

HR Insights

10 HR Practices that Will Help Protect Your Business

No matter what size company you are, chances are that at some point you will face a challenging HR compliance issue or employee situation that exposes your business to significant financial liability. This article discusses 10 HR practices that are relatively simple to implement and that go a long way towards protecting your business.



#1: Extend Written Job Offers

Written job offers are a great opportunity to start the employment relationship on a positive note. They also serve as legal documentation of the terms of the employment relationship – an important foundation to have in place should issues arise in the future.

Some **tips** for job offer letters are:

- Use the letter to welcome a candidate and to say how excited you are to have him or her join your team.
- Avoid words that could be perceived as an implied contract such as “guaranteed” and “annual” and make it clear that employment is at will. At will employment means the employee can resign at any time, for any reason, and the Company may end an employee’s employment any time, for any reason, with or without notice and with or without cause.
- Establish the timeframe for which the offer is valid and request the candidate to accept and sign the

offer within that timeframe (e.g., three or five business days).

- Create a standard offer letter form and have your attorney review it to ensure it contains language that will protect your business.

Checklist: What to Put in Offer Letters

- Basic job information:** Job title, job responsibilities, reporting relationships, and start date
- Compensation:** Base pay, whether paid on an hourly or salaried basis and when, eligibility for overtime, and if applicable, a description of bonuses and incentive compensation
- Benefits:** Benefits (e.g., health, retirement, and time off) for which the employee will be eligible and when, and cost to employee
- At Will Language:** A statement that all employment is at will (unless this is an executive or other position that will be under an employment contract).

#2: Have Employees Sign Confidentiality and Non-Solicitation Agreements

Confidentiality and non-solicitation agreements provide some protection against an employee sharing your proprietary information outside the company and soliciting business away from the company. Under the agreement, employees agree:

- To keep all proprietary information confidential
- To return all company documents upon terminating employment
- That all work and documents generated on the employer’s premises or on company equipment belongs to the company
- To not solicit or influence clients, vendors, suppliers, and others to not do business or to not continue to do business with the company while an employee and for a stated time period following termination of employment (e.g., one year)

For new hires, you can include the agreement language in the offer letter. If you have existing employees who have not yet signed an agreement, you can state that it is now a policy of the company to require an agreement and ask them to sign one. This is especially effective

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If you are rolling out a new employee handbook at the same time. Sample agreements are available from multiple sources but you should always have your attorney review a final draft of the agreement before asking employees to sign.

#3: Provide Employee Handbooks

While there are both pros and cons for providing employees an employee handbook, the pros far outweigh the cons. Among other things, an employee handbook:

- Protects your business from employee legal claims, including sexual harassment claims
- Sets expectations and rules for how you want employees to behave in the workplace
- Provides guidance to managers
- Serves as a valuable orientation tool for new hires

Some **tips** for developing and maintaining employee handbooks are:

- A handbook should comply with federal, state and local employment laws AND reflect your company's mission, values and culture.
- Update the handbook regularly – at minimum every two years.
- Always date all versions of the handbook and retain old versions on file in case you need to later refer to them for issues that arose during that time.
- Do NOT download a handbook from the Internet and distribute it. The handbook may not have been updated for new laws or changes to existing laws or it may contain language on laws that are not applicable to your company.

#4: Thoroughly Document Terminations for Performance

Dealing with performance issues can be frustrating for managers and employees alike. Here are a few important things you should know:

- Although Massachusetts is an at will employment state, it is important to be able to show that an employee was terminated for appropriate reasons. This is because there are exceptions to at will employment, for example, terminations that violate

nondiscrimination laws, public policy, and employment contracts (whether actual or implied).

- Thoroughly document performance issues, including conversations with the employee and others regarding the issues and steps taken to help the employee improve his or her performance. Terminating an employee without thorough documentation is potentially one of the costliest mistakes a business can make!
- If you decide to terminate an employee, consider offering severance pay in exchange for a waiver of discrimination and other claims. Note that when severance pay is contingent on a waiver of claims, the employee will be able to collect unemployment benefits while receiving severance pay. Make sure you have your attorney review the severance letter for compliance and protection purposes. Also, note that Massachusetts law requires that involuntarily terminated employees receive their final paycheck on date terminated, and that the final paycheck must include earned but not yet paid commissions and pay for accrued and unused time off.

Some **tips** for dealing with employee issues are:

- Don't ignore performance issues – try nipping them in the bud by talking with the employee.
- When talking with an employee, maintain your professionalism, provide specific examples of the issue, and what your expectations are for performance going forward. Treat the employee with dignity and respect.
- Consider implementing a progressive discipline policy if you have not already done so. If implemented, make sure the policy gives the company the right to skip progressive discipline for egregious behavior. In addition, follow the policy! If you don't, you further expose your business to potential liability.

#5: Complete and Maintain I-9 Verifications Correctly

Under federal law, companies may only hire individuals who can legally work in the U.S. – U.S. citizens, noncitizen nationals, lawful permanent residents, and aliens authorized to work in the U.S. To comply with

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the law, a company must verify the identity and employment authorization of each person they hire and complete and retain a Form I-9 that documents the verification. Failure to comply can result in civil fines, criminal penalties, and debarment from government contracts.

