**EMPLOYMENT LAW…BUSINESS OPERATOR?**

**THIS IS WHY YOU ARE MOST LIKELY TO BE SUED.**



I was surprised to learn recently that 75% of all civil matters filed in the U.S. are employment related. The average settlement of these claims is $40,000. In 10% of the cases that go to trial, the judgment exceeds $1,000,000. And if you think you are in a solid conservative part of the country where you are insulated from these claims, know that good ol’ Texas has more employment law lawsuits than any other state.

Statistics evidence that the problems is becoming worse. The Federal Agencies overseeing employment issues (EEOC, NLRB, Department of Labor…) are now staffed with union and employee sympathetic/minded managers appointed by the Obama Administration. While running for office, President Obama pledged to pass union favorable laws, but he was unsuccessful in doing so. However, he has unilaterally amended the supporting rules and regulations that surround these laws. In addition, his administration has created new employee favorable definitions to previously settled terms and meanings. One recent judge ruled that “at will” employment was no longer legally permissible.



**Here are ten (10) recommendations that should help you avoid future employment related lawsuits:**

1. Make sure your “salaried/exempt” employees meet the definition for such. If not, a disgruntled employee may be able to successfully collect back overtime pay. All full-time employees making less than $23,660/year\* are non-exempt hourly. Do not deduct pay from exempt employees for missing part of a work day or for substandard performance. If you do, you just made them “non-exempt;”
2. Hire from a broad pool of applicants. If all your employees are hired via word of mouth, you’ll likely have a group that share the same race, sex, and other affiliations;
3. During interviews, only ask questions directly related to the job functions. Questions about age, relationship status, kids, and health are dangerous. Keep interview notes, but never write funny remarks or note comments about physical appearance;
4. Stay small. Many federal laws, such as the American with Disabilities Act and the Family Leave Act, don’t apply to employers with less than 15 employees;
5. Criminal background checks, as well as employee skill /knowledge and drug tests are good ideas, but must be job related. Pre-employment medical exams aren’t allowed;
6. Have clear written workplace and employment rules. Consistently enforce them;
7. When you make an employment offer, due it in writing and include that the job is “at will.” Also add that all computer communications at work will be monitored;
8. Know that the EEOC, NLRB, and Department of Labor are **not** neutral arbitrators of employee disputes. Their budgets are dependent upon showing how many employees they helped and how big their awards were. If these agencies contact your business, seek counsel immediately, and before responding to the agency;
9. If there is an allegation of sexual harassment, investigate it immediately (<24 hours). And then exercise the “two strikes and you are out” rule; and
10. Don’t label workers that are “employees” as “independent contractors” unless they meet the definition of such. The Department of Labor is actively looking for violators of this rule as they see it as a revenue loss for the government.

\**This dollar amount is periodically adjusted and may be higher than the amount shown at the time of this printing.*

These are just a few ideas on how to reduce your risk of being sued for an employment related matter. If you’d like information on helping define if a worker is an employee vs a contractor, or exempt vs. non-exempt, then send me an email and I’ll forward you information on these issues.

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