HR for Small Business: Legal Issues and Tips for Addressing Them

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Agenda

- Just the Facts – Federal Regulations
- Just the Facts – State Regulations
- Questions

JUST THE FACTS – FEDERAL REGULATIONS
Federal Regulations

The federal government has empowered the following organizations to administer employee related issues:

- Department of Labor (DOL)
- Equal Employment Opportunity Commission (EEOC)
- Occupational Health & Safety Administration (OSHA)
- National Labor Relations Board (NLRB)

Federal Regulations

If you have 1 employee….

- Fair Labor Standards Act (FLSA)
- Equal Pay Act (EPA)
- Unemployment Insurance Coverage
- Immigration Reform & Control (I-9)
- Uniformed Services Employment & Reemployment Rights Act (USERRA - Veteran’s “Reemployment Law”)

Federal Regulations

If you have 1 employee….  
- Health Insurance Portability Accountability Act (HIPAA)
- Employee Polygraph Protection
- Fair Credit Reporting Act (FCRA)
- National Labor Relations Act (NLRA)
- Occupational Health & Safety Act (OSHA/Workers’ Compensation)
Federal Regulations

If you have 15 employees…
- Americans with Disabilities Act (ADA)
- Title VII of the Civil Rights Act of 1964 (Title VII/EEO)

If you have 20 employees…
- Age Discrimination (ADEA)
- Consolidated Omnibus Budget Reconciliation Act (COBRA)

If you have 50 employees…
- Family Medical Leave Act (FMLA)

If you have 100 employees…
- Employee Information Reports (EEO-1)
- Workers Adjustment Retraining & Notification Act (WARN)

Fair Labor Standards Act (FLSA)
- Wage & Hour Law
- Requires minimum pay of $7.25/hour
- Overtime (equal to 1.5 times base pay) required for nonexempt employees working more than 40 hours per week
- Requires regular pay periods (but does not specify what they are)
- Deductions (including merchandise shortages, required uniforms & tools) are not allowed to bring rate below $7.25 or reduce overtime rate
- Regulates Child Labor Provisions
Fair Labor Standards Act (FLSA)

- What it DOESN'T COVER
  - Mandatory vacation, holiday, severance or sick pay
  - Meal or rest periods (breaks)
  - Holiday time off
  - Premium pay for worked holidays or weekends
  - Pay raises above minimum wage
  - For cause terminations

How can I tell if an employee is exempt?

- Employee makes at least $455 per week ($11.38 per hour or $23,660 per year)
- Falls into one of the following categories:
  1. Executive Employee Exemption
  2. Administrative Employee Exemption
  3. Computer Employee Exemption
  4. Professional Employee Exemption
  5. Learned Employee Exemption
  6. Creative Employee Exemption
- Salary ≠ Exempt

Computing Overtime Pay

- Hourly rate (regular pay rate for an employee paid by the hour) - If more than 40 hours are worked, at least one and one-half times the regular rate for each hour over 40 is due.

Example: An employee paid $8.00 an hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times $8.00, or $12.00, for each hour over 40. Pay for the week would be $320 for the first 40 hours, plus $48.00 for the four hours of overtime – a total of $368.00.
Fair Labor Standards Act (FLSA)

Computing Overtime Pay

**Salary** - The regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the salary.

What do you think?!?!?!?!

Do holiday, vacation or sick hours count when computing overtime?

Can you “dock” the pay for an exempt employee if they don’t have vacation or sick time to cover an absence?

Fair Labor Standards Act (FLSA)

Pay records (comprising of the following) need to be kept for at least 3 years:
1. personal information, including employee's name, home address, occupation, sex, & birth date if under 19 years of age;
2. hour & day when workweek begins;
3. total hours worked each workday & each workweek (time clocks not required); 4. total daily or weekly straight-time earnings;
5. regular hourly pay rate for any week when overtime is worked;
6. total overtime pay for the workweek;
7. deductions from or additions to wages;
8. total wages paid each pay period; &
9. date of payment & pay period covered.
Equal Pay Act (EPA)

- Equal pay for equal work
- Jobs don’t have to be “identical” just “substantially equal”
  - Skill (experience, ability, education & training)
  - Effort (physical or mental exertion)
  - Responsibility (degree of accountability)
  - Working Conditions (physical surroundings & work hazards)

Immigration Reform & Control Act (I-9)

