



EMPLOYMENT PRACTICES AUDIT

Introduction

BY [DON PHIN, ESQ.](#)

There are dozens employment-related laws and hundreds of regulations that apply to your company. You can double that number if you work in California! The violation of employment laws can result in agency investigations, employee lawsuits, penalties, bad press, employee defection and the lowering of employee morale. A commitment to complying with employment laws must be viewed only as the start to successful employee relations. The areas of inquiry outlined in this audit require constant attention and improvement.

This audit also covers some basic HR practices, which if ignored tend to be the source of claims. Although this audit is comprehensive, it can not address every compliance or management issue. For example, IRS, EDD (payroll taxes), workers compensation, ERISA (insurance, pension and other group plans), COBRA (continued health insurance) NLRA (labor relations), OSHA (safety), Privacy (HIPAA), OFCCP (government contracting), and other state-related, financial or safety reporting requirements are only marginally addressed by this audit, or not at all. The focus is on today's most common personnel law issues – the 80/20 of employment practices risk management, and sound HR practices.

The audit is designed to minimize the expense of attorney time by having you respond to a series of questions and supply supporting documentation. If there is uncertainty as to your obligations you would be wise to contact me, the [ThinkHR](#) hotline team, or your local employment law attorney.

CONDUCTING THE AUDIT

1. Assemble an Audit Team
2. Maintain Confidentiality of Review
3. Respond to Questions and Gather Documentation
4. Attorney Review of Responses and Documentation
5. Summarized Legal Compliance Priorities
6. Create a Compliance Action Plan
7. Commit to and Implement the Plan
8. Monitor and Improve the Plan

NOTE: Case law leaves an uncertainty whether or not self-conducted audits are protected from disclosure in employment lawsuits and other circumstances by the “self-critical analysis privilege.” In light of the possible disclosure of this document, or its subsequent analysis, you are encouraged to limit distribution to senior management or those on a “need to know” basis. You can also involve your attorney to help maintain confidentiality. The best thing you can do is to acknowledge any exposures and commit to addressing them!



Don Phin, Esq.





TABLE OF CONTENTS

I. General Background.....	2	IX. Retention/Turnover.....	25
II. Ethics.....	5	X. Discrimination and Related Concerns	26
III. Outsourcing and Contingent Workers	5	XI. Legal Compliance Training.....	31
IV. Hiring	8	XII. Standards of Conduct and Discipline	32
V. Wage and Hour Policies	14	XIII. Termination	33
VI. Personnel Records.....	21	XIV. Health and Safety.....	38
VII. Posting and Pamphlet Requirements.....	22	XV. Privacy and Confidentiality in the Workplace ..	43
VIII. Performance Improvement.....	24	XVI. Protecting the Workplace	44

I. GENERAL BACKGROUND

1. Have you audited your personnel practices within the last year?

- Yes
- No
- Don't Know
- Not Applicable

In light of today's litigious environment, as well as the ever-increasing complexity of employment laws, you are advised to audit your personnel practices every year. You should supplement this audit to address state, industry and company-specific concerns.

2. Was any past audit conducted by an attorney, human resource consultant or risk manager?

- Yes
- No
- Don't Know
- Not Applicable

The audit process can be made even more effective with assistance from attorneys, human resources consultants, and risk managers. In designing this audit "best practices" and strategic analysis was obtained from each of these professions. If you had an audit performed in the past, you might want to review it to see if you made the recommended changes.

3. Has your HR manager attended any personnel law compliance training, seminars or workshops in the last year?

- Yes
- No
- Don't Know
- Not Applicable



In our time of rapid change, there is no substitute for continuous learning. I encourage you to sign up for [ThinkHR](#) with me and join their monthly Webinars, take advantage of their excellent newsletters, and Hotline services.

4. Have you conducted any employee surveys during the last year?
- Yes
 - No
 - Don't Know
 - Not Applicable

If not, what are you waiting for? If so, what have you done with the findings? Employee surveys are a valuable source of risk management information. When conducting a survey, you will invariably discover conflict that can be the seed to a Compliance and Productivity issue. You will also gain greater insight into the culture of the company, which is a primary concern when hiring and retaining employees, as well as avoiding lawsuits.

