

# 5 Practical Steps That Can Protect California Employers

In a heavily regulated business economy such as that which exists in the State of California, it is imperative that all employers take a prophylactic approach to managing their human resources.

While there is a tremendous benefit to building goodwill and creating an engaged work force, there will always be those few who, no matter what efforts are made by their employer, find the dark cloud in the silver lining. These employees also take every opportunity to point out any misstep or mistake made by their employer regardless of how dedicated that employer may be to making their workplace an opportunity for professional and economic growth of their employees.

Consequently, we offer five steps, while ever so obvious, that can help California employers avoid trouble. As a famous coach once said, "If we do the little things correctly, the big things will take care of themselves."

## 1. Document

If it isn't written down, especially in the area of complaints regarding employees and workplace disputes, it didn't happen. If an employee becomes problematic, those problems must be documented in writing and shared with the employee. Always allow the employee to write a rebuttal to whatever written discipline memo has been created and then request that they sign the memo. If they refuse to sign it, indicate that at the bottom of the memo. If legal counsel is ultimately needed, an attorney will ask for the personnel file containing the written discipline documenting the employee's problems. If you are unable to produce this,

the lawyer will most likely tell you that you do not have enough back-up to terminate regardless of what the employee has done to push you to the point of seeking legal counsel.

## 2. Conduct Regular (Annual) Performance Appraisals

This goes hand-in-glove with the documentation point above. However, many businesses fail to conduct regular, meaningful annual performance reviews of all their employees. Moreover, even if your business is conducting reviews, the reviews must be honest and accurate assessments of employees' strengths, weaknesses, faults, foibles and skills. All too often, even companies that conduct reviews merely conduct a cursory check-box evaluation indicating that the employee is "average," "above average," "good," "satisfactory" or some other rating so as not to offend the employee. Managers and supervisors must make the tough decisions and be honest and accurate in assessing all of their employees on an annual basis if the reviews are to do your business any good should litigation commence. In order to assist in these reviews you should also have written job descriptions against which to evaluate each employee. Once litigation commences, one of the first things a plaintiff's lawyer will use against an employee is that an employee received consistent average or above average reviews and consistent raises and bonuses during the time of their tenure with the business, thus indicating that they could not have been the problem employee described by the employer during the defense of wrongful termination or other related litigation. The only way to avoid this problem is to give a full and accurate assessment on an annual basis to your employees. If you don't tell the employees there is a problem, then they will assume and always assert that there was no problem.

## 3. Have a Reason for Termination

Despite California's policy of "at-will" employment, if in fact it does come to termination, you must be able to articulate a clear and obvious reason or reasons for your decision to terminate. This does not mean that your reason should be stated in a blunt and offensive manner, as employees who are insulted or believe they are being disparaged are much more likely to sue.

As a corollary to this, everything you can do to treat the employee with the utmost respect at the time of termination will pay you huge dividends after the fact.

## 4. Pay All Wages and Monies Due to the Employee Upon Termination

Many employers are unaware of California Labor Code Section 201 which requires that all wages be paid to a discharged employee immediately upon termination. If the employee initiates the separation by quitting, you have 72 hours to pay all wages due. If, at the time of termination, there are outstanding expenses incurred by the employee, you should attempt to pay them at the time of termination as well. However, if the employee needs additional time to submit those expenses, they should be paid as soon as they are submitted but in no event more than 72 hours after the submission of the required backup documentation. California Labor Code Section 203 goes on to provide waiting time penalties of up to thirty (30) days' salary. The payments that must be made include all vacation and other accrued time-off benefits and/or commissions the terminated employee has earned up to the time of the termination.

# California Employers Protection

*continued*

## 5. Compensate Employees from a California Bank

While this is a somewhat hyper-technical requirement, California state law requires that all employees' pay be drawn on a bank located within the borders of the State of California. Many employers run afoul of this by using payroll services and/or banks that operate out-of-state and issue payments from an out-of-state address. There are legions of plaintiffs' employment attorneys that would like nothing more than to make a class action example of your business for failure to comply with these rules as codified in California Labor Code Sections 212, 213 and 214.

Moreover, failure to comply with this requirement can result in misdemeanor prosecution of the offending business owner.

Clearly, there are innumerable traps the unwary employer can fall into to run afoul of California's large and complex statutory employment law. Consequently, it is best to pay attention to detail and make sure to document all issues that arise with employees at the time they arise. Further, it is important to make sure that all business owners, managers, HR staff, and supervisors are aware of current California employment law and do their best to comply with all the technical requirements. ■

For further information regarding this article or any employment law matters, contact us at 213.480.1900.

To receive our newsletter electronically or for complimentary copies, please send your request to [pholguin@bonnebridges.com](mailto:pholguin@bonnebridges.com).

© 2010. The newsletter is a publication of Bonne Bridges and is intended as a report on legal developments and should not be construed as legal advice on any specific facts or circumstances. Readers should not act upon the information contained within this publication without professional advice.