

Slide 1: (Title Slide) Module 13: Personnel Policies

Welcome to the Public Housing Authority Financial Management Training. This session covers several topics related to PHAs' personnel policies.

Slide 2: Module 13 Topics

Module 13 provides information on items to consider when deciding whether to contract out services or have the work performed in-house. Information and best practices are also provided on policies typically found in a PHA's Personnel Manual such as:

- Employee compensation;
- Time and attendance;
- Employee evaluations including guidance on PHA bonuses; and
- Hiring policy and practices

Slide 3: (Section Break) Contracting Out Services

This section covers questions that PHAs should consider when determining whether to contract out current or new services or perform those services with PHA staff.

Slide 4: Contracting Out: Factors to Consider - Activity

PHAs should examine their current service delivery model for certain activities and determine whether the work can be performed more efficiently and cost-effectively by outsourcing versus continuing to perform the work in-house. Similarly, if the PHA has a need for a new service or needs an additional resource, the question should be whether this additional resource should be procured (a contractor) or hired (a PHA employee).

In making this determination, PHAs should consider two items – the activity in question and the skill set of PHA staff.

With respect to activities, PHAs should consider the following questions in determining whether to contract out the activity.

1. **Is the activity temporary, recurs in cycles, or requires less than a full-time resource?** Specialized maintenance such as plumbing or electrical work or an information technology person is a specialized skill set that PHAs typically contract out. Most PHAs do not have enough work to justify having a full-time plumber, electrician, or IT resource on staff.

2. **Would it cost less for the PHA to outsource the activity? Would the quality of the work be better if outsourced?** If you were to hire someone to cut the grass, remove snow, or paint your house, would you pay by the hour or by the job? The answer is probably by the job, and you would evaluate based on the quality of the work. Similarly, for these activities, PHAs should examine whether it makes sense to hire a company to perform the work and the cost would be determined based on a fixed price, i.e., the completion of the job rather than on a per hourly basis. This is a particularly important consideration if maintenance is behind on work orders or unit turns and the PHA would benefit from having staff focused on core tasks associated with the units.
3. **While the activity can be performed in-house, is staff time better used elsewhere?** For example, if the Board wants to improve the curb appeal of the properties by adding more flower beds or do additional landscaping, how should this additional work be performed? Maintenance staff can certainly perform this work but at the expense of what other priority task for the PHA? On the administrative side, the common example is payroll. Is the PHA better off performing this function in house or hiring a payroll provider that is responsible for sending tax payments, w-2, etc. In these cases, PHA should evaluate the opportunity cost and the work priority.
4. **Does the activity require specialized knowledge and is it impractical to have a PHA employee perform this function?** For example, most PHAs do not have on staff, an attorney or a human resources person. First, most smaller PHAs do not have enough work to maintain a full-time attorney or human resources person. Second, familiarity with the law and employment law and practices are specialized fields where the PHA would want to retain a person with the appropriate credentials.
5. **What can the PHA afford to pay?** Contracting out is not always the cheapest or preferred option. PHAs should also evaluate based on the budget the PHA has available. PHAs should perform market research and obtain three bids on any proposed work to evaluate which option is more cost-effective (cost and quality) and balance the cost against staff's other work priorities.

Slide 5: Contracting Out: Factors to Consider – PHA Staff Assessment

In determining whether to contract out, the PHA should also consider the duties, workload, and skill set of their staff.

1. **What are staff's duties and workload?** Consider the duties and associated workload of the staff. If the PHA is determining whether to augment staff with an additional resource (either contractor support or another hire), what are staff's duties and workload? Is staff already working at maximum capacity?

PHAs should look at productivity metrics in making this assessment. For maintenance, review the number of work orders completed, work order completion time, unit turnaround time, etc. For property managers review reexaminations, unit inspections, lease-up time, etc.

2. **What is the skill set of staff?** For example, most maintenance staff can perform general tasks but are not able to perform specialized plumbing or electrical work. Similarly, most PHAs do not have an employee that can setup a network server for the PHA.
3. **What is the contract cost versus contract benefits?** Lastly, the PHA should assess the contract cost versus the benefits provided by the contract.

Slide 6: Contracting Out: Who to Contract To?

In most cases, PHAs will look to contract with private companies. However, other options include contracting with nearby PHAs or city departments. For example, some PHAs have contracts or shared service arrangements with other PHAs or a city department to perform HQS inspections for their HCV units. PHAs have also contracted with city departments for additional security, information technology, or accounting services.

When contracting, PHAs are reminded that they must perform proper oversight of the contract and follow HUD regulations and PHA's policies.

Slide 7: PHA Services Typically Contracted Out

The slide shows a list of administrative and maintenance services that PHAs increasingly have looked to contract out. In addition, some PHAs have chosen to voluntarily or as directed by HUD, contract out the property management functions for some or all projects.

