



## CREATING LEGAL EMPLOYMENT PRACTICES

Many organizations are sued or fined millions of dollars each year for unknowingly violating one of the many employment laws governing employees, employment decisions, and benefits. The list of possible offences is large, with numerous complex laws, rules, and regulations constantly changing.

In this article, we provide techniques to help you be legally compliant, avoid fines/penalties, limit attorney fees and keep you out of the courts.

### WHICH LAWS APPLY TO ME?

The laws and regulations that apply to each organization are based primarily on three things:

- 1) The number of employees;
- 2) The states in which you conduct business; or
- 3) Whether or not you conduct business with the government.

Even organizations with only one employee must comply with over 14 federal laws and almost as many state laws and regulations. When companies hit 15 employees, they must comply with Title VII of the Civil Rights Act (CRA), Pregnancy Discrimination Act (PDA), Americans with Disabilities Act (ADA) and the related ADA Amendments Act (ADAAA), Genetic Information Nondiscrimination Act (GINA), and Fair Credit Reporting Act (FCRA). At 20 employees, Age Discrimination in Employment Act (ADEA) and Consolidated Omnibus Budget Reconciliation Act (COBRA) apply. At 50 employees, the Family & Medical Leave Act (FMLA) comes into play, and at 100 employees EEO-1 reporting requirements and Worker Adjustment & Retraining Notification Act (WARN) also apply.

### STATE LAWS

Each state can establish their own laws and regulations covering employment practices, as long as they at least match federal laws. You will typically find differences in state practice for such things as breaks, final paychecks, new hire reporting, and other employment practices.

### GOVERNMENT BUSINESS

The size of government contract and the number of employees determines whether or not you must comply with such laws and requirements as Affirmative Action or VETS 100 Reporting. Generally, anyone with 50 or more employees and annual government contracts in excess of \$50,000 will need an affirmative

action plan and need to comply with other federal contractor laws, rules, and regulations.

### LAW ENFORCERS

The following organizations are increasing the number of compliance audits and are assigning large fines for non-compliance: IRS, DOL, ERISA, OSHA, OFCCP, INS, EEOC, NLRB, SSA, and federal and state courts.

### CREATING EFFECTIVE PRACTICES

These techniques will help you create legally compliant employment practices & work environment:

**Know Which Laws Apply** – Be aware of the laws, rules, and regulations that apply to your organization. Keep up on changes, and actively implement the steps needed to ensure compliance. HR Service, Inc. clients receive a monthly legal update along with due date reminders, giving them what they need to know and do, when it's needed. Read and follow these important updates and actions.

**Review Current Practices** – Once familiar with the laws that apply, evaluate current practices to identify risks, inconsistencies and challenges. A useful technique is to hire an independent third party who specializes in employment laws and have them conduct a compliance audit.

**Align Practices to Comply** – Proactively take the needed steps to eliminate risk, follow requirements, and build effective people practices, as well as overall HR infrastructure that ensure compliance. This may require new policies, changing existing practices, or training supervisors.

**Establish & Follow Consistent Practices, Procedures and Guidelines** – Be consistent in how employees are treated. One of the best techniques to drive and communicate consistency is to document good employment practices in an employee handbook. Equally important is to provide leaders with guidelines on how to handle important employment practices for things like interviewing, hiring, orientation, training, performance management, appraisals, corrective actions, pay, terminations and discharges. This can be accomplished in a leader handbook and supervisor training program.

**Train Supervisors** – What supervisors say and do will either help or hinder your legal compliance and best practices. Because a supervisor represents the company, her actions make her one of the organization's greatest assets or liabilities, pertaining to employee rights. Train all supervisors in employment laws and practices that apply to them. Make sure they know how to interview, manage performance, and terminate without creating risk. Equally important, make sure they know how to respond to employee complaints, requests for medical leave, disability, or religious accommodation requests.

**Make Employment Decisions on Job-Related Factors** – Every employment decision related to hiring, appraisal, corrective action, training, discharge, pay, etc. must be based solely on job-related reasons/information. Any implication that decisions are based on sex, age, national origin, religion, color, or other protected category is a recipe for a law suit and a hefty fine. Make sure all employment decisions are based solely on job-related factors, taking out all implications to areas protected by law.

**Keep Good Documentation** – Be prepared to defend employment actions and decisions by keeping good documentation. Keep files on each employee; record key performance measures and feedback (both constructive and corrective/praise). Individuals involved in hiring, pay, disciplinary action, and termination decisions should also document information needed to demonstrate that decisions were job-related and supported by facts, not bias.

**Establish a Grievance and Complaint Process** – If employees have a place to complain and are given fair consideration, the need to seek outside assistance from attorneys or compliance organizations is lessened. Equally important is having a process to make sure that all complaints are taken seriously, investigated, and acted upon. Train employees in your process, opening up access to their supervisor, executives, and HR representatives. Train supervisors how to respond to complaints and ensure effective investigations and complaint resolution practices.

**Monitor the Work Environment** – Monitor the work environment and keep in touch with employees so you are aware when unsafe, legally risky practices are taking place (e.g., harassment). It is good to conduct annual employee opinion surveys to keep a pulse on employee attitudes and perceptions. Maintain a safe, positive, risk-free workplace by communicating expectations, training employees and supervisors, and monitoring to ensure compliance.

**Provide Required Notices** – State and federal laws require organizations to post various employee rights.

Obtain an all-in-one notice, for each state where employees work, that covers state and federal requirements. Organizations who offer insurance benefits, like medical insurance, must comply with ERISA rules providing Summary Plan Descriptions or SPD Wrap, Medicare Part D, WHCRA, CHIP, NMHPA, MHPA, HIPAA, Wellness, and SBCs. HR Service clients have access to a web-based document creation center to create an SPD Wrap and run an all-in-one employee notice to help make creating and distributing these notices easy.

**Evaluate Disciplinary Actions/Discharges** – The two most risky employment practices are corrective actions and discharges. These are the times tempers can flare and individuals say and do things that can escalate to legal actions. It is a good practice to not allow anyone to fire on the spot. All employment violations and performance issues should be thoroughly reviewed before action is taken in anger or spite. Get all sides of the story and know the laws that apply so an informed decision can be made. Consult with experts in handling these risky situations, prior to taking action to further minimize risk.

**Be Respectful, Fair, Honest and Kind** – As obvious as it may seem, it is when a company neglects to be respectful, fair, honest, and kind that employees complain to outside agencies, seek attorneys or revenge. Even during corrective actions and terminations, treat people with respect and dignity.

**Align with Experts** – There are so many possible areas where things can go wrong. It is imperative to either have an onsite expert or align yourself with an outside resource that can assist with challenging employee issues, risks, and compliance issues.

**Do the Right Thing** – If you think about it, most of the laws, rules and regulations are not only required, but are good practices to help extend respect and dignity.

Eliminate bias, discrimination and prejudice from your workplace, and promote a positive respectful work environment that rewards performance and results, not color of skin, age, or gender.

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**Compliance Assistance** - HR Service, Inc. helps organizations comply with federal and state laws, make good employment decisions, and train leaders. We also provide compliance audits, to identify and eliminate risk. Call toll-free (855) 447-3375 or visit online at [www.HRServiceInc.com](http://www.HRServiceInc.com).