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What Keeps a Professional in Human Resources Up at Night? by Scott Buchanan

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DOL Initiatives- Wage and Hour/ Fair Labor Standards Act (FLSA) Audits

Being sued for FLSA violations is getting easier by the day. And with a majority of the workforce classified as non-exempt (hourly workers subject to overtime payments), it's crucial to know the ins and outs of the law. Companies that don't are sitting ducks for costly lawsuits. Most lawsuits are caused by small errors made by well-intentioned companies trying their best to navigate this complicated statute.

Some of the most common errors are:

â€¢ Misclassifying employees as exempt from overtime. This means your receptionist is probably not â€œsalary exemptâ€•!

â€¢ Incorrect calculation of the â€œregular rate of payâ€• (by not including incentive bonuses, commission and shift differentials in the calculation of the overtime rate)

â€¢ Failure to count all hours â€œworkedâ€• (examples include timekeeping systems that auto deduct for lunches, non-exempt employees who are deducted for lunches but were not â€œcompletely relieved of all dutiesâ€•- hint- donâ€™t let your non-exempt employees eat at their desks)

â€¢ Failure to correctly pay for travel time

â€¢ Failure to keep accurate records of time worked. An easily implemented best practice is to have your employees sign their timecards attesting that the hours submitted are true and accurate.

The Wage and Hour Division is also developing a proposed rule requiring employers to take affirmative steps to ensure compliance with not only federal wage-and-hour, but safety, and anti-discrimination laws as well. The proposed plan, called â€œPlan, Prevent, and Protectâ€• places the onus for federal compliance squarely on the shoulders of employers. Under the new strategy, employers must demonstrate to the DOL, as well as their employees, that they are affirmatively complying with federal wage-and-hour, job safety and anti-discrimination laws.

The first steps for employers would be to conduct workplace audits of company wage-and-hour policies and practices, specifically with regard to the classification of workers, requiring employers to perform a written classification analysis for exempt employees and share that analysis with the worker and reclassify any workers perceived to be misclassified. Other steps would be to audit their safety policies and practices; audit their anti-discrimination, harassment, retaliation policies, in addition to conducting regular management and employee trainings for all of the above. Not that this is a bad idea, but the extra work it creates for all employers is enormous.

DOL and IRS Combined Initiatives - Independent Contractor Status

In addition to the enforcement of the FLSA, the Wage and Hour Division is seeking to add hundreds of full-time staff to support the DOLâ€™s initiative against the age-old problem of misclassification of independent contractors and other labor violations arising from misclassification. Along with the budget and staff increases, the DOL expects its investigations to increase as well in 2012. According the DOLâ€™s budget summary, the DOL is planning on conducting an additional 3,250 investigations.

Recently, different news agencies such as the Wall Street Journal and the St. Petersburg Times have reported on a recent investigation by the Labor Department of large U.S. home builders such as Pulte, Lennar Corp., D.R. Horton Inc. and KB Home to see if they failed to pay workers the minimum wage or overtime. To determine if they are not in compliance, investigators have requested mountains of records, including employee time sheets, payroll and Social Security records.

Other industries targeted with higher rates of violations include:

â€¢ Hospitality

â€¢ Home health care

â€¢ Grocery stores

â€¢ Janitorial businesses

â€¢ Poultry and meat processing

â€¢ Child care

â€¢ Business services

â€¢ Landscaping

The IRS has also added additional staff to identify employers who are evading employment taxes by misclassifying employees as independent contractors. Given the Federal budget issues and revenue needed to fund programs such as Health Care Reform, the IRS has renewed its efforts to collect the millions of potential tax revenues created by employers and workers skirting their tax obligations by intentionally paying â€œunder the tableâ€• or misclassifying workers who should be employees, as independent contractors. Penalties and interest add up quickly and officers or other management employees of the business can be held personally liable for the payroll taxes that should have been withheld and were not paid to the IRS.

Itâ€™s not all bad news though. The IRS has recently announced its new Voluntary Classification Settlement Program (VCSP). The program, which is designed to help employers resolve past worker classification issues, provides employers the opportunity to reclassify independent contractors as employees BEFORE an audit occurs. Employers who voluntarily reclassify workers pursuant to the VCSP will receive substantial relief from the payment of past payroll taxes and related penalties and interest. To participate, an employer must apply to the program, agree to prospectively treat its workers or a class or group of workers as employees for federal employment tax purposes and pay 10 percent of the employment tax liability that would have been due on the employeeâ€™s compensation only for the most recent tax year. All in all, for an employer who may have been misclassifying workers for years, the savings could mean staying in business as opposed to being out of business.

