

A TALE OF TWO PERSPECTIVES: GUIDE TO AN HR AUDIT

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The Lawyer's Perspective

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INITIAL CONSIDERATIONS FOR EMPLOYERS

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WHAT IS A HUMAN RESOURCES AUDIT?

- A human resources (HR) audit is a systematic formal process, which is designed to examine the strategies, policies, procedures, documentation, structure, systems and practices with respect to an organization's human resource management
- This type of audit systematically and scientifically assesses the strengths, limitations, and developmental needs of the existing human resources department from the larger point of view of enhancing organizational performance and ensuring regulatory compliance
- **NOTE:** The audit should be conducted by professionals with significant Human Resources experience. And, it is recommended that employers work closely with employment law counsel to better address/correct regulatory and/or noncompliance issues

WHY SHOULD AN EMPLOYER CONDUCT AN HR AUDIT?

- HR audits present employers with a comprehensive review of the employer's current state to help determine whether specific practice areas or processes are adequate, legal and effective
- The results obtained from an HR audit can help identify gaps in HR practices, and HR can then prioritize these gaps in an effort to improve processes, minimize lawsuits and regulatory violations
- HR audits help human resources professionals standardize processes, identify risk areas, and tie human resource department goals to strategic business goals

WHY SHOULD AN EMPLOYER CONDUCT AN HR AUDIT?

A properly conducted audit will help answer the following types of questions:

- What are the employer's current formal and informal policies?
- Are policies memorialized in writing and applied consistently?
- Where can applicable policies be accessed if not memorialized in writing?
- Who is aware of applicable policies not memorialized in writing?
- Are the employer's policies and practices in compliance with applicable federal, state, and local employment requirements?
- What mechanisms are in place to ensure compliance with applicable employment laws?

WHAT ARE THE STEPS FOR A SUCCESSFUL HR AUDIT?

- **STEP 1: Organize the audit process**
 - HR professionals, in conjunction with employment counsel, should organize the audit process by working with the employer to identify key employees and internal references who have specific knowledge of the HR policies, practices and procedures to be audited
- **STEP 2: Determine the scope and type of audit**
 - Audit scope and complexity will vary according to employer size and business need
 - Develop an audit plan that identifies the goals of the audit and creates a timeline for completing the audit.
 - If an HR audit has never been conducted, a comprehensive review of all policies and procedures is recommended. Going forward, employers may choose to conduct audits that focus on specific HR functions, such as payroll or record keeping

WHAT ARE THE STEPS FOR A SUCCESSFUL HR AUDIT?

- **STEP 3: Gather and analyze the data**

- Once all applicable documents and forms under the scope of the audit have been gathered, a comprehensive document is developed that organizes the materials and elicits on all the subjects to be reviewed
- The audit team (professionals and counsel), will conduct an on-site visit to at the employer's primary business location, to conduct a comprehensive analysis and review
- After all of the necessary information has been analyzed, the next step is to create a report that (1) addresses the findings of the audit, (2) identifies any strengths and weaknesses found during the audit, and (3) offers as recommendations to correct any instances of noncompliance

- **STEP 4: Develop an action plan and document progress**

- The audit team, in conjunction with employment counsel, should jointly determine how to analyze audit results, implement the necessary action plan and/or document progress.

AUDIT TARGET AREAS

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THE HIRING PROCESS

AUDITING THE HIRING PROCESS

- **Key Legal Concerns for Employers:**
 - Claims of discrimination based on employer hiring practices
 - Violations of legal requirements relating to pre-employment background checks, drug testing and medical examinations
 - In Illinois, for example, employers may not inquire into an applicant's criminal record until the applicant has been selected for an interview by the employer or until after a conditional offer of employment is made to the applicant
 - Medical examinations and drug testing should only be conducted after a conditional job offer.
 - Penalties imposed for failure to obtain complete and accurate information on pre-employment verification documents, such as incomplete I-9 documentation

AUDITING THE HIRING PROCESS

- **Documents to Collect and Review:**

- Job descriptions for management and entry-level positions
- Job advertisements and internal job postings
- Application for employment
- Background check policies and procedures
- Post-hire paperwork (*i.e.* state and local tax withholding forms, W-4s and other deductions from wages)
- Internal policies and procedures regarding interviewing and hiring
- Sample rejection letters
- Sample new hire personnel files
- Available Affirmative Action Plan

