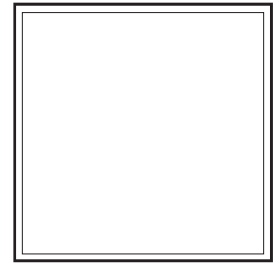


The Legal Side of HR Practice



The Legal Side of HR Practice

Max Muller

© 2012 American Management Association. All rights reserved. This material may not be reproduced, stored in a retrieval system, or transmitted in whole or in part, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the publisher.

ISBN-13: 978-0-7612-1490-8

ISBN-10: 0-7612-1490-9

Printed in the United States of America.

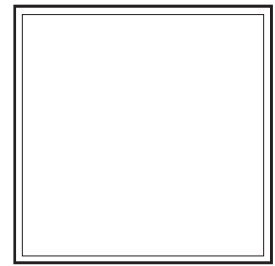
AMACOM Self Study Program

<http://www.amaselfstudy.org/>

AMERICAN MANAGEMENT ASSOCIATION

<http://www.amanet.org>

10 9 8 7 6 5 4 3 2 1



Contents

About This Course	xi
How to Take This Course	xiii
Pre-Test	xv
1 Onboarding	1
Overview	
Defining the Position	
Job Descriptions	
Recruiting	
Statutes Requiring Affirmative Action Plans in Recruitment	
Uniformed Services Employment and Reemployment Rights Act (USERRA)	
Legal Recruiting Generally	
Internal Job Postings	
Employee Referrals	
Discriminatory Recruitment	
Job-Related Ad Language	
Recruitment Documentation	
Federal Contractors	
Private Sector Retention of Applications and Resumes	
Employer Information Report (EEO-1 Report)	
Pre-Employment Issues	
Background Checks	
Pre-Employment Tests	
Interviewing	
Interviews and the Americans with Disabilities Act	
Overview of the Americans with Disabilities Act (ADA) and the Amendments to the Americans with Disabilities Act (ADAAA)	
Identifying the Essential Functions of a Job	
The ADA Prohibits any Pre-Employment Inquiries about a Disability	
Post-Offer Stage	
Competency-Based Questions	
Closing the Interview	
Documenting the Interview	
Post-Interview Notes	
Employment Eligibility – Form I-9	

- Form I-9 Basic Requirements
- E-Verify
- Recap
- Review Questions

2 Compensation

35

- Introduction
- Major laws Prohibiting Compensation Discrimination
 - Equal Pay Act of 1963
 - Title VII, the ADEA, and the ADA Compensation Prohibitions
- Wage Standards Generally
 - Major Employee Categories
 - Understanding the Terms
 - Total Remuneration
 - Regular Rate of Pay
- Calculating Overtime Pay
 - Using the Fluctuating Workweek Method
 - Compensatory Time Off
 - Tipped Employees
 - Youth Minimum Wage
- Compensable Hours
 - Waiting (On-Call) Time
 - Rest and Meal Periods
 - Sleeping Time and Certain Other Activities
 - Lectures, Meetings, and Training Programs
 - Travel Time
- Child Labor
 - Nonagricultural Jobs (Child Labor)
 - Farm Jobs (Child Labor)
- White Collar Exemptions
 - Salary Test
 - Duties Tests
- Wage and Hour Violations
 - Managerial Responsibility
- Recap
- Review Questions

3 Fair and Legal Management

65

- Overview
- Key Federal Employment Laws
 - Prohibited Acts
- Proving Discrimination
 - Disparate Treatment
 - Disparate Impact
 - Legal Discrimination – Bona Fide Occupational Qualifications (BFOQ)
- Enforcement Mechanisms
 - Statutes of Limitation
 - Title VII and Civil Rights Act of 1991 (CRA91) Remedies

Discipline and Discharge
Employment at Will
Erosion of the At-Will Doctrine
Progressive Discipline
Recap
Review Questions

4 Privacy Issues

91

Introduction
The Doctrine of *Respondeat Superior*
Negligent Hiring
Background Checks
Doing It Yourself
Using Information Providers
Medical Information Obtained During the Hiring Process
The Americans with Disabilities Act (ADA)
Consumer Reporting Agencies – Section 411, FACT Act
Genetic and Biochemical Testing
Federal Laws
State Laws
Drug and Alcohol Testing
Public-Sector Employers
Private-Sector Employers
Unionized Workplaces
Department of Transportation, Federal Motor Carrier Safety Administration's (FMCSA) Alcohol and Drug Testing Rules
Employee Polygraph Protection Act of 1988 (EPPA)
EPPA Exemptions
Monitoring Employees in the Workplace
Electronic Media
The Electronic Communications Privacy Act of 1986 (ECPA)
Surveillance, Searches, and Other Intrusions
Regulating Employee Off-Duty, Off-Premise Lifestyle
Invasion of Privacy
Public Disclosure of Private Facts
Placing a Person in a False Light
Intrusion upon Seclusion
Misappropriation
Defamation, Libel, and Slander
Intentional Infliction of Emotional Distress/Outrage
False Imprisonment
Recap
Review Questions

5 Safety and Health

121

Introduction
The OSH Act
The General Duty Clause

- The Standards
 - Federal Register
 - Code of Federal Regulations (CFR)
 - Performance-Based Standards
 - Basic Requirements
- Significant Standards
- Workplace Violence
- Basic Prevention Strategies
 - Prevention and Response – HR’s Role
 - Types of Workplace Violence
 - Risk Factors and Symptoms
- Workplace Bullying
 - Corporate or Institutional Bullying
 - Co-Worker Bullying
 - Cyberbullies and Cyberstalkers
- Recap
- Review Questions

6 Workers’ Compensation

143

- Introduction
- Exclusive Remedy Doctrine
 - Erosion of the Exclusive Remedy Doctrine
- Loaned or Borrowed Employees
 - Employee Leasing Organizations
 - Statutory Employer Laws
- Getting WC Insurance
- Work Relatedness
 - Accidental Occurrence
 - “Ordinary Diseases of Life”
 - The Last Employer
- Injuries “Arising out of” Employment
- Injuries “in the Course of” Employment
 - “in the Course of” Legal Doctrines
- Employee Misconduct
- Types of Benefits
 - Disability Benefits
 - Waiting Period
 - Benefit Wage Calculations
- The Bermuda Triangle – ADA, WC, and FMLA
- Administering WC Claims
 - Notice of Injury
 - Notice of Claim
 - Employer Reporting
 - Claim Resolution
- Recap
- Review Questions

7 Federally Mandated Benefits	167
Introduction	
Unemployment Insurance	
Introduction	
Funding	
Covered Work Force	
Extended Benefits	
Disaster Benefits	
Denial of Benefits	
Fighting a UI Claim	
The Family and Medical Leave Act (FMLA)	
Introduction	
Covered Entities	
Notices and Certifications	
Intermittent Leave	
Employee Eligibility	
Eligible Reasons For Leave	
Unpaid Nature of Leave	
Maintaining Health Benefits	
Key Employees	
The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)	
Introduction	
Coverage	
Qualified Beneficiary	
Qualifying Events	
COBRA and FMLA	
Coverage Periods	
COBRA Notices	
Election Timing	
Payment of First Premium	
Cost	
Enforcement	
Recap	
Review Questions	
Bibliography	205
Glossary	207
Post-Test	211
Index	217

Additional files referenced in this course are to be found at
www.amaselfstudy.org/go/HRPractice