Understandably, PHAs with a unionized workforce may be constrained in determining what services can be outsourced.

Slide 8: (Section Break) PHA Employee Compensation

This section discusses the important of PHAs performing a salary review, HUD's salary requirements for maintenance and PHA top management, and HUD's guidance concerning PHA bonuses.

Slide 9: PHA Employee Compensation – Items to Consider

When was the last time your PHA performed a salary comparability review? It is generally good practice for a PHA to perform a salary review every 3 years. A salary review is important to be in compliance with HUD's requirements – we will discuss what these requirements are in the next few slides. A salary review is also important to determine whether the PHA can attract and retain talent. For example, if the PHA is having difficulty hiring maintenance, how does the salary that is offered by the PHA compare to other similar positions such as maintenance for an apartment complex? Lastly, a salary review is important to ensure that there is not a pattern of inequitable pay based on gender, race, or other State or Federal protected class.

In performing a salary review, the PHA should examine whether they have established a salary range for each position. The salary range should identify for each position, the minimum or entry level pay, the midpoint, and the maximum pay. In general, the PHA should identify what is the prevailing local **market rate** for the position. The market rate is defined as what an experienced solid performing employee is paid.

- The entry level pay is typically 75% to 80% of the market rate.
- The maximum pay is typically 120% to 125% of the market rate and represents a salary for someone that is a highly experienced employee.

As part of the salary review, the PHA should also consider how the PHA determines the amount provided for pay increase and bonuses and who in the organization is authorized to approve pay increase and bonuses. For example, does the Board permit the Executive Director to approve pay increase and bonuses for PHA staff or does the Board have to approve all staff pay and bonus determination?

Slide 10: Salary Comparability Review

When performing a salary comparability review, the PHA should determine the data source to be used. It is important to review the pay scale (that is, entry level, midpoint, and maximum salary) for each position and make sure that the pay scales align with the pay scale for other PHA employee positions. This review is necessary to avoid situations where for example, a non-supervisory maintenance employee is paid more than a property manager.

PHAs can obtain salary information from local companies or city and county government that employ workers for similar positions. There are also various firms that conduct salary surveys for PHAs.

Slide 11: HUD's Requirements for PHA Compensation

For the most part, HUD does not review how much a PHA's employee is paid. The compensation for PHA staff is mainly determined by a PHA's Board and/or Executive Director. Unions both locally or at the state level can also impact employees' compensation levels.

That said, there are some HUD requirements governing PHA pay for maintenance and PHA executives. For maintenance, HUD provides guidance on the prevailing or minimum hourly wage that maintenance must be paid. Similarly, Congress has capped the amount that the Board can pay PHA executive positions using certain HUD program funds.

The next set of slides discuss the HUD requirements for maintenance and PHA executive compensation.

Slide 12: Prevailing Wage Requirements: Maintenance

Section 12(a) of the US Housing Act of 1937 requires that maintenance workers on properties subject to the Annual Contributions Contract or ACC – meaning public housing properties, must be paid the prevailing or minimum hourly wage.

The prevailing or minimum hourly wage for maintenance is set by each PHA. **Maintenance work** is defined as routine maintenance such as janitorial; non-routine maintenance such as electrical or other work that is typically performed by a licensed contractor; and development, which is also subject to Davis-Bacon Act wage requirements.

Within HUD, it is not the Office of Public and Indian Housing but instead it is the Davis Bacon and Labor Standards office that has responsibility for enforcing the maintenance wage labor standards. The Davis Bacon and Labor Standards office is located in Washington DC and has regional and local field offices that work with all PHAs.

Slide 13: PHA Maintenance Wage Determination

PHAs are required to submit a maintenance wage determination, the minimum hourly wage for maintenance and fringe benefits (if applicable) to HUD annually. The submission is required whether the maintenance work is performed in-house or maintenance is contracted.

The minimum hourly wage for maintenance represents the lowest hourly wage that a PHA is permitted to pay a maintenance position. The minimum hourly wage should represent the hourly rate that the PHA would pay for an entry level hire and not an experienced or long-time employee.

The most common mistake a PHA makes in submitting this information to HUD is providing the hourly wage that is typically associated with a more senior level maintenance person. Again, the rate provided represents the lowest wage that a PHA would pay for maintenance work, so when a PHA submits an hourly wage of \$20 per hour, the PHA is not permitted to pay maintenance less than \$20 per hour. When these mistakes occur, the PHA is required to re-submit to HUD the correct hourly wage and obtain HUD approval.

Where the PHA does not know what the minimum hourly wage for maintenance is for their area, the Davis Bacon wage for the PHA's locality can be used as a rough proxy for the maintenance wage determination. The Davis Bacon wage by locality is available on the Department of Labor's website.