AUDITING THE HIRING PROCESS

- **Best Practices:**

- Use application and corresponding employee acknowledgment forms to: (1) acknowledge that the company is an equal opportunity employer; (2) certify accuracy of applicant information, (3) establish an employment at-will relationship, and to (4) shorten applicable statutory limitations periods
- Do not include hiring paperwork with employment applications (*i.e.*, 1-9, W-2, FCRA forms)
- Ensure that background/credit check procedures are compliant with applicable federal, state and local laws
 - Eliminate policies or practices that automatically exclude individuals from employment based on criminal record
 - Keep applicant criminal history and credit information confidential and only use for intended purpose

AUDITING THE HIRING PROCESSES

- **Best Practices (cont'd):**

- Focus interview questions on whether the applicant is qualified for and able to do the essential functions of the job, document candidate qualifications with objective evaluation forms, and timely notify all rejected candidates in writing
- Understand disability protection laws relating to drug tests and medical examinations/inquiries
- Develop a streamlined process for ensuring the timely completion of I-9 and tax documentation
- Develop objective criteria for conducting internet searches and screening applicants' social media accounts

EMPLOYER RECORDS AND AGREEMENTS

AUDITING EMPLOYMENT RECORDS AND AGREEMENTS

- **Key Legal Concerns for Employers:**

- Incomplete or inaccurate documentation of employment relationship, including the failure to maintain accurate records of job offers and the failure to execute electronic forms
- Legal claims arising from an employer's violation of an employee's preexisting agreement with a former employer (*i.e.*, interference with non-competition and non-solicitation agreements)
- Legal claims based on employer misclassification of workforce (*i.e.*, employee v. independent contractors)
- Consequences for failure to maintain certain personnel records
- Legal claims arising from for wrongful destruction of employment records under the theory of spoliation of evidence

AUDITING EMPLOYMENT RECORDS AND AGREEMENTS

- **Documents to Collect and Review:**
 - Sample offer letter
 - Standard employment agreements
 - Independent contractor/sales representatives agreements
 - Policies regarding review of personnel files
 - Sample personnel file
 - Sample medical file

AUDITING EMPLOYMENT RECORDS AND AGREEMENTS

- **Best Practices:**

- Ensure that all records relating to the hiring process are maintained according to applicable law
- Develop a streamlined process for verifying whether applicants are bound by agreements with previous employers before making an offer of employment
- If independent contractors are used, consult legal counsel to ensure the proper classification of workforce
- Evaluate the process for preparing job offer letters to ensure letters cannot be misconstrued as employment contracts
- Develop a comprehensive procedure for ensuring that agreements addressing the employment relationship are fully executed and enforceable (*i.e.*, non-solicitation agreements, non-compete agreements)

AUDITING EMPLOYMENT RECORDS AND AGREEMENTS

- **Best Practices (cont'd):**

- Ensure that personnel files are maintained in a secure/centralized onsite/offsite location
- Ensure that documentation of performance discussions and disciplinary issues is maintained in employee personnel files
- Ensure that I-9 forms and employee medical records are maintained separate from employee personnel files
- Ensure that employee medical records are protected from disclosure except as permitted by the Health Insurance Portability and Accountability Act (HIPAA) and the Americans With Disabilities Act (ADA)
- Train management on employee requests to review personnel file

EMPLOYER PROCEDURES AND POLICIES

AUDITING EMPLOYER POLICIES AND PROCEDURES

- **Key Legal Concerns for Employers:**
 - Discrimination claims based on an employee's perception of inconsistent application of workplace policies or unfair performance evaluation/disciplinary action processes
 - Legal claims resulting from violations of federal or state drug testing requirements
 - Legal claims for harassment or discrimination on basis that employer failed to take corrective action
 - Legal claims for violation of ADA for employer failure to provide reasonable accommodations
 - Penalties imposed by government entity for failure to display required workplace postings

