

Avoid Legal Pitfalls in Your Business

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#1 – Avoid Hiring the Wrong Employee

- Research the candidate before hiring
- Require employment applications rather than resumes
- Resolve gaps, inconsistencies
- Check references, prior employers, education
- Carefully draft “Offer” letters
- Ask about non-compete obligations



#2 – Avoid Asking Prohibited Questions on the Application or During the Interview

- Focus on questions that are job-related
 - See handout
- Avoid seemingly “innocent” topics
 - Children
 - Origin of name
 - Comments about foreign language fluency/accents
 - Ethnic clothing



#3 – Avoid Failing to Document Performance Problems

- Avoid the “Glowing Performance Appraisal”
- Objectively evaluate skills and behaviors
- Be specific
- Provide facts, not conclusions
- Give timely feedback to the employee along the way to prevent surprises
- Compare performance to that of other employees and make sure treatment is consistent



#4 – Avoid Untimely Discipline

- Avoid delays between the problem behavior and the discipline/termination
- If discipline is delayed, a jury may:
 - Question whether there was a performance problem
 - Question motivation / credibility of supervisor
- If you delay, the opportunity is lost!



#5 – Avoid Delaying to Address a Complaint of Harassment

- Prompt, thorough and impartial investigations
 - When to conduct? Complaints of discrimination, harassment, retaliation, and wage and hour violations; compliance issues, etc.
- Take immediate action
 - What to do?
 - Be prompt and thorough.
 - Review relevant documents and policies.
 - Conduct employee interviews.
 - Make conclusions in a timely manner.
 - Follow-up with reporting employee.
 - Take prompt remedial action if appropriate.
 - Avoid any appearance of retaliation.
 - Ongoing monitoring.



#6 – Avoid Unwritten Policies and/or Not Following Policies that are in Writing

- The most basic employee handbook should include:
 - Equal Employment Opportunity Statement
 - Non-Discrimination Policy
 - Anti-Harassment Policy
 - Policy Prohibiting Retaliation
 - Complaint and Reporting Procedure
 - Employment at-will Statement
 - Prohibited Conduct/Discipline Policy
- If an employer has written policies and procedures but does not follow them, the employer may be held accountable



#7 – Avoid Inconsistent Administration of Identical Rules

- Treat similarly situated people similarly
- Inconsistency may result in employees or former employees claiming that the differences in the application are based on differences (i.e. race, gender, age, etc.)
- When you bend the rules, you are setting precedent



#8 – Avoid Risks Associated with Termination Decisions

- Prior to Making the Termination Decision
 - Review policies – is the employee conduct prohibited?
 - Review written agreements
 - Review personnel file
 - Consider membership of protected class
 - Consider timing – recent protected activity?
 - Review past treatment of similar employees



Additional Termination Considerations

- Documentation is the first line of defense
 - Personnel file, performance appraisals, supervisor file, emails, complaints from or about the employee etc.
- Termination meeting
 - Who should attend and what to provide
- After Termination
 - What to tell coworkers, access to personnel file, and service letter request



Questions?





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