

# WHEN WAS THE LAST TIME YOUR COMPANY HAD A CHECKUP?

Employment Practices Review Checklist



# ABOUT FISHER PHILLIPS

If it has been a while, or if you can't even remember the last time your company reviewed its 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 a company's practices and what should be included in a company's policies and procedures. To remain in compliance with applicable laws and best practices, a company should schedule periodic reviews of human resources policies, practices and procedures to ensure that they are up-to-date.

At Fisher Phillips, we routinely help our clients audit human resource practices and ensure 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 laws, 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.

## 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.

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 a Fisher Phillips attorney to assist you and ensure that responses are confidential.

## Yes No **Documentation and Filing Systems**

Do you have and follow a written record retention and destruction policy?

Are medical records maintained in a secure, confidential manner separate from personnel records?

Do you comply with the EEOC's recordkeeping requirements?

Are personnel records up-to-date including changes in employee contact information, gender or employment status?

Do you know whether applicable state law allows your employees to review their personnel file?

### **Application Stage**

Have you ensured that your recruiting methods are non-discriminatory?

Are job openings posted internally and externally?

Has the company developed an adequate job description for each 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 EEO 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 rehires?

Are applicants asked to self-identify race/ethnicity, gender, veteran status and disability, if required?

If applicants do self-identify, does the company use the required form for disability?

Does the company test offerees for illegal drugs before they begin employment?

Are all offers of employment made subject to satisfactory background checks?

For applicants who will drive as part of their job duties, do you check their driving record?

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?

**Yes No**    **Application Stage continued**

Are your managers trained to avoid making unlawful inquiries during interviews?

Does the company train managers to hire the appropriate, best qualified applicants?

Are your managers trained not to write notes and comments on applications and resumes?

Does the company have a process for the collection, review and storage of applications?

Does the company have a reliable applicant tracking system?

Do you have policies in place to deal with restrictive covenant issues, such as reviewing an applicant's agreements with prior employers?

**New Hire Stage**

Do you provide a comprehensive orientation program for new employees?

Is a new hire or orientation checklist completed for each employee?

Do new hires sign an arbitration agreement or jury trial waiver?

Has your arbitration agreement been updated recently to reflect significant legal changes?

Is the mandated "new hire reporting" completed and submitted to the state for each new hire?

Do you know whether your state allows mandatory direct deposit?

Do you know whether your state has pay card requirements and/or limitations?

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?

Has employment counsel reviewed your employee handbook within the last two years?

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 at least every two years?

Do you require such employees to report changes in their driving status, such as DUIs or license suspensions?

## Yes No **Protecting Confidential Information and Valuable Relationships**

Do employees who have access to confidential information execute confidentiality agreements?

Do you discuss unfair competition with new hires, including prohibiting the use of a prior employer's property or confidential information?

Do you have written agreements with key employees and those with significant customer relationships (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 during employment and after termination?
- Soliciting your employees during employment and after termination?
- Using or disclosing your confidential information during employment and after termination?

Do employees with access to your business strategies have agreements not to compete, in states where permissible?

Have you recently reviewed your agreements to make sure they: (1) comply with current law in the states in which you operate including time, territory, and scope; and (2) take advantage of favorable changes in state law?

If you are located in multiple states, do you tailor restrictive covenant agreements to each state's requirements?

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 employees (such as shutting off their cell phone accounts and preserving electronic evidence)?

Do you have policies authorizing your company to remotely wipe company information from personal devices in the event a device is lost or stolen?

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?

When you make disclosures of confidential information to other businesses (vendors, potential business partners, etc.), do you use 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?

As allowed by state law, 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 signed, current restrictive covenant agreements on file?

**Yes No**

## **Protecting Confidential Information and Valuable Relationships continued**

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/or 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 written policies prohibiting discrimination, harassment, and retaliation?

Do you have a formal grievance or problem-solving procedure?

In the last 12 months, have your managers and employees been trained about the company's discrimination, harassment, and retaliation policies?

Are training session attendance sheets and handouts maintained?

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)?

Does the company consistently enforce dress and grooming policies?

