The Cost of Non-Compliance

The HR Strategies to Reduce Your Employment Practices Risk

Presented by: Blue Ox LLC
As litigation and damage awards costs continue to rise, experts predict that employment liability will only become more complex.

Employers must limit their exposure by focusing on desirable Human Resources policies and practices.
• In a single recent year, there were 99,922 charges filed for discrimination with the U.S. Equal Employment Opportunity Commission (EEOC).
• The most ever recorded. *
• The marketplace has seen double-digit increases from 2000*
• In a recent year the EEOC secured more than $404 Million from employers and the rate is increasing *

* Per 2011 data from EEOC (Equal Employment Opportunity Commission) Charge Data System. Includes race, sex, national origin, religion, retaliation, age, disability, and equal pay act harassment
I-9 Enforcement

Inspections touch:

- Employers of all sizes
- Employers in all states
- Emphasis on:
  - Businesses related to critical infrastructure and key resources
  - Banking and Finance / Commercial Nuclear Reactors / Dams / Drinking Water and Water Treatment Systems / Government Facilities / Information Technology
  - Companies in landmark buildings
  - High turnover industries, such as retail and food service
  - Employee or whistleblower complaints

“Quiet Immigration Raids”

Increasing Monetary Risks
Increasing Monetary Risks

I-9 Enforcement

• In the past few years there have been a two-fold increase in I-9 audits and a 500% increase in penalties
  • Average Fines in excess of $110,000
  • Fines per violation - $110 - $1,100 for substantive / uncorrected technical violations
  • Fines driven by % violations found & number of offenses
Human Resources
Policies and Practices
Limiting HR Exposures

Conduct an HR audit to review:

- I-9 and E-verify procedures
- Employee handbook
- Recruitment and hiring practices
- Disciplinary and termination practices
- Performance review requirements
- Promotion and demotion procedures
- Workplace rules
- Training of Supervisors
I-9 Employment Eligibility

• I-9 Employment Eligibility Verification Form
  • All employees must have I-9 maintained in separate file
  • Enforced by U.S. Immigration and Customs Enforcement (ICE) a Division of the Department of Homeland Security (DHS)
  • Purpose is to verify employees are eligible to work in the United States
Mississippi

- Effective July 1, 2011; all employers in the state of Mississippi are required to perform E-Verify for all new hires.
- Penalty – Felony subject to imprisonment of not less than 1 year and not more than 5 years, a fine of not less than $1,000 and not more than $10,000, or both.
Establish solid recruitment and hiring processes that stress a ‘zero-tolerance’ policy for discrimination and/or harassment.

Institute proper employee orientation.

Establish standard disciplinary action and termination plans.

Keep records and remain consistent throughout all hiring processes.
Job interviews pose additional liabilities if interviewers are not aware of the laws.

All employees involved in supervisory positions should receive additional training, particularly in interview skills.

Educate supervisors/interviewers through periodic training to avoid questions pertaining to the following:

- Age
- Religion
- Race
- National Origin
Application of Employment

- At-will agreement
- EEO statement
- I9 and E-verify procedures
- Authorizations to verify information
- Perform due diligence
- Contact references
- Check school records
- Verify degrees earned
- Conduct aptitude testing
- Explain and conduct drug/alcohol testing
- Perform background checks
At-Will Employment:

- Make a job offer in writing – specify position, duties, salary, vacation accrual and stipulations of any bonus or incentive pay.

Contract employees:

- Be aware of contract breaches
- Outline salary in bi-weekly or monthly increments
- If stated as annual, may be misconstrued as contract for a year
If an employee’s performance is sub-par:

• Outline areas of improvement in writing
• Set timelines for improvement
• Explain consequences, if no improvement

Institute uniform disciplinary actions:

• Actions should be equitable for similar infractions
• Review policies and consequences
• Increase action in severity

Document all occurrences:

• Indicate action taken
• Specify employee and results of your actions
In order to investigate all complaints thoroughly:

- Give employees options for reporting grievances, and communicate procedure effectively
- Document all phases in writing
- File initial report, including date and details
- Conduct follow-up conversations
- Decide course of action
Courses of action may include:

- Disciplinary
- Training
- Reassignment of duties
- Restructure workplace
- Periodic review for employees and supervisors
- Workplace polices and rules
- Employee handbook
- Performance management
After failed attempts:

- Conduct a review of employee’s personnel file with a labor attorney or legal counsel to identify possible legal ramifications
- Proceed with termination or review the disciplinary process

Present termination notice calmly and concisely:

- Inform employee in person in a private manner
- HR representative should be present, as a witness, and present continuing benefit options, such as COBRA
- Also consider having security personnel escort the employee out of the building, if necessary.
Training of Supervisors

- Make sure supervisors are properly trained to handle employee issues
- Develop manager training program with periodic updates
Reduce your liability by putting the proper procedures in place, communicating them to management and employees and promptly addressing all complaints.

• Consider additional employee/supervisor training stressing a zero-tolerance policy for discrimination and harassment.
• Utilize written employment policies and best practices.
• Thoroughly investigate every incident of harassment; give employees options for reporting grievances.
• Conduct objective annual reviews and have employees participate in review process via a self-assessment.
• Document all occurrences and remain consistent!!