HR Audit Checklist

- **Employment Application and Background Check Documentation**
  - Ensure that the application contains appropriate language to minimize exposure to negligent hiring and employment-at-will liability.
  - Review the application to confirm that it complies with applicable nondiscrimination laws.
  - Confirm compliance with rules pertaining to criminal background inquiries, including federal and state Fair Credit Reporting Act laws, and industry-specific regulatory background check rules.

- **Interviewing**
  - Review scripts, guidelines, lists, or forms for interviewing applicants to ensure that only permissible questions are asked.
  - Ensure that managers are consistent in terms of the questions that they ask of applicants.

- **Offer Letters and Employment Contracts**
  - Review offer letters and employment contracts to guard against the creation of express or implied agreements.
  - Make sure that existing employment contracts comply with federal and state laws, including Section 409A of the Internal Revenue Code.
  - Determine whether restrictive covenant agreements should be provided along with offer letters, and whether offers of employment should be contingent upon execution of such agreements.

- **Employment Handbook and Policy Manual**
  - Review or create, as appropriate, handbooks and manuals to ensure compliance with applicable federal, state, and local laws, including updates to such laws.
  - Confirm that handbooks and manuals minimize exposure regarding employment-at-will and other federal and state laws governing the workplace.
  - Ensure that updates reflect technological advances in the workplace.

- **Corporate Compliance and Codes of Conduct**
  - Within the scope of corporate compliance, review codes of conduct, including conflict-of-interest policies.
  - Ensure your organization’s interests are protected to maximum extent possible.
  - Ensure codes comply with applicable federal, state and local law, regulations and best practices.

- **Postings and Notices**
  - Ensure that your organization complies with all federal, state, and local laws pertaining to the posting of workplace notices.

- **Job Descriptions**
  - Make sure that job descriptions exist, as they are key to demonstrating essential job functions under the Americans with Disabilities Act.
  - Ensure that job descriptions accurately explain job functions and distinguish essential from nonessential functions.
  - Confirm that job descriptions accurately reflect the day-to-day functions of the applicable job.

- **Employee Benefit Documents**
  - Review employee benefit documents to ensure compliance with the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and other related federal and state laws, including new requirements under health care reform.

- **Immigration Forms**
  - Ensure that Forms I-9 are filled out for every person hired, and kept for three years or one year following termination of employment, whichever is longer.
  - Prepare and retain public access files, audit files, and other immigration documents for appropriate time periods.

- **Wage and Hour Matters**
  - Review classification of employees as exempt or non-exempt to ensure compliance with wage and hour laws and payment of overtime.
  - Confirm that no employees are misclassified as contractors.

- **Personnel Files**
  - Review personnel files to ensure that they are appropriately maintained (e.g., where the law requires information to be kept separately, such as medical records, make sure that your organization does so).
  - Ensure that there are sound procedures to control access to personnel files and protect confidentiality.
  - Confirm that your organization complies with any applicable personnel file laws.

- **Recordkeeping Requirements**
  - Review recordkeeping requirements with respect to employment and employee benefits matters to ensure compliance with federal and state laws.

- **Affirmative Action Plans**
  - Determine whether affirmative action plans are required.
  - If such plans are required, ensure that they are “narrowly tailored” to meet their objective.
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- **Waiver and Release Agreements**
  - Review waiver and release agreements to ensure compliance with applicable laws and that the organization’s interests are protected to the maximum extent possible.

- **Performance Review Forms and Disciplinary Forms**
  - Review these forms to protect the organization’s interests, avoid the creation of implied contracts, and ensure that the organization’s right to discipline or terminate employees is not restricted.

- **Manager Training**
  - Ensure that managers have been trained with respect to the organization’s policies and procedures.

- **Employee Training**
  - Make sure that employees have been trained with respect to their rights and responsibilities under the organization’s equal employment opportunity policy and complaint procedure.

- **Whistleblower Issues**
  - Ensure compliance with applicable regulatory and licensing requirements.
  - Make sure that your organization maintains an appropriate internal complaint mechanism.

- **Restrictive Covenants**
  - Ensure that, where appropriate, agreements and/or policies are in place to protect the organization against solicitation by former employees of clients and employees.
  - Confirm that non-competition agreements are narrowly tailored to protect the organization’s interests.

- **Intellectual Property**
  - Ensure that the organization’s intellectual property is adequately protected.
  - Confirm, if desired, that the organization will own employees’ intellectual property created during employment.
  - Update agreements frequently to keep up with changes in technology.

- **Search Firm Agreement Review**
  - Review applicable search firm agreements with third parties.
  - Check for any preferred recruiter arrangements.
  - Determine whether any firms are on retainer.

- **Mediation / Arbitration Agreements**
  - Determine whether employees should be subject to mediation and/or arbitration or disputes.
  - Review existing agreements to ensure compliance with federal and state laws.

- **Commission Agreements**
  - Review agreements to ensure compliance with state law.
  - Confirm that terms are well-defined, and that agreements clarify whether commissions are due post-termination.
  - If so, determine whether procedures for post-termination payments are clear.
  - Determine whether written agreements are required (if not required, written agreements are recommended in any event).

- **Required State Law Forms**
  - Consider utilizing required state law forms or templates relating to the workplace (e.g., templates for wage notices under New York State Labor Law Section 195.1, issued by the State’s Department of Labor).
  - Alternatively, if you choose to create your own forms or templates, ensure that they contain all the information required by the relevant state law.

- **Salary, Bonus, Other Compensation, and Performance**
  - Review salary, bonus, compensation, and performance information, including pay range for different grades, frequency, and timing of salary reviews, correlation of increases to performance, and performance evaluation procedures.
  - Ensure compensation practices are explained clearly.
  - Review incentive compensation and equity compensation to ensure compliance with Section 409A of the Internal Revenue Code and applicable federal and state tax, wage withholding, and securities laws.
  - Ensure commissions and compensation methodologies promote compliant business behavior, and do not inadvertently promote noncompliant behavior.

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This HR Audit Checklist has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice.