



LAWYER AS EMPLOYER

FIRMS AREN'T EXEMPT FROM EMPLOYMENT LAW ISSUES

Conduct a self-audit on handbooks, hiring, harassment and other topics

Editor's Note: This is the first of a six-part series that will examine how employment law issues specifically affect law firms. Next week, the authors will write about federal and state overtime requirements.

By **ROBERT G. BRODY**
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There's an old saying that the cobbler's children have no shoes. This proverb is often true of lawyers. Just think about how many contracts we all sign without reading them!

When it comes to complying with employment laws, lawyers can be some of the worst offenders. Typically this is not willful, but simply because we are often too busy being lawyers rather than managers. This is a mistake. Employees are increasingly willing to litigate, and with increased enforcement by federal and state agencies, missteps can be costly. You may remember the Baker & McKenzie administrative secretary of four months who sued for sexual harassment and was awarded \$7.1 million in punitive damages.

If your firm were investigated today, how would you fare? Try this self-audit: would your answers pass muster?

Overtime

You probably know there are a few exemptions to the federal and state overtime requirements. Lawyers performing legal work, for example, are exempt as "Professionals." But are your paralegals exempt, and

if so, on what basis? What about your office manager? Can you pay your lawyers an hourly rate but not overtime?

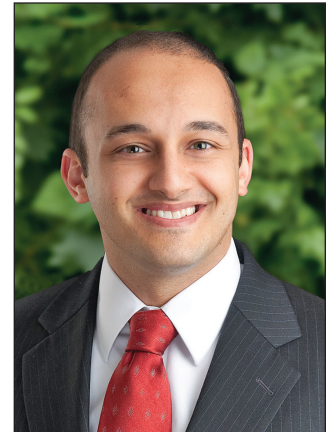
Bonuses

Often law firms incentivize attorneys with bonuses. What happens when an attorney leaves and the firm does not want to pay the bonus? Last year, such a bonus dispute went all the way to the Connecticut Supreme Court. Do you communicate your bonus plan to employees properly? Did you know a "discretionary" bonus is not always discretionary?

Discrimination

We all know race and sex discrimination are illegal, but do you know what all the protected classifications are under federal and Connecticut law? Do you ask questions that solicit information you are not allowed to consider as an employer? For example, do you ask questions about availability to work long hours (which elicit information about family obligations)?

What information did you write down in your notes? Do you screen applicants



by going on Facebook? How do you record what you find there? If a former associate claimed his/her discharge was racially motivated, would the personnel file justify your decision? If an associate requires special equipment, furniture, or software to accommodate a disability, do you have to pay for it?

Harassment

When is harassment illegal? When should you say it is just wrong? What steps should your employees take if they feel harassed? Do you have a policy in place? How is it communicated? Are you covered by Connecticut's mandatory sexual-harassment-prevention training requirement? Should you do the training anyway?

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Required Notices

Most federal and state employment laws require certain notices be posted. Where are your notices posted (and can they be seen)? Do you know which notices apply to your workplace? Are your notices up-to-date? Have you posted notices that don't apply to you but are part of the "all-in-one" poster you bought?

Handbook

While an employee handbook is not legally required, if well written, it can enhance compliance and administrative efficiency. Do you have one? Is it current? Does it create a contract? Does it sell your firm or read like a rule book?

Hiring

A lot of paperwork is involved when hiring. Do you correctly complete all legally required forms? If you hire a non-U.S.-citizen with temporary work authorization, how do you know when it expires? Do you report all new hires to the state? What employment terms do you communicate to new hires in writing?

Leaves

When an employee requests a leave of absence, sometimes a federal or state law will require it be granted. Do you know which leaves are mandatory? Are you covered by the federal or Connecticut Family Medical Leave Act? If so, do you know when and how much leave is required? Do you know how much leave a pregnant employee must receive? Do you have a parental leave policy; if so, does it discriminate *in favor* of moms? Are you too generous or too cheap?

Privacy

Lawyers today spend all day on computers and hand-held devices. Many employers allow personal use of such equipment as a courtesy. If you do, do your employees have a reasonable expectation of privacy in their personal communications? Do you monitor employees' computer use, and do employees know this? What about other forms of electronic monitoring? Do you provide guidance on social media activity? Does such guidance comply with the National Labor Relations Act?

Additionally, state and federal law requires employers to guard certain personal employee information. What steps do you take to protect social security numbers? Do employees know what to do if they receive a call requesting information about another employee? Where do you keep any employee medical records received?

Conclusion

If several of these questions left you scratching your head, be glad this was only a self-audit and not a government audit! But what will you do now? Of course, it's not easy to find time to handle these non-billable HR issues while practicing law and trying to woo the next big client. But you need to correctly answer these questions to minimize the risk of costly and time-consuming litigation and government investigations. These articles, which will be published over the summer, are designed to offer some of these answers. As lawyers, we often preach to clients that an ounce of prevention is worth a pound of cure. It's time to practice what we preach! ■