Slide 14: PHA Maintenance Wage Determination Process

The maintenance wage determination process starts with HUD's Davis Bacon and Labor Standards local office sending the PHA a letter 180 days prior to each PHA's fiscal year start date. The HUD letter will request that the PHA submit the proposed prevailing maintenance wage rate, and fringe benefits (if applicable).

The PHA can submit this information to HUD using HUD Form 4750 (Maintenance Wage Rate Recommendation) or if the PHA is conducting an actual salary survey, the PHA can complete and submit HUD Form 4751 (Maintenance Wage Rate Survey) and 4572 (Maintenance Wage Rate – Summary Sheet). For PHAs where maintenance is unionized, the PHA can submit the collective bargaining agreement which would contain the prevailing maintenance wage.

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PHAs will also need to submit position descriptions with the maintenance wage determination, if HUD does not already have this information or if changes have been made to the position descriptions.

Slide 15: PHA Maintenance Wage Determination Process (continued)

The wage information and position descriptions are due to HUD no later than 90 days before the PHA's fiscal year start date. HUD has until 30 days before the PHA's fiscal year start date to review and approve the PHA's prevailing wage submission. Once the HUD office approves the PHA's maintenance wage determination, the HUD office will issue to the PHA, HUD form 52158 (Maintenance Wage Rate Decision) – this form is similar to the HUD Form 4750 and contains the approved wage rate for all maintenance work classification.

If the PHA does not submit the wage information to HUD, HUD will perform the calculation for the PHA. HUD typically calculates the maintenance wage rate for the PHA using last year's submitted data times the Consumer Price Index (CPI) inflation rate. For 2016, the CPI used was 0.5%.

Slide 16: HUD 52158 Form - Example

This slide contains an example of a completed HUD Form 52158 (Maintenance Wage Rate Decision) that HUD issues to the PHA.

Slide 17: PHA Maintenance Wage Determination – Other HUD Requirements

PHAs are required to post the HUD Form 52158 (Maintenance Wage Rate Decision) in an employee common area such as lunch room, office, etc.) and the maintenance wages must also be incorporated into routine maintenance contracts.

PHAs are also required to maintain records associated with the maintenance wage rate determination for three (3) years.

Additional information on maintenance wage determination is available in the HUD Handbook – Federal Labor Standards Requirements in HUD Programs.

Slide 18: PHA Executive Compensation: HUD Requirements

Starting with the Fiscal Year 2012 Appropriations and thereafter, Congress has capped the salary amount, including bonuses that PHAs are permitted to pay the Executive Director or any other PHA employee from funds appropriated under Section 8 (only with respect to the tenant based rental assistance program) and Section 9 of the U.S. Housing Act. The cap is the annual rate of basic pay for a position at level IV of the Executive Schedule.

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Specifically, Section 8 and 9 funds refer to funds appropriated for the following programs: 1) Tenant Based Rental Assistance and Project Based Vouchers (PBVs); 2) Capital Fund (including Resident Opportunity Supportive Services (ROSS) program funds but not ROSS Service-Coordinator's funds); and 3) Operating Fund. Funds from the Moderate Rehabilitation and Project Based Rental Assistance programs are not subject to the salary cap.

Compensation provided to an Executive Director or any other PHA employee as salary and bonus are subject to the cap. Other compensation such as overtime and benefits, including retirement, life insurance, medical insurance, or the use of a PHA vehicle is not subject to the cap.

For 2017, the cap on the annual salary and bonus is \$161,900 and for 2018, the cap on the annual salary and bonus is \$164,200. Again, these are the annual rates of basic pay for a position at Level IV of the Executive Schedule for each of these years respectively. Any salary and bonus above these levels for these years must be paid for with non-federal funds.

The salary cap applies to all PHAs, including Moving-to-Work PHAs.

Slide 19: PHA Executive Compensation: HUD Requirements (continued)

PHAs that have established a Central Office Cost Center (or COCC) under the asset management model often fund a portion of the Executive Director's or other PHA employee salaries from fees received by the COCC. HUD's guidance (PIH Notice 2016-14) is that COCC fees from Section 8 and 9 funds remain subject to the salary cap. For example, if the Executive Director's annual salary is \$100,000 and \$20,000 of the ED's salary is paid for from the COCC, the portion of the \$20,000 from the COCC that can be attributed to fees received from the Section 8 & 9 programs are subject to the annual salary cap for the Executive Director.

It is common for smaller PHAs to have a part-time Executive Director and the same person can serve as an Executive Director for more than one PHA. Where an Executive Director or other PHA employee is employed by more than one PHA under a single agreement, the cap is applied to that person's total compensation from all sources.

The salary cap applies to all PHA employees including employees of another legally separate entity of the PHA (for example, a non-profit) but are still reported on the PHA's financial statements as a component unit. HUD's current guidance is that the salary cap does not apply to independent contractors or hourly employees.

