

## **TOP TEN MISTAKES EMPLOYERS MAKE**

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### **1. Hiring Practices And Decisions**

- Employers do not take time to evaluate the essential functions of the position for which they are hiring.
- Employers are not consistent in the interview process, causing possible differential treatment issues.
- Employers ask not only the wrong questions, but also illegal questions.
- Employers fail to provide reasonable accommodations to applicants who may have disabilities.
- Employers do not know how to communicate with applicants about hiring decisions.

### **2. Non-Compete Agreements**

- Employers fail to let applicants know about the requirement for the individual to sign a non-compete agreement before working.
- Employers fail to have applicants sign the non-compete prior to starting work.
- Employers have ALL employees sign non-compete agreements, including janitors!
- Employers fail to offer “real consideration” to existing employees that they want to sign a non-compete agreement.
- Employers fail to enforce the non-compete agreements consistently, which may result in waiver arguments.

### **3. Discipline And Terminations**

- Employers are “Minnesota nice” and do not address performance issues.
- Employers fail to properly document performance issues.
- Employers are not consistent in the disciplinary action taken (i.e., one employee receives a written warning for the same conduct for which another employee is terminated).
- Employers do not go through a “termination checklist” before proceeding with a termination.



- Employers do not have termination letters prepared in advance.
- Employers improperly communicate termination decisions to other employees.

#### **4. Maintenance of Personnel Files**

- Employers do not have personnel files.
- Employers do not know what Minnesota law prohibits from being in a personnel file.
- Employers improperly include I-9 Forms, medical documentation, worker's compensation documentation, and leave of absence documentation in personnel files.
- Employers let people have access to the personnel files that should not have access.
- Employers let employees review their personnel files without anyone from the company present.
- Employers destroy personnel files too quickly.

#### **5. Leaves of Absences**

- Employers do not know all of the leaves of absences permitted under Minnesota law.
- Employers do not understand the Family and Medical Leave Act ("FMLA") and, therefore, fail to comply with the mandatory provisions of the statute.
- Employers do not understand the "triggering" language or event that requires a statutorily protected leave of absence.
- Employers do not take steps to prevent retaliation after an employee takes a statutorily protected leave of absence.

#### **6. Disability Issues**

- Employers do not understand the state and federal laws prohibiting discrimination on the basis of a person's disability or perceived disability.
- Employers fail to engage in the interactive process when an employee requests an accommodation in the workplace.
- Employers fail to understand that an employee does not need to utter any "magical words" to request an accommodation in the workplace.
- Employers fail to understand that they are not required to provide any accommodation requested by an employee.

- Employers fail to document the discussions about possible accommodations and the actual accommodations provided.
- Employers do not take steps to prevent retaliation after an employee requests an accommodation in the workplace.

## **7. Wage And Hour Issues**

- Employers misclassify employees as “salaried” employees and do not pay overtime. The law is “exempt” and “nonexempt.”
- Employers either have no job descriptions or insufficient job descriptions justifying the classification of employees.
- Employers fail to track hours worked by employees.
- Private employers give employees “comp time” instead of overtime.
- Employers fail to have written policies about overtime.
- Employers have poor documentation and struggle with audits by the Department of Labor.

## **8. Handbooks**

- Employers do not have them!
- Employers have handbooks, but they are dated! Employers should review their handbooks on an annual basis and update them.
- Employers do not include all of their policies in the handbook – instead “that’s just the way we do things.”
- Employers have handbooks that fail to have disclaimers about “not a contract.”
- Employers do not have policies against offensive behavior and harassment.
- Employers are inconsistent in the administration of the policies in the handbook, resulting in differential treatment.
- Employers do not meaningfully communicate the handbook policies – instead, employees are told to just review the handbook.
- Employers fail to get signed acknowledgements from employees after they have received and read the handbooks.

## **9. Drug & Alcohol Policies**

- Employers do not take the time to ensure compliance with the rules and regulations regarding appropriate authorizations and policies necessary to test an employee for use.

- Employers fire employees for inappropriate use of drugs and/or without taking steps required under the law.

**10. Anti-Harassment And Discrimination Training (Respectful Treatment Training)**

- Employers do not conduct any training on their policies against offensive behavior and/or policies against harassment and discrimination.
- Employers fail to conduct meaningful training on an annual basis.
- Employers fail to conduct training with managers on their policies against offensive behavior and handling complaints by employees.
- Employers do not educate employees about the impact of offensive, harassing or discriminatory behavior.

By conducting annual, meaningful training, employers could minimize their exposure to liability or raise affirmative defenses under *Ellerth* and *Faragher*.

***This is a general summary of the topics and is not a substitute for legal advice.***