



This article presents general guidelines for Ohio nonprofit organizations as of the date written and should not be construed as legal advice.

Always consult an attorney to address your particular situation.

Identify and Reduce Employment Law Risk in 2016

By Tara Burke, Jackson Lewis P.C.

If you have employees, you have employment law risks. As you head into the spring season, take some time to consider the following:

1. Are We Paying Employees Correctly?

- **Classifications.** If, like most employers, your organization is covered by the Fair Labor Standards Act (FLSA), employees must be paid one and one-half times their regular rate of pay for all hours worked over 40 in a workweek, unless the employee's duties and pay meet one of the exemptions. First, determine if your organization is covered by the FLSA. Then, evaluate your positions to confirm that all employees are appropriately treated as either "exempt" or "non-exempt." Exempt employees do not require overtime pay; non-exempt employees must be paid overtime. Conducting this review with an attorney will provide the benefit of the attorney client privilege. This is very important this year, because the Department of Labor is planning to more than double the minimum salary for executive, administrative and professional overtime exemptions to \$50,440 from \$23,660. This could mean that some employees will shift into the non-exempt category and require overtime pay. We expect that the Department will issue final rules this summer and employers will have a short 60 to 120-day window before the rules become effective. Now is the time to identify all workers classified as exempt to date with a salary below \$50,440 and develop a strategy for managing conversion to non-exempt status, or in some cases, increasing employees' salaries in order to avoid the change in status.
- **Independent Contractors/Interns.** To avoid liability under wage and hour laws and tax laws, carefully review the status of any independent contractors and unpaid interns to ensure they are not treated as employees.
- **Are "Volunteers" Doing Work for Which They Should Be Paid?** Although non-profits can generally enjoy the services of volunteers, care should still be taken in this area. For example, employees of the organization should not be "volunteering" to perform work that is related to their job.

- **Off the Clock Work.** Confirm that non-exempt employees are not working off the clock and are paid for all time worked. Most of us have technology that keeps us “connected” at all times. But if non-exempt employees are “connecting” and working on evenings and weekends, they must be paid.

2. Are Our Employee Policies Legally Compliant?

Laws change and our organizations’ practices change. It is easy for our policies to fall behind. It is important to make sure that our policies help us instead of hurt us. If your policies have not been updated in the past 12 to 18 months, now is definitely the time.

3. Do We Appropriately Manage Leaves of Absence?

Laws including the Family and Medical Leave Act and Americans with Disabilities Act provide employees the right to be away from work for certain family and medical reasons. Failure to comply with these laws and/or appropriately manage these absences can result in liability. Review your policies and your leave administration system, including your leave of absence forms and correspondence. Train a leader to manage leaves of absence and train all supervisors to identify and respond appropriately to leave of absence and disability accommodation requests.

4. Is Our Employee Management System Effective?

An effective, consistent approach to addressing employee performance and discipline issues is essential for reducing potential legal liability and has the added benefit of improving performance and morale. Review your discipline policies, your discipline forms and performance evaluation forms. Train supervisors to timely and appropriately address performance and discipline issues and prepare effective documentation.

Taking these steps now will reduce your exposure to legal liability down the road.

Tara Burke is an attorney with the Cincinnati office of Jackson Lewis P.C. and is available to consult about these or other workplace law issues. Tara can be reached at (513) 898-0050 or tara.burke@jacksonlewis.com. To receive legal updates and invitations to free workplace law seminars from Jackson Lewis P.C., email Tara your contact information.

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