Slide 20: PHA Executive Compensation: HUD Requirements (continued)

A PHA's executive compensation information is required to be submitted to HUD on HUD-52725 form. The form is a web-based form that PHAs are required to submit online through HUD's Secure Systems portal.

On the HUD-52725 form, PHAs are required to provide salary information for the following three (3) positions: 1) top management official – typically, the Executive Director; 2) top financial official – typically

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the Finance Director; and 3) the highest compensated employee that is not the top management or financial official. This last individual could be the Deputy Director at a larger PHA or a Maintenance Supervisor at a smaller PHA.

For each position, the total compensation is to be broken out by base salary, bonus, and incentive and other compensation. In addition, the total compensation is to be broken out by Section 8 and 9 funds and non-Section 8 and 9 funds.

For almost all PHAs, the salary information provided by the PHA will be based on the compensation as reported on the employee's W-2 form box 5, Medicare Wages and Tips. In rare cases, some employees may be exempt from paying Medicare taxes resulting in a blank box 5 on the employee's W-2. In these cases, the PHA should call or email the REAC executive compensation team for guidance. Section 3 on the HUD- 52725 is used for reporting income that is not reported on a W-2 form.

If a PHA fails to comply with the reporting requirements for the executive compensation information, HUD may impose monetary sanctions or other remedies.

Slide 21: PHA Executive Compensation: HUD Requirements (continued)

The Executive Compensation data that is collected for all PHAs will be made available on HUD's website and is reported to Congress.

At the time of the development of the training materials, the Calendar Year 2016 data has not been finalized. However, the Calendar Year 2015 executive compensation data is available on HUD's website at the link shown on the slide. When reviewing the CY 2015 executive compensation data, please note the following:

- The compensation limit for 2015 was \$158,700 annually.
- Position and associated salary referenced as CEO refers to Executive Director; CFO indicates Finance Director; and Executive indicates "Other", meaning the highest compensated employee that is not the top management or financial official in the PHA such as a Maintenance Supervisor or a Deputy Director.
- Some salaries that may appear to be low may indicate an individual is serving as a part-time Executive Director or can be an Executive Director for several PHAs, all in a part-time capacity. Some salaries that may appear high may be the result of dual roles, vacation payouts, or retirement etc.

PHAs are reminded to review the annual PIH Notice on Executive Compensation reporting requirements to stay up to date on the latest HUD guidance.

Slide 22: (Section Break) Time & Attendance Policies

This section provides an overview of the Fair Labor Standards Act and guidance on frequent questions related to time and attendance and best practice for PHA's time and attendance policies.

Slide 23: Fair Labor Standards Act Requirements

The initial Fair Labor Standards Act was originally established in 1938 and has been amended over time. The Act continues to establish requirements for minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers for both private and public sectors, including Federal, state, and local governments.

The Act generally applies to hourly employees, that is, employees who are paid by the hour.

With respect to the **minimum wage**, the Act requires that non-exempt employees be paid at least the federal minimum wage which is currently \$7.25 per hour. However, where the state has a minimum wage rate that is higher than the federal rate, employers are required to pay the higher amount.

Overtime – which is the most significant aspect of the Act requirements for most employers -- requires that employees that are subject to FLSA requirements, also referred to as non-exempt employees be paid overtime (pay of hourly wage plus 50% of hourly wage) for any hours that are worked over 40 hours in a work week.

Employers are required to keep records on employees' wages, hours, deductions, etc. as provided by the Department of Labor regulations. As part of this requirement, PHAs must define in their Personnel Policies what is the start and end date and time for a work week and the start and end time for a work day. There is no requirement that records be kept in a certain format or that time clocks be used. However, most employers do require the use of a time clock for non-exempt employees.

Slide 24: Fair Labor Standards Act Requirements (continued)

The following policies are not regulated by the Act: 1) Vacation; 2) holidays off or pay; 3) Severance; 4) Sick Pay; 5) Meals or Rest Periods; 6) Pay Raises or Fringe Benefits; and 7) Employee discharge. These policies may instead be regulated by state law or determined by each employer.

In addition, the following positions are exempted, that is, not subject to the FLSA requirements. These positions are considered **salaried**, and therefore the employees are not entitled to overtime pay: 1) Executive; 2) Professional capacity; 3) Certain computer-related positions (typically refers to software engineers or programmers); and 4) independent contractors.

Slide 25: Fair Labor Standards Act – Exempt Employees

This slide shows the criteria to determine whether an employee is exempt from the Fair Labor Standards Act. An employee must meet each criterion to be considered an exempt employee.

1. Hired to perform a job – pay is based on the quality or quantity of work but not on the number of hours worked.
2. The employee must be paid a guaranteed salary that is not subject to the number of hours worked.

