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2011 Human Resource Checklist

By Kathryn M. Hindman
Shareholder
Bullard Smith Jernstedt Wilson



By Maryann Yelnosky
Shareholder
Bullard Smith Jernstedt Wilson



Human resource professionals are critical to the success of every organization. As the New Year begins, they should ensure their companies have updated policies and employees trained on new and developing issues. The following is a checklist of specific human resource (HR) issues organizations should review to ensure they start the New Year in compliance with new laws and focused on issues that will support their organizations throughout the year.

1. Evaluate compliance with federal and state wage and hour laws.

In 2010, the U.S. Department of Labor hired hundreds of new investigators for its Wage & Hour

Division. Federal wage and hour audits are up, and state agency investigations are on the rise. Attorneys for employees are also aggressively pursuing class action wage and hour lawsuits. Accordingly, HR should consider the following steps:

- Conduct training sessions for supervisory employees to ensure a basic understanding of the requirements of the federal wage and hour law (Fair Labor Standards Act or FLSA) and state wage and hour laws. Training should cover (1) the prohibition against employees working off the clock and not reporting their time for pay purposes, particularly overtime

pay; (2) state requirements to provide paid rest breaks and an uninterrupted 30-minute meal period for non-exempt employees; and (3) the attributes of exempt and nonexempt employee status.

- Ensure employees who are not compensated for meals are receiving an uninterrupted 30-minute break as required by both the FLSA and state law. Employers should assume state meal and rest break rules apply to their employees unless the requirements are appropriately waived by a labor agreement (which can apply to nursing staff providing acute care in hospital settings) or employees meet the state exceptions exempting them from these rules.
- Meet with the payroll department to ensure that hours worked by non-exempt employees at various facilities are aggregated or counted toward the 40-hour workweek (or the 8 and 80 workweeks for certain healthcare facilities) for overtime pay calculations as required under the FLSA and state law.
- Work with payroll to ensure that all required employee pay is included in the base rate for overtime pay calculations.

This is especially important for employers who provide a base hourly rate in addition to other pay in the form of shift differentials, non-discretionary bonuses, incentive pay and other types of compensation not specifically excluded by FLSA or state regulations.

- Review policies related to travel time, training time, time-clock rounding, attendance at educational programs and other pay-related issues to ensure compliance with wage and hour laws.
- Consider conducting a wage and hour audit to enhance good-faith compliance with federal and state laws. Such audits can be coordinated on a system-wide, facility, or department unit basis.

2. Enhance efforts to comply with the federal and state family medical leave regulations and rules.

3. Review applications, handbooks, posters, and job descriptions.

Review employment applications and handbooks. Be sure handbooks address the FMLA military provisions, the state military family leave laws related to the deployment of a spouse or registered domestic partner, and the requirement to provide leave and safety accommodations for certain victims of domestic violence. Employment posters should be updated. Review and revise job descriptions. Although they are not legally required, they are valuable for recruiting, training and performance evaluations and they can be critical in the evaluation of disability accommodation needs.

4. Strengthen awareness of federal contract compliance programs.

With increased federal stimulus dollars, the expanded definition of who qualifies as a “federal contractor,” and enforcement initiatives by the DOL with respect to federal contractors, employers should determine whether they have federal contracts and if so, the new requirements that apply. (For example, employers may have to develop and implement affirmative action plans, and may be required to use the federal government’s E-Verify system).

- At a minimum, review federal contracts and grants to determine if the company is subject to the DOL Office of Federal Contract Compliance Programs (OFCCP) and recognize that many HR-related requirements are associated with that office.

5. Understand the implications of the new Genetic Information Nondiscrimination Act (GINA).

Review requirements of the new GINA regulations to ensure the company is in full compliance with this law. GINA prohibits employers and health insurers from discriminating on the basis of genetic predisposition to illness and disease, including a prohibition on gathering information about family history of illness. The DOL Employee Benefits Security Administration (EBSA) issued guidance on Title I of GINA and how it affects employer group health plans and insurance providers. The EEOC published final rules on Title II of GINA, which prohibits using genetic information in employment decisions.

6. Look for increased “social networking” employment issues.

With the increase in popularity of Linked-In, Facebook, blog sites and texting, HR should be prepared for new and increasing concerns related to social networking in the workplace.

- Modify or develop confidentiality policies to include coverage of special networking sites like Twitter, Linked-In, and Facebook.
- Educate managers and staff about policies and procedures regarding social networking, and communicate clearly to employees that public posting of proprietary or confidential information including patient information on such sites will be subject to review and misuse can result in disciplinary action.

7. If the workplace is unionized, review HR policies for compliance with recent NLRB decisions.

- With the newly instituted National Labor Relations Board (NLRB), unionized employers can expect increased scrutiny of HR policies and practices for compliance with the latest NLRB decisions about use of company emails, the definition of “supervisors” and independent contractors, solicitation and distribution, compensation and loitering.

8. Train supervisors and managers in anti-discrimination practices and confidentiality policies.

Review the anti-harassment and EEO policies and remind supervisors and managers of their duties to ensure compliance with “appropriate” conduct under the work-

place conduct policies. Remember that discriminatory practices that affect pay and other compensation are under particular scrutiny by the EEOC. Insure that all employees understand their obligations of confidentiality while they are employees and after their employment ends.

9. Review potential HR issues connected with healthcare reform.

Healthcare reform presents many challenges for HR this year. If the company is a small employer (presently fewer than 25 FTEs), the Small Employer Health Insurance Tax Credit requirements may apply. Otherwise, companies should prepare for the new auto-enroll health plan requirements for new plans with more than 200 FTEs.

Health plans effective after September 22, 2010, must offer coverage to children up to the age of 26, and “essential” benefits and limits on annual dollar limits have been expanded. Consider making a “to-do” list that could include notice to employees who hit lifetime limits, and who have children who “aged off” the health plan; and remember to apply for an annual-limit waiver for some medical plans and stand-alone HRAs, and to amend the cafeteria plan document to reflect the new definition of dependent child.

2011 offers great opportunities.

Careful attention to HR issues at the start of the year can minimize unnecessary challenges with a company’s most valuable asset—

its employees.

Kathy Hindman’s primary focus is employment-related advice, litigation prevention and training. She specializes in public and private sector wage and hour compliance, workplace harassment and discrimination, managing family medical leave, injured workers, the interactive process and reasonable accommodation.

Maryann Yelnosky is a graduate of the University of Oregon, where she earned her Juris Doctor in 1986. She has spent the last 20 years representing Northwest employers and health care providers specializing in litigation defense, including discrimination, employee management, employee training and medical malpractice.

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