

KEYS TO AVOIDING EMPLOYMENT LITIGATION

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Watch What You Say

- Do not make comments about age, sex, race or other personal characteristics.
 - Never
 - Never Ever.
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- Be careful what is discussed during interviews.
 - Do not ask applicants about:
 1. Marital status
 2. Place of birth
 3. Date of graduation
 4. Other non-job-related matters

Conduct Background Checks – Lawfully!

- Don't discriminate on unlawful grounds based on results.
- Criminal Background Checks
- Fair Credit Reporting Act
 - Obtain authority
 - Provide a copy of the report.

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Don't Hire the Walking Lawsuit

- Read between the lines
- Check references
- Speak with previous employers

Make Sure Employees Are Properly Classified

- California Labor Commissioner
- Exempt vs. Non-Exempt Employees.
- Hourly vs. Salary Distinction

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Make Reasonable Accommodations for Disabled Applicants and Employees

- Equal Employment Opportunity Commission
- Americans with Disabilities Act
- What is a “Reasonable Accommodation”?
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Maintain Updated Employment Policies

Department of Fair Employment and Housing

- Keep up-to-date on policies against discrimination and harassment
 - Employer is guilty until proven innocent.
 - Sexual Harrassment Training
- Manager's Liability
- Employee Handbooks

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Address Problems When They Arise

- Implement an Evaluation Process
- Articulate and document reasons for employment actions
 - Document everything and maintain files for at least 3 years
 - Use multiple decision makers (team approach)

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Play Layoffs and Handle Terminations Carefully

- Termination
 - Was the employee put on notice?
 - Did they have an opportunity to improve?
- Hiring Freeze
- Worker Adjustment Retraining Notification Act
- Reasons for Layoff Should Be Carefully Documented
- Identify Objective Criteria for Determining Who Will Be Laid Off
 - Seniority
 - Skills
 - Performance evaluations
 - Elimination of Duties
- Is One Group Disproportionately Affected by Layoff?

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Document, Document, Document

- If an incident isn't documented, it's as if that incident never occurred.
- Doesn't matter if it is unacceptable behavior, poor performance or an extended absence.
- **IMPORTANT:** Keep in mind that those documents could be Exhibit A to a jury.

Seek Advice and Counsel

- HR Department
- Outside counsel