3. The pay must be greater than the equivalent of the minimum wage pay, either federal or state, whichever pay is higher.
4. The employee's primary duty is office, non-manual work but is not of a clerical nature.
5. The employee's work is directly related to management or business operations of employees or customers.
6. The employee can bind the company in financial or contractual matters.
7. If the employee is deemed an executive, by definition, the employee must supervise at least two full-time equivalent staff positions.
8. The employee can exercise discretion and independent judgement on behalf of the company for significant matters.

PHAs should review the criteria and make sure that the exempt employees meet each criterion.

Slide 26: Exempt and Non-Exempt Classification – PHA Example

Based on the criteria for an employee that is exempt from FLSA, the table on this slide shows the most common classifications of exempt and non-exempt PHA positions. Some PHAs may classify the following positions differently than shown on the table.

- **HCV Staff** - Are generally classified by most PHAs as non-exempt, meaning the HCV staff receive over-time pay. However, some PHAs classify HCV staff as exempt from the FLSA and these positions are then not eligible for overtime pay.
- **Property Managers and Assistant Managers** – Are associated with the public housing program and are generally exempt from FLSA and are therefore typically salaried employees. However, there are states where PHA employees are part of the state civil service and as such property managers and assistant managers are considered non-exempt, that is these positions are subject to FLSA.
- **Other Professional Staff** – Similarly, some PHAs that are part of the state civil service system also classify their Human Resources and Modernization Coordinator as non-exempt.

Slide 27: 1. Time Reporting Non-Exempt Employees

The following guidelines apply to time reporting for employees that are NOT exempt from the Fair Labor Standards Act.

- A non-exempt employee must be paid for all hours worked. Hours worked is defined as all times that an employee must be on duty, on the employer premises, or at any other prescribed places of work.
- Travel time to and from a job site during the work day must be considered as part of hours worked.
- An employer can round the hours that an employee works based on 15-minute increments. However, the Department of Labor provides guidance on how to apply rules for rounding. Essentially, there is a general prohibition on employers from always rounding down an employee's time.

Slide 28: 1. Time Reporting Non-Exempt Employees – Best Practices

The following are some best practices for time reporting for non-exempt employees. PHAs should have similar policies in their Personnel Policies.

Some of these items may seem tedious but the best practices highlighted here are common issues faced by PHAs.

- Time tracking for Non-exempt Staff policies should address the following items.
 - A PHA's personnel policy should include information on how early/late employees can clock in or out for a shift. For example, some PHAs have in their policy that an employee can clock in no sooner than 10 minutes before or no later than 10 minutes after a shift.
 - Whether non-exempt employees are required to clock in and out for lunch breaks or rest periods
 - An important policy to have is a prohibition on employee clocking in our out for another employee
 - Overtime work requires prior authorization from supervisor
- Additional Time Tracking Policy for Maintenance: If maintenance starts or ends the day at a unit, maintenance should call the property office and request that the property manager clock the person in and out.
- Timesheets must be signed by the employee and the immediate supervisor.
- Time and attendance records should be maintained by a designated office, for example, Finance.

Slide 29: 2. Time Reporting Exempt Employees

With respect to employees that are exempt from the Fair Labor Standards Act, the Act does not require or prohibit the tracking of time for exempt employees. This means that PHAs can require exempt employees

to use a time clock to track attendance. In fact, it is recommended that the PHA requires that all employee time be tracked with a time clock, including the Executive Director's time.

If the PHA adopts a policy to require exempt employees to use a time clock for attendance purposes, the PHA must implement the policy evenly. For example, the PHA cannot require that one property manager use a time clock but not require the same for another property manager. Similarly, the PHA cannot require all exempt HCV employees but not exempt Public Housing employees from clocking in and out.

A PHA can use the attendance information from the use of a time clock for disciplinary reasons. However, the PHA is prohibited from deducting the pay of exempt employees for tardiness because exempt employees are considered salaried.

With respect to public housing property staff (that is, property managers and assistant managers), a best practice is to have posted office hours that instructs visitors to call the main office if the office is not opened and to require a visitor log be maintained at each property office. The implementation of these two policies allow PHA management to verify that staff is at the office and to get a better idea of the foot traffic that is occurring at the properties.

Slide 30: 3. On-Call Policy: Non-Exempt Employees

The Personnel manual should also include the PHA's on call policy. The Fair Labor Standards Act provides the following guidance on when an employee that is not exempt from the Act is considered working or not working while on call. For PHAs, the on-call policy for non-exempt employees typically apply to maintenance staff.

- Specifically, if an employee is required to remain on the employer's premises or close to the premises so that the employee cannot use the time effectively for personal use, the employee is considered working while on call and must be paid.
- However, an employee who is required to carry a cell phone, a beeper, or leaves a message where he or she can be reached is in most cases, not considered working while on call and is not required to be paid.
- Additional constraints that are placed on an employee's freedom could require on call time to be compensated.

