



HR Compliance: Areas of Highest Risk for California Employers

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AN EMPLOYER'S WORKFORCE REPRESENTS one of a company's most significant and valuable assets. Whether that firm has two or two thousand employees, there are certain legally mandated internal practices which both the State of California and the Federal Government require all employers in California to follow. One way to help ensure the relationship between the employer and employees is successful and to comply with these laws is to voluntarily undergo a proactive audit of the company's HR policies and procedures. Using the expertise of an outside HR professional or organization to conduct the audit, provide written feedback of findings, and develop an action plan to rectify areas of deficiency is a proven solution to tackle these issues.

A voluntary audit can protect a company by identifying areas where it might be vulnerable to an employee lawsuit or an involuntary audit by an outside governing agency before any problems actually occur. The cost in both time and money of such an audit is relatively easy to justify when compared with the often high fees associated with defending, and most likely settling, a single employee-triggered lawsuit.

The trigger to an involuntary audit may simply be an anonymous phone call to one of the many overseeing governmental agencies by a current disgruntled employee, a former employee with an issue, a 1099 contractor who gets audited, or even a competitor seeking to gain some advantage. While the issue may never end up in front of a judge, the cost of diverting both time and money away from the business can be considerable and create bad public relations for the company. On the other hand, if the company has its practices and documentation in order, employee-initiated lawsuits can be

averted. At the very least, litigation can be mitigated to reduce cost, minimize the investment of time and successfully defend the case.

While an involuntary audit by a governing agency may be disruptive to the company and divert energy away from its primary business, if an infraction is found it may lead to a further, more in-depth audit. That in turn can potentially bring in other governmental agencies to perform their own audits. If that happens, a business may end up paying fines and penalties. If, for example, a misclassified employee is unearthed, back pay, taxes and penalties may also be involved.

An audit can help determine the effectiveness and efficiency of HR practices and whether or not they are aligned with business planning and strategy. It is also an opportunity to assess an organization's "HR best practices" as well as identify areas for improvement, what can be done more efficiently and where costs may be reduced.

The four types of voluntary HR audits covering specific areas of HR practices include:

- The **Compliance Audit**, which ensures compliance with an employer's legal HR obligations dealing specifically with areas like at-will employment, leaves and absences, COBRA, harassment, etc.
- The **Best Practices Audit**, which considers a company's procedures for disciplinary action and its documentation, practices for hiring and terminating, and performance reviews, among others to ensure that they are in alignment with court decisions or rulings in these areas.

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- The **Strategic Audit**, which ensures that HR specific areas in the company are aligned with its strategic goals. For example, the Strategic Audit reviews the company's benefits programs, hiring practices and training programs to make certain they are structured to attract and retain the best candidates for the company's long-term success.
- The **Functional Area Audit** is designed to look at very specific areas of HR such as 401(k) administration, health insurance programs, etc.

Once the decision for a voluntary audit is made and the appropriate resource is identified to conduct the audit, the initial set of fact-finding meetings will most certainly find that specific items from each of the four audit types are unearthed and will require further investigation to clarify or rectify.

Because of the potential legal and financial ramifications, the Compliance Audit is the one that most businesses voluntarily undertake as a first step. Some of the areas of HR practice that should be examined during a Compliance Audit include employee handbook/policies, recruiting selection process, new hire orientation, employee files (including proper completion of I-9 forms), properly written job descriptions, salary and wage administration, benefits programs and administration, performance appraisals, documentation of employee counseling or disciplinary action, employee training and development and termination procedures.

This list outlines only the basic areas of importance. There certainly are many more areas to consider. Some of the most common areas of non-compliance that we have found across a variety of companies are in the following areas:

Employee Handbooks

With the frequent change to state and federal law, it is wise to revisit employee handbooks at least annually or as significant events occur. While a handbook may seem a laborious effort to create and maintain, it is the one place that all of the company's policies, procedures and legal requirements for both the employees and employer are documented. After a labor attorney reviews the handbook, the document is distributed and an employee will sign an acknowledgement of receipt and for review of its contents. The employee cannot later claim being unaware of certain policies as everyone at the company receives the same document. This is an important legal defense if a dispute arises with an employee or an involuntary audit occurs.

I-9 Forms

Incomplete or incorrectly filled out I-9 forms happen when identification is obtained from an employee and no mechanism exists to track and re-verify the renewal of expiring work authorizations. In addition, the employer's section of the I-9 form generally is not completely filled out. Oftentimes, the employee's start date is left off, which can easily result in a fine for this slight oversight.

While there are myriad compliance issues surrounding the employee relationship, many companies feel they are in compliance with these laws when in fact they are not.

Employee Classification

Different rules govern whether an employee is salaried exempt or non-exempt hourly. This is an area where mistakes are easily and often made and many employers will incorrectly classify an employee based on title (e.g., manager) or by earnings. It is usually impossible to determine if someone is exempt based on pay or job title alone. This is where a formal job description becomes an invaluable document. Classifying employees exempt when they really should be non-exempt or hourly exposes the company to retroactive liability for overtime compensation and possible penalties.


Timesheets

Timesheets are generally non-compliant for non-exempt employees. Each day, employers must record employee start and stop times for shifts, meals and any unpaid breaks. Keep in mind these breaks are mandated by the State and may only be waived under certain circumstances.

New Hire Paperwork

New hire paperwork to be distributed is usually incomplete or missing. There are several forms that California employers are legally required to distribute to new employees. Confirmation of distribution can be recorded on a "New Hire Checklist." In addition, employment applications should be obtained from all job applicants and should be reviewed to ensure that no illegal or discriminatory questions are being asked.

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Including the expertise of a Human Resources professional as part of a company's inner circle of trusted advisors helps encourage an environment that nurtures growth, maximizes the company's ability to protect itself against employee-initiated lawsuits, aligns its hiring practices with the company's strategic plans, and better positions the company for long-term success. 

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