5. Have you had any employment practice claims in the last three years including, but not limited to, NLRB, Dept. of Labor, EEOC, FLSA, state agencies, mediations, arbitrations, administrative hearings, internal grievances and attorney demands?
- Yes
 - No
 - Don't Know
 - Not Applicable

Past practices are good indications of present ones. Many times a company, after facing a claim, will not make an effort to find out what failure in their management system generated the claim, in the first place. Unless we examine our losses, and address the variances in our system, we will continue to be faced with similar failures. As ancient wisdom has it, "lessons are repeated until learned."

6. Are you currently aware of any possible employment practice claims?
- Yes
 - No
 - Don't Know
 - Not Applicable

There is no time like the present time to deal with a problem. Many employers make the mistake of *ignoring*, *burying* or *denying* risk exposures. Remember, what employees want most is for you to a) acknowledge they have a complaint and b) make an effort to do something about it; so, c) they can get back to doing their jobs. Note: If you have Employment Practices Liability Insurance coverage, your knowledge of a claim may 'trigger' a reporting requirement. Check with your broker.

7. Are you a government contractor?
- Yes
 - No
 - Don't Know
 - Not Applicable

If you are a government contractor, and depending on the type of project, number of employees and contract size, you may be subject to numerous regulations related to wages and hours, affirmative action, EEOC



compliance, etc. These regulations are not covered within the scope of this audit but must be addressed. See the Office of Federal Contract Compliance Programs at www.dol.gov/ofccp for a good head start.

8. Do you intend to conduct any layoffs, downsizing, plant closures, or recall efforts?
- Yes
 - No
 - Don't Know
 - Not Applicable

Layoffs, downsizing, plant closures and recall efforts are a significant source of employment law claims. WARN notices may be required. Change is often accompanied by pain, and as a result, claims get filed. A good time to get your attorney involved.

9. Do you intend a merger, acquisition or dissolution of any portion or subdivision of your company at any time soon?
- Yes
 - No
 - Don't Know
 - Not Applicable

Mergers, acquisitions, and dissolutions are also a significant source of employment law claims. So much so, that many insurance carriers exclude these events from the employment practices insurance coverage they offer. The clashing of cultures, as well as the eventual re-engineering, causes these claims. Peter Drucker claimed that three out of five mergers and acquisitions fail because of the poor cultural interface. I recommend a Merger and Acquisition Audit related to personnel practices be done. Ask for a copy of my outline.

10. Are you subject to a collective bargaining agreement?
- Yes
 - No
 - Don't Know
 - Not Applicable

Unions are the result of a collective resistance to management practices. It could be viewed as a forced outsourcing of the management function. If you are in a collective bargaining setting, you can better manage your relationship with the union. If you are trying to prevent unionization, then you need legal advice. I recommend you work together with your union in a pro-active, empowering way. For additional information, go to www.nlr.gov

11. Do you have Employment Practices Liability Insurance coverage?
- Yes
 - No
 - Don't Know
 - Not Applicable

The average verdict on an employment practices claim exceeds \$200,000! And that doesn't include attorney's fees, costs, etc. If you don't have EPLI coverage, you risk exposure to considerable expenses for defending and indemnifying any claim. Employment practices liability insurance (EPLI) should be considered by every organization. If you already have or are contemplating such coverage, I can help by analyzing or recommending appropriate policies. Ask for a copy of the Employment Practices Liability Insurance Worksheet.



II. ETHICS

12. Do you have a company ethics policy?
- Yes
 - No
 - Don't Know
 - Not Applicable

Good ethics is good business! Do you have a company Code of Ethics statement? If you don't, please contact the Ethics Resource Center at www.ethics.org, or contact the Josephson Institute of Ethics <http://josephsononbusinessethics.com/>. Both websites have excellent resources regarding business ethics.

13. Do you have a policy for the reporting of illegal or unethical activity?
- Yes
 - No
 - Don't Know
 - Not Applicable

According to the Ethics Resource Center, less than half of employees will report having witnessed unethical conduct. There is no substitute for educating employees about ethics and then requiring them to speak up. I am on the Advisory Board of Employee Confidential, an online program designed to facilitate reporting www.employeeconfidential.com.

14. Do you hold your company leaders and employees responsible for conforming to your ethics policy?
- Yes
 - No
 - Don't Know
 - Not Applicable

There is no substitute for enforcing ethical responsibilities at all levels of an organization.

15. What are the most common ethical issues that arise in your industry/at your company? What is your plan for preventing them?