- Prohibits the employment of individuals unauthorized to work in US
- Does not allow for:
  - Discrimination on the basis of national origin
  - Discrimination on the basis of citizenship
- Requires completion & retention of I-9 form for each employee
- Forms must be retained for 1 year after date of termination OR 3 years after date of hire, whichever is later

Occupational Health & Safety Act (OSHA/Workers’ Compensation)

- Goal is to provide a safe working environment for employees
- “General Duty” clause: The general duty clause [Section 5(a)(1)] states that each employer “shall furnish . . . a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”
- Requires:
  - safety training for hazardous materials & equipment
  - medical treatment & wage continuation in the case of an accident
Occupational Health & Safety Act (OSHA/Workers’ Compensation)

- Recordkeeping Requirements:
  - OSHA Form 300 – a detailed injury/illness log
  - OSHA Form 300A – a summarized version of Form 300 which must be conspicuously posted by February 1 & kept in place until at least April 30.
  - OSHA Form 301 – an individual incident report that provides added detail about each specific recordable injury or illness. An alternative form, such as an insurance or workers’ compensation form that provides the same details may be substituted for OSHA Form 301.

Occupational Health & Safety Act (OSHA/Workers’ Compensation)

- Recordkeeping is not required for the following:
  - Employers with 10 or fewer employees &
  - Employers in statistically low-hazard industries including: automobile dealers; apparel & accessory stores; eating & drinking places; most finance, insurance, & real estate industries; & certain service industries, such as personal & business services, medical & dental offices, & legal, educational, & membership organizations

- However, the Bureau of Labor Statistics or OSHA may require ANY employer to maintain records.

What do you think?!?!?!?

Is it better to have an injured employee return to work in a modified-duty arrangement or stay at home until he/she is fully released by the doctor?
Title VII

• Prohibits discrimination on the terms & conditions of work based on the “Big 5” protected classes:
  – Gender
  – Race
  – National Origin
  – Religion
  – Color
• No provision for “reverse” discrimination

Terms & Conditions of Employment

• Recruitment
• Selection
• Compensation
• Benefits
• Promotion
• Demotion
• Transfers
• Training
• Special Job Assignments
• Termination

Americans with Disabilities Act (ADA)

• Prohibits discrimination on the terms & conditions of work based on an actual OR perceived disability
• Requires the implementation of “reasonable accommodations” which allow employee to perform the essential duties of job
Age Discrimination in Employment Act (ADEA)

• Expands provisions of Title VII
• Prohibits discrimination against individuals over the age of 40.

What do you think?!?!?!?!

Is it ever legal to discriminate against an employee protected under one of the “Big 5,” age or disability?

Family Medical Leave Act (FMLA)

• Allows for up to 12 weeks of unpaid leave during a 12 month period for:
  – for the birth & care of a newborn child of the employee;
  – for placement with the employee of a son or daughter for adoption or foster care;
  – to care for a spouse, son, daughter, or parent with a serious health condition;
  – to take medical leave when the employee is unable to work because of a serious health condition; or
  – for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation.
  – for the care of a “seriously injured” service member or veteran (26 weeks may be taken)
Family Medical Leave Act (FMLA)

• Employee Eligibility:
  – have worked for the employer for a total of 12 months (consecutive months not required);
  – have worked at least 1,250 hours over the previous 12 months; &
  – work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

Family Medical Leave Act (FMLA)

• What’s a “serious health condition”
  – An illness, injury, impairment, or physical or mental condition that involves either:
    • Inpatient Care
    • Ongoing Outpatient Treatment
  – In most instances, ongoing treatment does NOT require repeated visits to a physician.

Family Medical Leave Act (FMLA)

• Any employer must....
  1. Maintain health benefits at the same level provided to all other employees;
  2. Restore employee to original job (if available) or an equivalent job with equal pay & working conditions & hours
Family Medical Leave Act (FMLA)

- Any employer can:
  1. Can, without employee request, mandate that leave go towards 12 week allowance.
  2. Under certain conditions, employers may choose to “substitute” (run concurrently) accrued paid leave (such as sick or vacation leave) to cover some or all of the FMLA leave. An employee’s ability to substitute accrued paid leave is determined by the terms & conditions of the employer’s normal leave policy.
  3. Require a 30 day notice for “foreseeable” events.
  4. Require medical verification (& recertification) of health condition.
  5. Can require employee to pay his/her “share” of premiums while on leave.
  6. Utilize a “rolling” calendar year to determine leave time available.

What do you think?!?!?!?

Can you make an employee use their FMLA benefit while on a worker’s compensation leave?

Can you fire someone who is on FMLA?
Required Posters

US DOL – OSDBU Poster Page

- Job Safety and Health Protection (OSHA)
- Equal Employment Opportunity is the Law
- Fair Labor Standards Act
- Your Rights Under the Family and Medical Leave Act (only if > 50 employees)
- Uniformed Services Employment & Reemployment Rights Act
- Notice: Employee Polygraph Protection Act

JUST THE FACTS – STATE REGULATIONS

State Regulations

The Missouri Department of Labor and Industrial Relations is the governing body for employee related issues. The following entities work under their guidance:

Missouri Human Rights Commission
Division of Employment Security
Division of Workers’ Compensation

http://labor.mo.gov
Wage & Hour Law

• Minimum wage is based on the Consumer Price Index and may not be lower than federal minimum wage (currently $7.25 per hour)
• Reviewed each fall for increases beginning January 1 of each year
• Tipped employees are required to be paid a minimum of $3.625 (50% of minimum wage) and if tips do not equal minimum wage, the difference must be paid by the employer

Wage & Hour Law

Child Labor (14 & 15 years old)
• 30 minute minimum meal break for 5.5 hours of work
• 12 hours between shifts
• No more than 3 hours OR later than 7:00 pm on a school day (9:00 pm on non-school day)
• A work certificate issued by the school superintendent’s office is required
• No door-to-door or street sales
• Jobs using hazardous equipment or materials are prohibited
• Children working for (or supervised directly by) their parents are exempt from these conditions

Wage & Hour Law

Travel Time
• If you require an hourly employee to travel on the weekend, then you need to pay them if it is during their normal working hours.
• Pay for travel time only, not for downtime spent in hotel.
• If traveling during the week, pay for time in transit outside of normal working hours.
What do you think?!?!?!?

Are breaks or meal periods required by law for adults?

Can you reduce someone’s pay?

Should you give a fired employee his/her last check at the time of termination?

Worker’s Compensation

Coverage Requirements
• Coverage required if you have 5 or more employees (One or more in construction)
• Even if you are exempt from purchasing coverage, you are still responsible for paying claims for an injured employee
• Employees have 30 days to provide written notice of the accident or injury
• Coverage can be provided through self-insurance (with or without use of TPA) or purchase of insurance through a traditional company

Worker’s Compensation

Accident Definition
• Work must be the “prevailing factor” in an accident or injury (i.e., illness or disease) case
  – Accident: an unexpected "traumatic event or unusual strain identifiable by time and place of occurrence caused by a specific event during a single work shift."
  – Occupational Disease: only compensable if worker can demonstrate the workplace caused the occupational disease.
Worker’s Compensation

You may pay a claim without reporting it to your insurance company if:
- The total bill is less than $1,000; **AND**
- Total loss time is less than three days; **AND**
- Employee chooses not to file a claim for compensation.

Reasons for reductions in claims:
- Employee fails to use provided safety equipment or follow safety rules (25 – 50%)
- Drug and alcohol use – automatic deduction of 50%; can result in employer exemption if found to be the proximate cause of the accident

What do you think?!?!?!?

Are accidents that occur when driving a company owned vehicle covered under worker’s comp?

Are accidents that occur when participating in recreation activities sponsored by the employer covered under worker’s comp?

Unemployment

You are liable for unemployment if you:
- Have a total payroll of $1,500 in one quarter during the current or previous year;
- Employ a worker (doesn’t have to be the same person) during 20 or more weeks during the current or previous year;
- Pay $1,000 or more in cash to domestic labor during the current or previous year;
- Pay $20,000 or more in one quarter during the current or previous year for agricultural labor.
Unemployment

Independent Contractors vs. Regular Employees
- If you maintain the right to direct and control the activities, both the results and the method(s) for obtaining them, of an employee, then they are NOT an independent contractor. Three areas to consider:
  - Behavioral Control
  - Financial Control
  - Type of Relationship

Required Posters

MO DOLIR
- Notice to Workers Concerning Unemployment Benefits
- Workers’ Compensation
- Discrimination in Employment
- Missouri Minimum Wage Law

QUESTIONS?
To obtain a copy of the slides, or for in-depth information, please contact:

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