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The Fine Art of Employment Law: From Compliance to the Courtroom

**Artfully Crafting a
Human Resources Compliance Program**

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Creighton v. GEAR Enterprises LLC

- This morning's mock trial
- Could it happen to your Company?
- Would you be prepared?
- If you could **plan ahead** for Myra's lawsuit, what would you do or change about your current practices?

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How Do We Plan Ahead?

- You need to know where you are
- You need to know where you need to be
- Let's ...
 - Investigate
 - Review
 - Audit

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Legal Perspective on HR Audits

- Many benefits
- Many “hot spots” to be reviewed
- Many solutions
 - Some simple
 - Some inexpensive
- Ideally, auditing is an ongoing process

Benefits of HR Audits

- Identifying best practices
- Improving “affirmative defenses”
- Better “image” with government and/or jury
- Improved processes
- Fewer employee complaints
- Coordination of practices and policies

Benefits of HR Audits

- Reduction of EPL premiums
- Readiness for government investigations
- Safer workplace
- Better trained managers
- Improved documentation and paperwork
- Better use of “employment law” dollars

Pay Now or Pay Later...

- An Audit
 - Planned
 - Budgeted
- A complaint, charge, lawsuit, class action, government investigation, etc.
 - Surprise!
 - Budget buster
 - Worst outcome

Audit Focus

- Compliance
 - Focus on legal aspects
 - "Do it right"
- Best Practices
 - Focus on practical aspects
 - "Do it better"

So Where and When Do We Start?

- Anywhere!
 - Beginning with a few small items is better than not starting
- Now!
 - No more waiting until things slow down

Where Do We Start?

- What type of company are we? How big are we?
- Where do our employees work?
- What problems have we had?
- Where do we fear lack of compliance?
- What keeps us up at night?
 - (some clients learn they could be sleeping soundly!!)
- What are government agencies/plaintiff's lawyers doing in our area/industry?
- Where can we save money or time?
- What do we want to do better?

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Where Do We Start?

- With those basic questions answered...
- Triage
 - What must be done now?
- Formulate a plan
 - Time
 - Money
 - Resources
 - Schedule

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Audit Hot Spots

- Fair Labor Standards Act (FLSA)
- Office of Federal Contract Compliance (OFCCP)
- Independent Contractors (IC)

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Audit Hot Spots

- Employment Application
- Employee Handbooks
- Leaves of Absence

Top FLSA Hot Spots

- Meal and break periods
- Exempt / non-exempt status
- Manager "adjustment" of time
- Recordkeeping

Top OFCCP Hot Spots

- We know we are not a contractor. Right?
- Many more audit letters
- Much more stringent compliance reviews
 - Wages
 - Posting jobs with DOL and Vets agencies
 - ADA language on website
 - Outreach generally

Top IC Hot Spots

- Having independent contractors...
- Former employees
- Long term projects/assignments
- Part time projects/assignments
- Allowing managers to issue agreements
- No agreements

Employment Application Hot Spots

- Using application from 1998
- Using application borrowed from another company
- Using application developed for another state or industry

Handbook Hot Spots

- Says too much, or not enough
- Detailed, rigid progressive discipline
- "Basic work rules" left out
- Poor policies on: harassment, substance abuse, electronic communications
- Outdated FMLA or other leave policies

Leave Hot Spots

- FMLA
- ADA
- State Laws
- Lack of communication with employee
- Lack of attendance policy or management

So Our Audit Is Complete. Next?

- What did you find?
- Audit Report?
 - Why
 - What
 - Who
- Next steps?

Clearly....

- Don't start with "best practices" if actual compliance is an issue
- Spend adequate time assessing and planning
 - Try a "checklist" approach
- Then...
 - Just do it

Final Questions

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Thank You!

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