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The start of a new year is a traditional time for employers to review their workplace policies to ensure the policies comply with federal, state, and local requirements, both old and new. It is also a time to reflect upon any workplace incidents, charges, or lawsuits that may have occurred during the past year and whether policy changes might prevent or reduce the likelihood of such matters from arising in the future.

As 2021 begins, most employers remain primarily focused on the continuing effects of the Coronavirus pandemic inside and outside of their businesses. Given the multitude of difficult issues it has created for employers, the usual annual review may

not be treated as the priority it might have been in a normal year. While it is

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favorable to employees than the last one.

By all reports, the Biden administration intends to significantly increase the enforcement of workplace laws and regulations. They have also indicated that they will implement regulatory changes to help unions in their organizing efforts. Measures taken now to ensure legally compliant policies and procedures are in effect, could help to prevent problems down the road.

One topic that always merits careful attention is compliance with the Fair Labor Standards Act (FLSA), and where applicable, similar state statutes. These are the laws that require a specified minimum wage, as well as overtime pay for all hours over forty worked in a workweek (and over eight hours in a day in some states). The misclassification of employees as exempt from overtime pay is the most common FLSA violation and the basis for the largest number of lawsuits. Misclassification can result in substantial liability. The liability period can extend back three years and generally includes liquidated (double) damages and attorney's fees. Ensuring that your exempt employees are truly exempt is one of the most effective actions that an employer can take to avoid potential liability. It should be an essential aspect of any workplace review.

To be exempt from overtime pay, employees must satisfy the FLSA's minimum salary test and the "duties" test under the so-called "white collar" exemptions. Currently the minimum salary for exempt status under the FLSA is \$684 per week, (\$35,568 annually). Several duties exemption tests exist under the FLSA, three of which being the executive, administrative, and outside sales tests. Exempt "executive" employees include managers and supervisors with the primary duty of directing at least two full-time employee and managing the operation or a subdivision thereof. Exempt "administrative" employees primarily perform non-manual, office work and exercise discretion and independent judgement on significant business matters. There is no

minimum salary test for exempt “outside sales” personnel but they must spend the

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to prevent such conduct is to post notices prohibiting any overtime or off-the-clock work without specific authorization. To avoid liability, you must also document consistent enforcement of the policy.

Another federal employer mandate that sometimes draws less than sufficient scrutiny is properly completing I-9 forms required for all employees at the time of hire. A thorough self-audit should ensure that all the forms are complete with all blanks containing some entry, even if it is only “N/A.” Incomplete forms are a frequent source of recordkeeping violations, which can result in significant fines. Similarly, failure to discard I-9 forms that you are no longer required to retain can also result in recordkeeping violations since they would be reviewed with all others if an audit ever occurs. The required retention period is 3-years from the date of hire, or one year from the employee's departure, whichever is later. Unneeded forms should be promptly discarded.

An additional focus for employers in conducting their review should be compliance with all Occupational Safety and Health Administration (“OSHA”) obligations. The Biden administration has already announced that it will focus on employee safety and health through aggressive enforcement of all OSHA standards. They intend to double the number of compliance investigators, as well as increase the number of workplace audits. Therefore, in addition to ensuring that all COVID-19, normal safety protocols, and necessary training have been implemented, employers should also confirm that their OSHA 300 log, Form 301 and 300A are all current and posted if required.

Finally, no review of policies and procedures would be complete without a thorough review, and if needed, revision of the employee handbook. If you do not have one, now would be a good time to implement one. No workplace is too small to be without an employee handbook. Handbooks remain the most effective way to

publicize your policies and your expectations for the employees. They also help to

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