Get It In Writing: Five (Maybe Six) Employment Documents Every Employer Should Have

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Businesses come in all shapes and sizes. Most, however, have the same common set of goals: provide excellent products or services, keep their clients and customers happy, and maintain a productive employee force that serves the company's overall mission. There are few things more distracting to businesses and their owners than litigation. Although there is nothing that can completely prevent a lawsuit, there are some documents businesses can adopt to minimize the risks posed by litigation.

- Employee Handbook

The importance of an employee handbook can be summarized in one word: consistency. An employee handbook provides a convenient, central location for your company's core policies. A well-drafted handbook clearly communicates expectations to employees and prevents your business from becoming bogged down by multiple inconsistent policies developed on an ad hoc basis over the years. An employee handbook should have policies that instruct employees how to address concerns of harassment, discrimination, and retaliation. It should describe the company's leave of absence polices and key employee benefits. An employee handbook is also an easy way to comply with state or local laws that requires employers to provide to employees certain policies in writing.

Ideally, your handbook is drafted or reviewed by someone with employment law experience and updated at least once a year. Employees should sign a receipt of acknowledgment (with an at-will employment acknowledgment) every time a new handbook is issued or revised.

- Offer Letter

Offer letters are another way to ensure that your company outlines clear expectations for incoming employees and eliminates confusion when a new employee starts work. An offer letter should include an employee's start date, job title, pay rate, the name of the employee's manager, and what benefits the employee is eligible for (if any) and when. An offer letter should also state if a position is exempt or non-exempt from state or federal overtime laws. New employees should sign an acknowledgment that they have received their offer letter.

- Job Description

Job descriptions are vitally important documents that are unfortunately overlooked by many businesses. Ideally, a job description describes the tasks, duties, functions, and responsibilities of a position. One of the most important aspects of a job description is to define a position's essential functions. Defining a position's essential functions provides one of the best ways for evaluating an employee's request for an accommodation for a disability. Indeed, many disability discrimination lawsuits boil down to a fight over whether an employee could accomplish a job's essential functions with or without accommodation. A job description should also clearly state whether a position is exempt from state or federal overtime laws, and the information in a job description should include language that clearly supports that exempt/nonexempt classification. Employees and their supervisors should sign a receipt acknowledging they have received their job description.

- Commission Agreement

It's not only a good idea for companies to develop written commission agreements; in California it's the law. Effective January 1, 2013, all employers must have written agreements for California employees who are

compensated on a commission basis. Specifically, California law requires that commission agreements be in writing; set forth the method by which commissions will be computed and earned; employers must provide employees with a signed copy of the commission agreement; and employers must obtain signed receipt of the agreement from the employee acknowledging both receipt of, and agreement with, the commission program. Converting these deceptively simple requirements into a legally-compliant commission agreement can be a significant undertaking. Ultimately, this task is worth the effort because it (you guessed it) minimizes confusion about when and how commissions are earned, which (you guessed it again) can reduce the risk of a legal dispute over a commission, particularly how to pay departing employees.

- Severance Agreement

Like it or not, there are times when employment ends under circumstances that are less than ideal. Of all the points in the employment relationship, it is during the termination process when a former employee decides whether or not to become a future plaintiff. Research has shown that employees who feel disrespected during the termination process are much more likely to sue. And therein is the importance of a severance agreement. A well-crafted severance agreement provides a soft-landing for someone who is about to enter a time of uncertainty in his or her life. They help a former employee feel respected as they leave the company. And someone who feels respected is much less likely to consult a lawyer and/or sue.

Severance agreements, however, are not without traps for the unwary. For example, federal law provides employees over the age of 40 with certain rights that must be codified in a severance agreement. There are also certain types of claims that an employee cannot waive as a condition of accepting a severance payment. No employer should present a severance agreement to an employee that has not first been vetted by an attorney. The headaches created by a poorly drafted severance agreement more than outweigh (and outcost) the legal fees you will incur in having an attorney review the agreement. Finally, although no severance agreement can completely inoculate your company from a lawsuit, a solid severance agreement sends a very clear message to potential plaintiff's attorneys that this company (and its attorneys) will not be a pushover in litigation.

- Optional: Arbitration Agreements

Much ink has been spilled about the pros and cons of arbitration agreements. Briefly, arbitration is a nonpublic forum for resolving legal disputes. Think of it as a private court. Arbitration provides a measure of confidentiality, informality, and efficiency that is missing in state and federal courts. It also removes the variable presented by having a jury (instead of a former judge or attorney) decide your case. Arbitration agreements with an enforceable class action waiver can also prevent against financially devastating class action lawsuits. All that said, arbitration is expensive. In California, the law requires the employer to pay for arbitration with former employees and good arbitrators will charge thousands of dollars per day for their services.

We recommend that companies consider implementing arbitration agreements, especially with certain categories of employees who could band together to form a class (i.e., sales representatives, assistant managers, etc.). An experienced employment attorney can help your company decide if arbitration is a good risk-management strategy, draft and guide the implementation of arbitration agreements, and guide you through the process of moving a case from court to arbitration if an employee with a valid arbitration agreement sues.