



HR 101 – What You Don't Know Can Hurt You

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Session Outline

- Defining Employment
- Fair Labor Standards Act (FLSA)
- At-Will Doctrine
- I-9/E-Verify
- Terms of Employment
- Personnel Files
- Policies/Procedures/Handbook
- Employment/Recruiting
- Fair Credit Reporting Act
- Interviewing Pitfalls
- Document retention
- FMLA
- Compensation
- Discrimination
- Harassment
- Terminations
- OFCCP
- Consistency – policy vs. practice

Defining Employment

- An economic relationship regulated by various government agencies (DOL, DHS, ERISA, EEOC, etc.)
- Employers may also be targets for non-employment government agencies (e.g. IRS, DSS, etc.)



FLSA - Fair Labor Standards Act

- **Minimum Wage**- \$7.25 per hour effective July 24, 2009
- **Child Labor** – be aware of different laws for different ages
- **Exempt vs. Non-Exempt** – determined by responsibilities, not titles
- **Employees vs. Independent Contractors**
- **Overtime**
- **Record Keeping Requirements** – requirements in personnel file (demographics, workweek, hours worked each day and each week, deduction regular wages, overtime wages, time and day of week workweek begins, etc.)
- **Very Costly**



At-Will Doctrine

- South Carolina employment is “at-will” – no fixed period of time and either party free to terminate at any time with or without reason
- Can be altered by a contract of employment by CEO or highest position within company
- Does not allow employers free reign on how people are treated
- All employment decisions must remain legal, defensible and in good faith

Form I-9

- New form effective March 2013
- Employee completes within 1 day of hire, Employer completes within 3 days of hire
- No documentation by Day 3 = No employment
- Documentation - Copies or no copies, consistency
- Employer cannot prescribe documents to bring
- Filled out correctly
- Filed separately
- Prepared for an audit?



E-Verify



- All SC employers are required to participate
- Complete employee verification within 3 days of hire
- 4 posters requirement – 2 English/2 Spanish
- E-Verify Confirmations filed with I-9 or Case File written on I-9 form
- Prepared for an audit?

Terms of Employment

- All SC employers are required to provide to new hire on Day 1 of employment
- Employee receives original, copy to Personnel File
- Indicates employee's terms – normal hours, wages agreed upon, pay date, work week, benefits, deductions, etc.
- Changes to terms should be provided to employee 7 days prior to effective change



Personnel Files

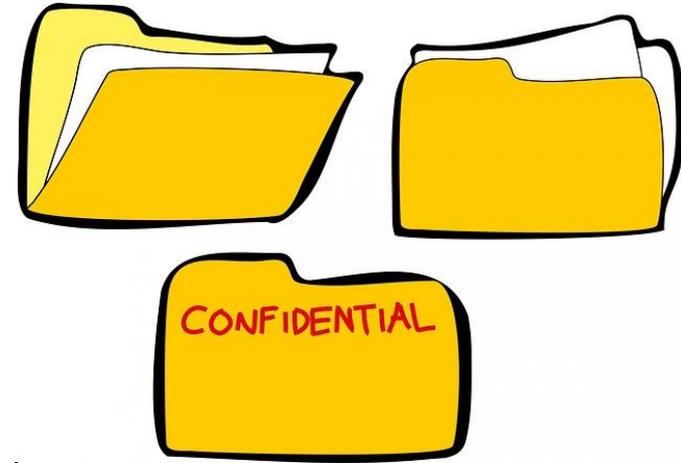
- Each employee should have 3 files – at a minimum
- **File #1** – Personnel – demographics, evaluations, pay changes, terms of employment, job descriptions, W-4, direct deposit, handbook receipts, etc.
- **File #2** – Confidential – benefits, insurance enrollments/waivers, releases/authorizations, results, doctor's notes, garnishments, etc.
- **File #3** – I-9, E-Verify



Personnel Files Maintenance

Recommended or Required items:

- Signed Offer letters
- Signed Agreements
- Signed Applications
- Terms of Employment
- Employee Information with emergency contacts
- W-4
- Direct Deposit
- Handbook acknowledgements (or separate policies)
- Benefits Enrollments or Waivers
- I-9 form
- E-Verify
- Other company specific forms



Policies/Procedures/Handbook

- Reviewed by attorney
- Collect acknowledgement pages
- Review areas where you may have limited ability to use discretion in making employment decisions
- Contain state and federal requirements - 2 pages, all bold, all caps, underlined at will statements
- Published, up-to-date, communicated, and are followed as stated rather than ad hoc (Policies vs. Practice)
- Training for managers, supervisors and employees
- Administered consistently



Employment/Recruiting

- Job Descriptions
- Testing – valid, reliable, consistent
- Drug Testing, Background, Credit Checks
- Interview Process
 - Consistently applied
 - Applications vs. Resumes
 - Interview notes and retention
- Interviewers
 - Trained
 - Legally compliant questions



Fair Credit Reporting Act

Regulates collection, dissemination, and use of consumer credit information:

Employers must:

- Run checks POST offer
- Obtain release/signature
- Provide contingent offers of employment
- Notify consumer of adverse action
- Identify the vendor providing report
- Provide employee opportunity to investigate, dispute, correct or delete inaccurate data
- Protect data in confidential file



Interviewing Pitfalls

Avoid Questions regarding the following:

- National Origin
- Religious or political beliefs
- Convictions
- Marital/Family status
- Age
- Race
- Gender
- Genetic Information
- Disabilities



Document Retention



- Know the rules for contents of Personnel Files – it could vary based on document
- Lilly Ledbetter Act – retention of documentation regarding pay
- Know the rules for I-9s – 1 year from term date or 3 years from hire date, whichever is later
- Purge all eligible documents as soon as possible

Family Medical Leave Act - FMLA

FMLA requires covered employers to grant eligible employees up to 12 weeks of unpaid leave in a 12-month period; job protection.

