

Preparing for 2010

Shaping Up Your Employment Policies

By KEVIN V. MALTBY, Esq.

The end of the calendar year marks the time for business owners to finalize financials and prepare for the upcoming year. In addition to corporate-governance compliance, there are other issues that must also be addressed at the end of one year and the beginning of the next.

A year-end review should be akin to tuning up your car or replacing the batteries in your smoke detectors. It is generally better to be proactive than reactive.

Similarly, in employment law, the proactive employer is usually ahead of potential problems and will be ready to address anything that may come up. What follows is a list of suggestions an employer may wish to implement while conducting end-of-year finances and corporate governance.

Distribute Your Sexual-harassment Policy

Every business that employs more than six individuals must circulate a sexual-harassment policy to all of its employees. This is something that must be done on an annual basis. Under Massachusetts law, every employer must adopt a policy against sexual harassment and also provide an annual copy of it to all employees. In order to comply with this provision, business owners should not only provide a copy of the policy but also document a receipt for the company's records demonstrating that each employee received a copy of the policy.

This requirement also provides an opportunity for every employer to review its sexual-harassment policy to assure compliance with Massachusetts law. Business owners are encouraged to seek the advice of counsel to ensure that its policy of sexual harassment complies with the guidelines set forth by the Mass. Commission against Discrimination as well as Massachusetts law.

Confirm Your Total Number of Employees

Employers should also re-determine the number of employees it employs going into the new year. A change in the number of employees may have a critical impact on med-

ical-leave policies. For example, if a company crosses the 50-plus employee threshold, the employer must abide by the Family Medical Leave Act. The employer may also have to abide by the Massachusetts Small Necessities Leave Act. If an employer crosses the 11-plus employee threshold, then under Massachusetts law, it must provide a 'Section



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125 Cafeteria Plan' for purposes of health insurance. As noted above in this article, if an employer crosses the six-plus employee threshold, not only does the employer have to annually distribute a sexual-harassment policy, it must also comply with all other rules and regulations enforced by the Commission Against Discrimination.

Reconfirm That Your Policies Are Up to Date

Employers should also confirm that other policies are also up to date. Just recently, a Massachusetts Court ruled that employee handbooks can become binding contracts and alter the at-will employment doctrine. This may have grave consequences for an employer who attempts to terminate employees without complying with procedures outlined in their handbooks.

In addition, recent case law may also have an impact on grooming policies. Since employment law is ever-evolving, employers would be wise to check in with counsel to have their policies reviewed for the new year.

Review Your Wage Policies

Employers should also review their pay practices. To do this effectively, employers

should be reviewing any individuals designated as independent contractors. The attorney general's office recently revised a set of enforcement guidelines for determining whether a worker can be determined an independent contractor. More often than not, employers are mistakenly designating employees as independent contractors. This

mistaken designation can be costly if the employee is due overtime or other benefits. Under Massachusetts law, this wrongful designation could lead to an employer paying an employee three times any amount due the employee.

In other situations, employers should make sure that they are complying with minimum-wage law. Compliance under minimum wage includes employers who have a commissioned-based sales staff with a recoverable draw. Since Massachusetts passed a new wage law that automatically triples damages due an employee in a wage-and-hour case, it is critical to ensure that companies are complying with all wage-and-hour laws.

Year-end is a good time to perform preventative maintenance on business policies, practices, and procedures. Once done, employers can enjoy peace of mind for another year. ■

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