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IN BRIEF

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EMPLOYMENT PRACTICE CHECKUP

Managing employees and complying with all the legal requirements associated with a company's Human Resources (HR) function is important for any small business. Much of a business' potential liability for employment-related claims and litigation can be reduced or even eliminated by implementing a few simple HR policies and practices. The following article discusses just a few of the areas you can examine to tighten up your HR practices and protect your business from potentially expensive employee claims.

Does your Business Display All Required Federal and State Employment Disclosures?

All Illinois Employers must post notices informing its employees of their rights under certain state and federal employment laws. The required Illinois and Federal postings can be accessed at the following website:

<http://www.state.il.us/agency/idol/posters/poster.htm>

The postings required for your business depend upon the specific laws applicable to your business, which are typically determined by the number of your employees. These notices must be posted in a place that is easily accessible to and frequented by employees, such as employee lunchrooms or time clock areas.

Does your Business Have an Employee Handbook or Other Means to Convey Work Rules and Policies to Employees?

Having a current and comprehensive employee handbook is an important risk management tool for any employer. Written policies that are communicated to employees and consistently and uniformly applied are your first line of defense against

employment-related claims. Every employer should have an employee handbook or, at a minimum, individual policies in place addressing the most important areas of concern. Some important areas where policies should be implemented include, but are not limited to, the following:

- All employers should have an anti-harassment / anti-discrimination policy that establishes a clear reporting procedure for employees to follow if they believe they have been harassed or discriminated against. In addition, responsible supervisory employees need to be trained to properly accept and respond to any employee complaints of discrimination or harassment.
- If your employees have access to business secrets, financial information or other proprietary or confidential information relating to your business, a policy should be in place setting forth guidelines for the protection, use and disclosure of such information. In certain situations you may consider using separate confidentiality agreements for specific employees that have access to potentially valuable confidential or proprietary information.
- To manage risks arising out of employee use of company technology, all employers should have an electronic communications policy setting forth clear rules for employee use of employer provided computer and cellular technology as well as establishing guidelines for the use of employee owned devices in the workplace.

Are your Internal Employment Forms and Hiring Procedures Up to Date With Current Law?

If the Job Applications and related forms and procedures used by your business in the hiring process have been in use for a number of years, it is possible that those forms, as well as your application procedures, are not in compliance with current state and federal laws. When an employee's personnel files are requested in the course of employment litigation, shortcomings in your forms and related hiring practices can strengthen an employee's claim. A periodic legal review and update of your applications, forms and procedures provides a good safeguard against liability arising out of possible non-compliance.

Do You Have a Procedure for Documenting Employee Conduct and Performance Issues?

A written record of all employee disciplinary actions, large and small, should be created at the time the action is taken and retained in the employee's personnel file. This type of recordkeeping process is valuable in two respects. First, it will assist you in proving cause and/or the absence of discriminatory intent if you are required to discipline or terminate an employee.

Secondly, it assists an employer in establishing that it treats its employees uniformly. Evidence of uniform treatment and application of appropriate employment policies is very helpful in defending employee discrimination claims.

Do You Maintain Consistent and Complete Employee Records?

In addition to documentation of Employee disciplinary and performance matters, your employee personnel files should contain most, but not all, important job-related documents. Personnel files should be consistently maintained with the content of the file varying little from employee to employee. Items typically kept in a personnel file include an employee's:

- Current Job Description
- Job Application or Resume
- Offer of Employment
- IRS Form W-4 (Withholding Certificate)
- Receipt of acknowledgement of Employee Handbook
- Performance Evaluations
- Employee Benefit Plan Elections
- Emergency Contact Information
- Complaints from Customers or Co-Workers
- Awards or other acknowledgement of Excellent Performance
- Attendance Records and Evidence of Training
- Written Warnings or Disciplinary Actions
- Records of Attendance or Tardiness
- Copies of All Employment Related Contracts (for example, Confidentiality Agreements, Non Competes, or agreements related to use of employer provided property)
- Documents relating to the Employee's departure from the Company (reasons for separation or termination, unemployment documents, health insurance continuation notices and elections, etc).

Personnel files should not include any medical related records or information that are subject to HIPPA confidentiality protections. Those documents should be maintained in a separate secured environment to ensure required confidentiality is maintained. Also, your personnel files should not include the employee's form I-9. The I-9 is a form required by U.S. Citizenship and Immigration Services (USCIS) that must be completed by each employee and retained by the employer. These should be kept in a separate file so that they can be inspected by USCIS without giving the inspector access to an employee's file and other information retained therein and avoid the possibility of additional questions or investigation.

We would be happy to help you with any employment related question you may have. Please contact us if we can assist you or

your business in any way.

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The Law Firm of Mahoney, Silverman and Cross, LLC strives to provide superior legal representation with the objective of exceeding our clients' expectations. Each member of our firm is committed to utilizing critical analysis and innovative approaches to achieve timely resolutions with the best possible results for our clients.

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