III. OUTSOURCING AND CONTINGENT WORKERS

16. Have you "outsourced" any employees? If so, are you aware of your legal responsibilities to these contingent workers?
- Yes
 - No
 - Don't Know
 - Not Applicable



Outsourcing non-core work functions is an integral part of today's workplace. The risk management aspects of the Contingent Worker are continually being explored in the courts and legislatures. Expect confusion for years to come.

17. Have any contingent workers been employed by you for more than six months performing duties essential to your core business needs?
- Yes
 - No
 - Don't Know
 - Not Applicable

The Internal Revenue Code, Employee Retirement Income, and Security Act, and other agencies want workers to be employees. If you have a contingent worker working for you for more than six months, performing duties essential to your core business needs, they may be considered an "employee" under many of these regulations. If you are in such a circumstance, you should consider converting them to a regular employee or risk potential exposures. Microsoft agreed to a 97 million dollar settlement to some 10,000 'perma-temps,' due to their alleged misclassification as contingent workers.

18. Have you obtained bank references and/or audited financials of any PEO or temp agency you use?
- Yes
 - No
 - Don't Know
 - Not Applicable

The Department of Labor and other agencies are holding employers responsible for the non-payment of contingent temporary and leased workers. So that you don't get stuck footing the bill, it is wise to obtain bank references and/or audited financials of any PEO or temporary agency you use.

19. Do you include contingent workers in your safety training programs and maintain a record of their illnesses and injuries?
- Yes
 - No
 - Don't Know
 - Not Applicable

While you may be able to outsource numerous functions to contingent workers, you may not outsource your obligation for a safe workplace. It is recommended you include contingent workers in your safety training programs and maintain a record of their illnesses and injuries.

20. When "outsourcing," do you make sure the company you are using is:
- Properly licensed?
 - Conducting reference and background checks of its hires?
 - Properly insured, (including Worker's Compensation, EPL and general liability, naming you as an additional insured)?
 - Providing you with an agreement to indemnify you against any claims generated by one of their employees?
 - Treating its workers as W-2 employees and not independent contractors?
 - Prepared to protect your trade secrets and other proprietary property?



- Yes
- No
- Don't Know
- Not Applicable

Using contingent workers opens up a whole new area of risk exposure. Depending on what state you are in, there may be minimum capitalization requirements, insurance requirements, etc. You are encouraged to look into how employees are hired, what insurance exists, request the agency indemnify you against claims, make sure they are treating the contingent workers as their W2 employees, and, if necessary, have them sign trade secret, confidentiality, and other proprietary agreements.

21. If your company is unionized, do you consult the union before subcontracting any bargaining unit work?
- Yes
 - No
 - Don't Know
 - Not Applicable

If you are unionized, under the Fibreboard Doctrine, you may have to consult the union before subcontracting any bargaining unit work. For more information, go to www.nlr.gov.

22. Do you loan to, lease to or share any of your employees with other companies?
- Yes
 - No
 - Don't Know
 - Not Applicable

If you loan, lease or share any of your employees with another company you may be considered to be in a joint employment, dual employment or borrowed servant role. This makes your liability “primary” or “secondary” depending on the circumstances. This is a complex area, and it is recommended that you get some “front-end” advice.

23. Do you have a formal procedure for managing home-based workers?
- Yes
 - No
 - Don't Know
 - Not Applicable

Today's virtual workplace has created the home-based and off-site worker. Insurance, safety, and other risk management exposures exist with these workers. Not a bad idea to have a separate Telecommuting Agreement with these workers.

24. Do you have any independent contractors?
- Yes
 - No
 - Don't Know
 - Not Applicable

If you hire independent contractors, you may be liable for their taxes and other liabilities if you control their work product, supply their place of work, the equipment they use or pay them on a regular hourly basis. The IRS has listed more than 20 factors it looks at when determining exposure for independent contractors. I did a training for LinkedIn on [Independent Contractors](#).



25. Do all independent contractors you hire sign an independent contractor agreement?

- Yes
- No
- Don't Know
- Not Applicable

One fact the IRS will consider in determining whether or not someone is an independent contractor is whether they have a written agreement with you, identifying them as one! You should make sure the agreement identifies any work they perform as a "work for hire." If you don't, you may find yourself paying for the development of product you thought was yours, that the independent contractor now has a right to hire out to your competitors.

