



LAWYER AS EMPLOYER

PAPERWORK MAY SEEM DAUNTING, BUT IT'S NECESSARY

Complete personnel files can help firms avoid legal costs

Editor's Note: This is the last article in a six-part series on employment law issues that relate specifically to law offices.

By **ROBERT G. BRODY**
and **SAMI ASAAD**

Nobody likes paperwork, not even lawyers. But as we all know paperwork can be crucial to winning a case or closing a deal. As employers, proper paperwork is crucial to demonstrating legal compliance and minimizing litigation. In this final article in our series, we cover many of the documentation requirements from hiring to separation.

Offer Letters

Connecticut requires employers tell new employees in writing about their rate of pay, pay periods, pay days and hours of work at the time of hiring. Why not put this information into an offer letter? A well-written offer letter can simultaneously: 1) make an attractive sales pitch for joining your firm; 2) set the employee's expectations regarding compensation and benefits; 3) explain the firm's expectations regarding the position; and 4) designate a day by which the offer must be accepted. As for the concern that offer letters may be deemed a contract, it is all a question of drafting the letter properly, including stating that employment is "at-will."

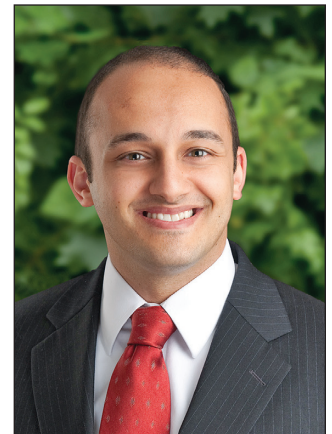
Employee Handbook

Connecticut also requires employers to

make available their policies on wages, vacation, sick leave, and other comparable matters. Why not include these items in an employee handbook? As discussed in our fifth article, a well-written handbook can be a great tool. Again, make sure to include an employment-at-will section to avoid it being construed as a contract. Handbooks should contain a receipt that may be torn off and signed by employees affirming they received and will read the handbook.

New Hire Verification

Once an employee accepts the job, you need to inform the Connecticut Department of Labor of their employment. You can submit this information electronically or by forwarding a copy of the employee's W-4 form. In addition, you must verify their authorization to work in the U.S. by completing an I-9 form. You do not have to submit this form to the government, but you must keep it for one year after termination of employment or three years after the date of hire, whichever is later. You also



should file it separately from the rest of the employee's personnel file.

Bonuses

As the Connecticut Supreme Court reminded us last year in *Ziotas v. The Rear-don Law Firm, P.C.* (involving a lawyer who quit and sue for an unpaid bonus), make sure your discretionary bonus is really discretionary by documenting it as such. If a bonus is not discretionary, it may be considered "wages" under Connecticut law. A claim for unpaid wages (unlike a simple contract claim) carries double damages and attorney's fees. To avoid these unpaid wage claims from former attorneys, avoid using terms conveying certainty, such as

Robert G. Brody is the founder of Brody and Associates LLC, and Sami Asaad is an associate with the firm. Brody and Associates represents management in employment and labor law matters and has offices in Westport and New York City.

specifying a formula. Instead, use terms such as “the firm may consider” or “you may be eligible.” It also helps to refer to the firm’s discretion as “sole and absolute.”

Personnel Files

While most lawyers have file cabinets full of papers, many do not have a single file folder on their employees. While there is no law requiring personnel files, it is prudent to do so. Personnel files usually contain things like performance evaluations, discipline records, information about their eligibility for employment or promotion, and requests for leaves of absence. It is important to be able to easily justify every employment decision, and such records can help you do so.

For example, if business is slow and you fire the only Asian employee, it may look like discrimination. Being able to point to documented discipline issues or poor performance helps you demonstrate you had a legitimate reason. No documentation will lead to more issues and more legal costs.

Connecticut law requires employers keep the contents of a personnel file private and obtain the employee’s written consent before disclosing information contained in them to outside parties. Also, since 2008, Connecticut requires employers enact measures to protect employees’ Social Security numbers and other types of personal information, like driver’s license numbers, health insurance numbers, and credit card numbers from unauthorized disclosure.

Lastly, you must keep medical records, often part of Health Risk Assessments or medical leave requests, separate from all other employee records.

Separation

When an employee leaves, regardless of the reason, you must provide a separation packet explaining how to file for unemployment. These packets can be found on the Connecticut Department of Labor’s web site. In addition, you may need to inform your employees about their ability to con-

tinue health care coverage after they leave your firm.

Conclusion

While all this talk of paperwork sounds daunting, it is necessary to run a successful business such as your law firm. By having well-kept employment records, the next time an employee brings an issue to your attention, you can easily point to the documentation justifying your decision. This may help to avoid litigation and avert (or at least streamline) an audit by a government agency.

Series Wrap-Up

We hope this series provided some practical insight in managing the employment issues at your firm. It’s not easy to keep track of all these issues, especially if you do not have an employee dedicated to HR. But taking time to consider these issues and following some of the outlined steps can not only promote legal compliance, but also create a positive and efficient work environment for you and your employees. Good luck! ■