

HIRINGS AND FIRINGS, CLASSIFICATIONS AND INVESTIGATIONS, HR NIGHTMARES EMPLOYERS CAN AVOID



Employers often find themselves in legal hassles for reasons that range from ignorance of law, to complacency and smugness that their unlawful activities are so well concealed that chances of them being caught and brought to justice are remote. Some do it to save money and many feel that the administrative headaches really call for too much of an effort and can be bypassed. Whatever the reason, employers are prone to make these HR mistakes that can land them in hot legal soup and result in censures and huge financial penalties. Chas Rampenthal, general counsel of online legal services said, "HR is about more than a manual, more than classes and training. We think of it as a living, breathing organism that works inside the culture of the company. Business owners need to have the proper policies in place, and they have to manage and enforce those policies." The Human Resources department is perhaps the most important department in the organization and has many significant responsibilities to fulfill. Managing them is often an overwhelming task. One small mistake, intended or unintended, could cost the company hundreds, thousands, and even millions of dollars. It will surely help to know, which are the likely pitfalls and knowing and understanding them will help you not to fall into them. The California Chamber of Commerce catalogues the following mistakes that employers, with specific reference to Californian employers, make that has led them to face lawsuits. The biggest mistake that employers make is in classifying all their employees as exempt employees. They feel that to avoid the hassle of figuring out the overtime and break periods and other things that non-exempt employees are entitled to, it is less of a bother, to just pay them a salary and classify them as exempt. By merely paying them a salary, your workers do not become exempt workers. For a worker to be exempt, he must fall under these three factors: A) He should be paid at least \$455 per week, B) He should be paid on a salary basis, and C) He must perform exempt job duties. It is worth noting that there are three categories of exempt job duties — executive, administrative and professional. The government does not make it compulsory for employers to give their workers meals or rest breaks, though there are some states where this is mandatory. However, if you offer short breaks to your workers, between 5 and 20 minutes long, you have to pay your employees for this break time. Most employers overlook paying workers for the break and hence invite trouble. Workers are entitled to a host of benefits and legal protections. However, contractors are paid for what they have been contracted and employers do not have to offer them normal employees entitlements like workers compensation, unemployment insurance, disability insurance and family leave benefits. You cannot qualify every worker in your workplace as a contractor. A contractor usually has to manage the work on his own, bring his own tools and equipment. If the company supplies the so-called contractor with tools he becomes an employee and ceases to be a contractor. There are other factors too, that govern the difference between an employee and a contractor and employers will be well advised to understand them before resorting to this ill-advised method. Many companies are dragged to court on harassment and discrimination charges. More often than not it is the manager or the supervisor's fault whose behavior with the employee has transgressed accepted behavior and falls under the harassment and discrimination jurisdiction. They may say discourteous, racially prejudiced, or chauvinist things, or be inadvertently discriminatory, and because they are in a supervisory position, the entire company has to face the flak. It is of the utmost importance to provide harassment and discrimination training to managers and supervisors. When you want to fire an employee for taking leave of absence, think twice and make sure that you are doing the right thing. It may be okay to fire a regularly errant employee, but employees taking leave under disability leave, family disability leave, military leave and jury duty are all protected by law, and sacking them could leave you open to legal suits. Parting between the employer and the employee is, more often than not, bitter and contentious. Employers are known to hold on to the employee's final check and when they do issue it; it is full of deductions towards things like unreturned equipment, uniforms and similar things. Federal law does not say that the final check to the employee should be given along with his termination letter but it does say that it should be given before reasonable time elapses. There are some states, however, that make it mandatory to clear the employees wage and salary dues along with his termination. Moreover, FLSA says that you cannot deduct the cost of things like unreturned equipment and uniforms from an employee's final check. Employers are not allowed to deduct loan payments from the employee's paychecks unless the employee has specifically asked them to do so. Although some states are exception to this rule, the only things most states allow to be deducted are taxes, retirement and benefit plans. If you have entered into a rather rigid noncompete agreement with your employee it could be seen by the court, in case of litigation, to be preventing your ex-employee from making a living. A non compete agreement is a contract between an employee and an employer, where the employee agrees not to enter into competition with the employer after he terminates employment. A non-compete agreement is based on give and take and more the give and take are on equal terms the safer the agreement is. Many employees make the mistake of believing that if a worker does not avail of his vacation time, that's his decision and he does not have to be paid for the accrual of vacation time. Courts have ruled that earned vacation time is a vested benefit and must be paid out upon termination. Last but not the least employers would be well advised to know the law. Ignorance of law is not an excuse and cannot be used as a reason for committing a workplace mistake. Most employers do not make the effort of really understanding the law. You don't have to become a lawyer but you should at least be aware of what rights your employees are entitled to and be knowledgeable enough to be able to identify when you have a potential issue on your hands.