

THE C SUITE REPORT

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The Hiring and Firing Process

Where to Start

Hiring your first employee or building your business team brings a whole new area for compliance – employment and labor law. These laws include regulations on discrimination and harassment in the workplace, wage and hour laws and workers' compensation regulations.

Workforce management is among the most difficult tasks for businesses and business owners.

Complying with the following will make sure you do not fall out of compliance in these pertinent areas:

1. Workplace safety

There are various federal, state, and local rules and regulations that businesses are required to abide by. Federal guidelines for workplace safety and health are established and enforced by the Occupational Safety and Health Administration (OSHA). Employers should be familiar with these guidelines, as well as the procedures for handling workers' compensation claims.

Employers

As a general rule, an employer is required to provide workers with a workplace that is free from recognized hazards that are likely to cause serious physical harm to them. The employer also has the responsibility to be familiar with and comply with the specific standards set forth by OSHA and must inform employees of the OSHA health and safety standards that apply to their particular workplace.

Finally, employers are not permitted to take any retaliatory or discriminatory action against an employee who makes an OSHA complaint.

Employees

under the Occupational Safety and Health (OSH) Act of 1970, employees have certain rights and responsibilities, and employers are responsible for reducing workplace hazards. Employees have the right to, among other things:

1. Access relevant employee exposure and medical records and copies of relevant standards, rules, and regulations that apply to their workplace.
2. Request an OSHA area director to inspect their workplace if they believe that there are hazardous conditions or safety violations present.



OSHA Regulations Concerning Heat

Just one of the workplace hazards that OSHA is concerned about is heat-related injuries. This type of injury is more common among certain industries, such as construction and agriculture, but any employees exposed to long periods of heat can be at risk for heat-related injuries. Some examples of heat illnesses are heat stroke, heat rashes, or heat exhaustion.

As an employer, there are actions you can take to reduce your employees' risk of suffering from heat-related illnesses.

For example, as an employer you can provide training to your employees so that they know to drink plenty of water and take frequent breaks.

2. Hiring

Federal Regulations

There are various hiring laws that employers must comply with, both on a federal level and state level. Many of the federal laws are in place to prevent discriminatory practices in both hiring and during the course of employment. Federal laws prevent discrimination based on various factors including age, race, color, national origin, sex, religion, and genetic information.

Federal law also requires that men and women who perform substantially the same work, in the same or similar positions (at the same company) must be paid equally.

The federal government also requires employers to verify that a person is legally eligible to work in the United States within three days of an employee's start date. It's important that your business has interview questions that are in line with federal laws, and that they do not come across as discriminatory toward any group.



Independent Contractors vs. Employees

It's very important to classify your workers correctly because failure to do so can land you in hot water, particularly with the Internal Revenue Service (IRS).

Classifying a worker takes more than just giving him or her a job title. In fact, it's the core of the relationship between the worker and the business that defines a person's status as either an employee or an independent contractor.

There are several factors used to determine the status of a worker, but the root of the issue is the degree of control an employer has over the worker.



Basically, the more control the employer has, the more likely it is that the worker is an employee. The classification of a worker matters for both the employer and the worker. Employers are required to perform certain actions on behalf of employees. These include withholding a portion of an employee's paycheck and paying employment taxes.

Employers are also required to comply with federal laws related to family and medical leave when it comes to employees. Independent contractors, on the other hand, have to pay their own employment taxes and do not receive the benefit of federal family and medical leave laws.

3. Wages and benefits



Wages and benefits typically are the two main motivators of employment, and also tend to be among the biggest expenses for employers. A combination of federal, state, and local laws ensure a minimum wage, payment of overtime, and other regulations.

Common wage violations include not paying for work done "off-the-clock," paying less than minimum wage, or deducting too much for tips.

Anything other than wages received by the employee, such as paid vacation or medical insurance, is considered a benefit. Employers are generally not required to offer any certain benefits to their employees, but they may help the employer attract and retain top talent.

4. Discrimination and harassment

Discrimination and harassment in the workplace are related because they involve the treatment of protected individuals, such as women and racial minorities.

A combination of federal and state laws prohibit discrimination in all stages of employment, from posting a job and interviewing job candidates to the termination of employees.

Federal law prohibits discrimination on the basis of:

- Gender

- Race/Color
- Age
- National Origin
- Religion
- Disability

Some state and local governments offer anti-discrimination protections for additional categories, including those identifying as lesbian, gay, bisexual, or transgendered (LGBT).

Harassment typically involves unwanted sexual advances that create a hostile work environment, can also include "quid pro quo" harassment. A hostile work environment is one in which the harassed employee has a difficult time functioning and prospering at her job. Quid pro quo involves the offer of a raise or promotion in exchange for sexual favors, for example.

5. Termination and Time off



Although most employers implement an "at will" employment policy, firing an employee for the wrong reason could negatively impact an employer. Although at will employment means that an employer can terminate an employee at any time and for any reason, the reason for termination cannot be retaliatory, discriminatory, or for any other illegal reason.

Federal and state wrongful termination laws address various reasons that cannot be the basis for terminating an employee, whether he or she is at will or working under an employment contract.

The most common wrongful termination laws are ones that involve discrimination or retaliation. It is illegal under federal law to fire an employee because of his or her gender, race, disability, national origin, religion, or age (if the person is 40 years old or older).

An employer is also not allowed to fire an employee because she is pregnant or has a medical condition that is related to pregnancy or the birth of a child. Some states have expanded their "protected classes" to include more characteristics, such as sexual orientation.

Retaliation is another illegal reason to terminate a person's employment and could result in a wrongful termination lawsuit. Basically, retaliation occurs when an employer terminates an employee because he or she asserted his or her rights under state or federal anti-discrimination laws.

For example, if a female employee is fired for complaining that she is not paid the same amount for the same position as her male counterpart, she may be able to file a wrongful termination lawsuit based on retaliation. It's also illegal to fire a person in retaliation for him or her making a complaint regarding an Occupational Safety and Health Administration (OSHA) violation.

6. Other concerns:



Managing employees effectively can be a difficult task. There are various laws

that come into play - including laws intended to provide privacy to employees.

If you would like help creating and implementing policies intended to effectively manage your employees, you may want to meet with an employment law attorney near you. Some key concerns to consider include:

- a. Management
- b. Workplace Privacy
- c. Retirement and pension plans

Need more help or information navigating the hiring and firing process? Call or email C Suite Services today to schedule a consultation!