Have you reviewed your dress and grooming policies for EEO considerations?

Have you adopted a gender neutral paternity leave policy?

If you still use a "maternity leave" policy, have you carefully reviewed whether it meets current legal requirements?

## **Wage/Hour and Pay Equity Compliance**

Have you recently re-evaluated the status of exempt employees?

Have you recently reviewed your pay practices for discrimination and/or pay inequalities on the basis of sex?

Do you maintain accurate records of hours worked by non-exempt employees?

Do any of your timeclocks round time entries?

Do you have tipped employees? If so, do you use tip pools?

Do you follow all federal and state tip pool rules?

**Yes No Wage/Hour and Pay Equity Compliance continued**

Are all non-exempt employees properly paid overtime?

Do you know whether your state requires daily or weekly overtime?

If you employ anyone under 18 years of age, do you comply with child labor requirements?

Do non-exempt employees perform work during breaks or lunch periods?

Do you operate in any state which requires meal or break periods?

Do any of your timeclocks automatically deduct for meal and break periods?

Do any non-exempt employees perform work at home (including emails, phone calls, etc.)?

Do any non-exempt employees have remote access to company systems through electronic or personal devices?

Do any non-exempt employees perform work prior to the start or end of their shift without receiving compensation?

Are deductions from pay justified by law or a written agreement that complies with the law?

Do you know which states strictly limit deductions from pay?

Do employees paid on commission or bonus have a detailed written pay plan?

Are non-exempt employees properly compensated for travel time?

Do non-exempt employees have the ability to review and correct their time records?

Do you know whether your state requires reimbursement to employees for business expenses?

Have you reviewed whether the company pays overtime on bonuses, commissions, and incentives paid to non-exempt employees?

Have you reviewed whether "independent contractors," "casual labor," "contract employees," or "freelancers," might instead be employees?

Do you prohibit employees from discussing their wages with one another?

Does your employment application request information regarding an applicant's salary history?

Are wages ever withheld for failure to return company property or equipment?

Do you require forfeiture of unused vacation and/or paid time off at the end of employment?

**Yes No**

## **Fair Credit Reporting Act (FCRA)**

Do applicants complete a disclosure and authorization form prior to the company obtaining a criminal history or credit report?

Is the disclosure and authorization on an individual form, consisting solely of the disclosure and authorization?

Does the form allow for reports during continued employment?

When FCRA issues arise, is the current "Summary of Your Rights Under the FCRA" sent?

When FCRA issues arise, is a pre-adverse action letter sent?

Are the required special procedures followed for using Investigative Consumer Reports?

Do you counsel employees with access to FCRA information about its proper use?

When you finish using the consumer report, do you dispose of it in a secure manner?

When reviewing a consumer report, are you aware of additional EEO considerations?

Do you know whether your state has criminal history or credit report limitations (e.g. Ban-the-Box laws)?

## **Family and Medical Leave Act (FMLA)**

Do you have 50 or more employees?

Do you have more than one facility or 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?

Once an employee provides a Qualifying Medical Certificate, do you provide them with a Notice of Designation?

Do you require employees on medical leave to submit periodic status reports?

Are FMLA eligible employees who are on leave because of a workers' compensation injury or because of a short term disability, placed on FMLA leave when appropriate?

Are managers trained to recognize when a leave request implicates the FMLA?

Does your FMLA policy use a rolling 12-month calculation period for leave to minimize abuse?

Are you properly designating and managing the use of intermittent FMLA leave?

**Yes No Family and Medical Leave Act (FMLA) continued**

Do you have a medical leave/personal leave policy for employees who are ineligible for FMLA?

Does your state require paid or unpaid family and medical leave benefits under state law?

Do you properly consider workers' compensation claims to see if the claims also are an FMLA event?

Do you have employees in states with state-based family, medical and leave laws more generous than FMLA?

**Benefits**

Do you have a compliant ERISA plan and summary plan descriptions (SPD) for health insurance, life insurance, accidental death & dismemberment insurance, retirement savings plans, STD and/or LTD benefits?

Do you conduct annual nondiscrimination testing and confirm contribution limits are satisfied for your health and welfare plans, including HRAs, HSAs, or FSAs?

