

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 ban-the-box laws, credit check laws, federal and state Fair Credit Reporting Act laws, and industry-specific regulatory background check rules.
- Ensure compliance with applicable salary history inquiry bans.

Interviewing

- Review scripts, guidelines, lists, or forms for interviewing applicants to ensure that only permissible questions are asked (e.g., avoiding salary history inquiries, where prohibited).
- 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.
- Confirm the offer is contingent upon successful completion of any applicable processes/tests (e.g., criminal and/or credit checks, drug test, etc.).
- Ensure choice of law and jurisdiction provisions will be enforceable.

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.
- Consider whether separate handbooks or local practices sections are desired or appropriate.

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 and forms to be provided to employees at time of hire or at other times throughout employment (e.g., wage theft, sick leave, and pregnancy accommodation).

Job Descriptions

- Prepare job descriptions, as they can demonstrate essential job functions under the Americans with Disabilities Act and justify exemption designations.
- 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.
- Ensure compliance with federal, state, and local laws pertaining to wage payment, including timing of paychecks (including pay on termination).
- Review and comply with any applicable scheduling and/or flexible working arrangement laws.

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 of personally identifying information.
- 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, state, and local laws.

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Government Contractor Requirements

- Determine whether affirmative action plans, pay transparency, voluntary self-disclosure, or other policies/procedures are required.
- If affirmative action plans are required, ensure that they are "narrowly tailored" to meet their objective.

Waiver and Release Agreements

- Review waiver and release agreements to ensure compliance with applicable federal, state, and local laws, any applicable regulatory requirements, 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 and Staff Training

- Ensure all employees are trained regarding their rights and responsibilities under applicable equal employment opportunity laws, policies, and the organization's complaint procedure.
- Train managers with respect to harassment and general liability avoidance (note that certain jurisdictions require harassment avoidance training for managers).

Pre-Employment Testing

- Review pre-employment tests to ensure they do not run afoul of rules pertaining to validation, drug testing laws, or limitations on medical tests.

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 and are permissible under applicable law.
- Consider including references to applicable laws pertaining to trade secrets in order to gain certain additional protections.

Protection of Intellectual Property ("IP")

- Confirm, if desired, that the organization will own employees' and other workers' IP created during employment or any other relationship.
- Update agreements to keep up with changes in technology and federal and state and local IP laws (e.g., the federal Defend Trade Secrets Act).

Review of Job Advertisements/Recruiting Materials

- Ensure advertising/recruiting materials do not contain requirements or other statements that are unlawful in the applicable jurisdiction (e.g., those pertaining to current employment status and criminal history).

Search Firm Agreement Review

- Review search firm agreements to confirm requirements and arrangements are up to date, determine whether any firms are on retainer, and ensure certain provisions (i.e., those pertaining to indemnification, background checks, and EEO compliance) contain sufficient protections.

Mediation / Arbitration Agreements

- Determine whether employees should be subject to mediation and/or arbitration of disputes, and if so, whether any exceptions are warranted, and that provisions comply with federal/state law.
- Consider class action waivers.

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, and 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).

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 do not inadvertently promote noncompliant business behavior.
- Consider reviewing compensation policies/procedures for compliance with applicable equal pay laws.

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