

10 Costly Yet Common Mistakes Employer's Make Segment 1

When you decide to start your own business, people tell you how to incorporate, where to get your start up costs and some other basic information. Some even tell you how to run your company, but not in manner that avoids unnecessary costs and potential litigation. In my practice, I usually see clients come in with very common mistakes that can be very costly. These are all mistakes that could be easily avoided, but no one ever told these clients about this potential issue and how to avoid them. The common theme I hear is "If I had only known, I wouldn't be getting sued." The purpose of this three part series is to point out some of the most common mistakes employers make that can cost them. We will address 3 mistakes in this segment of the article. Next months article will address another three issues, and the final segment will address four other issues. The first three issues, I believe, are the most important for your protection.

1. Not Having An Employee Handbook With Written Policies and Procedures.

This may not seem like it is an important item to have as an employer, but it is the first line of defense. Due to the potential expense and time associated with creating a handbook, many employers avoid preparing one altogether. However, this is one of the most important tools an employer can have. The cost and time to prepare it is far outweighed by the potential issues that may arise without one.

Employee handbooks are not just a document outlining the hours and benefits of an employee. It should contain all relevant and important information that employees need to know. It should contain the company's mission statement, regular hours of employment, dress code, disciplinary proceedings, how and when raises and bonuses may be considered, sexual harassment policies, information on workers' compensation rights and policy, FMLA policy, HIPAA policy, reimbursement policies, etc. Depending on what your company offers to employees, the handbook can be prepared to ensure all information is at their finger tips.

By having standardized policies in place, written down and followed, the employees will always have a source to go to for guidance. By following the policies in place, there is less likelihood for abuse of the system and invalid claims being lodged against the employer for unfair treatment. If litigation is lodged against an employer for any discrimination, harassment, wrongful termination, violation of privacy, or even unemployment, the fact a handbook exists and was followed is an essential tool to defeat that claim.

2. Not Updating the Employee Handbook.

As important as an employee handbook is, it is only effective if relevant to the issues present to the company. In other words, a handbook that was created in 1972 does not likely contain information on current issues in workers compensation, FMLA, or other relevant matters. The handbook should be something that is addressed by the company on a yearly basis to ensure it is up to date. If a section of the handbook needs updating, it should be done quickly, and that updated section should be provided to the employees. Failure to do so may result in waiver of certain defenses in certain matters. For example, in workers compensation the statute of limitations changed several years ago. It is the employer's responsibility to advise employees of their rights under the workers compensation act. If the employer fails to advise the employee of the statute of limitations, a defense of that nature can be waived. This is something that could be easily set forth in the employee handbook.

3. Failing To Properly and Sufficiently Document Personnel Records.

This item goes hand in hand with the employee handbook. Once you set forth policies in the handbook, you must follow through. Even if you choose not to have a handbook, proper documentation is essential. A personnel file should include all of the following: initial application, performance reviews, disciplinary actions, reprimands, accommodations, certificates of excellence, documentation of any issues with employee or brought to your attention by the employee, FMLA requests, injury reports, medical records under certain circumstances, emergency contacts, benefit information, signature acknowledging receipt of handbook and any other policies, and any other document that might be necessary in proceeding with or defending yourself from litigation by the employee.

It may seem like a significant amount of work, but with the procedures in place, the proper documentation can be kept without difficulty or significant expense. The benefit to the company, however, is significant. For example, assume you have an employee who at first was excellent, but eventually develops an absentee issue. You speak to that employee and learn that they have a medical issue they are dealing with. Based on your handbook, you advise them of the FMLA process and suggest they apply. You also forward correspondence as required to ensure proper notification. The employee fails to comply with the procedures as set forth in both your handbook and in your certified letter. Due to your companies needs, you have no choice but to replace them. They then file a wrongful termination action against you for violation of FMLA. Because you have the documentation showing you complied, and that the employee failed to follow procedure that they were aware was required, you are well on your way to winning that case. You may even avoid litigation altogether once this information is revealed to the other attorney.

These three issues are only the beginning. Next month's article will address more of the 10 common mistakes. In the interim, if you have questions about the first three, please feel free to contact Barbi L. Feldman, of RossVecchio, P.A. at bfeldman@rossvecchio.com.