

## **Nine Tools to Implement to Achieve Labor Law Compliance**

These nine strategies you can implement immediately to limit your risk and exposure to employee labor lawsuits. Useful tools are provided to you to use as checklists, tips and worksheets.

### **Make Sure Employees Take Meal and Rest Breaks**

One way to ensure such is to pre-print the following statement upon on all timecards, "I hereby certify that [insert employer name] has made a 30 minute meal period available to me that and I have been afforded the opportunity to take such period free from [insert employer name] control."

Employers cannot impede, discourage or dissuade employees from taking rest periods; they need only provide, not ensure, rest periods are taken. It is the employer's responsibility to track employee's work hours and to maintain all records, even if using an outside payroll or administrative agency. For a further detailed discussion, See Strategy #1 on the 5 Strategies to Avoid Being Sued by Your Employees and Meal Break Checklist for Employers © 2013 Tamara L. Harper.

### **Have an Effective Employee Handbook**

A written at-will employment policy is enormously useful in litigating wrongful discharge claims because it can rebut an employee's claim that he or she could be fired only if your company had good cause. It is also the law in California. Without a written policy manual, or employee handbook, or even a poorly drafted one, you are at a disadvantage to defend yourself when faced with a lawsuit based upon your policies, procedures, or accusations of discrimination or sexual harassment. See Strategy #5 on the 5 Strategies to Avoid Being Sued by Your Employees © 2013 Tamara L. Harper.

### **Required Employer Posters**

Make sure all of your labor law compliance postings as required by the State and Federal Government are posted and your appropriate Industrial Welfare Commission Order and Sexual Harassment Pamphlet are posted in a conspicuous place in your workplace where all employees can refer to such. Some local cities have their own employment requirement notices as well, such as San Francisco, CA. For a good link to find a "20 in 1 poster" that includes all 20 required notices on one poster, click here. You can download at no charge the Welfare Industrial Order from the Department of Industrial Relations by clicking here.

## **Maintain Employee Files Correctly**

Make sure you have an employment file created for each individual employee and independent contractor. Applications, independent contractor or employment agreements, disciplinary actions, Form W-2, and other related employment documents may be filed within this file. Create a second and separate employment file for each employee that has health information to be filed such as Medical Releases, Drug Test Results or Medical Screening Results, Pregnancy Disability Leave doctor notices or any other medical information.

Employee health information must be filed in a separate file and not kept together with their employment file in order to satisfy the requirements of the Health Insurance Portability and Accountability Act (42 U.S.C. Section 1320d) (HIPAA) and the California Confidentiality of Medical Information Act (Civil Code Section 56 et seq.) (CMIA). If you are served with a Subpoena Duces Tecum for an employee's employment file, contact your employment or labor law counsel immediately. Form I-9 should not be filed within an employee's file. The practice of photocopying employee work and identity documents can lead to copyright violations, illegal photocopying of official documents and confidentiality violations. Please seek the immediate advice of employment law counsel, if it is your practice to do such.

## **Implement Mandatory Form I-9 Program**

All U.S. employers are responsible for completion and retention of Form I-9 for each individual they hire for employment in the United States. On the form, the employer must verify the employment eligibility and identity documents presented by the employee and record the document information on the Form I-9. The list of acceptable documents has been amended in the 2012 version of the Form I-9 and can be found on page 4 of the forms. Form I-9 is not filed with Department of Homeland Security and must be kept by the employer either for three years after the date of hire or for one year after employment is terminated, whichever is later. The form must be available for inspection by authorized U.S. Government officials (e.g., Department of Homeland Security, Department of Labor, Office of Special Counsel). Failure to complete this form at the time of hire for each employee subjects an employer to substantial fines and penalties. Form I-9 should be kept in a separate file and independent of the employee files. It is recommended that they be kept with your important payroll records and sorted by year.

## **Make Sure Your Corporate Entity Record Books are in Order**

Whether or not you operate as a Corporation or Limited Liability Company, there are annual requirements in addition to filing tax returns. An annual Statement of Information must be filed with the California Secretary of State. If you do business in other states, you may be required to file and register as a foreign corporation and must comply with that foreign states' annual regulatory filings. Annual Board of Director and Shareholder Minutes are to be prepared in addition to appropriate corporate resolutions for certain actions. To ensure the liability protections that a corporation or limited liability company can provide, these practices must be complied with in addition to not commingling personal finances with the corporation. Each corporate entity must be adequately funded initially and not used for personal expense purposes. It is suggested that you meet with your CPA at least three months prior to your year end to make sure accounting issues and finances can be dealt with prior to the end of your fiscal year. It is further suggested that your corporate counsel handle the annual corporate governance to ensure proper compliance to avoid personal exposure of your assets in the event of a lawsuit. If you have not had your corporate records book reviewed by counsel, now is the time to do such. In the event you are served with a lawsuit, your corporate records compliance will be in issue when the opposing party seeks to attempt to "pierce the corporate veil" and name the individual owners personally in an effort to reach personal assets. Tamara L. Harper, Esq. reviews corporate records to ensure corporate governance on a regular basis and is in a position to render quick opinions and recommendations to bring your records in compliance.

