



## Tips on Personnel Policy and Practice Issues Faced by CAAs

**Management and Leadership Training Conference**

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## Agenda

- ❖ Current status of the FLSA overtime rule
- ❖ Travel time policies under the FLSA
- ❖ HR directives in CSBG Organizational Standards
- ❖ Lobbying and political activity policies
- ❖ Role of CAA Board in overseeing personnel policies and employee grievances

## FLSA Overtime Rule

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## Disclaimer

- This presentation only addresses the **federal Fair Labor Standards Act**
  - It does not address state law
- **State law** will govern where:
  - It is more protective of employees than the FLSA

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## FLSA Overview

- Must pay **minimum wage & overtime** for covered employees, unless **exempt**
  - Includes public and private sector employees
- **“White collar”** exemptions (*29 C.F.R. Part 541*)
  - Covers certain executive, administrative, professional (EAP) employees
  - Tests to determine if exempt: salary basis, salary level, duties
- May choose to treat an employee who meets all 3 tests as **non-exempt** (*and pay OT for work > 40 hours*)
  - **Cannot** agree to **waive** OT pay if the employee is non-exempt

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## New Overtime Rule

### Increased Standard Salary Level Test

CURRENT Overtime Rule	NEW Overtime Rule
<p>Currently, most salaried employees who meet one of the duties tests must earn at least</p> <p style="text-align: center;"><b>\$455/week</b> <b>(\$23,660/year)</b></p> <p>to be classified as exempt from the FLSA’s minimum wage and overtime protections</p>	<p>Most salaried employees who meet one of the duties tests must earn at least</p> <p style="text-align: center;"><b>\$913/week</b> <b>(\$47,476/year)</b></p> <p>to remain exempt from the FLSA’s minimum wage and overtime protections</p>

**29 C.F.R. § 541.607**

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## New Overtime Rule

### Other Provisions

- No change to **standard duties tests**
- Includes **automatic updates** to standard salary level every 3 years
  - DOL to publish updated salary levels at least 150 days prior to effective date in Federal Register
- DOL info/guidance on the new rule, <https://www.dol.gov/whd/overtime/final2016>
- 81 Federal Register 32391 (May 23, 2016); codified at 29 C.F.R. § 541.607

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## New Overtime Rule BLOCKED

- On Nov. 22, 2016, a federal district court judge issued a **nationwide preliminary injunction** preventing the rule from taking effect on Dec. 1, 2016
- On Dec. 1, 2016, DOJ on behalf of DOL filed a **notice to appeal** the preliminary injunction (**expedited**) to the U.S. Circuit Court of Appeals for the Fifth Circuit

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## Court Reasoning

- DOL actions **inconsistent** with FLSA and congressional intent
- Congress defined EAP exemption with regard to duties and did not include a minimum salary level
- DOL **exceeded its authority** by increasing the salary level so significantly to create a “**de facto salary-only test**”

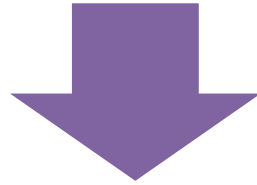
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## Could the Rule Return?

- The overtime rule could **go into effect as currently written** if:
  - Appeals court overturns the injunction or
  - Congress clarifies that the DOL has authority to increase the minimum salary level test for the EAP exemption
- DOL could **issue a revised rule** by initiating a new notice-and-comment rulemaking process
- States could implement the new rule as written or in a revised form

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## If Rule Returns, will it be Retroactive? Maybe



Other courts applied the rule **prospectively** and employers were liable for overtime pay after the date of the appeals court's decision

Some courts applied a similar rule **retroactively** and employers were liable for paying back wages



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## Option A: No Communication nor Changes Made

- Wait and see?
  - Continue to have employees track their time
  - Consider limiting overtime work by employees subject to reclassification as non-exempt in case rule goes into effect and applied retroactively

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## Option B: Begun Implementing BUT Not Finished

- If **announced** changes but not implemented them, may “wait and see” (Option A)
  - Consider employee expectations
  - May be subject to advance notice requirements under state laws
- Continue **reclassifying employees based on job duties** pursuant to broader audits
- **Communicate** with employees about preliminary injunction and potential future changes

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## Option C: Already Implemented

