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FASTEST-GROWING PRIVATE COMPANIES

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How fast-growing companies avoid employment lawsuits

Being a fastest-growing company sounds good, right?

Be careful what you wish for. Rapid growth creates real risks if you are not smart about how you grow. Here is a checklist to help avoid employee lawsuits:

Recruiting & hiring

1. Did you perform a background check on potential employees? Conduct criminal background checks and contact listed references. You will be glad you did.

2. Are you using consistent hiring practices? Create a hiring process and follow it for every employee. Jurors may think you are discriminating if you do not consistently follow your hiring process.

3. Do you ask proper interview questions? Questions about religion, sexual orientation, past worker's compensation claims or a candidate's physical or mental health should be avoided. You can ask about previous convictions, but not about arrests.

4. Are you using the new I-9 form? Since April 2009, you must use the new I-9 form, which requires unexpired verification documents.

The employment relationship

5. Did you issue an up-to-date employee handbook? Make sure each employee receives your handbook and that he or she know the company has an "open door" to voice concerns. If you have not updated your handbook in a year, it is out-of-date.

6. Have you trained employees on workplace rules? Employers must train employees (including management) so that they understand the Americans with Disabilities Act and that harassment is not limited to sex, but can include political affiliation, religion, age, race, national

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origin, disability and marital status.

7. Are your nonexempt employees getting breaks, lunch and overtime pay? The Department of Labor plans to audit lots more companies to assure employees

get breaks and overtime pay.

8. Did you misclassify hourly employees as salaried employees? Look at each position and job description to determine whether that position truly is exempt. Annual audits should be conducted to confirm employees' positions are properly classified.

9. Do you give accurate annual employee performance reviews? If an employee benefiting from grade inflation subsequently experiences an adverse employment action due to poor performance, the prior inflated performance reviews will come back to haunt you.

10. Do you discipline employees when necessary? Since so many employers have their own definitions of "discipline," juries want to know your discipline was reasonably tailored to stop inappropriate conduct.

11. Do you investigate employee complaints and take remedial action when necessary? Document a detailed summary of your investigation and rationale for your employment decision. You will need it later if you are sued.

12. Do you document properly and accurately? Draft each document as if it was going to be viewed by a jury. Documents should include the name and signature of the author, witnesses and the date it was created.

13. Do you know the fast-changing employee leave laws? Consult with counsel to make sure you are complying with

newly changed obligations under state and federal leave laws.

14. Do you stop improper use of office email and computers? Email and computers create ongoing records that will be examined later. Stop employees from forwarding inappropriate jokes and offensive humor, and that means screen savers, too.

15. Do you manage workplace romance? To prevent future misunderstandings and lawsuits, consider having a policy prohibiting supervisors from dating direct subordinates.

16. Do you prepare for employee terminations? Before you terminate an employee, review the employee's personnel file and other information to confirm the rationale for termination is well-documented.

Post-termination

17. Do you give narrow employee references? Think about providing references limited to position held, dates of employment and last salary.

18. Do you comply with COBRA? Check to see whether the terminated employee qualifies for COBRA, who pays for COBRA and what, if any, subsidies apply. The recent stimulus bill changes COBRA coverage and you should be aware of those changes.

19. Do you prepare for unemployment compensation appeals hearings? The appeals hearings for unemployment benefits may require your testimony.

20. Are you doing the right thing? View your employment decisions from the perspective of whether you are "doing the right thing."

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