

## **02. PERSONNEL**

### **2.22. Liability of Public Executives**

BOS Adopted – Jul 1, 2004

**2.22.1. Tort Liability.** Liability has emerged from court action in two forms, personal and official, which apply to personnel administrators of the County.

A. Personal liability concerns the individual public official's responsibility (as an employee of the County) for both his/her own acts, and subordinates erroneous acts and omissions resulting in damage or injury to another.

B. Official or governmental liability refers to the responsibility for unlawful policies.

C. Under personnel liability, the payment of damages comes from the individual, and under official liability, the payment of damages comes from the County's resources rather than the individual.

D. The County Board of Supervisors shall hold the County's executive officers, who use discretionary authority, liable on the basis of not only the scope of the official discretionary authority, but also on the evidence that the official acted reasonably and in good faith. This means that an official will be held liable for conduct, if he/she knew or should have known his/her acts would violate constitutional rights of other employees.

**2.22.2. Liable Acts Generally.** Traditional liability referred to cases where a public official would have to, through intent or neglect, physically harm an innocent victim (employee). Today's liability includes instances where a public official violates legally guaranteed rights of citizens. Guaranteed rights include Federal Statutory rights, equal employment opportunity, and rights of the disabled and handicapped.

**2.22.3. Impact of Tort Liability.** The impact of tort liability upon the County may arise when:

A. Employment discrimination occurs. (Employment nondiscrimination has its origins in the Civil Rights Act of 1964. The two factors that form the basis of the Standard Section 1983, which deals with nondiscriminatory employment acts, are bad faith and unreasonable action.)

1. Bad faith effort in an employment discrimination action considers intent of purposeful behavior of the party being accused (public official.)

2. Unreasonable action requirement is the other element necessary to prove employment discrimination cases within the County. Unreasonable action refers to action contrary to law.

B. The likelihood of a personal liability suit arises if officers of the County attempt to stop the formation of employee associations. Circumstances for personal liability may arise from these situations.

1. Dismissal of an employee for his/her membership in an employee association.
2. Departmental rules which forbid membership or participation in employee associations.
3. Forbidding supervisory associations.

C. An official of the County is personally liable, if he/she commits adverse actions against employees concerning their due process rights which include:

1. Failure to provide adequate notice concerning disciplinary actions, suspensions, or dismissals.
2. Failure to provide a full and fair hearing on any actions.
3. Failure to provide a way to appeal the initial decision.

D. The County Board of Supervisors, County Administrator, Constitutional Officers, and other administrative officers of the County have a critical responsibility to deal with subordinates who violate the constitutional rights of others: "the supervisor who fails to supervise faces personal liability." The law of supervisory liability applies when there is personal:

1. Involvement in wrong doing, or
2. Knowledge of wrong doing and a failure to act.

**2.22.4. Dealing With Future Personal Liability.** The County shall counsel public administrators to avoid the likelihood of liability actions through the following practices:

A. Constructing sound personnel practices for dealing with such areas as non-discriminating e employment practices;

A. Evenhanded responses to employee association formation activities;

B. Providing due process considerations for County employees'

C. Disciplinary policies and programs dealing with responsible supervisory management;

D. Training, monitoring, and communicating with public officials to avoid potential personal liability situations.