingness to advance the mission of the organization. Jewish organizations may reasonably expect non-Jewish employees to respect Jewish religious practices but should not require them to participate in the *kehillah's* celebration or observance. Conversely, *kehillot* should expect to make reasonable accommodation for the religious practices of non-Jewish employees. In this regard non-Jewish employees usually work in supportive roles on *Shabbat* and Jewish holidays. They should be given an equivalent number of their own paid religious holidays.

Workplace Discrimination

At any level, our *kehillot* should develop policies that treat employees with dignity and respect¹⁰. This requires that they prohibit discrimination (direct and indirect) and harassment (physical, emotional, racial, religious and sexual) in the workplace. The employee handbook should state unequivocally that the synagogue is an equal opportunity employer, committed to a policy of equal opportunity in every area of employment, including, but not limited to, hiring, advancement, termination, training, development, working conditions, compensation and benefits. Employment will be based on an individual's qualifications regardless of race, color, religion, gender, sexual orientation,

national origin, age, marital or veteran status or the presence of a non-job-related medical condition or handicap. An individual's religious belief should not be an impediment to employment except when it is necessary as an occupational qualification for an employee to be of the Jewish faith. This policy includes working towards a balance of men and women in the workplace, and especially of women in supervisory positions. This might also require adoption of practices that are flexible and accommodate the demands of family and personal life. Further, *kehillot* should examine their promotion profiles as it relates to persons from under-represented groups, to ensure that they are not being excluded from the working life of the *kehilla*.

All employment policies and procedures should be documented in writing and be available at any time to each employee. The fair and just administration of these policies is essential for maintaining the integrity of the relationship with employees. The employer needs to examine each issue on its own merits when applying policies and procedures.

Sexual Harassment

Sexual harassment is a particularly sensitive issue in any workplace. The *kehilla* should clearly articulate that it will not tolerate any form of sexual harassment in the work place. It should specify that sexual harassment (behavior directed at an individual on the basis of his or her gender that is not welcome) is offensive, affects morale and, as a result, interferes with the work effectiveness of the victim. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature should not be tolerated at the *kehilla*. Such harassment can include verbal abuse or insults, gestures or physical contact, and display or circulation of degrading pictures or materials.

In January, 2004 USCJ published Model Guidelines For Congregational Policy Against Harassment.¹¹ It describes behaviors which evidence sexual harassment, reporting protocols, procedures for investigating complaints and responsive action. This should be referenced in the *kehilla* policy manual and should be required reading for all lay leaders and staff as a condition of employment.

Respect for Employees

The Jewish experience in ancient Egypt taught us the indignities of slavery. While the physical labor imposed was a hardship, the *midrash* and

other rabbinic commentaries understood the difficulties of slavery to arise primarily from spiritual, rather than physical, oppression. This is still the case today as many low-wage workers who, when asked to describe their working conditions, invariably reply "they don't respect us" even before mentioning more concrete concerns such as low wages, long hours or the lack of health care.

Midrashim on Israel's experience in Egypt offer insight into unhealthy workplaces; a biblical episode in the Book of Ruth offers a contrasting positive workplace model. The second chapter describes Boaz, a wealthy field owner, visiting his fields to speak to the workers. This interaction offers a few insights and a more idealized image of employer-employee relations. It is clear that Boaz visits the field often. He is familiar with the workers and even notices the appearance of a new gleaner. Boaz invokes God's name in greeting his workers.¹² It is significant that the initial use of God's name as a greeting appears in the workplace, not in a specifically religious context. Perhaps it becomes even more important to introduce God into a situation in which one might not expect to sense God's presence. We are clearly shown that work should confer dignity upon the worker. The *Talmud* understands the interaction between Boaz and his workers as the precedent for invoking God's name in asking about the well-being of another.¹³

Labor Issues

Federal guidelines were first designed under the Fair Labor Standards Act (FLSA) of 1938 to protect employees engaged in industries involved in interstate commerce.¹⁴ In the intervening years, specific state codes have also developed. Each state has a Department of Labor; websites should be consulted to be sure that synagogues are in compliance with state requirements.¹⁵

Compensation

The compensation and benefit sections of this guide are primarily concerned with full-time employees. However, the provisions may also be applied to part-time employees who work a substantial number of hours or who have had a long period of service with the congregation.

