



When was the last time
your company had a checkup?



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Employment Practices Review Checklist

If it has been awhile, or if you can't even remember the last time your company reviewed employment-related practices, it's time for a "checkup." Changes in employment law occur not only when new laws are passed, but also as the courts interpret existing laws. Even subtle legal changes sometimes affect what should be included in a company's policies and procedures. To remain in compliance with applicable laws, a company should set a schedule and periodically review human resources policies, practices and procedures to ensure that they are up-to-date.

At Fisher Phillips, we routinely help our clients audit their human resource practices and review their employment law compliance. With our help, you can make sure that you are doing things right. This checklist serves as a guide to help you review your pay and benefits practices, policies and procedures, such as recruiting and hiring, training and supervising, granting leaves of absence, disciplining and terminating employees and many other matters. We can review your policies, practices and procedures to make sure they comply with all recent changes in labor and employment law, and that they represent "best practices" for your company. If you do not have all of the right policies, practices or procedures in place, don't worry – we can work with you to develop them. After we have completed the review, you will know that you are doing all that you can do to prevent or at least minimize the likelihood of labor and employment problems occurring down the road.

If you have any questions or concerns after reviewing the checklist, let us provide you with the information you need or help you with your periodic review. Prior to completing this checklist, please contact your Fisher Phillips attorney to determine the preferred method to ensure that the responses are confidential.

	Yes	No
Documentation and Filing Systems		
Do you have and follow a written record retention destruction policy?	☐	☐
Do you have and know when to use "litigation hold" instructions?	☐	☐
Are individual medical files maintained in a secure, confidential manner separate from other personnel documents?	☐	☐
Are employee files reviewed at least annually for compliance with ADA, EEO, and other requirements?	☐	☐
Do you comply with the EEOC's recordkeeping requirements?	☐	☐
Application Stage		
Have you ensured that your recruiting methods are non-discriminatory?	☐	☐
Are job openings posted internally?	☐	☐
Has the company developed an adequate job description for each specific job?	☐	☐
Are job descriptions updated at least annually?	☐	☐
Does the company retain copies or screenshots of external job advertisements and postings?	☐	☐
Do job postings contain Equal Employment Opportunity language and if applicable Affirmative Action language?	☐	☐
Is there any language in the job postings or job descriptions that could be viewed as discriminatory?	☐	☐
Has the company's application for employment been reviewed by employment counsel in the last 12 months?	☐	☐
Is there a completed, signed application for employment for each employee, including re-hires?	☐	☐
Do applicants complete a "disclosure and authorization to obtain consumer reports" form when background and/or credit checks are conducted by a third party?	☐	☐
Do applicants sign a "consent to alcohol and drug testing" form?	☐	☐
Does the company test offerees for illegal drugs before they begin employment?	☐	☐
Are all offers of employment made subject to satisfactory background checks?	☐	☐
Are past employment verification and reference checks completed for all offerees?	☐	☐
Do you send offer-of-employment letters and do they contain employment at-will language?	☐	☐
Are any employment tests used?	☐	☐
Are employment tests (if any) reviewed for compliance with the Uniform Guidelines on Employee Selection Procedures?	☐	☐
Are your managers trained to avoid making unlawful inquiries during interviews?	☐	☐
Does the company train managers to hire the appropriate, best qualified applicants?	☐	☐
Does the company have a process for collection, review and storage of applications?	☐	☐
If applicable, does the company have a reliable applicant tracking system?	☐	☐

Employment Practices Review Checklist

	Yes	No
New Hire Stage		
Is a new hire checklist completed for each employee?	☐	☐
Do new hires sign an Arbitration Agreement or jury trial waiver?	☐	☐
Is a new hire reporting form completed and submitted for each employee?	☐	☐
Is the I-9 Form for a new hire completed within the required time limit?	☐	☐
If direct deposit is used, does the company obtain a signed authorization?	☐	☐
Is a written document explaining the employee's pay plan given to the employee?	☐	☐
Do you have current emergency contact information for each employee?	☐	☐
For employees who carry company property, does the company issue a receipt for the property?	☐	☐
Do receipts for company property contain language authorizing the company to deduct for loss, damage, or failure to return the property to the extent allowed by law?	☐	☐
Is a current employee handbook given to each employee for reference?	☐	☐
Is there a signed, dated acknowledgment of receipt for the handbook in each employee's personnel file?	☐	☐
Is there a signed, dated acknowledgment of receipt for the No Harassment policy for each employee?	☐	☐
Is there a signed, dated acknowledgment of receipt for the No Harassment policy for each manager?	☐	☐
Is there a signed, dated acknowledgment of receipt for the Electronic Communications policy for each employee?	☐	☐
For employees who drive their own or company cars in the course of their jobs, do you require evidence of their automobile insurance?	☐	☐
Do you conduct driving records checks?	☐	☐
Do you require such employees to report changes in their driving status, such as DUIs or license suspensions?	☐	☐
Do you provide a comprehensive orientation program for new employees?	☐	☐
Do you utilize an orientation checklist?	☐	☐