Form I-9 has three sections, the first of which is completed by the employee, and the second, by the employer. The third section is completed by the employer for certain rehires and others requiring recertification.

Checklist: Completing Form I-9

- Have the employee complete and sign Section 1.
- Review and make a copy of the documents provided by the employee for verification.
- Using the Form I-9 Instructions regarding documentation, complete and sign Section 2 of the Form. **Make sure you complete and sign the Form no later than three days from the employee's date of hire.**
- If based on documentation provided, recertification will be required, be sure to request new documentation from the employee and recertify timely.
- Staple copies of the documentation provided to the completed Form and file.
- Maintain all Forms for active employees in one single file – do not maintain the Forms in individual employee files. This way if you are audited you need not turn over employee files.
- Retain all Forms for terminated employees in a separate file from active employees. A terminated employee's Form I-9 must be retained for three years after the employee's date of hire or for one year after the employee's date of termination, whichever is latest.

Important Note: The USCIS (U.S. Citizenship and Immigration Services) published a revised Form I-9 on November 14, 2016. Employers may continue to use the 2013 version of the Form until January 22, 2017. After that, all employers must use the new Form.

#6: Maintain Accurate Employee Files

Several federal and Massachusetts employment laws require employers to maintain and retain certain information about active and terminated employees.

Regardless of whether you maintain employee files electronically and/or in paper form, accurate employee files provide a solid foundation if issues should arise.

Some **tips** for maintaining employee files are:

- Make sure access to the files is limited, for example, to an employee's manager or an HR manager. Also, develop a policy and rules for who and when access to employee files will be given.
- Make sure employee files are kept in a secure area and in locked cabinets or in secure electronic form.
- Be sure to maintain information such as job changes, pay changes, performance reviews, and other similar information in employee files.
- Do **not** keep the following information in employee files. Instead, file the information in separately maintained files:
 - Protected information such as Social Security numbers, age, race, gender, national origin, disability, and marital status
 - Medical information
 - Information received from background checks and reference checks
 - Results of drug tests
 - Form I-9s (see #5 above)

Note that here in Massachusetts an employer must allow an employee to review his or her file within five business days of receiving a written request from the employee and that the review must take place at the place of employment during normal business hours. In addition, a copy of the file must be given to the employee if requested within five business days.

#7: Classify Positions as Exempt or Non-exempt Correctly

Under the Fair Labor Standards Act (FLSA), an employee must be paid overtime at 1.5 times his or her regular pay rate for all hours worked over 40 in a workweek, unless the employee meets one of the FLSA exemptions. Failure to pay overtime can be one of the costliest mistakes a business can make. Thus, it is very important that positions be classified correctly to avoid issues. Classifying positions correctly requires in-depth

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knowledge and expertise and for this reason, we recommend having your outside HR/Compensation Consultant review them.

#8: Hire and Promote the Best

Businesses succeed through their people. Hiring and promoting the right individuals for your company drives the quality of your services and products, customer satisfaction, efficiency of your operations, and financial results. Yet, many companies have made bad hires and promoted individuals who fail, which are very costly to a business in terms of time and money spent on training, the impact these failures have on other employees, and the time and money involved in replacing bad hires or failed promotions.

Some **tips** on hiring and promoting the best are:

- Take the time to screen candidates and employees thoroughly, including conducting appropriate background checks.
- Before recruitment begins, review the job description and determine if it needs updating. In addition, think through the job requirements, including the competencies that make an individual successful in the job.
- When interviewing, ask about the individual's skills, education, and experience as well as questions that help you understand how an employee would handle different situations on the job. For example, if you were recruiting for an administrative assistant, you might ask "tell me how you organize your work" rather than "do you consider yourself organized." Also, ask questions that help you determine whether the individual is a good fit for your company's culture. For example, if your culture is team-oriented, ask behavioral type questions to learn more about whether the candidate is team-oriented.
- For individuals promoted, consider the job requirements, what strengths the individual will bring to the job, and any gaps for which the individual will need training to succeed. For example, if an individual is being promoted to a supervisory position and has no experience

supervising staff, that individual will need training and support to be successful.

#9: Develop an Onboarding Program for New Hires

Research has shown that onboarding programs significantly impact a new hire's success. Given the time and dollars spent on recruiting candidates, onboarding is a great way to protect your investment.

An onboarding program does not have to be expensive. The important thing is that there is a plan for orienting and training the new hire as quickly as possible so that he or she will be successful in the job. Examples of elements an onboarding program might include are a general contact person or "buddy" to whom the employee can ask general questions, meetings with employees with whom the new hire will be working most closely, taking the new hire out to lunch the first day, and follow-up/check-ins with the new hire after completing one week, one month, two months, three months, and six months of service with the company.

#10: Know What Employment Laws Your Company Is Subject to and Post Required Posters

There are many federal and state employment laws and many apply based on the number of employees your company employs. It's important to comply with these laws and to post required posters in areas where they will be seen by your employees. For an overview of the laws and posters required, visit our website at www.psandeassociates.com and go to the Resource page.

For more information or help with implementing any of the 10 HR practices discussed in this article, contact Pamela Sande & Associates at 774-251-3007. Also, visit our website at www.psandeassociates.com for more information.

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