

## **EMPLOYMENT LAW AUDIT FOR YOUR BUSINESS**

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In the past several years employers have had to shield themselves from an explosion of lawsuits filed by current and former employees sparked by a series of new state and federal laws and regulations. Many of the lawsuits could easily have been avoided if the employer took preventative measures to protect itself. Much like the human body needs a medical check-up to avoid a heart attack, a company should have itself examined with an employment law audit to avoid litigation.

An employment law audit is conducted by an attorney whose practice emphasizes employment and labor law. The attorney works with company representatives in charge of policies, procedures, human resources, benefits, payroll and disciplinary issues. The goal is to review the company's policies and procedures regarding employees to assure that:

1. The company is in compliance with state and federal laws and regulations;
2. The company has policies and procedures appropriate for its particular work environment and business;
3. Employees receive appropriate training;
4. Managers are trained in policies and procedures to avoid inconsistent and improper handling of problems;
5. Employees are notified of the company's policies and procedures; and
6. Crisis plans (including a workplace investigation) are in place if and when a lawsuit is threatened or filed.

The employment lawyer will start by interviewing those company representatives who have any intimate knowledge of company policies and how they are applied. There will also be a thorough review of the company's policies, even if not written. Many companies have an employee manual but do not amend its provisions when there is a change in the law or in company policy.

The employment lawyer will review and/or draft policies and procedures including the following topics:

### **Sexual Harassment and Anti-Discrimination Policy**

Review the company's sexual harassment, anti-discrimination and retaliation policies and procedures to assure compliance with several laws including The Pennsylvania Human Relations Act (or other state law), Title VII (federal statute), The Civil Rights Act of 1991 and The Pregnancy Discrimination Act.

### Employees With Disabilities

Review policies and procedures to assure compliance with state law and The Americans With Disabilities Act of 1990, including a review of hiring and termination procedures.

### Non-Compete Agreements

Review employee contracts to determine if non-compete and non-solicitation provisions are enforceable.

### Employee v. Independent Contractors

Review independent contractor agreements to determine if those workers, are in fact independent contractors or employees (which has serious ramifications on the company's contributions for taxes, workers' compensation, unemployment, etc.).

### At-Will Employees

Review policies and procedures to insure the employer has not jeopardized the at-will employment status by imposing contractual terms on employment.

### Wage/Hour

Review policies and procedures to assure the company is (a) properly calculating and paying overtime; (b) properly classifying its employees into exempt and non-exempt categories; and (c) not improperly changing or docking employees for time off; (d) not otherwise in violation of other regulations promulgated under the Fair Labor Standards Act. This review is especially necessary to avoid an investigation and audit by the United States Department of Labor Wage/Hour Division which routinely look back two years at wages paid to all employees. The Department of Labor has the authority to require back wages to be paid and to assess civil money penalties. In addition, Department of Labor investigations are costly, disruptive and time consuming.

### Equal Pay

Review payroll records and job positions to assure compliance with The Federal Equal Pay Act. The Equal Pay Act is part of the Fair Labor Standards Act and was drafted to insure that men and women are paid equally for the same work.

### Employee Withholdings

Review payroll records to assure that the company is complying with federal, state and local tax withholding requirements.

### Disciplinary System

Review of company policies to identify problems or inconsistencies with the manner in which employees are disciplined and terminated, and look for "unintentional" discrimination.

## Hiring and Firing Procedures

Review company hiring and firing procedures to assure compliance with all state and federal regulations including drug and medical testing, and hiring employees with disabilities.

## Leave Policies

This is a review of all company policies regarding employee leave including vacation, sick days, personal days, bereavement leave, jury duty, snow and emergency days and unpaid leave. Special attention is paid to whether the leave policies are consistent with the sometimes contradictory requirements of The Family and Medical Leave Act of 1993, The Americans With Disabilities Act of 1990 and applicable workers' compensation laws.

## Employee Privacy Issues

Review employee privacy issues including notification to employees of the lack of privacy with company e-mail, voice mail and other communications. Also review how the company treats personnel files to comply with the regulations regarding employee access to personnel files. For example, Pennsylvania has a statute entirely dedicated to when, and under what conditions, an employee may view his or her personnel file.

## Company Privacy Issues

Review issues of company proprietary information and trade secrets so if the company needs to bring a civil action against an employee for stealing company secrets, the lawsuit has the best chance of success.

## Benefits

Review policies to assure compliance with state and federal regulations regarding the equitable administration of benefits including participation in the company's 401(k) plan and COBRA notices after employee termination. Specific questions about medical benefits and pension plans, however, are usually answered by the Plan Administrator or insurer.

## Unemployment Compensation

Review policies and procedures regarding company treatment of claims for unemployment compensation from former employees.

## General Suggestions

In many instances, because employment lawyers have the opportunity to interact with so many businesses, general suggestions can be made about how to improve employee/employer relations and to save money by the proper drafting and enforcement of policies and procedures. Of course, some companies are efficient in some areas, so a review is unnecessary. However, rarely do businesses employ human resources personnel experienced in the wide variety of employment law issues that arise.

Employment law audits are an excellent way to identify and correct problems before they begin. Although there is no guarantee that any given employee will not file a lawsuit, the company is well served by an employment law audit that roots out problems and corrects deficiencies.

For more information about employment law audits, employee handbooks or any employment law topics, contact Michael J. Torchia, Esquire at Semanoff Ormsby Greenberg & Torchia, LLC at (215) 887-2042 or e-mail at [mtorchia@sogtlaw.com](mailto:mtorchia@sogtlaw.com).