The *Talmud* warns that employers who withhold wages from their employees are guilty of six violations: oppressing a neighbor, stealing, oppressing the poor, delaying payment of wages, failing to pay wages at the due date and failing to pay wages before sunset. Indeed, the *Talmud*

warns, “he who withholds an employee’s wages is as though he deprived him of his life.”¹⁶

Employees should earn enough to be able to live in dignity and fulfill their family and social responsibilities. We believe that the wages and salaries of employees should be based on fairness and justice. That is, the market should not be the sole arbiter of the rightful salary of an employee.

Salary represents fixed compensation for services, paid to a person on a regular basis, while wages are the rates that may be paid hourly for employees who may not be employed full time.

Salary

An employee who is salary-based is generally paid a predetermined amount each pay period which should be at least the minimum weekly salary required by minimum wage regulations. The amount paid should not be reduced because of a variation in the quality or quantity of the work performed. With few exceptions, the employee must receive his or her full salary for any week in which he or she performs any work without regard to the number of days or hours worked. Under the FLSA, to be exempt from being paid overtime, administrative, executive and professional employees are paid on a salary basis. Nonexempt employees are often paid on a salary basis but are still paid overtime if they work more than 40 hours in a workweek.

Wages

Kehillot should be aware of the cost of living in their communities when allocating wages for employees who are less well compensated. There are standard methodologies for estimating the cost of living for low wage families. *Kehillot* can reference published tools that provide minimum estimates of the cost of living are available for each county in the United States.¹⁷

Metropolitan counties typically have a higher cost of living. In such cases, a standard calculator may underestimate costs such as housing and child care. The data obtained using this tool provides a guide to what may be considered subsistence levels, not a middle class standard. Aside from salaried employees who are in administrative or supervisory positions, many *kehillah* employees are currently paid near minimum wage. As we individually aspire to a lifestyle of dignity, we can appreciate that the employees of our *kehillot* will have similar aspirations. Our *kehillot* should consider paying full time employees a living wage which is defined as the estimated amount of income necessary to

live comfortably and which qualifies a family as middle class.

There are four commonly used indices to achieve these levels of income:

1. The living wage for the county, city, or municipality
2. Three times the fair market rent on a two-bedroom apartment in the county, city or municipalities
3. The “self-sufficiency wage” for the county or 130% of the poverty line
4. Eighty percent (80%) of the area median income

The *Magen Tzedek* standards also offer useful guidance: the hourly wages of the lowest level paid employee should be at least 15% higher than the highest mandated US federal, state or local minimum wage.⁶ While we recognize that not every *kehillah* may be in a position to immediately achieve this standard; nevertheless, each *kehillah* should strive to attain this goal at the earliest feasible opportunity.

Benefits

Lower pay scales, common in our *kehillot* and many other nonprofit organizations, may be a disincentive to recruitment. Although people who work for non-profits often do so based on the passion they have for the non-profit’s mission, many non-profit organizations increase benefits as a lower cost option to attract and retain employees.

The total documentable value of benefits for non-exempt employees should be at least 35% of wages (including mandatory government required benefit deductions). The vetting period for new employees to qualify for benefits should be no more than six months.

Temporary and seasonal workers should also be covered by the requirements of the *Magen Tzedek* living wage standard and the fringe benefit standard while employed.

Cost of Living Allowance

The *kehillah* should consider adjusting wages annually. The minimum adjustment should be based on the increases in the local cost of living as reflected in the Consumer Price Index (CPI) or equivalent for the geographical area in which the *kehillah* is located (or any reference index mandated by applicable law). At the same time, wages should be at least 15% higher than the highest applicable legal minimum wage. Such adjustments assure that earnings keep pace with the rate of inflation, to avoid a decrease in the employees buying power. The *kehillah* may include such an annual increase at their discretion.

