

A THOROUGH AUDIT OF HUMAN RESOURCES OPERATIONS CAN PREVENT POTENTIAL LAWSUITS

All too frequently, employers unknowingly violate state and federal laws, or have policies and practices in place that are likely to generate problems.

That is why audits of an organization's Human Resources (HR) department – whether done internally or through outside consultants - are a critical facet of every HR professional's responsibilities. A detailed audit can identify and resolve issues before an employee's lawsuit or a government audit uncovers them.

Employers should audit the entire employment process, from hiring through employment to termination. Following are some of the more common problem areas:

Employment Applications. Most employers use some form of employment application. While applications serve several valuable functions, an outdated or carelessly worded form can be the basis of a lawsuit. Employers should review their application to ensure that they are only asking for information that is necessary to make a hiring decision.

For example, asking for an applicant's marital status or number of dependents may be necessary for benefit purposes after hire, but should not be asked prior to hire. Applications should also have a section the employee signs that includes a clear at-will employment statement and a release for reference-checking purposes.

This section should also include a statement that if the applicant is hired and any of the information on the application is subsequently shown to be false or misleading, the individual's employment may be terminated.

Handbooks. Employee handbooks should be reviewed on a regular basis to ensure they comply with all relevant laws and regulations. Handbooks should include language disclaiming any contractual obligations and reiterating that employment is at-will. Handbooks should also give employers proper flexibility so they may respond efficiently and fairly to workplace issues.

Wage and Hour Concerns. Perhaps one of the most common problems in all organizations is the misclassification of positions as exempt from overtime requirements. Employers should review all positions that do not qualify for overtime to determine whether they truly fall within the definition of an exempt position.

Employers should keep in mind that simply paying an employee on a salaried basis rather than at an hourly rate does not make an individual exempt. The individual must also perform the types of duties that the law recognizes as exempt. The law can be very complicated in this area, but generally it is the true nature of the employment that defines exempt and non-exempt status.

Sexual Harassment. Certain states require employers to train their supervisors or employees regarding sexual harassment prevention. Such requirements should be observed and processes should be in place to ensure that new hires are appropriately trained.

Employers should also note that in certain circumstances they may have an affirmative defense to a sexual harassment claim if they have properly notified and trained employees. Employers should have a strong, effective policy that is communicated to all employees. Also, appropriate individuals should be trained to respond effectively to sexual harassment complaints.

Leave Practices. The overlap of various laws, such as workers' compensation, family and medical leave, and disability discrimination laws can make administering an attendance policy complicated. Employers should be certain that no one is being disciplined or terminated for absences that may be protected under state or federal law.

Reference Procedures. To avoid being sued by former employees, employers should review their procedures for providing references. Some states have laws that outline what information an employer may provide without being subject to suit. Other states provide no statutory protection whatsoever.

Employers should carefully consider what they will tell prospective employers and should limit the number of people who have the right to speak on behalf of the company. Prior to providing information, the employer should consider requiring written authorization from the former employee that releases it from any liability for providing a reference.

Once an audit has been completed, employers should be certain that any deficiencies identified by the audit are corrected. In addition, in view of the ever-changing and ever-increasing complexity of employment law, employers should consider re-auditing their departments on a regular basis, perhaps once a year. *(Reprinted by permission of the Council on Education in Management, with the understanding that in publishing this material, the publisher is not engaged in rendering legal advice. If legal advice or other expert assistance is required, seek the advice of an attorney. The Council presents employment law seminars nationwide for HR professionals and publishes the Personnel Law Update newsletter.)*

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