



The Top 5 Employment Law Concerns

As an employer you need to be aware of some of the HR risks facing your business. It is a balancing act to grow your business, manage HR and Payroll Administration and keep compliant. This white paper discusses the 5 top employment law concerns that pose a risk to your company. One misstep can result in major lawsuits and fines and drain your productivity.

#1 Intermittent FMLA Leave

The Family Medical Leave Act (FMLA) provides certain employees with 12 weeks of unpaid, job-protected leave per year. It also requires that group health benefits be maintained during the leave. While it is easy to track 12 weeks of continuous leave per year on a calendar, tracking Intermittent FMLA becomes a challenge. Intermittent FMLA allows employees to take smaller increments of leave each week. Employers must track every minute of this leave. Failure to do so accurately, can result in penalties and even lawsuits initiated against the employer. Managing schedules and production is challenging with intermittent leave.

#2 FLSA/Wage Hour and Overtime

The Fair Labor Standards Act (FLSA) sets the standards for the basic minimum wage and overtime pay. It requires employers to pay covered employees who are not otherwise exempt at least the federal minimum wage and overtime pay of one and one half times the regular rate of pay. It also sets minimum wage limits. To make the matter even more confusing California has even more stringent standards. The basis of the laws are to classify employees properly. Exempt employees (sometimes thought of as salaried employees) are exempt from the regulation and hence do not receive overtime. Non-exempt employees are not exempt from the regulation and are entitled to overtime. The two major trouble areas for employers are:

Employee Classification - The first issue facing employers is to properly categorize their employees as exempt or non-exempt. Sometimes, employers want to avoid overtime expenses and they classify someone as Exempt so they can pay them a salary. Misclassifying employees can lead to huge penalties in addition to back pay.

Accurate Record Keeping

In a weak economy and cutbacks, employees may find themselves looking for ways to extract money from their employer or former employer. There are many potential ways employers can cause infractions. Some examples are not paying employees for time putting on a special uniform, waiting for transportation to a job site. Being lenient is another problem area. Letting an employee skip lunch so they can leave 1/2 hour early could subject you to back pay plus penalties. By not having accurate records, it is probable that the employee will win the case.

The large cases get a lot of press as employers have shelled out \$290M in awards. Starbucks, Microsoft,

Intel, UPS have all been assessed fines. Small employers are not exempt. An owner of a nail salon was fined \$100,000 for not giving breaks and paying overtime.

#3 Retaliation

Retaliation occurs when an employee has blown a whistle on the company and the company in turn, takes an adverse action such as deny promotion, make threats or terminate the employee as a result of the original action. Even if the original call is unfounded, the retaliation case can continue. Employers should establish anti-retaliation policies and train managers. The Equal Employment Opportunity Commission (EEOC) has recovered more than \$124 million in monetary benefits for charging parties and other aggrieved individual not including benefits obtained through litigation.

#4 "New" protected classes

Protected classes are groups that lawmakers specifically protect from discrimination. Today they include anyone who suffers discrimination because of their age, sex, race, national origin, disability, creed or religion. "New" protected classes are older workers, sexual orientation, gender identification, religious minorities. These new classes sometimes lead to unintentional discrimination charges.

#5 Aggressive EEOC enforcement

Employees have the help of the EEOC working to investigate complaints and file lawsuits. In 2007 EEOC complaints has seen an increase in the types of complaints:

- ◇ Race - up 12%
- ◇ Retaliation - up 18%
- ◇ Age - up 15%
- ◇ Disability - up 14%
- ◇ Religion - 13%

The Department of Labor and the EEOC are aggressively enforcing these laws including small and medium size companies. The EEOC feels that most discrimination occurs in small and medium companies.

People ROA can help you manage these risks through our consulting and HR outsourcing services. We establish your HR infrastructure, audit and monitor your practices so you stay compliant. Contact us to learn more.

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