

# **The Independent Counsel**

## **Employment: Conduct Periodic Human Resources Audits**

by Edward Russell  
Association of Independent General Counsel

An ounce of prevention...." The old adage well describes the need for periodic audits of your company's employment policies and practices. For the same reason that one might schedule regular medical checkups, your company ought to audit its human resource ("HR") practices to minimize a costly "pound of cure."

A HR compliance audit is a voluntary, internal, periodical review and analysis of a company's HR policies and practices conducted in order to limit exposure to employment litigation.

### **Why Are Audits Needed?**

The need for audits increases year by year as governments add more laws and regulations governing the employment relationship, and modify old ones. A HR audit is intended to uncover those company management practices and policies that risk breaking those laws. While poor management practices usually pose the greatest risks, inappropriate or conflicting HR policies can also cause problems.

Maintaining too many policies can be as or more dangerous than none because a company's failure to follow an existing policy may become a basis for liability. In many companies, HR policies have been added ad hoc over time in response to specific company needs or crises. As a result, they may conflict with each other, or with newer laws and regulations. Similarly, implementing "canned" policies without customization can be dangerous. Also, legally required policies, e.g., for sexual harassment in Massachusetts, may have been overlooked, and need to be added.

### **What to Expect**

A compliance audit is not a one-day project. It will touch all areas of HR, and may require looking at documents and policies and interviewing HR staff as well as selected employees and managers in other areas of the company. The amount of effort required depends on the size and type of company.

Most audits start with a review of existing employee handbooks and policy and procedures. This provides an opportunity to step back and assess needs and risks, find conflicts and delete them, and fill gaps where policies are missing.

Consider also implementing a policy in newly developed areas such as electronic privacy and the use of e-mail; software and Internet companies have such policies but many others aren't yet aware of the need. \* This will be followed by an examination of the policies' actual implementation and practice.

Here are but a few of the many areas that might be examined:

- \* Postings of mandated notices.
- \* Employment applications.
- \* Hiring and firing practices.
- \* Compliance with mandated record keeping requirements.
- \* Benefit plans and their communication.
- \* Exempt vs. non-exempt classifications.
- \* Uses of independent contractors.
- \* Intellectual property assignments.
- \* Letters to new or to terminating employees.
- \* Assessments of where managerial training may be necessary.

### **Who Should Conduct the Audit?**

Whoever does a HR compliance audit must have significant HR experience and use a checklist or method to assess a company's risks and needs. This might be a HR professional or an attorney who concentrates in employment law.

Compliance audits can also be conducted in-house if the HR manager is experienced. Such an in-house audit, however, inevitably will suffer from objectivity and time limitations caused by the HR manager's ongoing job responsibilities.

### **Investigatory Audits**

An investigation, sometimes called an investigatory audit, inevitably will be required following the filing of an employee criminal or civil complaint, or in the event of a government investigation. The investigatory audit is done after the fact, addressing one specific issue or claim, and is more focused than a compliance audit. Some investigations, such as those for sexual harassment, should follow certain carefully prescribed procedures.

Where a HR professional or an attorney may conduct a compliance audit, an investigation or investigatory audit must be conducted only through an attorney in order to protect confidentiality as to the results by means of the attorney-client privilege.

\* Comment: Conducting regular audits of employment practices will significantly reduce exposure to the possibility of lawsuits.

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