

# Frequently Asked Questions on HR Legal Service

*Are members of ACCG-IRMA required to use this service?*

No, they are not required to use the employment legal counsel service. However, this service can be invaluable in helping to reduce the risk of claims due to employment lawsuits.

*How much does it cost the county (or authority)?*

Nothing. This service is provided by ACCG-IRMA at no additional cost to the members.

*After a request is submitted, when should a response occur?*

It is possible to receive a response the same day, but otherwise by close of the next business day.

*Why is a liaison necessary to contact the ACCG-IRMA employment law attorney?*

To create a clear process for obtaining the legal advice. Attorneys with the renowned law firm Jarrard & Davis can better coordinate and track responses through a single point of contact for each county or authority.

*Can a participating county / authority member have more than one liaison?*

Yes. A member may have one liaison for the board of commissioners, and the constitutional officers could appoint a different liaison. Since the sheriff generally has a large workforce, it may be helpful to ask the sheriff to appoint a liaison if he or she is not comfortable using the liaison appointed by the board of commissioners.

*Can someone other than the liaison use this service?*

Yes. While the liaison is designated to communicate with the employment law specialists on behalf of managers and supervisors, elected/appointed officials, constitutional officers and county attorneys also may utilize this service.

*How does this service affect the services provided by the county attorney?*

This service is designed to supplement – not supplant – ACCG-IRMA members and their legal counsel. It is not a substitute for counsel provided by the county attorney on employment issues. The member should always consult their attorney on questionable employment matters.

County attorneys represent their counties across a broad range of areas. Some county attorneys have more experience with employment law issues than others. County attorneys are always welcome to use this service on behalf of their ACCG-IRMA counties.

The ACCG-IRMA attorneys respect the relationship between counties and their county attorneys, understanding the importance of such relationships when administering this valuable service. They will communicate with the county attorney throughout the process.

*Is the communication between parties subject to the Open Records Act?*

While communications may qualify for protection under the Attorney-Client Privilege and/or the Attorney Work Product Doctrine, it is best not to include sensitive and confidential information in emails to the ACCG-IRMA employment law attorney.

*Are there any limitations or restrictions to using the employment legal counsel service?*

While there is no restriction on the number of calls that a single member can place to Jarrard & Davis, the service does not generally cover matters that cannot be adequately handled through telephone or email. That means the service doesn't generally cover matters requiring substantial amounts of legal research, document review, document preparation or witness interviews, along with matters that cannot be resolved within a reasonable amount of time.

*What if we've been sued for an employment decision?*

After reporting it to your county attorney, report this to ACCG Claims Administration online (Report a Claim) or by telephone (404.614.2553 or 877.421.6298 toll-free).

*What should we do if we receive a discrimination charge from the EEOC?*

After informing the county attorney, report the claim immediately to ACCG Claims Administration Services. There is a requirement in the ACCG-IRMA Coverage Agreement to report any and all possible claims as soon as they become known.

*Who should prepare the response to the Equal Employment Opportunity Commission (EEOC)?*

Typically, the EEOC requests a response to the discrimination claim, asking the county (or authority) to answer questions and provide copies of documents. The county HR staff should work through the county attorney to prepare the response.

*What is ACCG Claims Administration Services' involvement in an EEOC matter?*

ACCG Claims Administration monitors the EEOC process and investigates liability in the event it ends up in a civil claim or suit. It is the county's (or authority's) duty to respond to the charges. They should copy ACCG Claims Administration Services on their response and any records they send with it.

Should the county (or authority) agree to EEOC mediation, any money offers to settle are not covered by ACCG-IRMA. The county (or authority) will be responsible for any monetary settlement. It will not count towards the county's (or authority's) ACCG-IRMA deductible.

*What types of questions may be asked of the employment legal counsel?*

The employment legal counsel service is designed to provide an overview about how state and federal employment laws impact employment decisions and actions (e.g., the factors that must be considered in a termination, FMLA leave request, when an allegation of harassment is made, etc.). It is not

intended to answer whether a specific personnel action should be taken (e.g., whether a particular employee should be terminated, whether FMLA leave should be denied, etc.). Those recommendations should come from the county attorney who may be familiar with important factors such as the county's actions in similar situations, the county's personnel policies or civil/merit service system, the employee's personnel file, underlying facts, etc.

For instance, questions may be asked about:

- Overtime, compensatory ("comp") time, minimum wage (FLSA): The ACCG-IRMA attorneys can explain the difference between overtime and comp time; the difference between overtime/comp time for public safety employees; the tests that are used to determine whether an employee is entitled to overtime/comp time; records that must be maintained; etc.
- Leave for serious medical conditions, to care for a family member with a medical condition, pregnancy, childbirth or adoption (FMLA): what types of conditions qualify for FMLA leave; how many weeks of leave; how intermittent leave works; factors to be considered when an employee is seeking reinstatement at the end of their FMLA leave.
- Steps to respond to complaints about discrimination or harassment of employees or applicants based upon race, gender, religion, national origin, age over 40 years, or a disability; what is discrimination; etc.
- Questions about applicants or employees who may have a disability (ADA); what types of conditions qualify as a "disability"; types of reasonable accommodations; etc.
- Steps to take and things to consider when disciplining or terminating an employee.
- Questions about required "due process" when taking disciplinary action or terminating an employee; types of notice and "hearings;" etc.
- Questions about how to terminate an at-will employee.
- Steps to take when an employee is terminated or demoted for a "stigmatizing" reason (i.e., "name clearing" hearings).
- Questions about the types of employees who are subject to random or "for cause" drug testing; difference between random drug testing and for cause drug testing; etc.
- What to do when an employee reports alleged improper action by a county official or employee (i.e., "whistle blower" protection).

*Can this service be used to answer questions about county benefits programs or immigration law?*

No. Questions about immigration issues, health insurance, retirement, or other benefits are beyond the scope of this service.

*Will the questions asked and answered via this service be disclosed to ACCG-IRMA?*

No. Each month, the ACCG-IRMA attorneys will provide a brief summary of the call activity, which will include the county name, county representative, time spent on the call and the nature of the call (e.g., termination, ADA, FMLA, FLSA, etc.).

*Will using this service affect the cost of the ACCG-IRMA premium to the county or authority?*

Use of this service is included in the member's premium expense and will not increase future premiums. Actually, this service should help *control or reduce* future premium costs since the intent is to help the member reduce the number and the severity of employment claims.