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Richard D. Alaniz, JD • Dec. 31, 2017

It is a common occurrence with the start of every New Year that people make personal resolutions about what they will do to improve in the months ahead. Generally, it involves pledges to diet more, eat healthy, exercise more, make more quality time for family, and similar personal commitments.

What is conspicuously left out of the resolution process in most cases is what we will do to improve our workplace in the coming year. What will we do to assure that employees have a workplace where they can thrive and produce without fear of unfair or improper treatment? What changes will we make, or at least consider, that will help to reduce legal liability for violation of federal and state workplace regulations? What will we do to assure that our managers and supervisors are confident that the actions they take regarding employees will be consistent with both the law and good management practices?

Too often workplace policies are only considered in the context of some negative workplace action when it is actually occurs, such as a termination or other employment issue. Sometimes it may involve a legal claim by an applicant or employee.

Whether our current policies are adequate for dealing with issues in the most regulated area of our economy, today's workplace, rarely is explored or even considered. This article is intended to serve as a reminder of some of the more significant workplace issues that should equally bear serious consideration for resolution as we enter a new year.

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harassment that is available under U.S. Supreme Court precedent? Currently, in order to avoid liability for unlawful workplace harassment, an employer must demonstrate that it acted reasonably in seeking to prevent and promptly address any claims of unlawful harassment.

To do so, an employer must have in place a comprehensive no harassment policy and a reasonable procedure for employees to file a complaint regarding any improper conduct. Additionally, the employer must show that it acted promptly to effectively address an alleged violation of the policy. How long has it been since you reviewed and updated your anti-harassment policy? Are you certain that all employees know of the policy and how to make a complaint? Have you included the option to take a complaint to any member of management? Sometimes the issue is with their supervisor.

A female employee may want to speak to a member of management of her gender. In general, if you have not reviewed and updated your employee handbook and the specific policies set out there within the last three years, it probably contains policies that are outdated or it is lacking policies that are needed in today's workplace.

Off-The-Clock Work

Most employee handbooks, unfortunately, rarely address one of the issues that many employers are dealing with today, pay liability for off-the-clock work. Until they are confronted with a claim, few employees are even aware that it may be an issue. Numerous wage and hour lawsuits have been filed across the country, some as class actions, alleging that employees routinely performed work-related tasks either before or after the regular work day, and were not compensated for such work. In most cases, it is a claim for overtime, which would entitle a successful claimant to liquidated damages (double damages) and attorney's fees. Such claims are relatively easy to make and usually come from a terminated, or disgruntled employee. These

cases are particularly prevalent in states that have wage and hour laws that go

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Reviewing Local and State Laws

Another step that all businesses should undertake before the New Year is to review state and local laws to determine whether any new laws will affect you. Frequently, state and local governments choose to have new laws take effect at the beginning of the year. For example, a quick search reveals that last year hundreds of new state laws took effect on January 1 throughout the U.S. In 2018, several states have minimum wage increases that will take effect on or by January 1 including Alaska, Arizona, California, Colorado, Florida, Hawaii, Maine, Michigan, Missouri, Montana, New Jersey, New York, Ohio, Oregon, South Dakota, Vermont, and Washington.

Several laws will take effect in California next year including a “ban the box” law (prohibiting employers from asking about criminal history), a law expanding parental leave, and a law expanding sexual harassment training requirements. Without a review of the laws that may be changing, you may be caught off-guard and face unexpected penalties.

Employee Bonuses and Annual Reviews

January is often a time for bonuses and annual reviews for some employees and a time when employees may reevaluate and set new goals towards earning a bonus or meeting goals at work next year. It is also a time when companies must reassess their relationship with employees that fail to meet the required production or sales quota for the year. Employers must decide how they will help employees reach the quota in the coming year or whether they will terminate the underperforming employee.

Employers that choose to keep an underperforming employee must make efforts to help the employee be more productive in the coming year, which will also help increase the company's bottom line. The first step is to assess what caused the

employee to be unproductive this year. Was it a one-time event such as a family

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should document the reasons for the termination. The reasons could include performance issues (e.g. failure to meet sales quota), disciplinary issues (e.g. attendance), and any other relevant reasons that detail why the employee is being terminated. These reasons help protect companies from liability if an employee decides to sue for discrimination. Once you have documented the reasons you should schedule the meeting with the employee and begin the termination process.

Conclusion

The above are just several examples of the types of policies that should be updated and revised as needed on a regular basis. If you provide your handbook in electronic form, not only is it easier to update, but it obviously eliminates the cost of printing a document that may require revision months later due to a regulatory change. However, whether in printed or electronic form, having in effect an updated and thorough employee handbook should be among every employers' New Year's resolutions.

Richard D. Alaniz has been at the forefront of labor and employment law for over thirty years, including stints with the U.S. Department of Labor and the National Labor Relations Board. Rick is a prolific writer on labor and employment law and conducts frequent seminars to client companies and trade associations across the country. Questions about this article, or requests to subscribe to receive Rick's monthly articles, can be addressed to Rick at (281) 381-2219 or ralaniz@alaniz-schraeder.com.

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