Do you have a written cafeteria plan document to authorize pre-tax payment of employee insurance premiums?

Do your group health plans provide equal coverage for all employees without regard to sex, disability, pregnancy, genetic information, health-status, or compensation?

Do you have committee charters and procedures in place to ensure compliance with your fiduciary duties under ERISA for your welfare and retirement plans?

Are you an applicable large employer under the ACA?

Are you part of an aggregated controlled or affiliated service group for benefit plan testing and ACA liability?

Is health coverage "affordable" and provide "minimum value" if you are an applicable large employer?

Do you report group health plan eligibility information to employees on Form 1095 series and to the IRS on the Form 1094 series if you are a large employer or self-insured?

Do you provide a uniform summary of benefits and coverage to participants and beneficiaries at appropriate times (i.e. application for coverage and at renewal)?

Do you provide proper notices for retirement and welfare plans required under the ACA, ERISA, CHIPRA, HIPAA, Medicare Part D, and COBRA?

Do you prepare a Summary of Material Modifications (SMMs) to notify employees of changes in medical plans within 60 days before their effective date?

Do you prepare SMMs to notify employees of changes in your non-medical welfare plans within 210 days of the close of your benefit year?

Do your payroll settings for 401(k) deductions accurately capture the definition of compensation in your 401(k) plan for deferral purposes?

Do you ensure the automatic enrollment provisions, if any, in your 401(k) plan are timely implemented?

**Yes No Benefits continued**

Are you in compliance with Form 5500 filing requirements and file a Form M-1 if you sponsor a multiple employer welfare arrangement?

Do you complete a Summary Annual Report (SAR) for ERISA plans?

On an annual basis and upon changes affecting your Medicare Part D plan's creditable coverage status, do you provide the plan's creditable status to the Centers for Medicare and Medicaid Services (CMS)?

Do you comply with Medicare Secondary Payer restrictions and notice requirements?

Do you comply with the Mental Health Parity and Addiction Equity Act (MHPAEA), the Newborns' and Mothers' Health Protection Act (NMHPA), and the Women's Health and Cancer Rights Act (WHCRA)?

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?

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 engage in timely Actual Deferral Percentage and Actual Contribution Percentage discrimination testing on your 401(k) plan(s)?

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)?

Do you ensure that documentation provided electronically or posted on a company website is in compliance with the DOL's safe harbor provisions?

Do you have compliant HIPAA Privacy and Security Procedures and conduct annual training for employees with access to protected health information?

Do you maintain procedures in case of a HIPAA breach (including a breach log and reporting procedure)?

Do your severance, long-term incentive and executive nonqualified retirement plans comply with the requirements of 409A or qualify for an exception by design?

**Yes No Immigration (IRCA) Compliance**

Do you maintain I-9 forms for all current employees hired after November 6, 1986?

Are I-9 forms completed within the time limit required after hiring?

Are you using the most recent version of the I-9 form?

Do you photocopy the supporting documents listed in Section 2 of the I-9 form?

If so, do you apply this practice consistently for all employees?

Do you maintain your I-9s for all current employees in a separate file (not the personnel file)?

Do you move the I-9 forms for terminated employees to a different file and calculate the date when you can purge them?

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 actually purge the I-9 forms?

Do you maintain a tickler/reminder system to assure timely re-verification of expiring work authorization documents?

Do you require employees to present specific identity and work authorization documents?

Are managers/company representatives trained on I-9 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?

If you participate in E-Verify and the employee presents a U.S. Passport, Passport Card, Permanent Resident Card or Employment Authorization Document, do you retain a photocopy of the document?

Do you close all cases in E-Verify after receiving a final case result?

Are managers/company representatives trained on E-Verify requirements?

Have you been audited by the U.S. Immigration and Customs Enforcement for I-9 form and E-Verify compliance?

Have you registered for the IMAGE program?

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?

