

CLIENT ALERT

WHY SUCCESSFUL EMPLOYERS UNDERSTAND THE IMPORTANCE OF CONDUCTING EFFECTIVE HUMAN RESOURCE AUDITS AND MEANINGFUL TRAINING ON EMPLOYMENT ISSUES

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Successful employers, regardless of size, are generally proactive in their approach to employment and personnel issues. They understand that success is a result of effective and intelligent planning, learning from personnel “mistakes”, and a commitment to constant and never ending improvement. Successful employers realize that sound human resource audits are a very effective way to improve employee hiring, job performance, and retention, and at the same time, reduce the risk of employment related litigation. A human resource audit routinely involves (i) a comprehensive review of employment policies and procedures and (ii) a commitment to conducting meaningful and regular training of employees and managers. These audits should be conducted for a variety of reasons, including the following¹:

- to evaluate procedures and ensure that forms are properly updated and revised
- to determine the appropriateness of existing policies and to determine new policies that need to be established
- to employ the best HR practices
- to ensure compliance with ever changing employment laws
- to improve employee relations and employee morale
- to improve the rate of successful hires
- to improve the likelihood that the organization can retain valued employees

Although the needs of employers may vary depending upon size and industry, an effective human resource audit should ordinarily include a review or consideration of the following subjects and documents:

Hiring:

1. Job application forms
2. Job posting policies
3. Advertising for job openings
4. Job descriptions
5. Interview training for managers and supervisors (which involves learning what questions, as a legal matter, may and may not be asked); preparing a

¹ To the extent practicable, HR audits should be conducted under the direction, and with the assistance of experienced employment counsel to improve the chances that the audit and internal reviews will be privileged.

set of meaningful interview questions, as well as a set of meaningful questions to ask references; properly evaluating candidates; conducting effective reference checks; etc.)

6. Job offers (offer letters)
7. Background check forms and procedures
8. I-9 forms
9. Employment agreements; independent contractor agreements
10. Non-competition, non-solicitation and confidentiality agreements
11. References.
12. Applicant disclosure forms

Orientation

1. Educate newly hired employees about the organization's expectations about maintaining confidentiality of employer and customer sensitive, proprietary, and non-public information.
2. Review policies and procedures for (non-exempt) employees obtaining approval before working overtime.
3. Consider having non-exempt employees sign an Orientation Certification confirming their understanding of, and obligation to fully comply with, all overtime policies and procedures.

Wage and Hour Laws and Regulations:

1. Wage policies
2. Methods of recording time
3. Paid time
4. Regular rate of pay
5. Overtime and exemptions from overtime
6. Understanding when a final paycheck must be issued and when employers may withhold monies from paychecks
7. Understanding when bonuses are earned and due to be paid
8. Timesheet certifications for non-exempt employees
9. Working "off the clock"
10. Handling remote work wage issues

Employee Handbook:

1. Preserving employee at-will status
2. Consistent practices
3. Required/recommended policies [Note: employers with offices in more than one state may need an addendum to handbook]

Preventing Discrimination, Harassment, Bullying, and Violence:

1. Establish comprehensive policies
2. Regular training for all employees and managers

Family and Medical Leave Act:

1. Policies and procedures
2. Forms
3. Educating managers on law (as well as any analogous state leave laws) and the importance of designating leave

Americans With Disabilities Act:

1. Create suitable handbook policy
2. Train managers on law and importance of properly handling accommodation requests

Sick and Safe Leave Laws

1. Policies and procedures
2. Forms
3. Educating managers on laws, the importance of properly designating and tracking sick and safe leave, and relationship to other leave laws

Artificial Intelligence (AI)

1. Create or, as the case may be, update AI policies which address, among other things, acceptable use of generative public and private AI tools.

Personnel Records:

1. Retention policy
2. Access policy

Discipline and Performance Reviews:

1. Policies
2. Meaningful evaluations and evaluation forms
3. Grievance procedures
4. Supervisor training
5. Employee reviews – formal and informal
6. Staff development
7. Performance plans

Termination:

1. Exit interviews
2. Training supervisors how to handle employee terminations legally and with dignity
3. Severance and severance agreements
4. Liability checklist
5. Exit letter reminding employees of their ongoing obligations to organization
6. Handling reference requests

Employee Retention:

1. Review and revise orientation procedures
2. Establish competitive pay and benefit procedures - use trade associations, etc. to gather information about what others in the industry are doing
3. Create career growth opportunities
4. Solicit employee feedback
5. Evaluate the reasons why employees have left to better tailor hiring procedures

Insurance:

1. Consider obtaining Employment Practices Liability Insurance (EPLI); review existing EPLI policy with knowledgeable agent and counsel

Regularly Scheduled Reviews of HR policies and procedures:

1. At least once a year

In conclusion, human resource audits are an important step in creating sound, effective hiring, retention, and performance management policies and procedures. The expression "an ounce of prevention is worth a pound of cure" is perhaps never more true than when it comes to taking constructive measures to reduce the risk of employment related litigation. Employers who take this expression to heart and consistently act on it can improve hiring decisions; increase employee retention and job satisfaction rates; properly handle employee separations when they become necessary; meaningfully reduce the risk of litigation and damage to their reputation and brand; and, at the same time, improve the financial "bottom line".

Marc R. Engel, Esq. is a shareholder at Lerch, Early & Brewer, Chartered and a member of the Firm's employment and litigation groups. He advises employers of all types and sizes on employment issues, performs human resource audits, and conducts training on a variety of employment issues, including strategies for improving hiring, performance management, retention and avoiding discrimination and harassment claims. His advice and counselling practice is informed (i) by many years litigating employment and other matters and (ii) a deep commitment to learning and fully understanding what motivates employees to join and leave organizations (and, in some instances, to file claims). He also litigates and mediates employment and business disputes and counsels clients on litigation avoidance strategies. For more information about human resource audits or the employment practice, please contact Mr. Engel at (301) 657-0184 or by email at mengel@lercheearly.com. For more information about the firm, please visit our website at www.lercheearly.com. **This article is not intended to provide general legal advice or legal advice as to any specific matter. Consideration of any legal implications of an issue(s) referenced in this article involves a review and assessment of all relevant facts and circumstances.**