If decide to reverse salary increases and reclassifications

Consider employee morale
Communicate reversal in advance
Check local laws, they may require advance notice to make certain changes
Comply with collective bargaining agreement, if applicable
See Option A
Consult with local counsel

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## Option C: Already Implemented

- If move forward with salary increases and reclassifications pursuant to the new rule and it is not reinstated, **communication** is key:
  - Inform employees that implementing the new rule is a financial burden
  - Explain to employees that they may need to forgo the next regularly-scheduled salary increase

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## Travel Time Policies Under the FLSA

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## On the Road Again

Willie is a nonexempt employee who works for Smalltown CAP. His normal work hours are from 9 a.m. to 5 p.m. His boss tells him to attend a two-day training session in Bigtown beginning on Monday morning. Willie leaves to fly to Bigtown on Sunday at 3 p.m. and does no work en route. He checks into his hotel at 8:00 p.m., has dinner on his own until 9:15 p.m., and then returns to his room, watches TV, and goes to bed at 10:30 p.m. How much of this is FLSA work time?

- (a) The two-hour period between 3 p.m. and 5 p.m.
- (b) Everything from 3 p.m. until Willie goes to bed.
- (c) None of it
- (d) All of the time until he returns to Smalltown

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## On the Road Again, Take Two

. . . . Willie drives to Bigtown on Sunday at 3 p.m., arrives at his hotel at 8:00 p.m., has dinner on his own until 9:15 p.m., and then returns to his room, watches TV, and goes to bed at 10:30 p.m. How much of this is FLSA work time?

- (a) The two-hour period between 3 p.m. and 5 p.m.
- (b) The five-hour period between 3 p.m. and 8 p.m.
- (c) Everything from 3 p.m. until Willie goes to bed.
- (d) None of it

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## On the Road Again, Take Three

. . . . CAP decides that Willie's colleague, Waylon, should also attend the training. Willie needs to respond to some work emails and read a report so he asks Waylon to drive. They leave Bigtown on Sunday at 3 p.m. and arrive at the hotel at 8:00 p.m. During the drive, Willie repeatedly asks Waylon to stop humming tunes because Willie needs to concentrate on his work. Willie wrapped up his work exactly at 8 p.m. Willie and Waylon then had dinner until 9:15 p.m., returned to their rooms, watched TV, and both went to bed at 10:30 p.m. How much of this is FLSA work time for Willie?

- (a) The two-hour period between 3 p.m. and 5 p.m.
- (b) The five-hour period between 3 p.m. and 8 p.m.
- (c) Everything from 3 p.m. until Willie goes to bed.
- (d) None of it

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## On the Road Again, Take Four

. . . CAP offers to pay for a ticket for Willie on the new fast train to Bigtown on Sunday. If he took the train, he would leave for the station at 3 p.m., take the 3:30 p.m. train, arrive in Bigtown at 4:15 p.m., and be at the hotel by 4:30 p.m. However, Willie, who never travels without his guitar and amp, prefers driving, and CAP permits him to do so. He drives to Bigtown on Sunday at 3 p.m., arrives at his hotel at 8:00 p.m., has dinner on his own until 9:15 p.m., and then returns to his room, watches TV, and goes to bed at 10:30 p.m. How much of this is FLSA work time?

- (a) The two-hour period between 3 p.m. and 5 p.m.
- (b) The five-hour period between 3 p.m. and 8 p.m.
- (c) Everything from 3 p.m. until John goes to bed.
- (d) The one and ½ hour period between 3 p.m. and 4:30 p.m.

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## Hours Worked: Travel Time

- If travel longer distance to attend conferences or other out-of-town events, such travel is **NOT** compensable if:
  - Employee is a passenger,
  - Travel is outside of normal work hours, and
  - No work is performed during the travel time
- See 29 C.F.R. §§ 785.37, 785.38, 785.39

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## Hours Worked: Travel Time

- Ordinary commuting travel is not hours worked
- Travel between job sites during the normal work day is hours worked
- Special rules apply to travel away from the employee's home community
- See 29 C.F.R. §§ 785.37, 785.38, 785.39

