



The Cost of Non-Compliance

The HR Strategies to Reduce Your
Employment Practices Risk

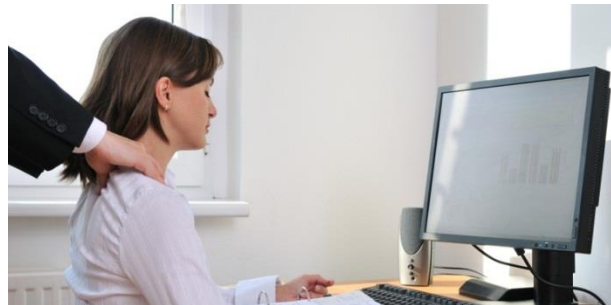
Strategies to Reduce Exposures

- 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

Increasing Monetary Risks

EEOC

- 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 *



Increasing Monetary Risks

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

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

E-VERIFY

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.

HR Strategies

- 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.

Recruitment

- 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-verfiy 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

Employment Offers

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

Enforcing Performance Policies

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

Investigate Complaints

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

Courses of action may include:

- Disciplinary
- Training
- Reassignment of duties
- Restructure workplace
- Periodic review for employees and supervisors
- Workplace policies and rules
- Employee handbook
- Performance management

Handling Terminations

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

Review

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!!