



Employers' Checklist

Newest emerging issues facing your best company practices today.

EMPLOYERS FACE NEW HURDLES each day. Here are “Top Ten” thoughts on current issues facing employers, and how to deal with them.

- 1. Get a social media policy.** Do not even think about hacking into a worker’s Facebook account. And, if someone comes to you complaining about inappropriate content on a worker’s website, ask for a copy and respond accordingly.
- 2. Install a firewall when searching the Internet for employee candidates.** Employers review social networking sites for information on potential hires and use that information in making hiring decisions. When you browse a social website, there is a strong risk you will be exposed to too much information. Imagine your search came up with the candidate’s Facebook page, which reveals the candidate’s religion, sexual orientation or a disability. The Equal Employment Opportunity Commission has taken the position that an employer who knows some fact about an individual that implicates a protected status may be presumed to have considered that fact in the employment decision. This could result in a discrimination lawsuit. So, have a plan on who conducts your Internet searches and how the online information is used. Have someone other than the person making the hiring decision perform the Internet search and screen results so that only relevant information is considered.
- 3. Prevent wage/hour lawsuits.** The Department of Labor handled 32,000 wage and hour complaints last year, up 33 percent from 2009. There is also an increased focus on independent contractor misclassifications. Review your independent contractor relationships before the government does.
- 4. Get the new Family Medical Leave Act poster.** The government has form WH380/381. Put these up and remove the old ones.
- 5. The NLRB and non-union businesses.** Even if you are a non-union shop, the National Labor Relations Board (NLRB) will sue you over company policies banning employees from talking about pay or benefits—a “protected concerted activity.”
- 6. Performance reviews: Grade inflation hurts.** Accurate performance reviews will “save your bacon” in a lawsuit, but unduly rosy reviews of average workers can hurt. Have Human Resources review performance reviews.
- 7. Record-keeping and “litigation holds.”** If you think litigation is coming, make sure all standard document destruction policies are suspended. Lost or “unsaved” documents can lead to a presumption

against you. Work with your IT department to construct a process to make sure documents are preserved.

8. What to do with Charlie Sheen. We all have seen the implosion of Charlie Sheen. What if you had an employee who engaged in poor or illegal behavior that could embarrass your organization? How should you deal with it? First, work on damage control. Do not spend lots of effort protecting the bad employee, because this links you to the employee’s bad acts. Second, eliminate the employee’s visibility and

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access to the company’s top people. Consider a paid leave with clear rules about acceptable behavior, setting out clear consequences for violation of the rules. Third, assess the chances for rehabilitating the employee’s reputation and weigh the value of the employee with the effort required to rehabilitate him or her. In the end, if you are working harder at the employee’s success than the success of the company, it might be time to cut and run.

9. Watch out for retaliation. Retaliation cases are the most common type of lawsuit now, and the most expensive. “Getting even” will cost you. Consider independent internal reviews of employment decisions affecting complaining employees.

10. Install a conflict resolution plan. Companies are avoiding lawsuits by having an established conflict resolution plan that gives the employee an opportunity to vent. Consider establishing one in your workplace.

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