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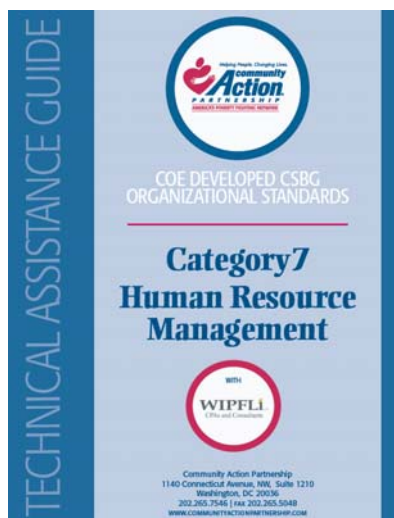
# HR directives in CSBG Organizational Standards

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## Category Seven: Human Resources Management

### Technical Assistance Guides for each Standard

#### Technical Assistance Guide Category Seven: Human Resource Management



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### CSBG Organizational Standards

- 1 CONSUMER INPUT AND INVOLVEMENT
- 2 COMMUNITY ENGAGEMENT
- 3 COMMUNITY ASSESSMENT
- 4 ORGANIZATIONAL LEADERSHIP
- 5 BOARD GOVERNANCE
- 6 STRATEGIC PLANNING
- 7 HUMAN RESOURCE MANAGEMENT
- 8 FINANCIAL OPERATIONS AND OVERSIGHT
- 9 DATA AND ANALYSIS

**Welcome!**

This webpage links resources developed by CAPLAW to specific Community Services Block Grant (CSBG) Organizational Standards to help Community Action Agencies (CAAs) in their compliance efforts. For some Standards that we regularly receive inquiries about, we also include links to resources developed by the national Community Action Partnership. All of the resources developed by the national Community Action Partnership on the Standards are available on its [website](#). Note: CAPLAW is in the process of revising some of its resources pursuant to updates in the law; however, the concepts in these resources generally remain applicable.

Click on the Category and Standard number to view the Standard and available resources.

This resource was created by Community Action Program Legal Services, Inc. (CAPLAW) for the Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Department of Social and Rehabilitation Services, as a result of the Interagency Agreement "Grant Administration and Technical Assistance for CSBG" between CAPLAW and the Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Department of Social and Rehabilitation Services.

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### CSBG Organizational Standards

Click on the Category and Standard number to view the Standard and available resources. The national Community Action Partnership has also developed Technical Assistance Guides and webinars which provide compliance information for all the standards in a category. These guides are not included in the resources listed below for each standard but may be accessed via the Partnership's [website](#).

- 1 CONSUMER INPUT AND INVOLVEMENT
- 2 COMMUNITY ENGAGEMENT
- 3 COMMUNITY ASSESSMENT
- 4 ORGANIZATIONAL LEADERSHIP
- 5 BOARD GOVERNANCE
- 6 STRATEGIC PLANNING
- 7 HUMAN RESOURCE MANAGEMENT
- 8 FINANCIAL OPERATIONS AND OVERSIGHT
- 9 DATA AND ANALYSIS

**Standard 7.1**

Standard 7.2

Standard 7.3

Standard 7.4

**Private**  
The governing board conducts a performance appraisal of the CEO/Executive Director within each calendar year.

**Public**  
The department follows local government procedures for performance appraisal of the department head.

**Resources**

**CAPLAW Partnership Resource:**

- Dynamic Duo: A Guide to Enhancing the Board & Executive Director Partnership (DDP). This Guide generally addresses how CAAs can navigate the relationship between the board and executive director. Section VII, Executive Director Supervision and Evaluation of the Guide specifically discusses executive director supervision and evaluation.