AUDITING EMPLOYER POLICIES AND PROCEDURES

- **Documents to Collect and Review:**
 - Required workplace postings
 - Employee handbook and corresponding acknowledgment
 - Records of updates to employee handbook
 - Harassment and discrimination policies and complaint/investigation procedures
 - Policies addressing reasonable accommodation
 - Policies regarding drug testing procedures
 - Policies regarding performance evaluations and adverse action
 - Sample job description

AUDITING EMPLOYER POLICIES AND PROCEDURES

- **Best Practices:**

- Ensure that all legally mandated employee posters are displayed
- Develop a procedure for conducting regular reviews of job descriptions and clarifying minimum job qualifications
- Conduct yearly updates to employee handbook to ensure that management and employees are aware of key equal employment opportunity, workplace conduct, compensation and leave policies
- Use handbook and corresponding employee acknowledgment forms to: (1) emphasize at-will employment relationship, (2) to shorten applicable statutory limitations periods, and to (3) detail discrimination/harassment reporting and complaint procedures
- Implement system for regular evaluation of work rules to ensure consistent administration of employment matters

AUDITING EMPLOYER POLICIES AND PROCEDURES

- **Best Practices (cont'd):**

- Ensure that workplace policies are distributed to all employees and obtain additional acknowledgments when distributing amended revised policies
- Evaluate/implement system for performing regular employee performance evaluations and ensuring fairness during evaluation process
- Align drug testing policies and procedures with applicable federal, state and administrative agency requirements
- Execute acknowledgments of policies referenced in the employee handbook and maintain such agreements in employee personnel files
- Evaluate policies addressing procedures for employment references and who is designated to provide references.

COMPENSATION AND LEAVE PRACTICES

AUDITING COMPENSATION AND LEAVE PRACTICES

- **Key Legal Concerns for Employers:**
 - Legal claims alleging violation of the Equal Pay Act and other discrimination statutes
 - Legal claims alleging misclassification of employees as “exempt” from overtime compensation
 - Legal claims alleging employer failure to comply with federal and state time off requirements
 - Legal claims alleging employer interference with employee FLMA rights
 - Failure to maintain adequate recordkeeping/documentation of hours worked by both exempt and non-exempt employees (in case of later “misclassification” determination)

AUDITING COMPENSATION AND LEAVE PRACTICES

- **Documents to Collect and Review:**

- Recordkeeping/documentation of hours worked by both exempt and non-exempt employees
- Management and entry-level job descriptions
- Policies and procedures regarding the classification of employees as “exempt” or “nonexempt”
- Policies and procedures regarding assessment of compensation and overtime disbursement/pay
- Policies and procedures regarding leave requests
- Recordkeeping of leave requests
- Policies and procedures regarding FMLA leave approval (if applicable)
- Record of FMLA leave

AUDITING COMPENSATION AND LEAVE PRACTICES

- **Best Practices:**

- Maintain detailed records of hours worked for both exempt and nonexempt employees
- Analyze metrics to ensure that employees are compensated based on objective qualifications
- Evaluate all job descriptions for exempt employees to determine whether descriptions meet FLSA requirements
- If the employer is subject to the FMLA, determine whether the employer has (1) a written policy notifying employees of their FMLA rights and (2) policies and procedures for on-going FMLA compliance
- Develop guidelines and resources to ensure correct application and coordination of leave policies (*i.e.*, sick leave, vacation leave, PTO)

The Practitioners Perspective

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STRATEGY, PRACTICE AND FUNCTIONS



AUDIT RECRUITMENT STRATEGY TO INCREASE SUCCESS RATE

Just developed a brand new recruiting strategy or improving and refining a current one?

- Undertake a “recruitment strategy audit” to ensure that it’s being successfully executed and includes:
 - Awareness of the strategy and ownership
 - Alignment with business strategies
 - Effective interview and selection process
 - Use of technology
 - Website effectiveness, social networking and employment branding
 - Use of and coordination with external search vendors
 - Cost effectiveness and ROI of the hiring process
 - Training for those involved in the process
 - Metrics
 - Diversity goals
 - Meaningful candidate experience

ONBOARDING: IT'S ABOUT EQUIPPING, NOT JUST ENGAGING

77% of employees that participate in a formal onboarding program meet their first performance milestone.

Good onboarding builds a solid foundation for a successful employment relationship.

