

# HR's New Year's resolutions: The top 10 to-do's in 2010

As you gear up for a new year, here are some key to-do's that will minimize the risk of lawsuits:

## 1. Stay well

Make sure your company has considered how a potential H1N1 flu pandemic could affect your operations and finances and those of your suppliers, vendors and contractors. Estimate the effect of key employee absences. Cross-train employees to help maintain vital functions. Plan to use e-mail and teleconferencing more, to minimize face-to-face contact. Revise sick-leave policies to reflect the new realities a pandemic can bring.

To help allay employee anxiety about H1N1, provide up-to-date pandemic information from reliable sources, including strategies to reduce the spread of the flu through good hygiene.

## 2. Get to know GINA

The Genetic Information Nondiscrimination Act (GINA), designed to protect Americans against discrimination based on their genetic information when it comes to health insurance and employment, is now in effect. Make sure to list genetic information as a protected class in all relevant policies, such as your anti-discrimination and anti-harassment policies.

## 3. Keep an eye on the feds

If you are a federal government contractor, make sure you are in compliance with the regulations issued by the Office of Federal Contract Compliance Programs (OFCCP). It requires contractors with \$50,000 or more in government contracts and 50 or more employees to have an affirmative action plan.

The Obama administration has requested a hefty increase in the OFCCP's 2010 budget, as well as a significant increase in employees. That's a sign to expect more aggressive enforcement activity.

## 4. Beware hasty terminations

Review your disability-leave policies to ensure they don't contain inflexible provisions requiring automatic termination after an employee has been out for a certain period of time.

The EEOC recently has been challenging those draconian practices. The premise: Inflexible leave policies could violate the ADA if they short-circuit engaging in an interactive process to determine whether additional leave or some other reasonable accommodation might be warranted.

## 5. Watch wage-and-hour issues

Audit your [wage-and-hour practices](#), especially whether exempt employees are classified properly and whether nonexempt employees are paid for all time worked, as well as overtime.

Class-action lawsuits under the Fair Labor Standards Act continue to make the news.

Review any relationships with independent contractors to ensure they're classified properly—or whether they should be classified as employees. If a worker who is actually an employee is treated as an independent contractor, you could face tax penalties, liability for failure to pay overtime (if applicable) and benefits, and be responsible for unemployment compensation.

## **6. Make the ADA interactive**

In conjunction with last year's amendments to the ADA and the anticipated final regulations coming this year, consider creating a policy that advises employees who need a reasonable accommodation to request one. Make sure managers and HR staff know how to engage in the interactive process with employees who request reasonable accommodations.

## **7. Focus on union issues**

In anticipation of the future passage of some version of the Employee Free Choice Act, review existing communication systems to make sure employees have a way of raising concerns. Then address those concerns. Increase employee satisfaction (and make union representation less appealing) by using surveys and audits to take the workforce's pulse.

Educate managers on the union risk and how to respond quickly at the first hint of any organizing campaign.

## **8. Manage social media**

Develop a policy concerning employee use of social media, such as blogs, Twitter, Facebook and LinkedIn. The policy should address whether employees can use company computers to access such media while at work. Remind employees not to post anything that is harassing, defamatory and offensive, or contains confidential company information.

## **9. Document, document, document**

Document every performance problem and communicate it to the employee involved. Given the poor economy, expect an increase in employment discrimination cases from laid-off or fired workers.

When a worker who was fired for poor performance sues, your best defense is a strong documentation trail showing that you advised the employee of the performance problems and afforded opportunities to improve.

In addition, review every adverse employment decision for consistency with past decisions affecting similarly situated employees. That minimizes the risk that an employee will be able to prove that other employees were treated more favorably.

## **10. Remember respect**

And, finally, remember that employees who feel they're being treated fairly and with respect are less likely to bring claims against their employers.