Your Recently Updated Handbook May Violate the Law

Description

As seen in the February 29, 2016 edition of the *Providence Business News.*

With the close of the first quarter of 2016 on the horizon, employers tend to be in two camps with respect to their employee handbooks – those who have not revised their handbooks for 2016 and those who have.

For those in the first camp, there is still time. While the beginning of a new calendar year is often a convenient time to release a new handbook, it is not the only time. In fact, the effective dates of changes to the law rarely correlate to the start of a new year. Thus, regardless of the revision date chosen, anytime an employer only reviews their handbook yearly will mean there will be some lag in compliance. The critical element employers need to know is that there were significant changes to employment laws in 2015, so this is not the year to skip revision altogether.

For those in the second camp, don't breathe easy yet. Unless legal counsel was consulted when the revision took place, there is a good chance that your handbook is not compliant due to the complexity of changes in the law last year. Below are four examples of pitfalls employers should be aware of:

One: Sick Time Policy.

Rhode Island does not have a state sick time law requiring employers to have a paid or unpaid earned time off policy. However, the 2015 Massachusetts Earned Sick Time law applies to any employer who has an employee working primarily in Massachusetts, regardless of whether the Company has a physical office in the state. New York City has a similar law that is even more likely to apply to Rhode Island employers, as employees who work a mere 80 hours in the City annually are covered and, like Massachusetts, no physical office is required. So the Rhode Island company that has an employee who works 40% of the time in Massachusetts, 35% of the time in Rhode Island, 20% of the time in Connecticut, and one day a month in New York City (approximately 5% of the time) needs to provide the employee with an earned time off policy compliant with both Massachusetts and New York City Earned Sick Time laws.

Two: National Labor Relations Act Compliance.

The General Counsel of the National Labor Relations Board released a report in 2015 which spells out the types of policies it believes have an illegal chilling effect on employees' exercise of Section 7 rights. All employers – even those without unions or employees likely to ever unionize – need to be cautious about policies that restrict or discourage employees from communicating with one another or saying negative things about their job. Non-disparagement, social media, confidentiality and email use policies are common culprits. Policies that were once common place – such as prohibiting employees from using work email for personal purposes, prohibiting employees from discussing the Company on social media, and general confidentiality requirements concerning company employee practices – must be deleted or revised.

Three: Pregnancy Rights Notice.

Last summer, the Fair Employment Practices Act was amended to require employers to give employees accommodations for pregnancies, and both notify employees of such rights upon hiring as well as re-notify employees who become pregnant. When the amendment passed, some employers complied with the initial notice requirement but then promptly forgot about the aforementioned ongoing notice obligations. To ensure compliance with the hiring notification, employers should include the notice in their policy manual.

Four: Vacation Policy.

Handbooks are bound to contain occasional errors. But one policy worth double (and triple) checking is the company's vacation policy. Rhode Island Gen. Laws § 28-14-4 mandates employers abide by their vacation policies and pay employees time that accrues under those policies. Last year an employer was burned by a sloppily written policy in Parmelee, Poirier and Associates, LLP v. R.I. Department of Labor, PC2012-0441 (R.I. Super. 2015). In that case, an admitted typographical error which misplaced a sentence in the policy made it unclear whether an employee's vacation time accrued at the beginning of the year (in an upfront lump amount) or whether it accrued throughout the year on a pro-rata basis (in small amounts in weekly/monthly increments). The typo led to the Department of Labor to find the policy to be ambiguous and ultimately awarded the employee the full vacation amount (over 100 hours), which the Rhode Island Superior Court upheld.

The examples provided above are just a sampling of reasons why employers should not only ensure their policy manuals are updated this year but also consult with a lawyer when updating their Employee Handbooks. While delaying revision or undertaking updates alone might save money in the short-run, in the long-run it can create costly legal problems.

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