Standard 7.5

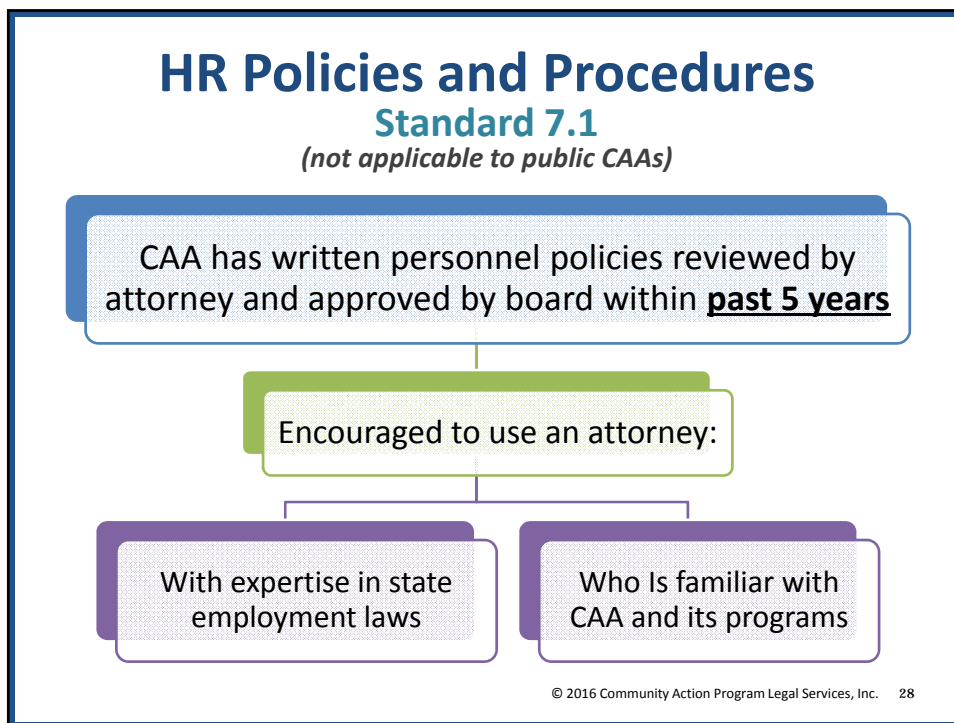
Standard 7.6

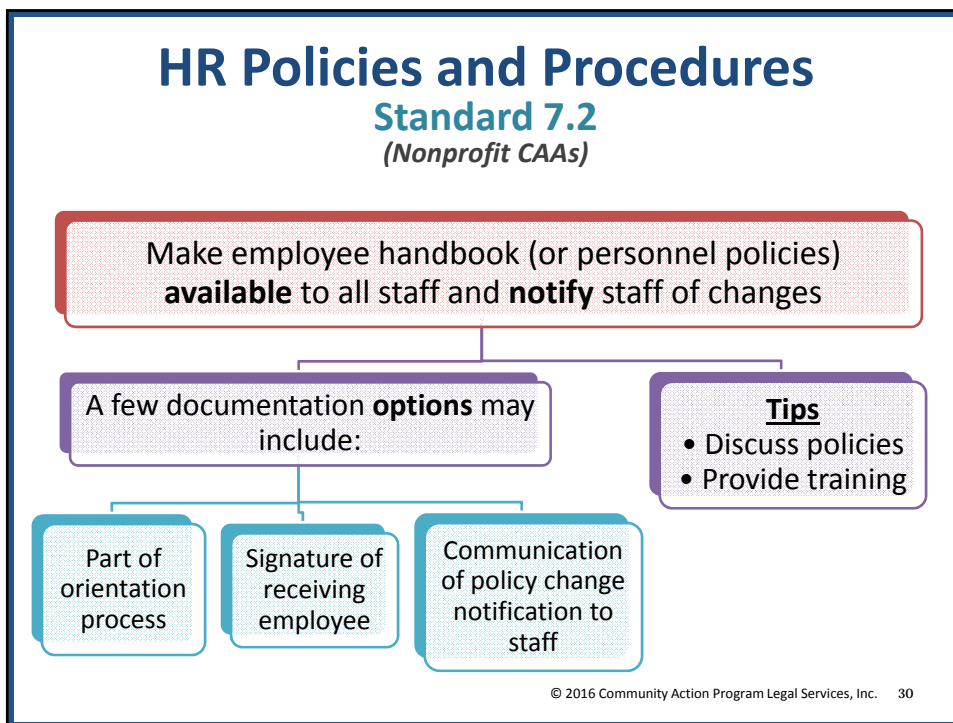
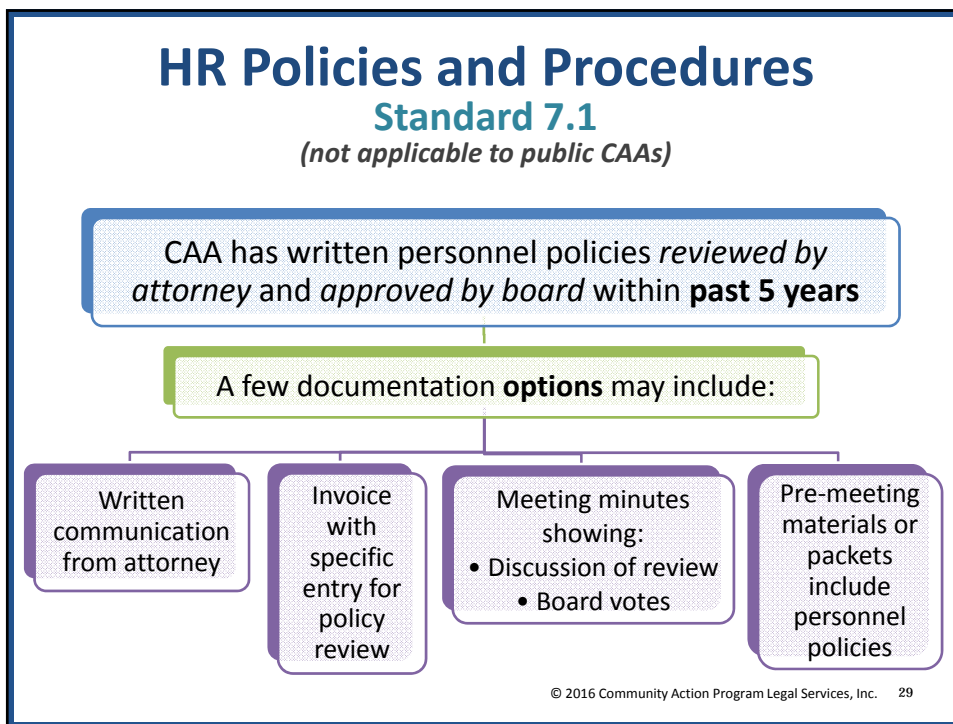
Standard 7.7