- Does your onboarding program include?
 - Critical “survival skills” for Day 1
 - One-on-one “jumpstart” coaching with intensive feedback and support
 - Introducing new employees to their work family so they know co-workers and feel comfortable reaching out for resources
 - Activities to promote strong integration, acculturation, and faster speed to productivity
 - Use of technology
 - Follow up, follow up, and follow up

TOTAL REWARDS



- Evaluate total rewards programs to ensure they are meaningful, drive the right behaviors, and support talent attraction and retention.
 - Understand “intangible rewards” and consider how they contribute to the overall
- Ensure programs in place address pay equity.
- Evaluate employee access to rewards information and program education.

TECHNOLOGY



- Are processes efficient and fully integrated?
- Are systems being utilized to their fullest extent?
- Do redundant or manual processes exist that could be automated with current systems?
- Are employees and managers trained on system capabilities and how to use them?

EMPLOYEE RELATIONS AND COMMUNICATIONS

Assess the degree to which an HR team and leadership connect and communicate with employees:

- Does the company have an employee communication strategy?
- What channels of communication are primarily used?
- How does leadership disseminate information and show visibility?
- Are open door policies and practices in place (and working)?
- What methods are used to gather employee feedback?
- How is employee feedback acted upon?
- Are retention strategies in place?

Productivity improves by 20-25% in organizations with connected employees.

SEPARATIONS

Review separation processes to ensure consistency, fairness and compliance






- Are checklists in place?
- Are termination pay practices compliant?
- Are meaningful exit interviews conducted?
- Are required notices being provided?
- Are available benefits being shared?



RESULTS

	Observations	Recommendations	Risk / Priority
Legal Compliance	Processes and procedure in place for general compliance areas such as wage & hour, OSHA, HIPAA, FMLA and required notifications. EEO-1 reporting is out of compliance.	Comply with EEO-1 reporting requirements. File 2016 report. Conduct FLSA audit to ensure proper classification. Audit I-9s and comply with retention rules.	●
Recruitment & Selection	No recruiting strategy in place, but recruiting process exists. Hiring managers are not trained on processes or effective screening and selection processes. No employment brand.	Create recruiting strategies. Train hiring managers on effective selection process. Track applicants. Keep recruitment files with hiring decision justification. Establish brand.	▲
New Hire & Onboarding	Onboarding programs are in place for both employee groups, but inconsistencies are reported in the execution of the program. Completion of 90-day evaluations varies.	Evaluate onboarding programs for effectiveness and consistency. Provide training on 90-day review process and ensure all involved in onboarding understand their roles.	▲
Files & Records Maintenance	Employee files are generally well-organized and compliant. One area of the business has paper files and one has electronic files. No formal record retention policy is in place.	Create a formal record retention policy and review files on an annual basis for consistency. Train staff on retention of electronic files.	▲
Policies & Procedures	No avenue to monitor changes in state and federal laws is in place. Multiple personnel manuals currently exist. Review social media policy for compliance.	Create methods for monitoring changes in state and federal laws. Review need for multiple manuals and social media policy compliance.	▲

RESULTS

	Observations	Recommendations	Risk / Priority
Training & Development	Compliance training is currently provided. No leadership training is currently in place. Training programs are not reviewed to ensure relevancy.	Continue to provide compliance training. Utilize new LMS & HRIS systems for expanding and tracking training. Consider offering formal manager and supervisor trainings.	
E. Relations & Communications	The process for managing conflicts and employee relations issues, including harassment, is outlined in the employee handbook. A newsletter is in place.	Consider increasing visibility of HR at satellite locations to show HR as a resource. Continue communicating to staff through newsletters and Intranet.	
Total Rewards	A new benefits program was implemented in 2016. Human Resources handles benefits inquiries for all locations.	Evaluate total rewards strategy through surveys, focus groups, etc. to determine employee preferences with regard to benefits programs.	
Employee Separations	Managers are trained on the separation process as terminations arise. Exit interviews are not consistently completed or standardized, and turnover is not tracked.	Provide training on the separation process to managers. Implement an exit interview program and track HR metrics, including turnover.	
HR Technology	The organization is currently implementing Ceridian for payroll, HRIS and applicant tracking.	Continue to evaluate new HRIS capacity and determine whether new modules will be needed.	

QUESTIONS?

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