PHAs may require maintenance to be on-call and to rotate who is on-call on a nightly or weekly basis. Other PHAs solicit volunteers from maintenance to be on call. To get volunteers, some PHAs have adopted a policy where the PHA provide a flat fee amount for the person who is on call and pay maintenance that is on-call for the hours that are worked. However, some PHAs will also provide a minimum number of hours to be paid if there is a work order call. For example, a PHA's policy is to pay a minimum of 3 hours if there is a call. If Ed takes 2 hours to complete a maintenance call including travel time, Ed would receive pay for 3 hours. If Ed took 4 hours to complete a couple of maintenance calls, Ed would be paid for 4 hours. If there is no maintenance call, Ed would be paid a flat fee.

Slide 31: 4. Annual (Vacation) Policy: All Employees

The amount of annual or vacation leave that is provided by an employer is governed by state law and not federal law. Most states do not require employers to provide employees with vacation benefits, either paid or unpaid. However, when an employer chooses to provide annual/vacation leave, the employer must comply with the established policy or employment contract.

Most PHAs voluntarily provide some form of annual leave to their employees.

The PHA should include in their Personnel Policies the following items regarding annual leave. The items highlighted in bold warrant special consideration and review.

- As permitted under state law, establish a policy that denies the payment of accrued annual leave upon separation from employment without two weeks' notice.
- Establish the number of hours that is earned per pay period, annual leave, cap, and cap on the amount of annual leave that can be carried forward.
- Annual leave cannot be advanced to employees or transferred between employees.
- The PHA cannot buy back annual leave from employees.

Slide 32: 5. Sick Leave Policy: All Employees

Most states do not require employers to provide sick leave, either paid or unpaid. However, employers including PHAs are still subject to the federal Family and Medical Leave Act which provides job-protected and unpaid sick leave for certain medical and family reasons.

The following are policies that PHAs should include in their sick leave policy:

- Situations when sick leave should be taken such as personal illness, care of a family member, health care appointment, etc.;
- The number of sick leave hours accrued per pay period and annually;
- Whether new employees or employees in a probationary period can earn sick leave;
- Whether employees on injury leave or in a non-pay status can accrue sick leave;
- Whether accrued sick leave is paid upon separation from employment; and
- Prohibition on the advancement of sick leave.

Note also that there is no requirement to provide employees with separate annual and sick leave days. In fact, employers and private industry are moving increasingly towards a consolidated leave or Paid Time Off (PTO) plan where instead of tracking a person's leave by vacation and sick days, there is one category of paid absences. From the employer's standpoint, a PTO plan reduces the administrative burden of needing to track reasons for paid absences. From the employee's perspective, a PTO means freedom and flexibility from having to stretch the truth to use sick time for a vacation.

Slide 33: (Section Break) Employee Evaluations

This section covers factors to consider in conducting employee evaluations, whether PHAs can provide bonuses, and suggestions on PHA hiring policy and practices.

Slide 34: Employee Evaluations

Employers subject themselves to risk when an employee is dismissed (outside of the probationary period), and no employee evaluation has been conducted in accordance with the company's personnel policy. Similarly, a company that only initiates an employee evaluation for a "troubled" employee but no other staff, may also be subject to greater risk of litigation.

Employee evaluations should be performed as part of the normal course of business. Most PHAs have in their personnel policy that an employee evaluation is conducted at least annually. ***Are these evaluations being completed within your agency? For PHA employees? For PHA management, including the Executive Director?***

The PHA should review their employee evaluation policy for the following items:

- The employee evaluation should align with the position description and duties. Meaning, an employee evaluation for a property manager and maintenance should have somewhat different factors. Similarly, an evaluation for a senior manager would have slightly different factors than an evaluation for a property manager.
- The PHA's policy should establish the steps and timeline for conducting employee evaluations. Steps include:
 - **Goal-setting** – At the start of each fiscal year, the employee and their supervisor should establish the employee's goals including goals for training and professional development for the year.
 - **Feedback** – Establish a schedule for providing feedback, either formally or informally, including feedback on areas for employee's improvement
 - **Impact on Pay** – The employee's evaluation should have input into an employee's possible merit pay increases.
- The employee evaluation should to the greatest extent possible, include work performance metrics such as work order completion rate, rent calculation error rate, etc.

Slide 35: Employee Evaluations: Factors to Consider

The table below provides the typical components of an employee evaluation. The points to be taken from this table are:

- The components listed on this table are straight-forward and can be applied to most employees.
- Most people would agree that the components are what should be used to evaluate a "good" employee.

Slide 36: Executive Director Evaluation

Does your PHA perform an annual evaluation of the Executive Director? At the in person financial training sessions, several Executive Directors indicated that their Board did not provide them with an annual evaluation. They shared that the Board when asked, said that the day the Board conducts an evaluation of the ED, it is because the Board is not pleased with the ED's performance. Remember – the Executive Director is the Board's only direct employee - is this what a responsible Board would do?

