

2011 HR Checklist for the New Year

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While the beginning of the new year can be a little less demanding for most employees, it is one of the busiest times for

human resource professionals. Employers can expect increased regulatory oversight and rulemaking initiatives in 2011,

particularly with the federal government. They can also expect increased employment litigation, especially collective or

class filings in wage and hour.

With this in mind, following is a checklist of specific human resource (HR) items you may want to pay special attention

to in 2011. Upcoming columns will explore some of these concerns in greater detail.

1. Classify non-employees correctly.

State and federal legislation and agencies continue to target misclassification of workers in three categories:

(1) independent contractors, (2) unpaid interns and trainees, and (3) volunteers. Misclassification of workers is one of

the biggest bases for employment-related lawsuits. The U.S. Department of Labor (DOL) estimates that one in three

employers misclassifies workers. Make sure you are not one of these employers.

2. Evaluate your compliance with federal and state wage and hour laws.

In 2010, the U.S. Department of Labor hired hundreds of new investigators for its Wage & Hour Division. Federal wage

and hour audits are up, and state agency investigations are on the rise (despite frequent mandatory furlough days). Additionally,

attorneys for employees have been aggressively pursuing class action lawsuits in the wage and hour area, particularly

in Oregon where the penalties are steep. Accordingly, HR should consider the following steps:

- Conduct training sessions for supervisory employees to ensure, to the extent possible, a basic understanding of the requirements of the federal wage and hour law (Fair Labor Standards Act or FLSA) and state wage and hour laws. At a minimum, training should cover (1) the prohibition of employees working off the clock and not reporting their time for pay purposes, particularly overtime pay; (2) an understanding of the state requirements to provide paid rest breaks and an uninterrupted 30-minute meal period for non-exempt employees; and (3) a practical confirmation that your employees are properly classified as either exempt or non-exempt.
- For Oregon employers, remember that the state meal and rest break rules probably apply to your employees, unless it is appropriately waived by a labor agreement or meets one of the few exceptions. Review how meal and rest periods are being implemented throughout the organization to ensure that employees who are

not compensated for meals are receiving an uninterrupted 30-minute break as required by both the FLSA and state law.

- Meet with the payroll department to ensure that hours worked by non-exempt employees at various facilities are aggregated or counted toward the 40-hour workweek (or the 8 and 80 workweeks for certain healthcare facilities) for overtime pay calculations as required under the FLSA and state law.
- Beginning January 1, 2011, Oregon's minimum wage increases to \$8.50/hr, Washington to \$8.55/hr and the federal minimum wage remains at \$7.25/hr. Work with payroll to ensure that all required employee pay is being properly included in the base rate for overtime pay calculations. This is especially important for employers who provide a base hourly rate in addition to other considerable pay in the form of shift differentials, non-discretionary bonuses, incentive pay and other types of compensation not specifically excluded by FLSA or state regulations.
- Review policies related to travel time, training time, time-clock rounding, attendance at educational programs and other pay-related issues to ensure compliance with wage and hour laws.
- Finally, consider conducting a wage and hour audit to enhance good-faith compliance with federal and state laws. Such audits can be coordinated on a system-wide, facility, or department unit basis. Consider involving your favorite attorney in the audit to gain the protections of the attorney-client privilege.

3. Enhance efforts to comply with the federal and state family medical leave regulations and rules.

With the recent 2010 notice requirements in effect for the Oregon Family Leave Act (OFLA), it is important to pay particular attention to those new provisions or clarifications, how they coordinate with the federal Family Medical Leave Act (FMLA), and HR requirements to provide proper written notice and follow-up to every employee on family medical leave.

4. Review applications, handbooks, posters, job descriptions, etc.

Out with the old and in with the new. Employment applications and employee handbooks should definitely be reviewed for this year. 2010 was a banner year for policy changes at the federal and state level. Remember to incorporate the FMLA military provisions. Remember, too, the state military family leave laws related to the deployment of a spouse or registered domestic partner, and the requirement to provide leave and safety accommodations for certain victims of domestic violence. Employment posters should be updated for most employers in 2011. At some point this year, think about checking up on the company's job descriptions – although they are not legally required, they are extremely valuable

for recruiting, training and performance evaluations. In addition, they are critical in the evaluation of disability accommodation needs. And while you're at it, remind managers to finish performance evaluations for their employees so that raises can be incorporated into the payroll system.

