

CLINE WILLIAMS

HR & BENEFITS TIPS AND RESOLUTIONS FOR 2020

With the end of another calendar year approaching, employers are busy completing end-of-year tasks and planning for 2020. Within the Human Resources area, such tasks often include:

- Reviewing employee policies;
- Updating job descriptions;
- Conducting employee evaluations;
- Completing open enrollment for benefit plans;
- Reviewing and adjusting employee compensation;
- Budgeting;
- Addressing benefit plan checklists and notices;
- Assessing immigration law compliance; and
- Reviewing and modifying organizational structure.

It is a fun time of the year (say the lawyers), and a challenging time, too, with less work time to complete more-than-usual work and budgets dwindling, depleted, or spoken for. We cannot address all of these issues, but we hope the following tips and reminders will aid your efforts for a successful new year.

REVIEW OF EMPLOYMENT POLICIES

A new calendar year is a great opportunity to roll out an updated Employee Handbook and related HR policies—assuming union bargaining is not required. In reviewing your Employee Handbook and policies, remember that:

- The Introduction to the Handbook should provide in bold language that the Handbook is not a contract, that employment is at-will (unless modified by a contract, statute, or ordinance), and that only a designated representative has the authority to execute a written agreement for a fixed term of employment.
- The Handbook should have a separate at-will employment section.
- The policies covering at-will employment, equal employment opportunity, anti-harassment, and reporting protocols should be at the front of the Handbook to emphasize their importance.
- Ensure your anti-harassment policy is sufficiently broad to cover all unlawful harassment and not just sexual harassment.
- If you have an introductory or probationary period, make it clear that successful completion of such period does not alter the at-will employment relationship.
- Ensure flexibility and ability to bypass steps in any progressive discipline policy.
- The PTO or Vacation policy should be reviewed for clarity on accrual, payment on termination, and avoiding forfeiture. If you are still utilizing a “use it or lose it” system or if you are not paying accrued vacation or PTO at termination (or place conditions on doing so), stop doing so immediately. Such accrued benefits are considered wages under Nebraska law and must be paid.
- Ensure the presence of a strong Information Systems policy to cover computer/email usage.
- Check dress code policies for outdated/sexist language.
- Ensure your safety policy addresses the immediate reporting of workplace accidents and injuries, the completion of an incident report, and arrangements for medical care.

- Eliminate policies that provide for wage deductions without a written agreement from the employee, and remember that deduction rules are different for exempt and non-exempt employees.
- Ensure the presence of clear policies on recording all work time, barring working off the clock, and requiring approval to work overtime, where so desired.
- The Handbook should have a strong receipt and acknowledgement form that provides that the employee has reviewed and understands the policies, agrees to comply with the policies, agrees that discipline may result if policies are not followed, agrees that his/her employment is at-will (unless modified by a contract, statute, or ordinance), agrees the policies are non-contractual and can be changed at any time, and consents to monitoring and searches, as appropriate to your workplace and in accordance with applicable law.

EMPLOYEE BENEFITS ISSUES

The end of the year is a particularly busy time for employee benefit tasks. Please keep the following tip and reminders in mind:

- Retirement plans that use a calendar year plan year and have a safe harbor for nondiscrimination testing, a qualified default investment alternative, or an automatic contribution arrangement must provide the corresponding notices to participants by December 2.
- For cafeteria plans, the law generally requires participant elections to be in place before the beginning of a plan year (December 31 for calendar year plans). Many employers use an earlier deadline to facilitate open enrollment. Proactive human resources departments should consider contacting those who have not yet submitted an election a couple of weeks before the deadline.
- Applicable large employers (generally, those with more than 50 full-time employees) should prepare to meet Affordable Care Act reporting requirements for the 2019 reporting year. Please check the IRS's website prior to filing to confirm whether it has offered to extend the deadlines. Generally, employers must provide Form 1095-C to employees by January 31, 2020 and must file a copy and related forms with the IRS by February 28, 2020 if filing on paper, or by March 31, 2020 if filing electronically.

Some employers handle these compliance tasks in-house, while others rely on a third-party administrator or insurer. Either way, employers should confirm that the responsible party has completed the task.

IMMIGRATION COMPLIANCE & INTERNAL I-9 AUDITS

Immigration policy changes and compliance issues continue to create challenges for employers of all sizes. Regular internal audits of Forms I-9 are helpful in ensuring ongoing compliance with the Immigration and Nationality Act and to permit the employer to address any deficiencies found on Forms I-9. Additionally, an internal I-9 audit can assist the employer in identifying those I-9s that need to be purged. The employer can purge any expired I-9s either 1 year after an employee is terminated or 3 years after the start date of the terminated employee, whichever is longer.

An employer may choose to review all Forms I-9 or a subset of Forms I-9 selected based on neutral and non-discriminatory criteria. If a subset of Forms I-9 is audited, the employer should consider carefully how it chooses Forms I-9 to be audited to avoid discriminatory or retaliatory audits, or the perception of discriminatory or retaliatory audits.

If errors or omissions are discovered, remember that:

- Only an *employee* may correct errors or omissions in Section 1 of the Form I-9. If an employer discovers an error or omission in Section 1 of an employee's Form I-9, the employer should ask the *employee* to correct the error by having the *employee*:
 - draw a line through the incorrect information;
 - enter the correct or omitted information; and
 - initial and date the correction or omitted information.

- NOTE: there are specific procedures to follow if the employee requires a preparer/translator to assist them in making corrections.
- Only an *employer* may correct errors made in Section 2 or Section 3 of the Form I-9. The best way to correct Section 2 or Section 3 of the form is to have the *employer*:
 - draw a line through the incorrect information;
 - enter the correct or omitted information; and
 - initial and date the correction or omitted information.

An employer should not conceal any changes made on the Form I-9 (i.e., by erasing text or using correction fluid), nor should the employer backdate the Form I-9.

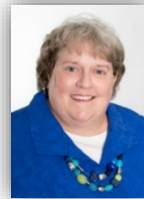
With these practical tips in mind, employers should be well-prepared to head into 2020. For additional information or any questions, please contact a member of Cline Williams' Labor and Employment Section:



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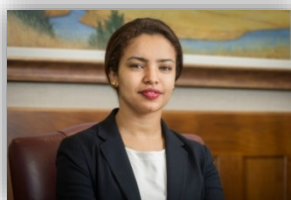
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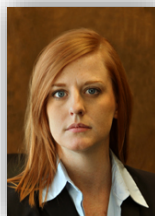
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