Like the evaluations for staff which should be conducted to communicate what works and does not work, the Board should perform an evaluation of the Executive Director annually. The information should incorporate PHA metrics with special emphasis provided on those items that is in the control of the PHA. Lastly, an evaluation should be conducted prior to the Board renewing or extending the contract for the Executive Director.

Slide 37: PHA Bonuses

PHAs have asked whether bonuses to staff or the Executive Director is permitted. The next couple of slides provides a response to this question.

OMB guidance in 2 CFR 200.430(f) regarding Incentive compensation, that is bonuses, states the following:

Incentive compensation. Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc. is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

Let's break-down this guidance.

- **Applicability to PHA.** First, housing authorities are considered “non-Federal entity”, so this provision applies to PHAs.
- **Justification for Bonus.** Note the language in the guidance which states that the reason for providing the incentive compensation, i.e., bonuses, must be based on cost reduction, efficient performance, suggestions, or safety awards.

Slide 38: PHA Bonuses (continued)

- **Agreement Required Before Services Are Rendered.** The amount of the bonus and the metrics that an employee must achieve to receive the bonus must be established beforehand and not after the fact. In other words, goals must be set in advance. In addition, the PHA must ensure that the

determination that the employee achieves the metric was properly determined, for example as part of an employee evaluation.

- **Christmas Bonus.** Based on the OMB guidance, Christmas or holiday bonuses are not permitted because no tangible goals were achieved for the bonus.
- **Longevity Bonus.** Similarly, many PHAs provide longevity bonuses which does not appear to fit the intent of the OMB guidance to provide bonuses based on performance that lower costs, improve efficiency, etc.
- **Applicability to Executive Director Bonus.** This provision only applies to Executive Directors that are hired as a W-2 employee and not under a contract arrangement. If the ED was hired as a contract employee, the terms of payment, including any bonus would need be included in the contract. PHAs should use the same guidance provided by OMB if the ED was hired under a contract, i.e., bonuses should be tied to metrics that are established beforehand, no holiday or longevity bonuses should be provided, etc.

Slide 39: (Section Break) PHA Hiring Policy and Practices

This section discusses best practices in a PHA's hiring policy and practices.

Slide 40: PHA Hiring Policy – Why Important

The table shows some recent statistics on why it is important to have a well-considered hiring policy.

- **Workplace violence accounts for 18% of all violent crimes.** First, the safety of your employees, the residents, and the public is important.
- **The typical organization loses 5% of its annual revenue to occupational fraud.** A good hiring policy will check someone's background to determine whether that individual may have been dismissed for fraud or theft.
- **About one-third of resumes have some degree of puffery.** Checking references and educational credentials are important because applicants may have exaggerated their educational attainment or background.
- **16% of executive resumes contain false academic claims or material omissions.** The more senior the position, the greater the likelihood that someone may have falsified or omitted certain information on their resume.
- **The replacement cost of a bad hire is up to 3 times the salary of the job in question.** PHAs may really need a resource but not taking the time to find a qualified person will end up costing the PHA more.

Slide 41: PHA Hiring Policy

A PHA's hiring policy should ensure that potential hires have the necessary knowledge, experience, and skills to do the job. In addition, as a governmental entity that provides a service to the public, the PHA's hiring policy should ensure that a potential hire has integrity and is trustworthy.

The following are some points to consider in developing an effective hiring policy and are discussed in more detail in the next slides. Most of these thoughts are from a HUD's Inspector General bulletin on best practices that Boards and Executive Directors can use in hiring PHA staff. These recommendations are a result of investigations by the OIG in which PHAs have hired individuals who have committed fraud or serious abuses at previous jobs.

- Use an application form to systematically pre-screen a potential hire;
- Conduct reference checks;
- Perform background checks;
- Use employment contract provisions that protect the PHA; and
- Test candidates' knowledge for certain skilled positions.

Finally, there are applicants who present themselves very well in interviews but once hired, it becomes clear that they cannot perform the job. In short, interviews are helpful but do not take the place of verifying past behavior through reference and background checks.

Slide 42: Application Form Components

If the PHA does not currently have an application form, they should develop an application form to use with the following components. Similarly, if the PHA already has an application form, they should review the application to see if the items listed on this and the next slide are in the PHA's current application.

- **Employment History.** The application form should request the applicant's employment history for the past 3 years and include sufficient information to determine the applicant's knowledge, experience, and skills.
- **Education and degree(s) earned.** The application should request information on the highest level of education attained, degree earned, from where and when.
- **Request reference checks.** Request information on three (3) references that are familiar with the applicant's work or skills. Request the reference name, contact number, email address, and relationship to applicant.
- **Request information required for background check.** Request information that is necessary to perform a background check.
- **Disclose of potential of conflict of interest or nepotism.** The application should include questions on whether the applicant has a family member that is employed by the PHA, serve on the PHA's Board, or receives housing assistance (e.g., public housing, Housing Choice Voucher, etc.) from the PHA and the relationship of the applicant to the family member that may pose a potential conflict or nepotism.

