



Employment Law Note

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New Year's Resolutions for Best Employment Practices



By **Amanda V. Masters**, amasters@sbj.law

A New Year's Resolution that is on every employer's list is minimizing and preventing litigation. This can be done by ensuring your company's policies, procedures, and agreements are in compliance with local, state, and federal labor and employment laws, as well as providing employees with crucial training. Here are some suggestions on specific areas of employment practices to review in 2023.

Employee Handbooks

Regardless of a company's size, employee handbooks are crucial to a company's wellbeing, as they can help to prevent or defend against litigation and promote a positive and safe work environment. There are many topics that should be included in employee handbooks. A small snapshot of these policies include:

- Anti-harassment policies;
- Anti-discrimination policies;
- Wage and hour policies;
- Information about the Washington Paid Family and Medical Leave; and
- Paid sick leave policies in compliance with Washington's Paid Sick Leave law.

An area that is often inadvertently left out of employment handbooks, but is helpful for preventing litigation, is a reporting and investigation policy. This policy should provide specific instructions for how an employee reports alleged unlawful discrimination, harassment, and other violations of the law and

company policy, as well as provide guidance for conducting internal investigations.

Further revisions to handbooks may be required should the National Labor Relations Board revisit its past case law regarding the lawfulness of employer handbook policies when balanced against employee rights to engage in protected concerted activities.

Job Descriptions

It may come as a surprise that job descriptions play an important role in minimizing and preventing litigation. Job descriptions provide guidance to human resources and other decision makers on what accommodations can be made for an employee. Further, in disability discrimination cases, courts often rely on job descriptions to define what are the essential functions of a role - an out-of-date job description could harm an employer in litigation. Employers should evaluate whether job descriptions accurately portray what duties an employee is performing.

The beginning of the new year is an excellent time to create and/or evaluate and update job descriptions.

Non-Compete Agreements

An employer can only hold an employee or independent contractor to non-compete agreements if the employee earns more than the threshold established by law. Employers that present a new non-compete agreement or attempt to enforce an existing non-compete agreement with an employee who does not meet the earnings threshold will face statutory penalties. The Department of Labor and

Industries has set the minimum threshold in 2023 at \$116,593.18 for employees and \$291,482.95 for independent contractors. Employers should review all non-compete agreements to ensure your company is in compliance with the law.

Confidentiality, Non-Disparagement, and Non-Disclosure Agreements

2022 was the first year that Washington's Silenced No More Act was in effect. Broad confidentiality, non-disparagement, and non-disclosure agreements may be invalid and lead to liability for employers. The Act prohibits any agreement between an employee and employer that requires the employee to not disclose conduct that the employee reasonably believes to be illegal discrimination, harassment, retaliation, a wage and hour violation, or sexual assault under state and federal laws and public policy. If an employer requests an employee to sign a prohibited agreement or attempts to enforce a prohibited agreement, it will face steep civil penalties. The beginning of a new year is the perfect time for employers to review all confidentiality, non-disparagement, and non-disclosure agreements to ensure your company is in compliance with the law.

Mandatory Arbitration Agreements

In 2022, President Biden signed into law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021. The law amended the Federal Arbitration Act to invalidate pre-dispute arbitration agreements for sexual assault and sexual harassment claims. While an employer may not face

statutory liability for including sexual assault and sexual harassment claims in mandatory arbitration agreements, their inclusion most likely would be invalidated by a court. The beginning of a new year is a good time to review mandatory arbitration agreements to determine whether they will be upheld by a court.

Employment Law Training

An important New Year's Resolution for all employers should be to evaluate the need for companywide or team specific employment law training. Providing employees with knowledge and resources is the best way to prevent unnecessary and expensive litigation resulting from illegal behavior in the workplace.

Employers should consider providing training on:

- Workplace Harassment
- Equal Employment Opportunity
- Performance Management and Progressive Discipline
- Wage and Hour Issues
- Investigating Employee Misconduct
- Hiring the Right Employee
- Union Avoidance
- Managing Employee Health Issues and Attendance

Sebris Busto James is happy to assist with the creation or review of handbooks and employment agreements, as well as to conduct any employment law training your company may need.

For more information about this month's Employment Law Note contact us at 425-454-4233