The *Magen Tzedek* program^{8,9} provides one bonus point within its system if the average non-exempt employee salary increase during the past two years was equal or greater than the cost of living for the year (based on Federal or State indexes). The employees should be aware of database information on which the salary adjustment calculations are made.

The *kehilla* can generally give or deny raises as it sees fit, but the decision to provide indexed increases to one employee and not another should be free of discrimination. For example, if an employer gave raises to employees of a certain race, gender or marital status because of that characteristic significant legal liability may be incurred.

Working Hours

Kehilla employees' work week should not exceed the maximum number mandated by federal, state or local laws. If overtime is required, it should not exceed 20% of the normal weekly working hours. Additionally, overtime premiums shall be paid in accordance with the most beneficial of any applicable federal, state or local laws.

If overtime work is needed to meet short-term business demand, additional overtime work beyond 20% of normal working hours is permissible only where that overtime is voluntary. Under no circumstances should work exceed 60 hours per week, absent an unusual and short-term emergency condition.

Personnel shall be provided with at least one day off in every seven-day period.

The *kehilla* should maintain records of hours worked, including overtime hours and any involuntary time-off.

Sick Leave

The Family and Medical Leave Act (FMLA) is designed to help employees balance their work and family responsibilities.¹⁶ Currently, paid sick leave is not required by federal law. FMLA however allows employees to take reasonable unpaid leave for certain family and medical reasons. While FMLA covers employers with more than 50 employees, our *kehillot* may find it a useful reference point when establishing their own leave policies. The FMLA allows leave for personal or family illness, military service, family military leave, pregnancy, prenatal medical care, child birth, adoption or the foster care placement of a child.¹⁸

Several states mandate coverage for fewer employees under legislation modeled after the

FMLA.¹⁹ The U.S. Department of Labor has a collection of links for states with similar laws.¹⁵

The Pregnancy Discrimination Act,²⁴ requires employers to treat a pregnant employee the same as a temporarily disabled worker, if she is unable to perform because of her pregnancy. Several states have their own maternity leave laws and programs.

While the laws in most jurisdictions do not require exempt employers to offer sick leave, many employers agree to provide these benefits to full-time workers as a way to retain employees. These agreements develop in negotiation between individual *kehillot* and their employees. Where a *kehilla* chooses to offer paid sick days, this should be defined in an employee handbook.

If providing sick leave, an employer should:

Describe the terms of sick leave in an employee handbook including if the employer will require the employee to provide a doctor's note when taking sick leave.

Decide whether to pay employees for sick leave when employment ends: In most states, an employer is not required to pay the employee for accrued sick leave when a job ends, but an employer can establish a policy for doing so.

Magen Tzedek certification requires companies regardless of size to meet at least the federal standard for unpaid leave. Most importantly, a person properly requesting such leave and receiving it shall retain a right to a job at the same salary level and at the same or easier difficulty level upon the person's return.

Bereavement / Shiva Leave

Kehillot should develop generous leave policies when any employee experiences the loss of a family member. In particular Jewish employees will need leave to fulfill their *Shiva* obligations. In such circumstances the staff member should be given compensated leave which is not debited against other paid leave. Whenever feasible staff should also be granted compensated leave for the purpose of supporting a spouse during their *Shiva* obligation. An equivalent courtesy should be extended to non-Jewish employees who are grieving for the loss of an immediate family member.

A *kehilla* should also permit its employees to take unpaid leave for the death of other family members including a grandfather, grandmother, grandson, granddaughter, aunt, uncle, nephew, niece, sister-in-law, daughter-in-law, brother-in-law, son-in-law, father-in-law and mother-in-law.

Paid Time Off (PTO)

In contrast to the leave policies described above, *kehillot* may consider a paid time off policy (PTO) which gives employees a set number of days off annually with pay, to use for a variety of reasons at their discretion. It may be used for vacation, illness, injury, and personal business. It combines traditional vacation and sick leave plans into one flexible, paid time-off policy. Many non-profit employers are switching from the traditional paid time-off to these “comprehensive” paid time-off (PTO) policies providing more flexibility and responsibility for their employees. The benefits of a single paid time-off policy include: increased productivity, fewer unscheduled absences and enhanced employee morale.

