

HR Audits Are A Must: Here's The Speed Dating Version



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I conduct human resources audits with my clients regularly--a 120-point thrill ride for the uninitiated. The 2 1/2-hour exercise routinely uncovers issues the client did not know about that could open them up to legal exposure. Here is the "speed dating" version of the audit. See how well your business is following proper California (and federal) employment practices.

1. Double-check that your arbitration agreements are in place and signed and include class action waiver language.
2. Review your employment practices liability insurance and consider whether a wage and hour rider is right for you.
3. Confirm that your meal and rest break protocols comply with the law and are being followed by your operations team. Don't combine rest breaks and meal breaks. When appropriate, consider installing a 30-minute electronic lockout system for meal breaks so employees get their full meal allotment. Educate your lowest level supervisors, typically your weakest link, on the meal and rest break rules (and don't forget that third rest break, when required). Understand the "5-hour" meal break rule (must start before completing 5 hours) and don't confuse it with the "6-hour" waiver rule.
4. Evaluate your salaried exempt employees' status to ensure they are properly classified. Check also that your independent contractor workers are properly classified. If you require employees to bring their own hand tools, you must pay them double the minimum wage.
5. Do not round time, especially if you are using an electronic timekeeping system. Rounding is still allowed, legally. Nevertheless, DO NOT do it.
6. Ensure that your paystubs are legally compliant with the required eight elements.
7. Is your employment application up to date? Does it properly exclude requests for Social Security number, birth date, emergency contact information, reasonable accommodation questions, and criminal background checks?
8. Update your handbook if it's more than two years old.
9. Document all terminations and provide the employees with a memo outlining the reasons why.
10. Strongly consider severance for every employee so that you get a simple release of claims in return.

11. Review your travel time and mileage policies. Understand the difference between commute time and travel time.
12. Reimburse employees for the use of their personal phones for timekeeping, calls, texts, etc. If they use other personal equipment, reimburse them. If you have remote workers, have something in writing about the protocols. What happens when they need to come to the office or travel? How are they compensated?
13. Do hourly supervisors check in by text, phone or email with their team when the supervisor is not on the clock? How are they compensated for time that typically isn't formally recorded?
14. Is your website visual- and hearing-disability-access compliant?
15. When someone is on leave, are you providing them with the appropriate Family and Medical Leave Act (FMLA) and/or California Family Rights Act (CFRA) notices? What happens when those 12 weeks of protection run out? These leave laws overlap with worker's compensation, for example. Employers only need five employees for the CFRA to be in play.
16. Are you properly accruing or frontloading sick time based on the new California accrual levels? Do you combine vacation and sick, but your Paid Time Off accrual level is too low? Are you allowing accrual with an acceptable maximum cap? Do you have people regularly working more than eight hours in a day who may be entitled to a higher sick time frontloading?
17. Have you implemented an alternative work week (AWS) schedule and registered it with the state? Do you need a California make-up time policy, since California does not allow "comp time"?
18. If you have commissioned employees, do you have a written agreement signed by both of you as required by California law?
19. If you have non-discretionary bonuses for non-exempt employees, are you properly grossing up those bonuses to calculate overtime, sick time and meal/rest break premiums?
20. The "Big Four" soft spots in class action and the Private Attorneys General Act (PAGA) litigation are 1) meal and rest breaks; 2) off-the-clock work/rounding time; 3) bonus gross-up miscalculations or no calculations; and 4) failure to reimburse for use of personal equipment. Are you protected?

There's your 2 1/2-hour HR audit in a nutshell. How did you do?