Standard 7.8

Standard 7.9

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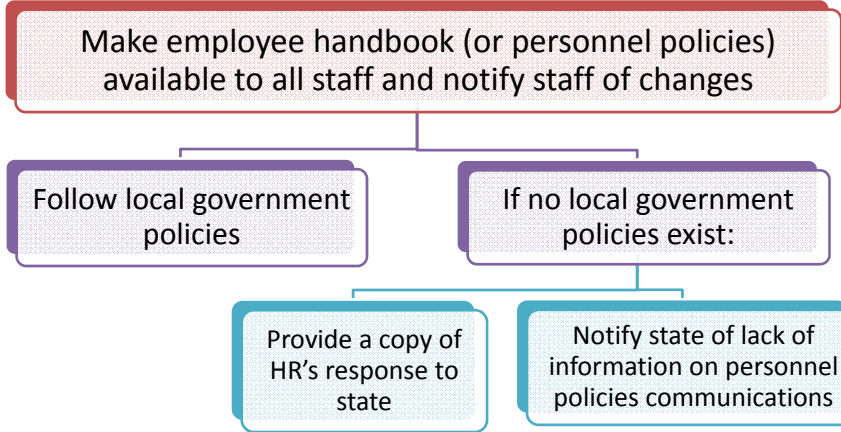




## HR Policies and Procedures

### Standard 7.2

(Public CAAs)

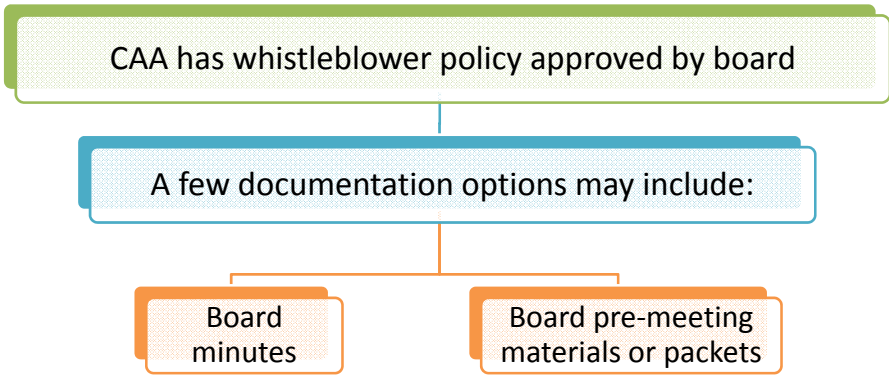


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## HR Policies and Procedures

