Top 10 Employment Law Mistakes: How to Identify and Avoid

Iowa Engineering Conference
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Top 10 Mistakes to Avoid:
1. Independent Contractor Status
2. Protecting Trade Secrets and Proprietary Information
3. Overtime Laws
4. Anti-Discrimination and Anti-Retaliation Laws
5. Disability Protections
6. FMLA
8. Background Checks
9. Drug and Alcohol Testing
10. Deductions from Pay

Why Does Legal Matter?

Independent Contractor Status
- **Mistake**: Misclassifying Employees
- Who is an Employee and Who is an Independent Contractor?
- Why does it matter?

Protecting Trade Secrets and Proprietary Information
- **Mistake**: Neglecting to Protect Your Information
- Ways to Protect:
  - Agreements
  - Covenant Not to Compete
  - Non-Solicitation of Customers/Clients
  - Non-Solicitation of Employees
  - Confidentiality
  - Iowa Code
  - Federal Trade Secrets Act
Overtime Laws

- **Mistake**: Misapplying Overtime Laws
- **Who Gets Overtime?**
- **Why Isn’t Paying a Salary Enough?**
- **What Does “Work” Mean?** Do I have to pay Non-Exempt Workers for Answering Phone Calls and Responding to Emails?

DOL’s New Proposed Overtime Rule

- **NOT in effect as of today**
- **Proposed Rule** would (among other changes) raise the salary basis level from $455 to $679 per week ($35,308 per year)
- **DOL published the proposed rule on March 22**, the public has until May 21 to comment
- **Recall from 2016**, there can be twists and turns, so don’t make any changes yet, but keep this on your radar

Anti-Discrimination and Anti-Retaliation Laws

- **Mistake**: Not having proper anti-discrimination and anti-retaliation provisions in your employee policies.
- **Mistake**: Not training.

Protected Classes

<table>
<thead>
<tr>
<th>Federal Law</th>
<th>Iowa Law</th>
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<tbody>
<tr>
<td>Race, Color, Religion, Sex, Pregnancy, National Origin, Age, Disability</td>
<td>Genetic Information, Gender Identity, Sexual Orientation</td>
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Violations of Title VII and Iowa Civil Rights Act Include:

- **Taking Action based on Protected Category** – disparate treatment
- **Harassment**
- **Segregation and Classification of Employees**
- **Pre-Employment Inquiries – Hiring/Interview**
- It is also unlawful to RETALIATE against an individual for opposing employment practices that discriminate based on protected or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation

Disability Protections

- **ADA**
  - Requires employers to provide "reasonable accommodations."
  - Requires employers and employees to engage in "interactive process."
  - **How can I help you?**
Implicit Bias

• What is Implicit Bias?
• Why is Implicit Bias important?

Implicit Bias Training in Organizations

• Starbucks: Closes 8,000 stores to conduct unconscious bias training
• Google, Facebook and other companies are looking at how unconscious or implicit bias impacts the workplace

Four Common Types of Bias

- Performance Attribution Bias
- Competence/Likeability Tradeoff
- Maternal Bias

Performance Attribution Bias

• How is credit attributed?
• How is blame attributed?

Counteracting Performance Attribution Bias

• Set rules & norms for meeting dynamics
  • No interruptions, everyone speaks
  • Interrupt the interrupters
  • Attribute carefully - noting contributions and attributing success

Tiny Bias Can Have Big Consequences
Tiny Bias Can Have Big Consequences: Only 35% of Level 8 Employees Would be Female

Evaluate Organization Culture
1) Zero Tolerance of Harassment or Discrimination?
2) Aggressiveness Rewarded?
3) Who are your Leaders?
4) What is the Message from your Leaders?
5) Do you foster a culture of **civility** and **respect**?

Take the Implicit Bias Test
What are your implicit bias?
You can take Harvard's implicit bias test: https://implicit.harvard.edu/implicit/takeatest.html

FMLA
- Is my company covered?
- Do you have a written FMLA policy?
- What Triggers FMLA?

Necessary Handbook Policies
**Mistake:** Not having an employee handbook
**Necessary Pieces of Handbook**
- EEO Policy
- Anti-Harassment Policy
- Anti-Retaliation
- Vacation, Sick or PTO
- FMLA, if applicable
- Drug / Alcohol Testing, if applicable
- Any other policy that is critical to the Company or its Employees

Background Checks
**Mistake:** Completing a background check that is not FCRA compliant.
- What is FCRA?
- What does FCRA require?
Drug and Alcohol Testing

- **Mistake:** Requiring drug or alcohol testing without reviewing Iowa’s Drug Testing Law

- What are the Requirements of Iowa Drug Testing Law?

Deductions from Pay

- **Mistake:** Deducting disputed wages from final paycheck.

- The law: Iowa Code 91A.5. Allows deductions only if:
  - The employer is required or permitted to do so by state or federal law or by order of a court of competent jurisdiction; or
  - The employer has **previous written authorization** from the employee to so deduct for any lawful purpose accruing to the benefit of the employee.

Freebee #11 -- Commissions

- **Mistake:** Not having a commission agreement in place for employees that earn commission pay.

Questions?

**Erin R. Nathan**
Position: Member
Phone: (319) 896-4013
E-Mail: enathan@spmblaw.com

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