Protecting Confidential Information and Valuable Relationships

Do employees who have access to confidential information execute confidentiality agreements?	☐	☐
Do you have agreements in place with your key employees (management, inside and outside salespeople, R&D personnel, IT personnel, etc.) to prevent them from doing the following:		
Working on behalf of a competitor during employment and after termination?	☐	☐
Soliciting your customers after termination?	☐	☐
Soliciting your employees after termination?	☐	☐
Using or disclosing your confidential information after termination?	☐	☐
Do employees with significant customer relationship responsibilities have agreements not to solicit your customers after termination?	☐	☐
Do employees with access to your key business strategies have limited agreements not to compete, in states where permissible?	☐	☐
Do you have agreements preventing departed employees from raiding your current workforce (non-solicitation clauses)?	☐	☐
Have you recently reviewed your agreements to make sure they: (1) comply with current law in the states in which you operate; and (2) take advantage of favorable changes in state law?	☐	☐
When an employee is terminated, do you immediately delete the employee's access to computers, phone systems and private property areas?	☐	☐
Do you have policies in place to deal with the departure of key employees, such as shutting off their cell phone accounts and preserving electronic evidence?	☐	☐
Do you have policies in place to deal with incoming employee issues, such as reviewing agreements with prior employers and ensuring that incoming employees do not retain and use the property of their prior employers?	☐	☐
Do you "back up" your computers and maintain copies of the back-up tapes for long enough that you could investigate, remedy and prove employee computer theft/tampering?	☐	☐
Have you determined what information is most critical for your business and would be most harmful if it fell into the hands of a competitor?	☐	☐

Employment Practices Review Checklist

Yes No

Protecting Confidential Information and Valuable Relationships *(continued)*

When you make disclosures of confidential information to other businesses (vendors, potential business partners, etc.), do you utilize a non-disclosure agreement?	☐	☐
For your sales force, do you limit each employee's access to the customer database to only those customers for which the employee is responsible?	☐	☐
In states where appropriate, do you update employee agreements when employees change job duties and/or geographic territories?	☐	☐
Do you periodically audit your personnel files to make sure that critical employees have applicable restrictive covenant agreements on file in case you need to produce a copy of the agreement?	☐	☐
Have you made sure that your severance/release agreements don't supersede any restrictive covenant agreements you want to enforce?	☐	☐
Do you mark important documents "Confidential"?	☐	☐
Do you limit access to confidential information on and off your computers to only those employees with a legitimate need to know?	☐	☐
Do you have policies and an agreement in place that explicitly state what employees are authorized to do (and must refrain from doing) on your computer system?	☐	☐

Nondiscrimination, Harassment, and Retaliation

Do you have a written policy prohibiting discrimination, harassment, and retaliation?	☐	☐
Does your policy include an appropriate, specific complaint reporting/problem solving/remediation/discipline procedure?	☐	☐
In the last 12 months, has an expert trained managers and employees about the company's EEO, No Harassment and No Retaliation policies?	☐	☐
Are training session attendance sheets and handouts maintained?	☐	☐
Do you have a procedure for ensuring harassment training comprehension?	☐	☐
Does the company have an internal policy or procedure for investigating employee complaints?	☐	☐
Do you inspect company premises for any materials that may violate the company's No Harassment policies (including posters, graffiti, screen savers, etc.)?	☐	☐
Have you reviewed day-to-day operating procedures and policies to eliminate discrimination on the basis of sex or pregnancy (e.g., leaves of absence or other benefits)?	☐	☐
Have you reviewed your criminal background check policy to eliminate the potential for disparate impact discrimination?	☐	☐
Does the company consistently enforce dress and grooming policies?	☐	☐