### Standard 7.7

(Nonprofit CAAs)



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## HR Policies and Procedures

### Standard 7.7

(Nonprofit CAAs)

- Elements of a whistleblower policy to consider:
  - To whom does policy apply?
  - How is policy publicized?
  - What type of conduct does it cover?
  - What are penalties for noncompliance?
  - Is reporting required by employees?
  - Does it include anti-retaliation language?
- Sample whistleblower policy,  
<http://www.capl原因.org/resources/modelpolicies.html>

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## HR Policies and Procedures

### Standard 7.7

(Nonprofit CAAs)

Information about  
whistleblower policies  
including samples in  
CAPLAW's *Tools for Top-  
Notch CAAs*,

<http://www.capl原因.org/resources/PublicationDocuments/TopNotchToolkit.html>



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## HR Policies and Procedures

### Standard 7.7

(Public CAAs)

Provide copy of **existing** local gov't whistleblower policy to board members

A few documentation options may include:

Board minutes

Board pre-meeting materials or packets

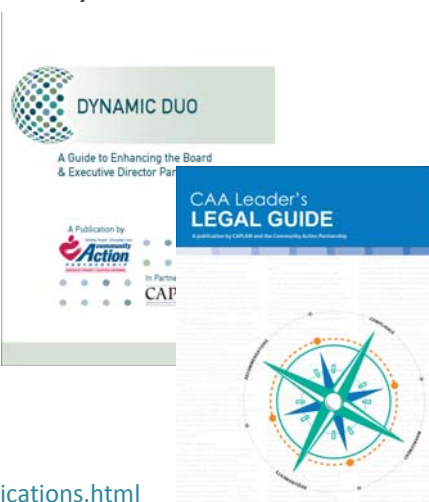
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## Effective HR Governance

### Standards 7.4 and 7.5

(Nonprofit CAAs)

- Board conducts performance appraisal and reviews and approves compensation of CEO/ED within each calendar year
  - Be careful about timing
  - **Documentation may include:** minutes, resolutions, executive performance and pay policies, blank self assessment, compensation comparison data



<http://www.caplav.org/resources/publications.html>

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## Effective HR Governance

### Standards 7.4 and 7.5

(Nonprofit CAAs)

- Option for **evaluating ED**:
  - Start with a board committee
  - Decide one valuation tool and criteria for review
  - Gather input from a variety of sources
  - Set-up face-to-face evaluation meeting
  - Create a written review and summary

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## Effective HR Governance

### Standards 7.4 and 7.5

(Nonprofit CAAs)

- Considerations when **compensating ED**:
  - Understand IRS requirements, such as intermediate sanctions
  - Establish presumption that ED's compensation reasonable by:
    - Use board committee
    - Assure board independence
    - Link pay to performance
    - Rely on meaningful comparables
    - Documenting the process
  - Recognize funding source requirements

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## Effective HR Governance

### Standards 7.4 and 7.5

(Public CAAs)

- Public CAAs **follow local governmental procedure** for performance appraisal and compensation of CSBG department head
- **Documentation options:**
  - Policy/procedures pertaining to performance appraisals
  - Performance appraisal sign-off
  - Blank appraisal forms
  - Salary information postings

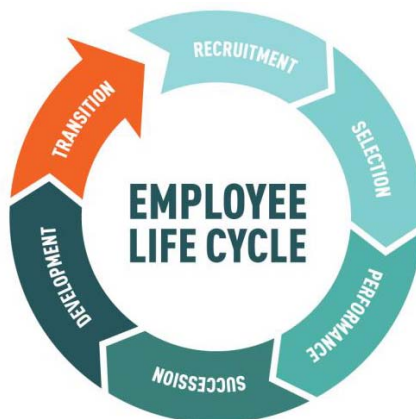
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## Effective HR Management

### Standards 7.3, 7.6, 7.8, 7.9

(Nonprofit and Public CAAs)

- Up-to-date job descriptions
- Standard approach for staff performance evaluations
- Employee orientation for all staff
- Staff development & training aligned to results & accountability



