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The Law & HRM: An Ounce of Prevention is worth a Pound of Cure

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The nature of human resources management (“HRM”) has become more challenging because of today’s complex legal environment. Increasingly, HR professionals have had to assume more front line responsibility for many legal compliance issues. As a result, the role of HRM is held to a higher standard, and a “knowledge base” regarding numerous employment laws must be maintained. HR professionals also need to be aware of high risk situations presented in the workplace that may require the advice of legal counsel. Without a basic understanding of these laws, organizations are more susceptible to otherwise avoidable employee complaints and potential lawsuits.

Prior to the 1930s there were no significant laws, statutory nor judicial, that impacted employment. Today there are over 50 significant federal laws, and an equal number of corresponding state laws, that directly impact HRM.

The purpose of this article is to provide a portrait of the evolution of the law relevant to the employee-employer relationship, and to examine management practices that enable organizations to acquire a basic understanding of related laws. (The intent is to identify many of the more important statutes, rather than an in-depth analysis of employment laws.)

Evolution of Employment Law & HRM

In a manner similar to Darwin’s theory of evolution and natural selection, the roles of HR professionals have also evolved from one generation to the next. Contemporary human resources management has had to adapt due to the significant impact of numerous complex employment laws. From an historical perspective, starting in the late 1800s in the U.S. there were virtually no laws specifically protecting employees in the workplace. The period 1920s to 1940s witnessed the enactment of the first few employment related statutes. The 1960s marked an era in which several pieces of social legislation had the most profound impact. From the 1990s to today the legal pendulum has swung clearly in favor of protecting employees.

Without providing an in-depth analysis, here is a chronological summary of some of the major federal statutes that impact employment activities:

- National Labor Relations Act: 1935; Fair Labor Standards Act: 1938



- Labor Management Relations Act: 1947
- Equal Pay Act: 1963; Civil Rights Act: 1964; Age Discrimination in Employment Act: 1967
- Health Maintenance Organization Act: 1973; Employee Retirement Income Security Act: 1974
- Immigration Reform and Control Act: 1986; Worker Adjustment & Retraining Notification Act: 1988
- Americans with Disabilities Act: 1990; Family and Medical Leave Act: 1993
- Sarbanes-Oxley: 2002; Pension Protection Act: 2006

Numerous examples can be cited in which reputable organizations unwittingly experience employee lawsuits simply due to the lack of understanding of legal issues surrounding the workplace. A recent example involved a privately owned forest products processor with over 4,000 employees. Although it has been doing business since 1986, the organization had to pay a fired employee over \$100,000 based on religious discrimination in violation of a statute that has been in existence for over 40 years, i.e. Civil Rights Act of 1964. (EEOC v. Sierra Pacific Inc.; 07-CV-02205-LEW/JFM).

New HRM Responsibilities

The HR management profession has gone through significant changes necessitated by the globalization of the business world, new technology, e.g. wireless communications and internet, and especially by the challenges posed by an increasingly complex legal environment.

Faced with potential workplace discrimination, retaliation, safety and related employment issues almost every day, managers and HR professionals have a responsibility to help their organizations to avoid - or at least minimize - employee complaints and potential employment-related lawsuits. HRM may meet the new responsibilities by implementing best practices.

CONCLUSION: HRM Best Practices

The most effective way to prevent situations that may lead to lawsuits is to have a basic understanding of major statutes and significant court cases – federal and state – that impact HRM. It is also important to learn how to find the answers to legal questions that go beyond the mere basics.

Besides keeping abreast with numerous employment laws, another challenge for HR professionals is accepting responsibility for recognizing when the advice of legal counsel is needed. A prerequisite to meeting this challenge is simply having access to either in-house or outside legal counsel. Best practices in this area requires organizations to be skilled in



recognizing “high risk situations”, i.e. circumstances in which there is a greater likelihood that there may be an employee complaint in response to an adverse employment decision.

A cost-effective way to learn the basics of these laws, and to readily recognize high risk situations, is to utilize MMC, Inc.’s outsourcing HRM services. Outsourcing services include full access to legal advice regarding sensitive workplace issues. Several HRM legal issues training workshops are also offered by MMC, Inc. These learning opportunities improve understanding of the legal environment of the workplace, enable management to readily find more detailed information regarding legal issues specifically related to their organization, and thereby help prevent costly litigation.

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To assist clients, MMC, Inc. has launched a special series of workshops covering key topics for manager development. This series offers a broad menu of a variety of interesting and highly relevant “talent development” workshops in flexible onsite formats e.g. lunch forums, 2-hour on-site programs. They may even be offered to employees as a special employee recognition, or as a means for improvement as part of performance evaluations. Please visit www.MMChr.com for details.)

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