

Practical labor law tips for the growing company

The partners running a computer consulting business reached an important milestone in the life of their young firm. They had more work than they could handle.

The quick solution: hire independent contractors. When one of the independent contractors became upset over a billing dispute, he quit and complained to the Department of Labor. Soon, the IRS and the Attorney General's Office were investigating whether the business was illegally classifying workers as independent contractors rather than employees.

This real-life scenario plays out far too often as small businesses grow and increase the number of workers. Adding to the employee ranks means more of the laws governing the workplace begin to apply to a once-small company.

Entrepreneurial spirit sooner or later collides with a maze of employment regulations that mystify company founders and managers.

Leaders of growing companies need to concern themselves with labor laws and understand at least the basics.

Independent contractors: The single most common mistake made by growing businesses is misclassifying workers as independent contractors rather than as employees. An employer cannot simply decide which he would rather have. Recent changes in state law make it much more difficult to have a true independent contractor.

In Massachusetts, the law pre-



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sumes that any work arrangement is an employer-employee relationship. The burden falls on the employer to prove otherwise. This difficulty has given rise to an increase in the business of supplemental staffing firms, which are now the only safe alternative to classifying workers as independent contractors.

Family and medical leave: It is inevitable that many employees will, over the course of their careers, need to take some form of leave for maternity, medical or others reasons. In Massachusetts, a full-time female employee who has been employed for at least three consecutive months is entitled to up to eight weeks of maternity leave.

For companies with 50 or more employees, the federal Family and Medical Leave Act provides up to 12 weeks of leave for the care of a newborn, as well as to deal with serious medical conditions of the employee or the employee's child, spouse, or parent.

In a maternity situation, the leave will run concurrently with the Massachusetts maternity leave, providing a maximum of 12 weeks of leave. Neither law requires employees to

be paid during a leave.

Performance reviews: The single most important and repetitive personnel function a manager must engage in is the performance review. When they are thorough, accurate and — most importantly — honest, performance reviews are the key to realizing the potential of human capital.

Done well, performance reviews serve as a basis for setting expectations and goals, measuring achievement, understanding employees' sense of satisfaction with a job and discussing any serious problems.

Terminations: If performance reviews have been done correctly and the need to terminate an employee arises, this drastic step should neither be a surprise to the employee nor difficult for the manager.

One recent development on the topic of terminations deserves special note. Massachusetts courts have now made clear what employment lawyers always knew: The manner in which a termination is conducted has the potential for creating liability, as conduct alone can be viewed as defamatory.

The lesson to be learned is that any termination should be well planned and carried out in a manner designed to minimize observation by other employees and embarrassment to the terminated employee.

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