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## Effective HR Management

### Standard 7.3

(Nonprofit and Public CAAs)

- **Written job descriptions for all positions**
  - **Nonprofit:** Updated within past 5 years
  - **Public:** Updates may be outside of purview of department
- **Documentation of compliance may include:**
  - Organizational chart(s); lists of job titles; standard job description template; alternative job description templates; sample job descriptions; dated board, committee or HR documentation noting updates

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## Effective HR Management

### Job descriptions

- **Job descriptions are important because they:**
  - Set expectations for applicants
  - Establish various defenses such as for ADA disability discrimination cases
  - Determine the exempt status of employees
  - Manage expectations of the job for the employee
  - Establish grounds for termination
  - Among other things . . .

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## Effective HR Management Job Description Tips

- **Title**
- **Department**
- **Supervision/reporting structure**
  - Management
  - Immediate supervisor
  - Subordinates
- **Classification?**
  - Exempt or nonexempt status
  - Strategic decision to include (or not)
- **Overview/summary of position**

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## Effective HR Management Job Description Tips

- **Essential functions**
  - Those performed day-to-day, irregular but recurring and essential
  - Use active words/verbs
  - Describe frequency w/which function performed
  - Include “catch-all”
- **Physical requirements**
  - Sedentary & non-sedentary
  - Physical activity
- **Knowledge, skill & experience**
  - Minimum education
  - Minimum experience
  - Specialized skills?

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## Effective HR Management Job Description Tips

- **Disclaimers – add language to the description to:**
  - Permit the employer to add to, change and interpret the position
    - *The employer may, in its discretion, modify or adjust the position to meet the company's changing needs*
  - Clarify that the description is not a contract
    - *This job is not a contract and may be adjusted as deemed appropriate in the employer's sole discretion*

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## Tips to Remember . . .

- Be sure to **accurately describe** the job
- Include all **critical elements**
- Establish a **plan of action** for your program and implementation
- **Use and update** job descriptions
- Make sure **employee sees** and **acknowledges** it

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## Effective HR Management

### Standard 7.6

*(Nonprofit and Public CAAs)*

- **Policy in place for regular written evaluation of employees by their supervisors**
  - Public CAA follows local governmental policies for regular written evaluation of employees by their supervisors
  - Key for defending discrimination claims

#### Tips:

- Make appraisals specific
- Include examples
- Avoid discriminatory stereotypes

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## Effective HR Management

### Evaluation Tips

*(Nonprofit and Public CAAs)*

- Evaluations based on work product so important to:
  - Clearly lay out and explain expectations,
  - Maintain up-to-date job descriptions,
  - Provide employee proper training, and
  - Ensure manager does what he/she can to help employee succeed

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## Effective HR Management Performance Evaluations Examples (Nonprofit and Public CAAs)

Bad	Good
Does not get along with coworkers.	He has gotten into arguments with coworkers on four occasions without provocation; he does not volunteer to assist when co-workers are busy; and co-workers have complained regarding his rudeness.

Bad	Good
She is the best assistant I have ever had.	She gets along well with clients; she anticipates needs before asked; she is accurate in document preparation; and she delegates work well when I am unavailable.

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## Effective HR Management Evaluation Delivery and Follow-up Tips (Nonprofit and Public CAAs)

- Schedule meeting to deliver evaluation
- Be prepared to justify ratings
- Get form signed and keep signed form
- Do not:
  - Attempt to soften blow when delivering evaluation
  - Discuss evaluation scores with others after evaluation
  - Wait until next year to deal with problem employees

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## Effective HR Management Standards 7.8

*(Nonprofit and Public CAAs)*

- **All staff participate in a new employee orientation within 60 days of hire**
  - Public CAAs: Follow local government policies
  - Documentation may include: personnel policies; orientation checklist; orientation presentation or materials; attendance noted in HR files
- **Reasons for orientation:**
  - Providing info about pay and benefits, company rules and policies
  - Introducing employee to work he/she will be doing, office culture and organizational operations
  - Assisting employees integrate into existing environment

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## Effective HR Management Standards 7.9

