

Year End Checklist for Employers

By Olivia Goodkin, Esq.

This time of the year is very busy for human resource directors and managers. Here are a few reminders and tips for dealing with typical year-end issues.

Did you have the mandated sexual harassment training this year?

Employers regularly employing 50 or more employees must provide two hours of interactive training and education about sexual harassment by December 31, 2005, and then once every two years thereafter. Even if you cannot schedule this training by the end of the year, better late than never! Have the training in January, when everyone is fresh and ready to go after holiday vacations.

The training must include information on sexual harassment laws, how complaints should be reported, and how complaints are investigated. It is recommended that the training encompass information about prohibited harassment and retaliation based on age, race, national origin, pregnancy, disabilities and other protected grounds, including sex. Managers should document that the training occurred. Harassment education does prevent claims, and also provides a defense in certain circumstances to claims of sexual harassment.

Did you review employees before giving them bonuses and/or raises?

You may have employees that are not quite "cutting it," but you do not have time for a full review. Stop! Do not give that employee the usual bonus or raise. If you do so, you will be sending the message that the employee's performance is satisfactory. If the employee has not signed an at-will acknowledgment form, the employee could use the fact that he or she received a bonus or raise as support for an implied contract claim.

An implied contract of employment can be inferred from conduct of the parties. Even if an employee does not have a written contract, an employee of some longevity could argue that it is implied that he or she can only be terminated for "cause." One of the factors that supports the existence of an implied contract is the regular receipt of bonuses and raises. Think twice before routinely doling out discretionary bonuses this year.

Have you talked with your accountant and employees about the tax consequences of non-cash bonuses?

Some companies award trips, gift certificates and other gifts as bonuses for employees. All but *de minimis* gifts, such as turkeys, are considered taxable compensation.

Do not forget other liability for company trips.

Companies routinely award trips to high achieving salespersons. Apart from the tax issue discussed above, there are several red flags that are raised by this practice.

First, if the trip is company sponsored, and the employee is injured while on the trip, then he or she may be able to file a worker's compensation claim.



Olivia Goodkin has over two decades of experience representing corporations, individuals and closely-held businesses in employment law and business litigation. She advises on the hiring and termination of employees, wage and hour laws, employment contracts and other employment issues, and she defends companies in wrongful termination lawsuits. Olivia also creates trade secret programs for companies seeking to protect their valuable intellectual property.

Olivia can be reached at ogoodkin@rutterhobbs.com, or by telephone at 310.286.1700.

[View full bio.](#)

Second, if the employee injures a third party while on the trip, the employer could potentially be liable to the third party for his or her injuries.

Third, when employees are away from home, and if they are drinking (or worse), they may end up in compromising situations that could violate your sexual harassment or fraternization policies and make it very uncomfortable--at the least--upon their return to the office.

If no work is being conducted on the trip, then I suggest that employees sign a waiver of liability, indicating the trip is for pleasure only; that they understand that they are not under the authority of the company in anything that they do on the trip; and that they understand that should they injure a third party, they will have full responsibility for the consequences of their actions.

Are your employee files up to date?

The month of January may be a good time for human resource directors to review employees' files to make sure that all performance reviews and complaints are documented, that employees have signed at-will acknowledgment forms and company confidentiality agreements, and that the files otherwise look in order.

The final point: Have a safe and Happy New Year!

The information in this newsletter has been prepared by Rutter Hobbs & Davidoff Incorporated for informational purposes only and not as legal advice. Neither the transmission, nor your receipt, of information from this correspondence create an attorney-client relationship between you and Rutter Hobbs & Davidoff Incorporated.

Rutter Hobbs & Davidoff will never share, sell, or rent individual personal information, unless ordered by a court of law.

To be removed from this mailing list, [click here](#).

Rutter Hobbs & Davidoff
Incorporated
1901 Avenue of the Stars
Suite 1700
Los Angeles, California 90067
Phone: 310.286.1700
Fax: 310.286.1728
www.rutterhobbs.com
info@rutterhobbs.com
