

December 2004 - Drake Webinar Series: Workplace Law – Volume 3**Reduce the Costs of Litigation by Understanding Employment Law**

Contemporary human resource practices have never been more sophisticated or complex than they are today. Laws are forever changing and employees are more knowledgeable as to their rights in the workplace. As a result, making errors in any stage of an employee's professional lifespan can greatly impact productivity and capital. Yet, it is neither smart nor effective to operate solely from a human resources perspective or just a legal perspective. So, to ensure that they cover themselves from possible legal action, companies are concentrating on both and focusing their attentions to legal and appropriate hiring and firing tactics, often seeking council to assist in the process. It may seem odd to be making provisions for letting an employee go during the hiring stage but, as with any business transaction involving a contract, it is imperative that all individuals are cognizant of the issues before entering into an agreement. For employers it is important to be well prepared prior to conducting any job interview in order to minimize risk.

First, all job descriptions must be accurately described and representative of the actual responsibilities so the applicant is fully aware of the role. Whoever attains the job must not have reason to claim that the position involves functions outside their abilities. During interviews, there are certain questions of which an interviewer should be conscious. "Even a simple enquiry regarding method of transportation could be considered an offence under the Human Rights Codes," says Krista Hiddema, Lawyer and Partner at e2r solutions, an employment law and human resources solutions firm. It is thought that the information gleaned from the answer could be used to screen applicants against disabilities or age. Being consistent with the line of questions is essential for reasons of equality. If candidates discover that different questions were asked to different individuals, an employer could be opening themselves up to accusations of bias.

The old question of legally binding oral contracts is still under hot debate. According to Stuart Ducoffe, Employment Lawyer and Krista Hiddema's Partner at e2r solutions, "a contract is established in law when an offer is made, when some item of value is exchanged between the parties and the person in receipt of the offer accepts the terms of the offer. If those elements are present, the fact that the 'offer' and 'acceptance' are not in writing does not mean that a contract has not been formed." This same principle applies to employment contracts.

Firing procedures must also be examined for legal constraints. One of the most misunderstood legal principles regarding termination of the employment relationship is the perceived requirement to provide a reason for the termination. Although there is no legal need to do so, providing a reason is advantageous towards avoiding claims of wrongful dismissal due to discrimination. It is therefore important to clarify the difference between 'with cause' and 'without cause' terminations. "To fire someone 'with cause' means the individual has behaved in a way that breaches the employment contract in regards to confidentiality or loyalty to the company," says Ducoffe. This may also include sexual harassment, assault or fraud. Yet, most terminations are done so 'without cause', when the employee is entitled to reasonable notice of termination or compensation.

"A 'without cause' termination allows the employer to terminate the employment agreement without having a specified reason," says Krista Hiddema. "Yet, the employee is still entitled to a reasonable notice of termination or compensation package relevant to their age, years of service, position and employability in the marketplace given current market conditions." Again, it is critical that employers are made constantly aware of changes to legal specifications as the laws – especially in regards to 'without cause' terminations – are under constant analysis and revision.

Similarly, the term 'wrongful dismissal' is a point of contention amongst HR legal professionals. "Wrongful dismissal' refers to whether or not the employee received compensation on termination that satisfies the employer's obligation to provide reasonable notice of termination or compensation in lieu of notice in the particular circumstances," notes Krista Hiddema. When carrying out a dismissal it is important to ensure that more than one person is present. A second person could prove beneficial should the former employee make allegations regarding the methods or events of termination.

Finally, there is never a 'right' time to conduct a termination. Obviously, there are a number of 'wrong' times to conduct such a meeting such as significant dates that are of importance to the employee like birthdays, a time of sickness, family situation or a religious holiday. Despite the widely held view that a meeting should not be on a Monday or a Friday, there is no legal evidence to support that view.

Although seemingly disparate, hiring and termination share the common element of high stress. No one truly enjoys the hiring process and termination is never a pleasant experience for anyone involved. Yet, ensuring that all processes remain legal and both parties are treated with dignity and respect can substantially reduce pressure and protect an organization from costly litigation. e2r Solutions recommends hiring a third party such as a human resource solutions company like Drake to assist with standardizing credible workplace legal practices.

To learn the basics of workplace law and the top 10 hiring and firing tips as presented by employment law experts e2r Solutions, on behalf of Drake, register for a complimentary webinar on Wednesday December 15th from 12 – 1 p.m. EST.

Contact Drake for further information on how successful planning can reduce the number of employment law incidents and rising costs within your organization. Call 1 800 GO Drake International or visit: www.drakeintl.com