26. Do all independent contractors you hire have their own tax I.D. number, business license, place of business and insurance?

- Yes
- No
- Don't Know
- Not Applicable

I recommend you make sure that all independent contractors have a separate tax ID number, business license, place of business and insurance. Maintain a copy of their business card, any letterhead, licenses, insurance, etc., in case you ever have to defend against a misclassification claim.

IV. HIRING

27. Do you post jobs internally?

- Yes
- No
- Don't Know
- Not Applicable

Not posting jobs internally will cause employee discord, as well as possible discrimination claims. It will also let employees know there is an applicant referral possibility.

28. Do your job descriptions help you comply with the Americans with Disabilities Act (ADA) by setting fort essential job functions and duties?

- Yes
- No
- Don't Know
- Not Applicable

The Americans with Disabilities Act (ADA) is an exploding area of the law and applies to any company with 15 or more employees. Mental disability claims are the fastest growing category. In many of cases, the issue arises over whether or not the employee can perform essential job functions. In making this determination attorneys and agencies will first turn to the employee's job description. While I am a great believer in flexibility, if you have more than 15 employees, you should nonetheless identify the 80/20 of employee responsibility and identify their essential job function. A great source for developing job descriptions is [ONET](#), and it's free!



P.S. Most job descriptions are out-of-date, and do a poor job of specifically identifying the most important tasks of the job.

29. Do you maintain your employment advertisements, job applications, resumes and interview notes for at least a full year?
- Yes
 - No
 - Don't Know
 - Not Applicable

To help defend against hiring related claims, you must maintain employment advertisements, job applications, resumes and interview notes for at least a full year. California employers are now required to maintain these docs for two years.

30. Are your employment advertisements non-discriminatory and gender neutral?
- Yes
 - No
 - Don't Know
 - Not Applicable

The EEOC requires that you eliminate non-discriminatory or gender-specific language unless it is an essential part of the job function (i.e., bathing suit models). Make sure that your HR department reviews all job placement ads before they are published.

31. Do you state your position regarding Equal Employment Opportunity in all of your help wanted advertisements?
- Yes
 - No
 - Don't Know
 - Not Applicable

You should place in your help wanted advertisements the statement 'Equal Opportunity Employer.'

32. Does your employment application or interview questionnaire contain any of the following prohibitive questions? (If so, eliminate them, except for legitimate business reasons.)
- Date of birth or age
 - Height and/or weight, color of eyes, hair, skin, or other physical attributes
 - Marital or family status
 - Place of birth
 - Number of dependents
 - Name of relative or other close personal contacts for emergencies
 - High school graduation date (requesting college graduation date is appropriate)
 - Citizenship (you may only ask if they are permitted to work in the U.S.)
 - Disabilities (you may only ask if there is something that would prohibit the applicant from doing the essential job functions of the position applied for)
 - Arrest record (you may normally only ask about felony convictions)
 - History of Worker's Compensation claims
 - History of garnishment
 - History of bankruptcies or credit rating (unless they handle finances)



- Club, organization and other social or religious affiliations
- Military record
 - Yes
 - No
 - Don't Know
 - Not Applicable

The EEOC requires that you eliminate non-probative questions in the hiring process.

33. Does your employment application contain an “at will” clause and a statement indicating the fabrication or omission of material facts will be considered grounds for immediate discharge?
- Yes
 - No
 - Don't Know
 - Not Applicable

It is important to protect yourself from poor hiring choices by including this language in your job applications.

34. Do you have a completed, signed application for employment for each employee, including rehires?
- Yes
 - No
 - Don't Know
 - Not Applicable

It is important to make sure that you have an acknowledgment of at-will employment and other aspects of your policies or procedures from all new hires.

35. Do you refrain from using terms such as “probationary,” “permanent,” “career,” “security,” “long-term” and “guaranteed” during the hiring process and in your employment relationships?
- Yes
 - No
 - Don't Know
 - Not Applicable

You have to watch what you say! Employees and their attorneys will attempt to turn anything you say into a promise or misrepresentation. Words such as probationary, permanent, career, security, long-term and guaranteed should be eliminated unless you intend to live up to the legal consequences of these statements.