FMLA leave may be taken for:

- birth or adoption of an employee's child
- employee to care for a child, spouse or parent with a serious health condition
- employee is unable to work because of his or her own serious health condition

Eligibility:

- Works in a location with 50 or more employees within 75 mile radius
- Worked at least 12 months (does not have to be consecutive)
- Worked at least 1,250 hours during 12 month period preceding leave request
- Seeks leave to care for self, spouse, parent or child

Family Medical Leave Act - FMLA

Employers need to be aware:

- Burden is not on employee – Employer should ask employee if they need FMLA leave
- Time sensitive
- Required notices and forms
- Triangular impact of ADA, FMLA, and Workers Comp
- Ensure detailed tracking of times, doctor's notes, forms, etc.
- Intermittent medical leave
- FMLA component – military caregiver, qualifying exigency leave



- **FLSA** – classifications, overtime, etc.
- **EEOC** – Equal Pay Act
- Poster requirements
- Title VII
- Lilly Ledbetter Act
- Internal equity
- **External equity** - market comparisons
- Administration



Discrimination

- **Title VII of the Civil Rights Act of 1964** (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- **Equal Pay Act of 1963 (EPA)**, which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- **Age Discrimination in Employment Act of 1967 (ADEA)**, which protects individuals who are 40 years of age or older;
- **Title I and Title V of the Americans with Disabilities Act of 1990, as amended (ADA)**, which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
- **Sections 501 and 505 of the Rehabilitation Act of 1973**, which prohibit discrimination against qualified individuals with disabilities who work in the federal government;
- Title II of the **Genetic Information Nondiscrimination Act of 2008 (GINA)**, which prohibits employment discrimination based on genetic information about an applicant, employee, or former employee; and
- **Civil Rights Act of 1991**, which, among other things, provides monetary damages in cases of intentional employment discrimination
- **The Immigration Reform and Control Act (IRCA) of 1986** requires employers to assure that employees hired are legally authorized to work in the U.S. However, an employer who requests employment verification only for individuals of a particular national origin, or individuals who appear to be or sound foreign, may violate both Title VII and IRCA;
- **Pregnancy Discrimination Act (PDA) of 1978** provides that women affected by pregnancy, childbirth, or related medical conditions must be treated the same way as other individuals with temporary disabilities. Therefore, you can not be treated differently from any other employee with any other disability.

Discrimination

Under Title VII, the ADA, GINA, and the ADEA, it is illegal to discriminate in any aspect of employment, including:

- hiring and firing;
- compensation, assignment, or classification of employees;
- transfer, promotion, layoff, or recall;
- job advertisements;
- recruitment;
- testing;
- use of company facilities;
- training and apprenticeship programs;
- fringe benefits;
- pay, retirement plans, and disability leave; or
- other terms and conditions of employment.



Harassment

Form of discrimination that violates Title VII of Civil Rights Act of 1964, Age Discrimination in Employment Act of 1967, (ADEA), and Americans with Disabilities Act of 1990, (ADA).

Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

Sexual harassment – unwelcome sexual advances; requests for sexual favors; other verbal or physical conduct of a sexual nature

Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

**ZERO
TOLERANCE
POLICY**

ILLEGAL

Terminations

- Ensure consistency in determinations
- Ensure solid documentation in place
- Decisions reviewed by third party to ensure minimal bias and cool heads prevail
- Prepare separation packet, ensure term checklist is completed
- Have witness or third party present
- Policy for Payout – vacation, sick, PTO
- Benefits Administration – COBRA or State Continuation timeframes, 401(k), termination of benefits
- Exit Interviews – what do you do with results
- Evaluating Turnover – voluntary, involuntary, what do the numbers show
- Purge documents according to retention requirements



If conducting business with Federal government – governed under many additional regulations:

- Compliance investigations to maintain nondiscriminatory practices
- Affirmative Action Plans
- EEO requirements (posting, policies, etc.)
- Drug Free Workplace policy
- Additional government reporting requirements

Civil Treatment

- Treat your employees reasonably and fairly
- Focus your personnel policies and decisions on accomplishing your business goals
- Document, document, document – keep detailed records of all personnel actions. Most litigation is won from lack of or poor documentation.
- Assume good intentions – separate the deed from the doer



Consistency

- Policy administration should be consistent
- Ensure equitable treatment among employees – perception of inequity creates issues
- What is your policy?
- What is your practice?



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