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EMPLOYMENT LAW LETTER

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HUMAN RESOURCES

This year I resolve to . . . really!

Now that the Christmas rush is over and you've indulged in all the excesses of the holiday season, it's time to make your annual New Year's resolutions. We're not talking about resolving to lose 15 pounds or be nicer to your mother-in-law in the coming year; we're talking about making resolutions relating to good employment practices. So, in no particular order, let's all resolve to do the following.

1. Document, document, document

Too many times, an employer's defense to a lawsuit, unemployment compensation claim, or administrative hearing fails because management didn't document the reasons for the adverse employment decision. No matter what the circumstance—counseling session, discipline, request for accommodation, transfer, or reassignment of duties—make sure that any discussions with the affected employee or the employee's supervisor are well documented.

2. Don't ignore requests for religious accommodation

When an employee claims that his membership in the Church of the Diminishing Sun requires him to have a prayer break at specific times and for certain lengths of time to ensure that the Earth doesn't go cold, don't dismiss him as being a kook. There are many religions that might appear to be farcical. The request may seem ridiculous, but do your homework before making any decisions.

3. Consider prohibiting cell phone use while driving

An accident in which a teenager sent or received 11 text messages in 11 minutes shortly before a fatal collision has heightened the focus on the use of cell phones while driving. If you implement a cell phone policy, make sure

you're not just paying lip service. Educate your employees on the importance of the policy, and stress the dangers associated with cell phone use (talking and texting) while driving. Even if you don't implement a policy, educate your employees anyway.

4. Provide employees positive feedback

All of us appreciate recognition for our efforts. Most employers don't hesitate to let an employee know when he has done something bad. Why not let employees know when they've done something good?

5. Think before you hit 'send'

Many individuals will put things in an e-mail that they wouldn't dream of saying directly to a person or even over the phone. Before you send an e-mail, particularly in the heat of the moment, take a breath and review it first. Carefully consider who is being copied on the e-mail. Ask yourself how the communication would look as an exhibit in an administrative hearing or at trial. Also, understand that no matter how confidential you think an e-mail is, it will be seen by others. You should think similarly before posting anything on a social media site. Reminding your employees about the appropriate use of e-mail and social media is always a good idea.

6. Don't assume that an employee with health issues needs an accommodation

Given the current disability statutes and regulations, it may be difficult to find any condition that isn't considered a disability. But don't jump the gun. Otherwise, you may be faced with a "regarded as" disability claim. Nevertheless, by all means, you should engage in the interactive process when it's warranted.

Kirton McConkie is a member of the *Employers Counsel Network*



7. *Be honest in your employee evaluations*

Employee evaluations are often considered in layoffs, promotions, work assignments, and other employment actions. If you aren't honest in your evaluations, then the reasons for employment decisions may be successfully challenged. Also, don't discuss employee evaluations with anyone who doesn't have a need to know.

8. *Conduct effective training*

Whether they involve your sexual harassment policy or how supervisors perform their responsibilities, make sure your policies are effectively communicated and enforced. Proper training is essential in an effective and efficient workplace.

9. *Rely on networking*

You don't need to reinvent the wheel every day. Chances are that the problem you're facing has been seen and effectively addressed by others. Join the local chamber of commerce and HR organizations or use social media to develop a network of professionals with whom you can consult, and don't be afraid to take advantage of your contacts.

10. *Call your lawyer*

No, this isn't a shameless attempt to develop more work for attorneys. But there is truth in the statement "You can pay me now, or you can pay me later." Even if your discussion isn't with a lawyer but with someone who brings a fresh perspective to the issue, you may be able to avoid legal consequences by talking through an issue with another person.

11. *Above all, be fair*

Being legally right doesn't always mean your decision is the correct one. A trial lawyer will tell you that an administrative law judge or a jury often will look at the fairness of an employer's actions, not whether the employer was legally entitled to make the decision. While you don't want to establish a precedent that might make it difficult to enforce your policies, you should consider all the circumstances before making a decision that results in an adverse employment action.

May you and your employees have a happy New Year! (And it might not hurt to be extra nice to your mother-in-law this year, too.) ❖