36. If you give pre-hire examinations including medical, physical, or psychological?
Do you indicate this on your employment application?
Do you do the test after making a conditional job offer of employment, requiring that they be “fit for duty”?
Are all applicants provided the same test or exam?
Is the test or exam related to a bona fide occupational qualification?
Do you have ADA accommodation discussions with those who do not pass the exam because of a disability?
- Yes
 - No
 - Don't Know
 - Not Applicable



If you are going to conduct a fitness for duty exam, do it post offer as a condition of employment. As a general rule, any testing must be job-related and a valid indicator of success in that position.

37. Are any aptitude tests and personality assessments job-related & validated based on actual job performance? (The test/assessment must be a valid predictor of the applicant's success at performing the job in question).
- Yes
 - No
 - Don't Know
 - Not Applicable

Aptitude tests and personality assessment tools need to be job-related and validated. There is not much of a concern when it comes to a typing test. Unless of course typing is not an essential job function. When I agreed to sponsor the [ZERORISK Hiring System](#), it was after looking into IRMI's validation studies. You should do the same anytime you are using such a tool. In fact, many psychological profile exams specifically disclaim any reliability or validation for purposes of hiring, promotion, and other workplace decision making. For great skills tests, use [CEB](#). Please see the [Summary of Uniform Testing Guidelines](#)

38. Do you maintain standard interview guidelines?
- Yes
 - No
 - Don't Know
 - Not Applicable

Standard employment interview guidelines are important to avoid discrimination claims and to make sure managers hire people with sufficient skills and character. Managers must also be trained on questions NOT to ask in an interview.

39. Do you keep notes regarding the interview process?
- Yes
 - No
 - Don't Know
 - Not Applicable

I suggest managers keep notes of the interviewing process not only to defend against discrimination claims, but also to make sure they are interviewing properly. Retain for at least one year, two in California.

40. Do you make sure new employees are interviewed by someone in the Human Resources Department, as well as a supervisor?
- Yes
 - No
 - Don't Know
 - Not Applicable

One of the biggest mistakes I see is companies allowing managers to hire without input from the human resources department. Not only will this ensure that a uniform hiring process has been followed, but it also helps get past the human nature factors of *desperation*, *laziness*, and *infatuation* which are the cause of most poor hiring decisions.



41. Do you obtain an I-9 Proof of Citizenship Form from new employees?

- Yes
- No
- Don't Know
- Not Applicable

You must obtain an I-9 Proof of Citizenship Form from new employees and place it in a separate personnel folder. Consider using [Global HR Research](#) to help with managing this process.

42. Do you obtain a reference and background check permission from the applicant that complies with FCRA requirements?

- Yes
- No
- Don't Know
- Not Applicable

You must know who you are hiring. Whether you are conducting a credit check, criminal record search, DMV check or obtaining references, you should have an employee sign a FCRA consent form authorizing you to do so. Consider using [Global HR Research](#). Tell them I sent you and you'll get awesome service from them.

43. Do you conduct at least three reference checks?

- Yes
- No
- Don't Know
- Not Applicable

As stated in the Johnson & Johnson company employee relations manual of 1932 'If workers are carefully selected, the problems of discipline will be negligible.' There is no substitute for conducting reference checks. Just because getting references may be difficult, is no reason to give up the process.

44. Do you request school transcripts where education is an important job criterion?

- Yes
- No
- Don't Know
- Not Applicable

Study after study reveals that job applicants misrepresent not only their employment and salary history, but also their education and training as well. If an educational background is an important criterion to perform essential job functions, requesting a school transcript can go a long way towards assuring you've hired the right employee. If you find it too much of a hassle to order one yourself, have the employee provide you with an official transcript which is certified by the school.

45. Do you obtain driving records of all applicants who are required to drive a vehicle on company time?

- Yes
- No
- Don't Know
- Not Applicable



Intoxicated and careless drivers are a significant exposure to employers. Even if you are not required to obtain driving records by the Department of Transportation (www.dot.gov), you should do so anyway. Note that many insurance carriers will not provide insurance for drivers with more than two points on their record. The last thing you want to do is find yourself responsible for the actions of one of your drivers because you did not pull a DMV report.

46. Do you run credit checks on applicants who are in financial or security-related positions?
- Yes
 - No
 - Don't Know
 - Not Applicable

The cost of a credit check is nominal compared to the amount of financial security you obtain. As with any other background investigation, always offer the employee the opportunity to dispute any findings or rejection based on information received. Have job applicants sign the appropriate permission forms to obtain these reports. The EEOC and many states have limited the use of credit checks. Again, I recommend [Global HR Research](#) to help with this process.