5. Strengthen awareness of Affirmative Action plan and other requirements that apply to federal contractors.

Although the affirmative action plan requirements that apply to federal contractors and subcontracts are not new, the budget for enforcement is. With the increased federal stimulus dollars, the expansion of who qualifies as a "federal contractor," and new enforcement initiatives by the DOL's Office of Federal Contract Compliance Programs (OFCCP) with respect to federal contractors, it is especially important for employers to determine whether they have federal contracts and understand the new requirements for federal contractors (for example, the OFCCP has proposed regulations requiring affirmative action for applicants and employees with disabilities, is working on new regulations relating to veterans, and now requires that covered contractors and subcontractors use of the federal government's E-Verify system).

- At a minimum, review federal contracts and other sources of federal funds to determine if the company is a contractor or subcontractor subject to the regulations enforced by OFCCP, and understand that many HR-related requirements are associated with the regulations enforced by OFCCP.

6. Understand the implications of the new Genetic Information Nondiscrimination Act (GINA).

Review requirements of the new GINA regulations to ensure the company is in full compliance with this new law.

GINA prohibits employers and health insurers from discriminating on the basis of genetic predisposition to illness and disease, including a prohibition on gathering information about family history of illness. The DOL Employee Benefits Security Administration (EBSA) has issued guidance on Title I of GINA and how it affects employer group health plans and insurance providers. The EEOC has published November 9, 2010, final rules on Title II of GINA, which prohibits using genetic information in employment decisions.

7. Look for increased "social networking" employment issues.

With the increase in popularity of Linked-In, Facebook, blog sites and texting, HR should be prepared for new and increased HR concerns related to social networking in the workplace.

- Modify or redraft confidentiality policies to include coverage of special networking sites like Twitter, Linked-In, Facebook, etc.
- Educate your managers and staff about policies and procedures regarding social networking, and communicate clearly to employees that public posting of proprietary or confidential information (or patient information for

healthcare facilities) on such sites will be subject to review and place the employee in a potential disciplinary situation.

8. If unionized, review HR policies for compliance with recent NLRB decisions.

With the newly instituted National Labor Relations Board (NLRB), unionized employers can expect increased scrutiny of HR policies and practices for compliance with the latest NLRB decisions about use of company emails, the definition of independent contractors, solicitation and distribution, and loitering.

9. Train supervisors and managers in anti-discrimination practices.

The beginning of the new year is a good time to dust off your anti-harassment and EEO policies and remind supervisors

and managers of their duties to insure compliance with “appropriate” conduct under the workplace conduct policies.

Remember that discriminatory pay practices that affect pay and other compensation are under particular scrutiny by the

EEOC due, in large part, to the Lilly Ledbetter Fair Pay Act.

10. Review potential HR issues connected with healthcare reform.

Healthcare reform presents many challenges for HR in the new year. If you offer your employees health benefits, add

the following items to your “to do” list (or check them off if you’ve already attended to them):

- Determine your “plan year,” so you know when the new rules will take effect
- If your health plan is insured (not self-insured) determine whether your plan is “grandfathered.” If your plan is insured but isn’t grandfathered –
 - *Immediately* review the new rules that prohibit discrimination in favor of highly compensated individuals.
 - Speak with your advisors about new rules regarding emergency services, primary care physicians, preventive care and claims appeals
 - Even if your plan is grandfathered, speak with your advisors about new rules regarding coverage of employees’ children up to age 26, changes for annual and lifetime dollar limits and retroactive cancellation of coverage.
 - Give notice to employees about changes to dollar limits and coverage of older children and of new rule prohibiting payment for non-prescribed over-the-counter medicines after December 31, 2010.

Finally, take it easy. Ring in 2011 with hope and peace. It’s a new year. Unless there is a potential HR fire on the horizon,

tackling one HR policy per month to review and update may be a more realistic goal than a full-on assault.