

AVOID BECOMING A STATISTIC

HUMAN RESOURCES COMPLIANCE AUDIT: WORTH THE COST OR RISK?

Jeanine Maloney, SPHR

Consider these frightening facts:

- In 2007, there were over 82,000 charges filed with the EEOC (Equal Employment Opportunity Commission), approximately 7,000 more than the previous year.
- In fiscal year 2008, Wage and Hour (division of the Department of Labor) collected over \$185 million in back wages for over 228,000 employees.
- For fiscal year 2008 there were over 4700 minors employed in violation of the child labor laws.
- There were over 1800 complaint cases on FMLA (Family and Medical Leave Act) enforcement.
- The monetary benefits awarded in 2007 from EEOC litigated suits were \$54.8 million.

These are startling statistics considering all of these regulations have been around for quite some time.

The high risk associated with non-compliance is often overlooked. Many employment decisions are often made “in the heat of the moment” or can be made too hastily especially when companies are scrambling to get staff on board or when terminating employees. Because monetary costs could be exorbitant if issues are ignored or not addressed, a business owner should consider a Human Resources Compliance Audit to ensure legal compliance either way. Even business owners considering retirement or the sale of their business may not think the risks are important because they would ‘no longer be the owner.’ The liability has a two-fold effect. It may not only remain with the company but can follow the owner because he ‘should have known the rules.’

Whether your business has been around a while or is fairly new, the opportune times to do compliance audits are:

- if there is a contemplated sale of the business in the near future;

- if there is an upcoming merger or acquisition;
- when there are changes in Senior Management;
- when there have been changes in Labor Laws or regulations;
- if you have experienced significant growth in your business; or,
- if you have added a significant amount of staff.

A good HR Compliance audit helps the company avoid liability and associated costs as well as time away from business to address any issues. The audit is often done by internal Human Resources. However, the use of an outside HR consultant to assist the in-house staff can enhance the objectivity and may uncover inadequacies not previously considered.

A Human Resources Compliance Audit should touch on the following areas. This list, although not all inclusive, is a good start to the process:

- **Payroll compliance:** Make sure timesheets compare with actual hours worked, that time clock rounding is done properly if one is in use, that overtime pay calculations are done accurately, and that classification of employees is done correctly to avoid liability for overtime costs. Corrections for Wage and Hour violations can go back several years.
- **Record documentation and retention:** Check for issues such as missing or incomplete information on Form I-9's, incomplete personnel files information, inadequate discipline documentation, to ensure personnel evaluation information is not inadequate or inaccurate. You can avoid wrongful termination claims by having accurate and complete data to support decisions.
- **Employee handbook / manual:** Make sure it has been updated to reflect the current employment laws that are ever changing. This is the communication tool to inform employees of company rules related to federal, state and local

regulations and policies. The handbook should be reviewed on a regular basis and communicated and reviewed with all employees and managers. Doing so may avoid possible claims and litigation from non-compliance to many of the labor laws.

- **Policies and Procedures:** Check to ensure they are written, up-to-date, communicated, and are followed as stated rather than ad hoc. Policies and procedures may include disciplinary guidelines, performance and termination policies. All managers should be trained on them and use them consistently to avoid wrongful termination claims.
- **Position descriptions:** Ensure that they are updated as responsibilities change and as the business grows or changes in a significant way. They not only verify specific job responsibilities for proper exempt/non-exempt classification purposes (to avoid wage and hour claims) but also for ADA (Americans with Disability Act) purposes. Position descriptions also outline the workflow of a position.

Generally, an audit report is compiled with concerns listed in order of importance. The report should be reviewed by senior management and decisions on how to handle the issues should be discussed. If there are changes to be made, any of which affect the employees, they should be communicated along with the reasons for the changes. It is good practice to let the employees know that the company takes people issues seriously and will always correct any problem issues and concerns.

As a business owner, you perform audits of your financial records on a regular basis. Audits on HR compliance should be taken just as seriously. They may prevent litigation or legal challenges in the long run. Don't let your company become a victim to one of the many statistics mentioned above.