Wage and Hour Compliance

Have you recently re-evaluated the status of exempt employees?	☐	☐
Do you maintain accurate records of hours worked by nonexempt employees?	☐	☐
Do all nonexempt employees get paid at least the applicable minimum wage?	☐	☐
Are all nonexempt employees properly paid overtime?	☐	☐
If you employ anyone under 19 years of age, do you comply with child labor requirements?	☐	☐
Do nonexempt employees perform work during breaks or lunch periods?	☐	☐
Does the company operate in any state which requires a specific meal or break period?	☐	☐
Do any nonexempt employees perform work at home?	☐	☐
Have you reviewed whether any nonexempt employees perform work prior to the official starting time or after the official quitting time without receiving compensation?	☐	☐
Are deductions from pay justified by law or a written agreement that complies with the law?	☐	☐
Do employees paid on commission or bonus have a written pay plan?	☐	☐
Are nonexempt employees compensated for travel time?	☐	☐
Are nonexempt employees compensated for time spent in training?	☐	☐

Employment Practices Review Checklist

Yes No

Wage and Hour Compliance *(continued)*

Do you pay any bonuses to nonexempt employees?	☐	☐
Have you reviewed whether the company pays overtime on bonuses, commissions, and incentives paid to nonexempt employees?	☐	☐
Have you reviewed whether “independent contractors,” “casual labor,” “contract employees,” or “freelancers” who might be treated as non-employees might instead be employees?	☐	☐

Fair Credit Reporting Act (FCRA)

Does the company periodically send a certification to consumer reporting agencies?	☐	☐
Does the company provide a written release and disclosure to job applicants and employees subject to a consumer report?	☐	☐
When FCRA issues arise, is the “Summary of Your Rights Under the FCRA” sent?	☐	☐
When FCRA issues arise, is the pre-adverse action letter sent?	☐	☐
After adverse action, is the post-adverse action letter sent?	☐	☐
Are there special procedures followed for using Investigative Consumer Reports?	☐	☐
Do you counsel employees with access to FCRA information about its proper use?	☐	☐
When the company is finished using the consumer report, does it dispose of the report in a secure manner?	☐	☐

Family and Medical Leave Act (FMLA)

Do you have 50 or more employees?	☐	☐
Do you have more than one facility of operation?	☐	☐
Have you determined which of your facilities have 50 or more employees within 75 miles (subject to the FMLA)?	☐	☐
Do you require employees to request medical leave in writing?	☐	☐
When employees request medical leave, do you provide them with a “Notice of Eligibility and Rights and Responsibilities Form”?	☐	☐
When employees request medical leave for themselves or a family member, do you require them to provide medical certification?	☐	☐
When employees request leave, do you provide them with a Notice of Designation?	☐	☐
Do you require employees on a medical leave to submit periodic status reports?	☐	☐
Are FMLA eligible employees on leave because of workers’ compensation injury or on leave because of a short term disability placed on FMLA leave when appropriate?	☐	☐
Does the company have a written attendance policy?	☐	☐
Are managers trained to recognize when a leave request implicates the FMLA?	☐	☐
Does your FMLA policy utilize a rolling 12-month period for leave availability to minimize abuse?	☐	☐
Are you properly designating and managing use of intermittent FMLA leave?	☐	☐
Do you have a medical leave/personal leave policy for employees who are ineligible for FMLA?	☐	☐

Benefits

Do your health insurance policies provide coverage equally for all illnesses and disabilities without regard to sex, disability, health-status factor or pregnancy, and provide equal coverage for spouses, and, if applicable, domestic partners?	☐	☐
Do you provide proper notices under ERISA, CHIPRA, HIPAA and COBRA at the inception and termination of health plan coverage?	☐	☐
Does your payroll system reflect the annual Social Security (FICA) taxable wage and the addition of an additional employee-paid Medicare tax for employees earning more than \$200,000?	☐	☐
Are you prepared to properly notify employees of changes in medical plans within 60 days before their effective date?	☐	☐
Are you prepared to properly notify employees of material changes in your non-medical welfare plans within 210 days of the close of your benefit year?	☐	☐
Are you prepared to properly disclose to employees the changes in contribution limits for retirement plans each year?	☐	☐

Employment Practices Review Checklist

Benefits (continued)