47. Do you conduct criminal background checks on all applicants?
- Yes
 - No
 - Don't Know
 - Not Applicable

The failure to perform criminal background checks has led to some real horror stories. This is especially true where employees are working in safety-sensitive positions or with children, the elderly and disabled. Numerous “ban the box” laws have impacted on your ability to use criminal background check results to deny employment. See [Global HR Research](#) to help with this process. (You may be getting the correct idea by now that they are a strategic asset for your company.)

48. Do you have a procedure to inform applicants of their exception or rejection?
- Yes
 - No
 - Don't Know
 - Not Applicable

Many employers are criticized for not keeping job applicants in the loop. I encourage you to let them know what your hiring process is through use of a hiring FAQ as well as status emails.

49. Do you send written offer letters to all prospective employees?
- Yes
 - No
 - Don't Know
 - Not Applicable

Just as with the signing of the job application, you should re-acknowledge the specifics of your job offer in writing. This guards against unwanted promises made by desperate managers.



50. Do your managers and executives sign employment contracts?

- Yes
- No
- Don't Know
- Not Applicable

All executive employees and most of your exempt employees should sign employment contracts. These contracts should at the minimum define compensation and benefits, length of employment, employer expectations, whether an employee is subject to 'at will' or 'for cause' termination, and any severance benefits upon termination.

51. Do you have new hire checklist for all employees?

- Yes
- No
- Don't Know
- Not Applicable

Checklists are a great way to reduce employee risks. You should have checklists for hiring, onboarding, performance management, compliance, etc. [ThinkHR](#) has numerous checklists. I helped design some of them!

52. Do you make sure you are prepared for onboarding new employees by preparing paperwork, people, policies and procedures, performance expectations, getting the workstation ready, assigning a work "buddy" and a 60 to 90 day work plan?

- Yes
- No
- Don't Know
- Not Applicable

Consider the use of an Onboarding Checklist to create a WOW experience for new employees.

53. Do you conduct Entrance Interviews to find out why new hires decided to work for you?

- Yes
- No
- Don't Know
- Not Applicable

Don't assume why employees came to work at your company, find out. Use the sample Entrance Interview form I created. Now you won't have to guess as to the impact of your compensation structures, benefits, proximity, employee connections, etc. and the impact on hiring.

V. WAGE AND HOUR POLICIES

54. Do you have well-defined employee classifications (i.e., full time, part time, exempt, non-exempt, etc.)?

- Yes
- No
- Don't Know
- Not Applicable



Too many companies take a 'wing it' approach to employee classifications. Such an approach will only get them in trouble with the IRS, Department of Labor, NLRB and other agencies. Make sure to consider the classifications used by your insurance and benefits carriers when defining yours. To create job descriptions go to [O*NET](#).

55. Does your treatment of exempt versus non-exempt employees comply with Federal and State Wage and Hour Laws?
- Yes
 - No
 - Don't Know
 - Not Applicable

The Department of Labor estimates there are billions of dollars of unclaimed overtime due to misclassification of exempt versus non-exempt employee status. A claim of misclassification by a single employee can open up a Pandora's Box of problems. The biggest exposure comes from misclassification of the executive (managerial) or administrative classification. If you are unclear about an employee's status, I suggest you contact your local attorney or HR consultant.

56. Do you keep accurate records regarding lunch and rest periods?
- Yes
 - No
 - Don't Know
 - Not Applicable

This has been an active area of wage and hour litigation. Some states, such as California, are very restrictive in this regard and other states are less so. It is important to understand how your state manages lunch and rest breaks so that you don't find yourself defending a class action wage and hour claim. Make sure employees acknowledge your policy.

57. Do you comply with overtime pay requirements?
- Yes
 - No
 - Don't Know
 - Not Applicable

The federal law requires that you pay overtime anytime an employee works over 40 hours in a week period. California requires that you pay overtime anytime an employee works more than eight hours a day. For an FLSA overtime factsheet, go to https://www.dol.gov/whd/overtime/fact_sheets.htm. California employers should go to www.dir.ca.gov.