Employees like the idea of being able to choose how to use their PTO. For healthy employees in particular, PTO can be a more attractive benefit because, it offers more vacation time than would be available under a plan that differentiates sick leave and vacation. The amount of PTO employees receive each year increases with the length of their employment.

Immigration /E-Verification

Our diverse workforce contributes greatly to the vibrancy and strength of our economy. United States law, however, requires *kehillot* to employ only individuals who may legally work in the United States – either U.S. citizens, or foreign citizens who have the necessary authorization. It is unlawful to hire an alien, to recruit an alien, or to refer an alien for a fee, knowing the alien is unauthorized to work in the United States. It is equally unlawful to continue to employ an alien knowing that the alien is unauthorized to work. More specifically Federal law requires that all employers verify the identity and employment eligibility of all new employees within three days of hire.

The Department of Homeland Security (DHS) and the Social Security Administration (SSA) have established an electronic system called E-Verify to assist employers in verifying the eligibility of their employees to work in the United States. E-Verify is fast, free and easy to use – and it’s the best way employers can ensure a legal workforce which is in the *kehilla*’s best interest.

Safety and environmental issues Worker Safety

Kehilla staff should work in an office environment that is safe, reasonably designed, well lit and properly heated and ventilated.

Workers should have regularly scheduled work breaks and lunch periods. Their assigned tasks should be matched to their capabilities and resources. These obvious considerations will go a long way toward minimizing stress and disability.

The office should be surveyed periodically to identify and remove hazardous conditions. These include physical hazards, task-related threats, environmental (chemical or biological sources) or design-related hazards.

Kehillot should take the extra step by doing ergonomic planning to be sure the worker’s health is safeguarded as much as possible by modifying or redesigning the job, workstation, tool or environment.

There are quite a few benefits that a *kehilla* should expect from a well-designed office environment. Good design in the physical layout of an office can elevate morale and improve productivity. It can help to attract and retain a higher quality workforce. Supervisors should make sure that employees are given workspace that they can call their own. Whether it is an office, desk space or cubicle this will help workers feel a sense of home at the office.

Custodians in our *kehillot* are exposed to many occupational hazards, from working on ladders to dealing with hazardous chemicals and contagious diseases. Custodial workers are at particular risk for repetitive motion injuries during routine tasks such as using a broom or mop, moving furniture, using a vacuum cleaner, cleaning restrooms, and moving trash. In addition, custodial workers may find themselves frequently bending at the waist and lifting awkward objects. They should be provided with and reminded to use proper face masks and filters when using volatile cleaning or disinfecting agents. In some *kehillot* financial constraints have led to cuts in custodial staff. These cuts are short-sighted since they often lead to the physical deterioration of facilities. Furthermore the custodial staff may be exposed to greater safety risks, as jobs which should be done by at least two people are attempted by custodians working alone. Our *kehillot* House Committees are urged to plan custodial tasks realistically so that worker safety is not compromised.

The Occupational Safety and Health Act (OSHA) was enacted in the USA in 1970.²⁵ This Act requires employers to provide and maintain a safe and healthy working environment. Significantly, synagogues are not specifically exempted from the OSHA requirements. In most states, synagogues are not specifically exempted under state law either. Employers are required to maintain safe working environments and are also

required to maintain careful, thorough records of workplace injuries, accidents, and work-related illness. The Occupational Safety and Health Administration has a right to inspect workplaces, including synagogues for violations of its health and safety standards. When a complaint is made that conditions in a workplace are unsafe or unhealthy, the Occupational Safety and Health Administration may inspect. If the workplace is not in compliance, the Agency can issue a citation as well as invoke monetary penalties. Obviously, it would be fiscally prudent to operate our *kehillot* safely and in compliance with workplace safety standards. Consult the OSHA website for more detailed information at www.OSHA.gov.