	Yes	No
Have you recently audited whether all wages are being captured and taxed properly for imputed income (e.g., employer provided life insurance coverage in excess of \$50,000)?	☐	☐
Do you include appropriate contract disclaimers for all employee benefits and policy communications?	☐	☐
Do you intend to engage in timely Actual Deferral Percentage and Actual Contribution Percentage discrimination testing on your 401(k) plan(s), if applicable, and cure any discrimination in favor of highly compensated employees by the IRS deadline to avoid the excise tax?	☐	☐
Is your company prepared to meet the IRS deadline for distribution to employees of their excess deferrals and excess annual additions beyond the statutory maximum under your qualified retirement plan(s)?	☐	☐

Immigration (IRCA) Compliance

Do you maintain I-9 forms for all current employees hired after November 6, 1986?	☐	☐
Do you photocopy the Form I-9 Section 2 supporting documents?	☐	☐
If so, do you apply this practice consistently for all employees?	☐	☐
Do you maintain your I-9s for all current employees in a separate binder (not the personnel file)?	☐	☐
Do you move the I-9 forms for terminated employees to a different binder and calculate the date when you can purge the I-9 form?	☐	☐
For terminated employees, do you periodically review the I-9 forms to see which forms have met the retention date requirements and can be purged?	☐	☐
Do you maintain a tickler/reminder system to assure timely re-verification of expiring work authorization documents?	☐	☐
Do you allow any employee to work without completing an I-9 form?	☐	☐
Do you require employees to present specific identity and work authorization documents?	☐	☐
Are managers/company representatives trained on Form I-9 requirements?	☐	☐
Are managers/company representatives trained on E-Verify requirements?	☐	☐
Do you review a terminating employee's I-9 as part of the exit process?	☐	☐
Are you required by state law to use E-Verify to verify the employment authorization of new hires and rehires?	☐	☐
Are you required by federal contract to use E-Verify to verify the employment authorization of new hires, rehires and existing employees working on the federal contract?	☐	☐
Are you properly responding to any notifications from the Social Security Administration regarding employees whose Social Security numbers do not match government records?	☐	☐
Do you review letters regarding mismatched Social Security numbers to ensure that the same employees do not reappear on these lists year after year?	☐	☐
Have you been audited by the U.S. Immigration and Customs Enforcement for I-9 form and E-Verify compliance?	☐	☐
If you have registered for the DHS Basic Pilot or IMAGE program, have you been audited?	☐	☐
Do you sponsor employees for temporary work or permanent visa status?	☐	☐
If so, do you maintain the correct documentation files?	☐	☐
Have you been audited by the U.S. Department of Homeland Security or the U.S. Department of Labor in connection with any visa program?	☐	☐
Do you obtain the appropriate inbound/outbound visas for employees who travel and work internationally?	☐	☐

Workplace Security

Does the company have a "no weapons" policy compliant with state law?	☐	☐
Does the company have a "zero tolerance" for violence policy?	☐	☐
Does the company have a complaint system for allegations of workplace violence and threats?	☐	☐
Are employees and supervisors trained regarding workplace violence?	☐	☐
Does the company have a contingency plan for bomb threats or incidents of alleged workplace violence or threats?	☐	☐
Does the company have an emergency action plan?	☐	☐
Has the company conducted a workplace security audit?	☐	☐
Does the company use spyware or a spam buster on its computer networks?	☐	☐
Does the company have a "disaster recovery hotsite"?	☐	☐
Does the company consistently enforce policies on solicitation, distribution, and access to the premises?	☐	☐
Has the company trained its managers/supervisors on handling workplace violence situations?	☐	☐

Employment Practices Review Checklist

Yes No

Safety Matters

Are OSHA 300 summaries maintained and posted within the required three-month period (unless exempt)?	☐	☐
Do driver applicants complete a request for check of driving record?	☐	☐
Do you have any CDL drivers?	☐	☐
Does the company use written safety instructions or manuals?	☐	☐
Do employees sign an acknowledgment of receipt of safety rules?	☐	☐
Do employees receive required safety training about safety matters?	☐	☐
Is safety training documented?	☐	☐
Is there a safety committee?	☐	☐
Does the safety committee meet on a monthly or quarterly basis?	☐	☐
Do you have a Job Safety Analysis (JSA) for each job?	☐	☐
Are Material Safety Data Sheets (MSDS) maintained for all chemicals used on premises?	☐	☐
Is there a written Hazard Communication Plan?	☐	☐
Do you have a Bloodborne Pathogens Plan, if required?	☐	☐
Do you have a confined space program, if applicable?	☐	☐
Have you ever participated in OSHA's 8(c) program?	☐	☐
Have you conducted a hazard assessment to determine whether your employees are required to use any personal protective equipment (PPE)?	☐	☐
Do you have certification that your employees have been trained on the proper use of PPE?	☐	☐
Do you have written certification that you have conducted a hazard assessment?	☐	☐
Is there a work practice (i.e., tagging) for the removal of defective equipment?	☐	☐
Do you have a lockout/tagout policy?	☐	☐