Slide 43: Application Form Components (continued)

The application should also include the certification statements provided in the table.

- I certify that in the last 10 years, I have not committed a felony offense.
- I certify that in the last 10 years, I have not filed for bankruptcy and am not currently more than 180 days delinquent on any financial obligation.
- I certify that neither my immediate family nor I have any conflicts of interest with housing authority business.
- I certify that all of my answers on this certification are true and complete.

In addition, the application should include the following provisions or statements that:

- Permit the PHA to contact references and to perform a background check.
- Makes clear to the applicant that a failure or refusal to sign the certification is grounds for denial of the position.
- Makes clear that the applicant's failure to provide complete and accurate information is grounds for denial of the position or termination.

Slide 44: Application Review

The PHA should review and verify the information provided on the application. The PHA should look for the following potential red flags:

- Unexplained gaps in employment
- Lost licenses
- Frequent job changes
- Termination from prior jobs
- Admissions of criminal behavior
- Potential falsification or misrepresentation of information provided
- Applicant indicates that he or she is willing to accept a significant pay cut

Slide 45: Reference Checks

Reference checks should be performed for the list of applicants that are on the short list for consideration. The reference checks should also be performed in a systemic fashion with questions for the reference checks drafted in advance so that each applicant's reference is asked the same questions. The responses to the questions should also be documented. Documentation of the response to the question is particularly important when considering several candidates and if there is more than one PHA employee that is vetting or selecting the candidates.

Questions for references should ask about applicant's duties at previous jobs, any reason for the applicant leaving or wanting to leave, and insight into an applicant's work ethic, timeliness, professionalism, and ability to work well with others.

Potential red flags when checking references include:

- The applicant’s duties at the job in question as provided by the reference is substantially different or less significant than what was indicated by the applicant.
- Of the references provided by the applicant, no reference was from the applicant’s supervisor in the applicant’s current or prior jobs.
- The reference contact provided has marginal relevance to the position the applicant is applying for. For example, if the applicant is applying for an accounting position and the reference provided is from when the individual worked at an auto parts store, the reference cannot respond to the applicant’s knowledge of accounting.

Slide 46: Background Checks

Background checks should be performed for applicants that are on the short list for consideration and before a job offer is made. The following background checks should be performed before an offer is made:

- Criminal history
- Verification of prior employment history
- Credit check
- Internet search to verify employment and position

Additionally, for position of trusts, the PHA or Board may want to also check with HUD and the Departmental Enforcement Center’s list of individuals and firms that are not permitted to participate in HUD’s program, is suspended or debarred. For Executive Director and Finance Director positions, the PHA may also want to check whether the prior housing authority where the candidate was employed, had any relevant OIG findings during the time the candidate was there. Lastly, internet searches of the candidate’s name and prior employers are also helpful background checks.

Slide 47: Employment Contract Provisions

PHA Boards may hire an Executive Director using employment contracts as opposed to considering the Executive Director as a W-2 employee hire. The employment contract should not provide for unreasonable bonus amounts, a buy-out clause or unreasonable severance.

The PHA’s employee contracts and personnel policies should also include provisions that:

- Require financial disclosures for positions of trust as permitted by State law
- Limits PHA liability for acts of fraud, financial non-compliance, personal tort claims (for example harassment), etc.
- For PHA employees, the Personnel Policy should clearly state that employment is at will, unless state law or union agreements indicate differently. An at will employee can be dismissed by an employer for any reason without having to establish “just cause” for termination.

Slide 48: PHA Hiring Policy: Test for Skilled Positions

Where possible, PHAs should test candidates' knowledge and skills. Typically, PHAs will advise candidates that get to the interview stage, that they will be asked to take a quiz on the relevant topic as part of the interview process.

For example, for accounting positions, PHAs can quiz candidates on their accounting knowledge, property managers and other office staff can be tested on their word-processing and spreadsheet skills. In fact, many accounting firms and private companies require candidates take brief quizzes to demonstrate their knowledge or skills as part of the interview process.

PHAs can also test applicants for maintenance staff positions using a maintenance quiz that was developed by HUD and is available at the link provided on this slide. The maintenance quiz has a list of 100 questions.

The slide provides examples of two questions on the quiz.

- The answer to question 1 – what type of drywall sheeting is best suited for use in interior, high moisture area, is “c. green board”.
- The answer to question 2 – which of the following items would not be used to repair a wooden door, is “c. rubbing compound”.

Slide 49: End of Module

This ends the training module on Personnel Policies.