

The 5 most dangerous legal mistakes HR makes



If you work in human resources, you carry a lot of responsibilities on your shoulders. But one small, simple misstep by HR or supervisors could cost your company hundreds, thousands or even millions of dollars.

So what are the biggest HR legal risks to be aware of? Here are our top 5:

#1 The hiring process: Mistakes in this area often start right at the beginning, with discriminatory words dropped in your want ads. Too many employers still use terms like “recent college grad” in their advertisements. This is particularly true when managers, rather than HR, write those ads.

Also, make sure everyone involved in interviewing knows not to ask about the applicant’s personal characteristics, such as age, race, gender, pregnancy or disability status. Asking such questions is essentially begging for a discrimination lawsuit. Keep every question based around one point — “How good would this person be at performing the job?”

#2 Wage and hour issues: Pay-related lawsuits in the United States have tripled in the past decade. An entire cottage industry of lawyers who solely go after employers for overtime and other pay-related cases has sprung up.

Technology has sparked many of these lawsuits. People can perform work now from anywhere at any time. You may get stuck with a big bill for this “off the clock” work unless you set some clear ground rules. When employees work unapproved overtime hours, you do have to pay them, but you can discipline them in some other way.

Another big wage issue: Wrongly classifying certain employees as exempt from the Fair Labor Standards Act, and thus, ineligible for overtime pay. You can’t just arbitrarily decide someone is a salaried, exempt employee. If they don’t fit under certain exemption criteria, they are due overtime pay for work over 40 hours a week.

We offer a free simple checklist to see if your employees are exempt or nonexempt. You can find it at www.theHRSpecialist.com/checklist.

#3 Training and performance: Supervisors who are not trained properly are more likely to trigger HR

troubles. They may say racist or sexist things, or discriminate in some way. But because they are in a supervisory position, the entire company is on the hook.

When it comes to performance reviews, companies get into the most trouble by having evaluations that are inconsistent or overly rosy.

Supervisors have a tendency to inflate employee ratings. But what happens when that employee who was fired for poor performance digs out his A+ review? He'll suspect discrimination ... and a court will, too. So keep evaluations consistent and grounded in reality.

#4 I-9 form mistakes: In the past three years, the Obama administration has really ramped up audits of I-9 employment eligibility forms. Make sure you complete an I-9 for each new employee within three days of their arrival. Don't ask new hires for any particular identity documents—let them choose one from the I-9 list. Keep those I-9s on file for at least three years after the employee's hire date or one year after his termination, whichever comes later.

#5 Terrible terminations: Messy firings are the biggest cause of employee lawsuits. To protect yourself legally, follow these tips for that last meeting:

- Bring another supervisor to act as witness.
- Write a memo right after the meeting summarizing what was said on both sides.
- Avoid surprises. Employees should never be completely surprised by a termination as long as their managers have been giving them regular feedback.
- Don't be too kind. You may feel compassion for the person, but your overly kind comments about a person being fired for substandard work could have them suspecting a different reason.
- Finally, don't discuss the reasons for terminations with other employees. A simple "Kevin won't be working here any longer" will suffice.