Additionally, to be sure that your *kehilla* is prepared to deal effectively with a workplace injury when it happens, work with your insurance agent to develop a list of physicians and medical facilities that can be easily accessed. Do this before a crisis, so that the staff isn't scrambling around trying to find a doctor to treat the injured worker. Finally, be vigilant about providing regular training for all workers, even volunteers, in safe work procedures such as the proper use of ladders and the proper use of power tools in a language the employees understand well. Planning prudently in advance of crises or injury allows your *kehilla* to be more effective stewards of all your resources.

Worker's Compensation

Workers' compensation laws encourage the safe and fair treatment of employees (26). For many injured employees, worker's compensation is the sole form of income when they are unable to work due to injuries sustained on-the job. *Kehillot* can purchase a workers' compensation policy from a State Workers' Insurance Fund, through an insurance company or can self insure with approval from the Department of Labor. Professional assistance is suggested to determine the appropriateness and the risks of self-insuring Workers' Compensation coverage. Insuring workers' compensation liability indemnifies the *kehilla* from wage loss, medical benefits and tort liability incurred as a result of work-related injuries.

A few states exempt employees from participating in Workers Compensation if they have religious objections to accepting insurance coverage. With regard to our *kehillot* however, most states compel participation. Unfortunately, some *kehillot* assume they are exempt and do not secure insurance. Such an assumption will not protect from full liability in the event of a claim for benefits.

Within that general context it should be appreciated that there are considerable variations in state statutes and *kehillot* should consult with their own legal counsel. In some states Workers' Compensation insurance coverage is not required for a religious organization that only pays its clergy, its teachers and individuals providing non-manual labor. To be exempt in those states clergy must only perform religious duties, and the teachers must only perform teaching duties. If they perform manual labor in the course of the workday and an injury occurs the *kehilla* is at risk of both liability and sanctions. Manual labor is broadly defined to include tasks such as filing, carrying materials (e.g., pamphlets, binders, or books), dusting or vacuuming and playing musical instruments.

It is commonplace to have volunteer workers in our *kehillot*. A *kehilla* may have a rabbi, cantor, secretary and custodian as the only paid employees while a number of volunteers may make up the real workforce. Each *kehilla* should secure Workers' Compensation coverage for its paid employees and its volunteers. Case law in some states suggests unpaid volunteer workers can be found to be employees for the purposes of a worker's compensation claim. Thus, having coverage for volunteers from which to pay such claims is far more economical, and better stewardship of the *kehilla's* resources, than risking having to pay such a claim "out of pocket." Coverage under an organization's worker's compensation policy often requires adding a "voluntary" endorsement to the existing policy.

The *kehilla* should consider the liability issues surrounding independent contractors and volunteers. When contracting with an outside caterer or other independent contractor their certificate of insurance should be on file to reduce the *kehilla's* liability for workers injury.²⁷

Children

Virtually all of our *kehillot* and many of its employees will have contact with children. Some *kehillot* have religious schools on their premises while in others children accompany parents to synagogue services. The *kehilla* assumes responsibility for the children's' development and safety.

Considerable thought and effort should be made to assuring that the interaction of our employees with our children is pleasant, healthy and enriching. The first step in this effort is to properly screen potential employees with a thorough vetting including the use of criminal background checks. Obviously persons with criminal backgrounds or those with a history of

child abuse should not be employed in our *kehillot*.

It is worth reiterating here the concerns expressed in the USCJ guidelines against harassment.⁹ If a student alleges sexual misconduct by an employee, the *kehilla* should report this to the police and any other appropriate state agency before launching its own internal investigation. The congregation may then investigate the allegations for the purpose of making a decision regarding the accused's further employment.

When children are left in the care of religious school administrative and educational staff there is an implied duty to act in parentis. Children should be continually supervised and under observation. Because children spend a good portion of their growing years under a teacher's care, teachers in our religious schools must be aware of their legal requirements and responsibilities to keep children safe. For teachers, the physical and emotional safety of students is a top priority. Teachers must be on alert to situations in the classroom which threaten or intimidate any child. They may also be aware of abusive situations outside the classroom or at home. As mandated reporters, they are required to report any evidence or suspicions of child abuse or neglect to the police and local child welfare authorities

Local statutes and guidelines concerning the physical characteristics of the classroom environment and the playground must be observed. Aside from physical precautions, the emotional well-being of the child must be protected. The use of corporal punishment or humiliation is legally prohibited.