Tamara L. Harper, Esq. has written an article entitled, "The Myths of Corporation Formation and Compliance" that provide further in depth analysis and detail of this topic. This article will be provided to you a not charge by sending an email to Tamara L. Harper and requesting such.

## **Correctly Classify Salaried Employees**

An employer cannot just call a position exempt or give an employee an exempt "sounding" job title. In order for the position to be truly exempt, several criteria as set forth by California law must be met. There is critical and detailed analysis to be made for each exemption claimed, whether it is for a salesperson, administrative position, computer professional, executive/managerial position, or professional. Tamara L. Harper, Esq., uses a worksheet for each of the above type classifications in order to determine if the position is truly exempt. The worksheets are quite

detailed. Each position has separately defined criteria and a different worksheet. Please contact Tamara Harper, Esq. directly to discuss the availability of these worksheets as they are specific to each particular situation and not for general use. This area has high potential for employer liability.

### **Correctly Determine Independent Contractors**

Each agency (Franchise Tax Board; IRS; Labor Commissioner; Employment Development Department; Worker's Compensation etc.) defines an independent contractor differently and it is almost impossible in California anymore to truly have an independent contractor that meets all of the criteria for each agency. This is another area that has high potential for employer liability and should be discussed on a case by case basis with your California employment attorney.

### **Make Sure Commission Payments or Piece Rate Payments are Properly Paid**

Payment of commissions upon termination and charge backs of unearned commission advances is a very complicated area of law with many challenges. If you have anyone you pay on a commission only basis, it is recommended that you seek the advice of labor law counsel, as there are minimum wage factors to be considered in addition to possible overtime issues.

You must pay sales commissions earned by outside salespersons no later than when you receive the money for the sale from the buyer. This rule prevails even after the outside salesperson leaves the company. Commissions are considered wages and thus are subject to the normal rules regarding timing of wage payments. If your commission plan delays payment of commissions until payment for a sale is received from a customer, and the time period for them to cancel has lapsed, the Labor Commissioner has exempted these wages from the normal final wage payment deadlines. You may continue to pay out commissions to a former employee after the employment relationship ends. However, the law is unclear as to whether you must send the former employee a check each time a customer pays for a sale that he/she has made, or whether you may continue to pay him/her on the normal pay schedule for all customer payments made within that period.

If you have the payment structure set up with a charge back provision for a long period of time, it may be a violation of the law. The withholding of commission payments earned upon termination in order to determine whether or not you need to charge back to the commission earned is

illegal. Should this event arise, I recommend that you put the employee on administrative leave with pay, pending a discussion with California employment counsel, and then chose to terminate once the issue is sorted through on a case by case basis.

Staying in compliance with California labor laws is overwhelming. Tamara L. Harper understands how you all feel, as she is an employer too. Many of her clients felt the same way too before they worked with her. Ms. Harper's clients have found as a result of working together, they feel confident in the final outcome of their situation.

Tamara L. Harper's unique competitive advantage is that she is very approachable as an attorney, which makes her clients feel at ease and in capable hands and further brings twenty years of litigation experience as a trial attorney to the drafting table.

Tamara Harper, Esq. is an aggressive fighter that is reliable and ethical. Ms. Harper not only offers quality work, but enjoys a good location in Westlake Village, California. Tamara L. Harper prides herself on her good personal and business relationships with clients, and uses her insight and knowledge to obtain successes for each client.

Tamara L. Harper, Esq., offers you the opportunity to be proactive in offering these nine strategies you can implement immediately to limit your risk and exposure to employee labor lawsuits. Useful tools are provided to you to use as checklists, tips and worksheets. However, should you face an employee lawsuit or Department of Labor or Department of Labor Standards Enforcement audit, I am here to represent you and advocate your interests.

Ms. Harper's goal is to help navigate employers to safe harbors through the maze of employment regulations, give them peace of mind and advocate their best interests should they experience the painful process of employment litigation.