Employee Engagement - Money is not the only motivator!

The days of employers espousing those words â€œyou are just lucky to have a jobâ€• to their employees are over. Why? To generate profits, a business needs people who perform period. This type of culture kills employee motivation. Employers may not think they are sending this message, but chances are, if you are not actively fostering a culture of recognition where employees have access to positive, immediate, and certain recognition strategies, that is exactly what your employees perceive.

Todayâ€™s business leaders know that great companies are built by great people and their business

success can always be attributed to the efforts of its team members. Engaged employees produce greater results. The concept seems simple, but many organizations have failed to invest in a recognition strategy and culture to motivate and drive engagement. When this integral component is lacking, companies struggle with high turnover rates, poor business results, unsatisfied employees, unsatisfied customers and a negative impact to the bottom line. Employee recognition is instrumental in contributing to a positive workplace and successful business performance. According to a recent study conducted by Northwestern Universityâ€™s Forum for People Performance Management, â€œsatisfied employees create satisfied customers, which improve the financial performance of the entire organization.â€•

The flip side is that when employees begin to disengage â€“ or are no longer committed to their work â€“ the bottom line suffers. Disengaged employees are discontent, unproductive, negative, and undermine the work of others. Nothing can help disengage an employee faster than a corporate culture that de-values employees as individuals and contributors to the businessâ€™ success. And why should you care if your employees are disengaged? Harold Gilstrap with Eagle Recognition cites statistics that illustrate the extent of this problem:

â€¢ 25% of Americaâ€™s workforce are employed in industries that report 100% turnover (turnover is expensive)

â€¢ 70% of employees feel no obligation to stay with their current employer

â€¢ 19% of employees are very negative about their work. These employees are considered actively disengaged â€“ also known as â€œout to lunch.â€•

â€¢ 55% of employees are apathetic or uninterested

â€¢ 90% of voluntary resignations are due to feeling underappreciated (employees donâ€™t leave companies, they leave bosses)

â€¢ EEOC claims and wage and hour claims are at an all time high. Do you think those employees were engaged?

According to The Gallup Organization, â€œThere are 22 million disengaged employees that cost the American economy up to $350 billion per year in lost productivity, including absence, illness and other problems that result when workers are unhappy at work.â€• However, most importantly, disengaged employees cause customers to do business elsewhere. Think about this: Approximately 96% of workers are members of some form of social networking site and the number one topic of discussion is work.

What Do the Best Companies Do About Disengaged Employees?

There is a reason that companies, books and programs that help devise employee recognition programs and train managers to be more aware of their staffâ€™s engagement levels have been thriving in the current economy. Recognition programs have been proven to increase employee satisfaction, which is the key predictor of employee engagement. Organizations use recognition programs to strategically manage employees by keeping them engaged at work. An employer who cares about its employees and the bottom line will find out what motivates its specific employees. If you want to know what motivates your employees, ask them! Survey after survey has shown that it is not the annual increase that motivates employees. It is the on-going continual feedback, encouragement, opportunity for growth, positive company culture and recognition for their efforts. Determine what motivates your employees, deliver it and watch the resulting increase in customer satisfaction and profits..

I-9 Compliance and E-Verify: From Completion to Destruction and Multi-State issues.

ICE (Immigrations and Customs Enforcement), the investigative arm of the U.S. Department of

Homeland Security has been going out of its way to put employers on notice that they can expect more enforcement efforts directed at them. In June of 2011 the story was a front-page headline in the Wall Street Journal and was echoed on many other media sites. ICE announced that the Obama administration intensified a crackdown on employers of illegal immigrants, notifying another 1,000 companies in all 50 states that the government plans to audit their hiring records. It was not the first time in 2011 that they made this effort to get the attention of employers regarding the importance of hiring properly documented workers and proper completion of the I-9 form.