*(Nonprofit and Public CAAs)*

- **Conduct or make available staff development/training (including ROMA) on ongoing basis**
  - No specific topics other than ROMA required
  - Documentation may include: training plan; documentation of off-site and on-site trainings (presentations, evaluations, attendee lists)

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## Lobbying and Political Activity Policies

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### Lobbying Applicable Legal Requirements

- **Nonprofit CAA may engage in unsubstantial amount of lobbying**
  - IRS 501(c)(3) rules
- **Federal funds may not be used for lobbying**
  - Narrow exceptions to unallowability of lobbying costs exist (*Uniform Guidance 2 C.F.R. § 200.450*)
  - Costs of membership in orgs whose primary purpose is lobbying are unallowable (*Uniform Guidance 2 C.F.R. § 200.454*)
  - Annual federal appropriation acts are broad; may include state and local regulatory or administrative action
- **Lobbying policy not required but helpful way to foster compliance**

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## Lobbying Policy Tips

- Include prohibition against using federal funds for all types of lobbying
- Establish process employees and volunteers must follow to lobby on behalf of CAA
  - E.g., permission to lobby, training
- Track time spent lobbying on behalf of CAA (including volunteers)
- Maintain records of funds used to pay for lobbying

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## Lobbying Resources

- CAPLAW articles on lobbying, [www.capl原因.org](http://www.capl原因.org)
- Alliance for Justice Tools for Effective Advocacy, <http://bolderadvocacy.org/tools-for-effective-advocacy>
- IRS lobbying information, <http://www.irs.gov/Charities-&-Non-Profits/Lobbying>

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## Political Activity Policy Tips

- CAPLAW sample Political Activity Policy, <http://www.capl原因.org/resources/modelpolicies.html>
  - Policy not required but helpful way to foster compliance
- Activities by **Individuals** vs. **Organization**
- List **allowable activities** (*off-duty*)
  - E.g., participate in voter registration, contribute to political campaigns, hold membership and office in political parties, etc.

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## Political Activity Policy Tips

- List **prohibited activities** (*on-duty*)
  - 501(c)(3)s may not support or oppose candidates for public office
  - CSBG-funded programs may not use CSBG funds, provide services, or use employees in a manner that identifies programs with any partisan or nonpartisan political activity, voter registration activities or transportation to the polls or similar activities
  - **Note** similar (but not the same) Head Start restrictions

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## Political Activity

### Policy Tips

- Set forth **prohibited activities** (*at all times*)
  - Hatch Act provisions applicable to CAAs and Head Start
    - **Those paid 100 % from CSBG or Head Start funds may not:** run for public office in partisan election; use official authority to interfere w/ or affect an election; or directly or indirectly coerce other covered employees to make political contributions

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## Political Activity

### Policy Tips

- Set forth **prohibited activities** (*at all times*)
  - Hatch Act provisions applicable to CAAs and Head Start
    - **Those employees principally employed by CAA and working in connection with CSBG or Head Start funded activities may not:** use official authority to interfere w/ or affect an election; or directly or indirectly coerce other covered employees to make political contributions

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## **Political Activity**

### **Uniform Guidance, 2 C.F.R. §§ 200.450(c)(ii)**

- **Prohibits use of federal funds for:**
  - Influencing the outcomes of elections, referenda or initiatives or
  - Contributing to political parties, campaigns or PACs

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## **Role of CAA Board in Overseeing Personnel Policies and Employee Grievances**

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## Role of Board in Personnel Matters

### CSBG Organizational Standards

- Pursuant to the Standards, a nonprofit board:
  - Ensures that CAA has compliant, effective policies in place:
    - Oversees review of personnel policies by attorney every 5 years
    - Reviews and approves personnel policies every 5 years
  - Evaluates and compensates the CEO
- The Standards require a public CAA board to follow local government policies

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## Managing Employee Grievances

- Board member involvement not recommended:
  - Lead to micromanaging
  - Employment laws complex and ever-changing
- Employees should **follow personnel policies**
  - Board oversees policy development
  - Executive director implements policy

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## Examples of Board Member/Staff Direct Contact Scenarios

- Board meeting logistics coordinated by administrative staff
- Committee business involves staff liaisons
- Executive director evaluation seeks staff input
- Reports of fraud, misuse of resources, discrimination or harassment involving the executive director in accordance with whistleblower policy

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