**Yes No**     **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, including response to an active shooter?
- 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 within the last two years?
- Does the company use spyware or a spam buster on its computer networks?
- Does the company have a "disaster recovery hot-site"?
- Does the company consistently enforce policies on solicitation, distribution, and access to the premises?
- Does the company keep OSHA 300 logs?
- Does the company electronically report the information on the 300A summary to OSHA?
- Does the company have a drug testing program for reasonable suspicion and post-accident that is compliant with OSHA's new rules?
- Does the company have a safety incentive program compliant with OSHA's new rules?
- Does the company have a policy in place on how to proceed if OSHA arrives?
- Does the company report fatalities, amputations, and in-patient hospitalizations timely to OSHA?
- Does the company have a policy in place to prevent bullying and workplace violence?
- Does the company train its employees on the use of fire extinguishers if they are required to use them in case of a fire?

**Safety Matters**

- Has your workforce been audited by a safety professional within the last two years?
- Does each locality or worksite maintain OSHA 300 logs (unless exempt)?
- Are OSHA 300A summaries posted within the required three-month period and properly updated (unless exempt)?
- Does the company use written safety instructions or manuals?
- Do employees sign an acknowledgment of receipt of safety rules?

**Yes No Safety Matters continued**

Do employees receive required safety training about safety matters?

Are training session attendance sheets and handouts maintained?

Is there a safety committee?

Do you have a Job Safety Analysis (JSA) for each job presenting hazards?

Are Safety Data Sheets (SDS) maintained for all chemicals used on company premises?

Is there a written Hazard Communication Plan?

Do you have a Bloodborne Pathogens Plan, if required?

Do you have a Confined Space Entry program, if applicable?

Do you have an OSHA "8(c)" whistleblower/anti-retaliation policy?

Have you participated in an OSHA 8(c) consulting 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 respiratory or audiometric assessment?

Is there a work practice for the removal of defective equipment (i.e., tagging)?

Do you have a lockout/tagout policy?

Do you report work-related in-patient hospitalizations, amputations, loss of an eye, and/or fatalities?

If you use temporary employees, have you reviewed OSHA's temporary employee initiative?

Do you have suitable eye and body wash facilities, if required?

Do you have personnel adequately trained in first aid, if required?

Do you conduct regular inspections for the most common OSHA citations?

Do you have policies governing contractors providing services on site?

If you use safety incentive programs, are they lawfully compliant?

Is your company ISO 45001 certified?

Have you reviewed your safety policies in the last 12 months?

**Yes No Evaluation, Discipline, and Separations**

- Are all new hires subject to an introductory period?
- Are performance evaluations conducted for all employees?
- 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 all personnel issues and disciplinary actions?
- Is there a written progressive discipline system that limits your discretion?
- Are verbal 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 separating 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?
- At separation of employment, are wages paid at the time required by state law?
- At separation, do you handle accrued but unused time off in accordance with company policy and applicable state law?
- At separation, are employees reminded of restrictive covenant agreements they signed?
- Does the company discuss the return of company property with the separating employee?

**Other Compliance Actions**

- Do you know whether you are located in any states or localities requiring paid sick leave?
- Has your drug and alcohol testing policy been reviewed for compliance with any applicable state laws?
- Do you discipline employees for testing positive for marijuana use?
- Are applicable federal, state and local employment law posters properly posted?
- Is the EEO-1 Form 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?



**Yes No Other Compliance Actions continued**

Is the VETS-4212 Form completed and submitted annually?

Do you maintain records on new hires, promotions, layoffs, transfers and discharges?

Do you provide products or services to federal or state government?

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 send letters to the State Employment Service or other recruitment sources about job openings?

Are company premises accessible to disabled applicants and employees?

Is your company website accessible to individuals with disabilities?

Does the company make reasonable accommodations for disabilities and religious observance(s)?

Does the company have an Employee Assistance Program (EAP)?

Do you consider your employee turnover to be excessive?

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With hundreds of attorneys across the globe, Fisher Phillips advises and advocates for employers internationally on some of the most complex and high-profile workplace matters. We leverage our employment experience, tech and thought leadership credentials to keep our clients ready for what's next. By understanding their business, we help them adapt faster to a faster-changing world, realize possibilities sooner and more effectively, and stay steps ahead when everything is on the line.

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