

Regulatory Compliance Checklist

Employment and Workplace Policies

Employment Applications

- Do they contain any provisions required by state law?
- Do they contain any impermissible questions?

Interviews and Other Pre-Employment Inquiries

- Do the company interviewers ask any impermissible questions or elicit information that an employer may not lawfully request?

Reference and Background Checks

- Are the company's practices sufficient to protect it from liability to third parties?
- Do the company's practices comply with federal and state law?
- Is there a clear policy on how background information will be considered in the application process?

Offer Letters

- Do the company's offer letters create any risk of liability?

Classification of Employees and Independent Contractors

- Will the company's classification of individuals as employees or independent contractors withstand scrutiny for federal and state law purposes?
- **For Massachusetts employers:** Is the company's classification of individuals as independent contractors defensible under the strict requirements of Massachusetts law?

Handbooks and HR Manuals and Policies

- Are they drafted in a manner that will not create contractual or other liability to the business?
- Do they include all mandatory policies required by federal and state law?
- Are they consistent with federal and state law?

Disability Policies and Practices

- Are the company's practices with regard to medical examinations of job applicants and existing employees in compliance with the Americans with Disabilities Act (ADA)?
- Is the business managing disabled employees correctly under the ADA and analogous state law?
- Does the company lawfully protect and maintain employee medical information?
- Do the company's termination practices with regard to employees on protected leaves of absence comply with federal and state law?
- Is the company properly managing benefit arrangements with respect to disabled employees?

Leave Policies

- Are the company's policies regarding Family and Medical Leave Act (FMLA), maternity, disability and workers' compensation leaves consistent with each other and with federal and state law?
- Are the company's benefit arrangements consistent with its leave policies?

Drug and Alcohol Policies

- Is the company covered by Department of Transportation regulations?
- Are the company's drug and alcohol policies in compliance with federal and state disability and privacy laws?
- Does the company have a coherent protocol for conducting drug and alcohol tests?

Technology Monitoring and Workplace Searches

- Do the company's policies and practices insulate the business against improper use or disclosure of confidential and proprietary information?
- Is the company's technology monitoring practices in compliance with external law?
- Has the company adequately addressed the use of social media?

Immigration

- Does the business collect and maintain work authorization documentation that complies with federal law?
- Is the business required to utilize the E-Verify system?

Compensation and Payroll

- Do the company's payroll practices comply with state law?
- Does the company's vacation policy comply with state law?
- Has the company properly classified employees as exempt or non-exempt from the overtime provisions of federal law?
- Does the company calculate and pay overtime correctly?
- Is the company compliant with state laws relating to sick time and paid family leave time?

Discrimination/Affirmative Action

- Is the business in compliance with the various state nondiscrimination laws?
- Is the company's EEO policy properly worded to comply with current federal and state law?
- Are any of the company's policies or practices putting it at risk under the discrimination laws?
- Does the company have and distribute a sexual harassment policy?
- Does the company have any obligation to conduct training, or would it be advisable to do so?
- Does the company file EEO-1 forms?
- Does the company need an affirmative action plan and, if so, does it maintain a plan that is fully compliant with federal regulations?

Confidential Information

- Does the company take adequate steps to protect against the misappropriation or misuse of confidential information by employees?

Non-competition and Non-solicitation Agreements

- Does the company have legitimate business reasons to require these types of agreements?
- Are the agreements tailored to individual circumstances?
- Does the company have a coherent practice with regard to addressing breaches of such agreements that will not undermine its enforcement efforts?
- Is the agreement narrowly tailored to comply with state law?
- **For Massachusetts employers:** are agreements compliant with new state law requirements?

Performance Appraisals

- Does the company have a practice of conducting periodic performance reviews?
- Is the performance review process consistent throughout the company?
- Are the reviews documented in a manner that would help or hurt the company in the event of litigation?

Termination

- Does the company have a process for managing and documenting terminations that pose a risk of litigation?
- Does the company conduct meaningful exit interviews?
- Do the company's practices regarding references for former employees protect it from liability?
- Does the company have a consistent practice regarding its response to claims for unemployment benefits?
- Does the company obtain releases from terminating employees and, if so, do the releases provide maximum protection under federal and state law?

Notices and Postings

- Has the company posted updated versions of all notices required by federal and state law?

Record-keeping

- Does the company maintain the specific types of employee records required by federal and state law?
- Does the company maintain employee records for the length of time prescribed by federal and state law?
- Do the company's record-keeping practices comply with the ADA and protect the business from a privacy standpoint?
- Does the business know how and when to respond to requests for personnel records?

For more information on employment and workplace policies, please contact:



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