

Employment Law Resolutions for the New Year

By Geoffrey M. Boodell

The beginning of the year presents a great opportunity for employers to make some New Year's resolutions about their employment practices. A few well-chosen resolutions now may save your organization significant resources and expense later. Consider adopting the following suggestions and bringing them to the attention of your managers to make this a better year in your workplace.

(1) Dust Off and Review Your Existing Handbooks, Written Policies and Employment Forms. You may be surprised when you read your workplace documents to find they do not accurately reflect your current practices, principles or workplace makeup. For example, does your handbook contain a standard "Sexual Harassment" policy? Given the increasing number of claims for other forms of unlawful harassment and retaliation, handbooks should contain broader "Workplace Harassment" and "Non-Retaliation" policies to address unlawful harassment based on membership in any protected class (e.g., age, race, religion, national origin, marital status, disability, etc.) and retaliation for engaging in protected activity (e.g., making complaints about harassment). Do you have protective E-mail and Internet policies in place? Do you have current job descriptions for each position in your workforce? What about ancillary forms, such as evaluations, applications, for reference release? Have your handbooks and other forms been reviewed recently by employment law counsel (which is a good idea any time you are preparing to distribute handbooks or other forms to your employees)?

(2) Get (or Renew) Employment Practice Liability Insurance. Employers increasingly are purchasing employment practice liability insurance (EPLI). These policies can be an effective risk management tool to address the risks and costs of employment-related litigation. Many of the policies, however, give the insurer the right to select employment counsel to defend a claim, without regard to the relationship and knowledge of the employer's management, operation and philosophy that the employer's regular employment counsel has developed over the course of the representation. To avoid this situation, employers are beginning to insist when the EPLI policy is negotiated initially or at renewal that they have the right to select specific counsel or that their employment counsel be included on the insurer's panel. Whether you are considering EPLI insurance initially or when your policy is up for renewal, you should consider having your employment counsel review the policy to assist you in assessing these and other issues before you commit to a specific policy.

(3) Carefully Review Your Arbitration Agreements. Due to the ever-increasing costs associated with litigation, many employers have instituted mandatory arbitration agreements that require employees to arbitrate employment-related disputes. In 2003, the Ninth Circuit Court of Appeals in *EEOC v. Luce, Forward, Hamilton & Scripps* gave employers the "green light" to require employees to arbitrate claims under Title VII, the federal law governing workplace harassment and discrimination. However, it was unclear how broadly our state courts would embrace mandatory arbitration of employment-related disputes. Fortunately, on December 2004, the Washington State Supreme Court decided two employer-friendly cases (*Adler v. Fred Lind Manor* and *Zuver v. Airtouch Communications, Inc.*) regarding mandatory arbitration of employment claims.

The Court upheld the enforceability of pre-dispute employment agreements in the context of employment discrimination claims brought pursuant to RCW 49.60, Washington's Law Against Discrimination, and claims under state common law. The Court further clarified the requirements necessary for employers to enforce mandatory arbitration agreements. In light of these recent decisions, if you are considering implementing a mandatory arbitration process or currently have one in place, you should have the agreement reviewed to increase the likelihood of it being enforced.

(4) Provide Preventative HR Training for you Managers. Given the complexity of regulation in the workplace today, and the ever-increasing scope of the anti-discrimination and other employment and labor-related laws, there is a great burden on managers and supervisors to stay informed about obligations regarding the employees they supervise. You can provide your workplace leaders some very beneficial assistance in the form of workplace training, which can enhance their effectiveness and reduce risk.

(5) Audit Your Personnel Files. Too often, employers are careless about what is (or is not) put into employee's personnel files. Periodic reviews can be a daunting ask, but also a very informative and valuable tool in assessing how your personnel files might look when scrutinized by a plaintiff's lawyer or a government agency. Look for medical information, which should always be kept in a separate, more access-restricted files; look for poorly written performance forms (e.g., "Mary's just too old to keep up with her job."); and look for what is NOT there (e.g., any record of progressive discipline).

(6) Reassess How You Have Classified Your Employees. One of the most common problems that are seen in the workplace is the mistaken classification of employees as (a) exempt from the wage and hour overtime laws when they actually are non-exempt; and (b) as independent contractors when they are really employees. A misstep in either of these classifications can be very costly to employers and it is much easier (and more cost effective) to be safe than sorry in this area.

This Employment Law Note is written to inform our clients and friends of developments in labor and employment relations law. It is not intended nor should it be used as a substitute for specific legal advice or opinions since legal counsel may be given only in response to inquiries regarding particular factual situations.



“We’re Going To Make Your Business Day Better!”

Renton 425-271-4225 // Seattle 206-223-4001 // Fife 253-922-6770

www.smarttalent.net info@smarttalent.net

**Office - Accounting - Finance - Medical - Mortgage - Legal - Production - Warehouse - Professional
Temporary - Temp-to-Hire - Direct Placement**

100% Guarantee on Temp assignments and up to a 1-Year Guarantee on Direct Placement