Teachers and administrators should be trained in appropriate first aid for common medical emergencies such as diabetes, asthma and epilepsy. They should be trained to recognize the symptoms of an allergic reaction and know the steps to take in such an emergency such as the use of an epi-pen. Administrators should be aware of the law in their particular jurisdiction. The New York City Law Department for example, has agreed to defend and indemnify any school employee who is sued as a result of the administration of an epi-pen.

More generally, teachers and administrators should be aware of students who have chronic or recurring diseases who may need medical assistance when a parent cannot be contacted.

Performance Evaluation

We cannot provide an exhaustive analysis of the legal implications of performance appraisal. Nevertheless there are principles of equity and fairness that should be upheld in any good employee evaluation process.

Employees deserve an honest and open appraisal process. Key to this is providing continuous feedback to the employee throughout the year and setting appropriate expectations.

The *kehilla* will function better and employee morale will be higher if certain principles of fairness are followed that will ease the performance appraisal process. Use a standard appraisal form for all employees. Include performance objectives and performance against the objectives. There should be a rating system that has been explained early in the year and adhered to. Make very specific comments and suggestions for improvement and back up any negative comments with documentation. Do your homework and make notes throughout the appraisal period on each employee's performance. Focus on performance not personality. Agree on an action plan to correct any performance issues. Update the appraisal and have the employee sign the final document.

Transparency

Each employee should have access, at any time, to a manual that describes procedures and benefits, standards of conduct, expectations and requirements of employees. Correspondence with new employees should reference such a personnel manual. An employee handbook (often called a "Personnel Manual") is a straightforward way of communicating an employer's expectations to employees. USCJ offers a template by which a *kehilla* can create its own personnel manual. It is best to combine the delivery of the handbook with in-person orientation to key policies; a written handbook provides employees with a place to go when they have questions. The presence of written policies, as well as proof that the employer provided the handbook to the employee, and consistent application of policies described in the handbook are effective defenses against legal claims. However, handbooks themselves can cause problems for employers if they are out-of-date and not consistent with federal or state laws, or are written in a manner that can be construed as a contract, or if their procedures are not followed. The fair and just administration of these policies is essential for maintaining the integrity of the relationship with employees.

Termination

In Jewish law there is a high bar imposed before an employee can be fired. This is usually limited to circumstances where there is specific cause for such action. Generally, an employer is discouraged from firing an employee without cause, even an employee who was hired for an indefinite duration and who under secular law, would be terminable “at- will.” According to many Jewish law authorities, an employer should provide severance pay even if there is no contractual provision to that effect.

Terminating the relationship with an employee, even one who is an “at will” employee, has some element of risk, therefore it should not be done in haste but after a period of thoughtful planning. Employers should review the circumstances and documentation that justify the termination. Many of the decisions and actions taken by an employer at the onset of a termination can determine the final outcome where an employee claims that they have been wrongfully terminated. If you must immediately remove an employee for reasons of safety, security or confidentiality, then suspension of the person, whether paid or unpaid, will allow time to review all of the facts and allow for a business decision devoid of emotion.

Prior to terminating an employee consider key issues which might justify a termination. Has this employee failed to meet expectations for performance or conduct? Has this employee been provided with notice of what the expectations for his/her performance or conduct are? Do you have documentation of the fact that a notice of expectations was provided to this employee? Was this employee provided with a period of time within which to demonstrate/try to meet expectations?

Employers in at-will jurisdictions cannot terminate employees for discriminatory reasons as provided in the federal Equal Employment Opportunity Commission's regulations. Employers may not terminate an employee as retaliation against the employee exercising his legal rights by filing complaints alleging violations of the Equal Employment Opportunity laws; the Occupational and Safety Health Administration's laws; the Department of Labor's federal employment laws; and laws protecting military personnel following deployment orders.

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