Evaluation, Discipline, and Termination

Are all new hires subject to an introductory period?	☐	☐
Are performance evaluations conducted for all employees?	☐	☐
Have you reviewed your evaluation form to ensure that it achieves its purpose and does not create adverse evidence against the company?	☐	☐
Are managers trained to conduct performance evaluations?	☐	☐
Are managers trained about and evaluated on compliance with employment laws?	☐	☐
Are managers trained about and evaluated on documenting personnel and disciplinary actions?	☐	☐
Are performance evaluations reviewed to avoid discrimination?	☐	☐
Are employees allowed to comment on their performance evaluations?	☐	☐
Are employees required to sign their performance evaluations?	☐	☐
Is there a written progressive discipline system that limits your discretion?	☐	☐
Are oral warnings memorialized in writing?	☐	☐
Are employees given copies of all written discipline?	☐	☐
Does one person review all terminations?	☐	☐
Are terminations compared to prior discipline against others for similar offenses?	☐	☐
Are exit interviews conducted for all voluntary terminations?	☐	☐
Are terminating employees asked to sign a waiver for the company to give future employment references?	☐	☐
Does the company direct all reference checks to a central person?	☐	☐
Are managers trained how to respond to requests for employment references?	☐	☐
Are employees allowed to give oral responses to employment reference checks?	☐	☐

Employment Practices Review Checklist

	Yes	No
Other Compliance Actions		
Are applicable federal, state and local employment law posters properly posted?	☐	☐
Is the EEO-1 Form completed and submitted annually?	☐	☐
Are the VETS-100 and VETS 100-A Forms completed and submitted annually?	☐	☐
Have you reviewed recent EEO-1 forms to see if they indicate any trend in the representation of women and/or minorities in each EEO-1 job category?	☐	☐
Do you maintain records on new hires, promotions, layoffs, transfers and discharges?	☐	☐
If your company performs services under federal contracts or subcontracts, do you maintain an appropriate applicant flow log (separate from personnel and applicant records)?	☐	☐
Do you have an updated Affirmative Action Plan in effect?	☐	☐
Do you maintain a log of open positions or job postings?	☐	☐
Do you send letters to the State Employment Service or other recruitment sources about job openings?	☐	☐
Are company premises accessible to disabled applicants and employees?	☐	☐
Does the company make reasonable accommodations for disabled applicants and employees?	☐	☐
Does the company have an Employee Assistance Program (EAP)?	☐	☐
Do you have any independent contractor arrangements?	☐	☐
Do you have a formal grievance or problem-solving procedure?	☐	☐
Do you consider your employee turnover to be excessive?	☐	☐
Is your handbook up-to-date and an accurate reflection of actual company practice?	☐	☐

About Fisher Phillips

Fisher Phillips represents employers nationally in labor, employment, civil rights, employee benefits and immigration matters. At Fisher Phillips, we have been committed to providing value to our clients dating back to the founding of our firm nearly 70 years ago. We do only one thing: Represent employers in labor and employment matters.

About this Checklist

This checklist provides only a general outline for an internal review of some labor and employment law policies, procedures, and practices. The list is not a complete or all-inclusive summary of necessary employment law forms or practices. Important areas, such as those relating to COBRA, HIPAA, workers' compensation, management development programs, and other subjects are omitted from this checklist. The "correct" answers to these questions may depend on multiple factors, including state and local laws and laws regulating a particular type of business.

For a complete analysis, employers need to consider the nature of their business and the particular laws and regulations that apply. This document is not intended to constitute legal advice. However, employers may find it helpful to review this general outline with their labor and employment law counsel. Among other things, use of this checklist in conjunction with legal counsel may serve to protect the responses under the attorney-client privilege.



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