



Doing HR without HR – Legal Compliance and Employee Benefits Strategies for Small Businesses

Presented By:



Alexandra Clauss, Esq., AWI-CH
Director, Labor & Employment Group
Downs Rachlin Martin
PO Box 190, Burlington VT 05402

aclauss@drm.com

802-846-8370

www.drm.com

LEGAL COMPLIANCE: Five General Topics



1. Recruiting, Interviewing and Hiring
2. Wage and Hour Compliance
3. Leave Issues
4. Discrimination and Harassment
5. Termination

1. Recruiting, Interviewing and Hiring



- Posting Traps for the Unwary
- Beware unlawful questions
 - https://hr.fas.harvard.edu/files/fas-hr/files/appendix_e_guide_to_legally_permissible_interview_questions_and_discussions_03202015.pdf
- Selection – DEI tension/race based selection is unlawful

2. Wage and Hour Compliance



- Fair Labor Standards Act (FLSA)
 - Exempt/Non-Exempt
 - Threshold salary \$684/week; \$35,568/year
 - Proposed increase: \$1,059/week; \$55,068/year
 - Exemption Duties Tests: “white collar” and other tests
 - Overtime after 40 hours/ week for non-exempt
 - All comp included in calculation of OT rate
- Record keeping requirements (non-exempt workers)
- Misclassification
 - ER will owe back wages
 - What about independent contractors?? - BEWARE

3. Leave Issues



- Family and Medical Leave Act (FMLA)
- Vermont Parental and Family Leave Act (VPFLA)
- Americans with Disabilities Act (ADA)
- Workers Compensation (WC)

- All of these may overlap concurrently!

4. Workplace Discrimination and Harassment

- Federal and State laws prohibit discrimination based on protected categories
- Unwelcome conduct based on protected category
- Federal law: unlawful harassment must be “severe or pervasive”
- VT law: new standard
 - Unlawful harassment = conduct that “interferes with the employee’s work or creates a work environment that is intimidating, hostile, or offensive”
 - Single incident may constitute unlawful harassment

5. Termination



- At will employment
 - Do not rely on “at-will” - too many exceptions!
 - Beware ‘Red Flag’ issues
 - Severance agreements
- Process - best practice includes documented warnings
 - Does not have to be signed by employee
 - Keep a file re employee performance issues
 - Publishing progressive discipline policies can be problematic
- Reductions in Force/WARN ACT/Older Workers Benefit Protection Act
- National Labor Relations Act and the NLRB

QUESTIONS??



When in doubt, reach out to trusted advisors

Additional Resources



- *Starting an HR Department from the Ground Up*, <https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/startinganhrdepartment.aspx>
- *Does Your Small Business Need an HR Department?*, U.S. Chamber of Commerce, <https://www.uschamber.com/co/run/human-resources/small-business-human-resources-department>