During an audit, the employer must provide I-9 employment-eligibility forms which contain Social Security numbers, dates of birth and statements by employees of their citizenship status. All employers must have a properly completed form for every worker completed at the time of hire. The employer physically reviews specifically authorized documents from a list that ICE has determined are sufficient to verify identity and eligibility to work in this country. The employer documents all of the details about the IDs on the form and must retain the form for 3 years from the date of hire or one year after termination of the employee, whichever is greater and have them readily available for inspection.

Going a step beyond making employers responsible for the I-9 completion, some lawmakers have proposed bills to make the use of E-Verify, the governments electronic work eligibility verification system, mandatory for all employers. So far only handfuls require E-Verify for All or Most Employers. Some states, frustrated with the Feds inability to come up with comprehensive immigration reform have created their own laws requiring the use of E-Verify to help deal with the overwhelming amount of illegals working in their jurisdictions. This has made things very tricky for multi-state employers. Proponents of mandatory E-Verify use hope that identifying and punishing those employers that knowingly use an illegal workforce will help stem the flood of illegal immigration. They reason that if illegals canâ€™t work, they wonâ€™t come to the United States.

For all employers, the audits can lead to both civil and criminal penalties. The possibilities range from fines for incorrectly completing the I-9 form and being barred from competing for government contracts to criminal charges of knowingly employing illegal workers, evading taxes and engaging in identity theft that include jail sentences.

In light of the increased attention on immigration and work authorization it has become more important than ever for employers to understand the legal requirements and technicalities of proper completion of the I-9 as well as state specific regulations regarding E-Verify.

Unemployment Cost Containment- 3 year budgeting

For many years when you spoke to employers about their biggest concern that impacted their overall payroll costs, many would cite the rising costs in a volatile workersâ€™ compensation market or the rising cost of health insurance.

Employers around the nation are getting hit with higher state unemployment taxes as states are forced to pay for more than $1 billion in interest payments this month. More than 30 states have borrowed billions from a federal fund to cover unemployment benefits for their jobless residents in recent years.

The unemployment system is an experienced rated system whereby the higher the claims posted to employerâ€™s account, the higher that employerâ€™s tax rate will become. In fact, many employers are now paying the highest state unemployment tax rate chargeable in a state while also experiencing an increase in the federal unemployment tax resulting in an increase in the overall employment cost of the employerâ€™s workforce. In most states, an employerâ€™s tax rate is based on the taxable wages and claims for the prior 3 years; therefore, the really bad recession years will not â€œroll offâ€• until some point in the future.

Additionally, the federal unemployment tax is increasing in states with outstanding loans at the same time that the state unemployment tax is increasing for a double whammy. The federal law

generally states that the net federal rate will increase by 0.3% each year that the loan is outstanding. The increase will be used to retire a portion of the loan, so the annual increases represent a method to eventually retire the federal loans. The increases are cumulative, so the first year is 0.3%, the second year is 0.6% while the third year is 0.9% and so forth.

During this time of rising unemployment tax costs, it is important for employers to focus on cost containment which includes the following steps:

â€¢ Review the quarterly benefit statement to confirm that all charges are from actual former employees because these statements often contain charges from former employees of other companies. Companies certainly donâ€™t want to be charged for the benefits paid to other companiesâ€™ employees.

â€¢ Review the annual tax rate notice, including the data in the notice and the computation of your tax rate.

â€¢ Review the reason for each termination and decide to fight those claims that are not warranted (for instance, when an employee resigns to work for another company or is terminated for cause).

As an employer, being aware of these issues and perhaps even putting some new policies and procedures in place or alternatively, hiring an HR professional to assist you in implementing the best practices mentioned in this article will help you sleep better at night too!

Lisa Henry is the Operations Manager for Human Resources, Inc. She experiences the issues outlined in this brief in working with her clients each day. Lisa is a Professional in Human Resources (PHR), and an active member of the Society for Human Resource Management (SHRM). Ms. Henry is also a Certified Payroll Professional (CPP) and an active member and frequent speaker for the American Payroll Association (APA) on a variety of HR and payroll compliance topics and unemployment. She has over twelve (12) years of experience in the payroll/HR industry and in providing human resource advice to clients. Ms. Henry has also been an instructor at the St. Petersburg Chamber of Commerce Entrepreneurial Academy, as well as an APA certification instructor at Hillsborough Community College. A native of the Pittsburgh area, Ms. Henry received her bachelorâ€™s in Psychology from Clarion University of Pennsylvania before making the move to St. Petersburg, Florida.

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