



TIME TO CLEAN OUT YOUR CLOSET

Employer Audits

Many employers consult counsel when new laws are enacted to make sure their policies are compliant. Many also spend significant time when implementing or revising an employee handbook.

More and more employers, however, are conducting larger scale audits of all their employment policies and practices for two reasons: (1) employment laws change regularly, so policies and procedures which were once appropriate may need to be revised, and (2) policies and procedures look good on paper but are not worth much if they are not followed.

While written policies and procedures are the first step in assuring compliance with local, state, and federal employment laws, a full review of how they are implemented can act as an early warning system, alerting an employer to problems prior to claims or litigation. In all cases, this is good business. In many cases, it may also have legal implications. For example, an employer with a good, consistently enforced sexual harassment policy will have defenses in litigation that are not available to an employer that does not have a policy or does not enforce it. Laws such as the Fair Labor Standards Act and the Family and Medical Leave Act provide for more severe penalties if the employer is not acting in good faith, so an occasional mistake is much less damaging where general practices are solid.

In addition to employee handbooks, the following are examples of areas which should be reviewed when conducting a full audit of employment practices:

- Employment applications, offer letters and contracts, pre-employment testing, interview practices, background checks, I-9 procedures, and other documents and activities related to the hiring process

- Worker classifications, such as employee vs. independent contractor, exempt vs. non-exempt
- Government-required postings regarding state and federal laws
- Payroll procedures, including compliance with overtime, minimum wage, and payroll deduction requirements
- Complaint procedures for discrimination and harassment complaints
- Accommodation procedures, including the process for handling medical restrictions
- FMLA and COBRA forms, procedures, and compliance with timelines
- Performance evaluations, including not only the forms but also a sample review of actual evaluations to identify concerns
- Disciplinary policies and processes
- Training for supervisors

Where an employer has an organized workforce, additional areas will need to be reviewed.

In addition to the particular issues raised by specific employment laws, virtually every employment law includes extensive record-keeping requirements. Making sure that records are maintained,

that they are maintained for the appropriate length of time, that they are maintained with the appropriate level of confidentiality, and that they can be accessed when needed will be critical to the success of any audit. A comprehensive employment audit, while time-consuming, may save a great deal of time, aggravation, and money down the road.

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