58. Are your salaried, non-exempt employees paid overtime?
- Yes
 - No
 - Don't Know
 - Not Applicable

Many employers find themselves in the trap of having employees who want to work hard and not demand overtime. The problem with this is that paying overtime is not a voluntary exercise - it is a legal requirement. Just because someone is paid a salary does not make them exempt. You should be vigilant about making



sure that non-exempt employees work no more than 40 hours per week or 8 hours in a day in California. If they find themselves needing to work late with any frequency, you have to question whether they are working effectively or whether you are asking too much from them.

59. Do you provide your supervisors with Overtime Authorization Forms, including the client or work project, work to be done, and expected amount of overtime, which must be signed before the employee working overtime?
- Yes
 - No
 - Don't Know
 - Not Applicable

Overtime is one of the top three issues litigated by the Department of Labor (www.dol.gov). It is also a precursor to larger claims. It's often abused as well. I recommend you have an Overtime Authorization Policy set forth in your employee handbook, and require employees to complete an Overtime Authorization Form.

60. Do you save and analyze your overtime authorization forms on a quarterly basis?
- Yes
 - No
 - Don't Know
 - Not Applicable

By collecting and analyzing Overtime Authorization Forms on a quarterly basis, you can determine what departments, and employees are causing bottlenecks in your systems thereby creating additional expenses and inefficiencies. A printing company with 80 employees saved over \$5,000 per month just by using the Overtime Authorization Form! It turns out the employees were having a hard time justifying why they were working overtime, because they couldn't. They also analyzed the forms to determine what customers and procedures were causing bottlenecks.

61. Are your employees required to drive in company vehicles to and from a job site, or are they required to transport heavy equipment to and from work?
- Yes
 - No
 - Don't Know
 - Not Applicable

'Portal to portal' laws require employers to compensate for all employer mandated transportation activities with limited exception. This is true where being require to drive a company vehicle or meet at a certain location to then drive to a job site. See Section 785.33 <https://www.dol.gov/whd/regs/compliance/wh1312.pdf>

62. Do you have a make-up time policy?
- Yes
 - No
 - Don't Know
 - Not Applicable

It's OK to 'make-up' time without violating the FLSA. I'd get the request in writing. The main requirement is that it is done voluntarily and within the current pay period. State laws may vary.



63. Do you have a written expense reimbursement policy?

- Yes
- No
- Don't Know
- Not Applicable

I can't tell you how many times the issue of employee expenses has caused bigger workplace problems. Don't leave your employees having to guess what expenses are appropriate and not appropriate. Get it in writing.

64. Have you conducted a compensation survey?

- Yes
- No
- Don't Know
- Not Applicable

Pay scale surveys are important to not only avoid equal pay and discrimination claims, but also to make sure that you hire and retain valuable employees. The Department of Labor, state agencies, Chambers of Commerce, employers associations and private companies can provide you with a pay scale survey. There is no substitute for paying an employee a fair day's wage. See www.onetonline.org, www.salary.com and other online resources.

65. Have you conducted an Equal Pay analysis?

- Yes
- No
- Don't Know
- Not Applicable

Both federal and many state laws require that employers offer equal pay. Not doing so can open you up to discrimination and similar claims. See <https://www.eeoc.gov/laws/statutes/epa.cfm>

66. Do you use interns?

- Yes
- No
- Don't Know
- Not Applicable

Non-paid interns are permitted under very narrow circumstances. If you are in fact using any of their labor for your customers or clients, you may be required to pay them. To learn more, go to <https://www.dol.gov/whd/regs/compliance/whdfs71.htm> .

67. What deductions do you make from employee paychecks for equipment, uniforms, damaged items, etc.?

- Yes
- No
- Don't Know
- Not Applicable

There are very particular guidelines regarding employee deductions. Not only is what can be deducted restricted, but the time of that deduction is also important, especially at termination. See <https://www.dol.gov/whd/regs/compliance/whdfs16.htm>



68. Do you have a written policy for absenteeism and punctuality?

- Yes
- No
- Don't Know
- Not Applicable

Absenteeism and punctuality problems are not only an indication of disengagement, but can substantially impact the bottom line. Be careful about docking the time of exempt employees. Note: No-fault attendance policies can generate ADA and FMLA claims.

69. Do you have a sick pay policy?

- Yes
- No
- Don't Know
- Not Applicable

If you do, get rid of it (unless of course, you work in one of those jurisdictions that have mandatory sick pay!) According to a survey by CCH, two-thirds of all sick pay is abused by employees who are not sick! Eliminate the 'white lies' and collapse sick pay into your vacation or PTO policy.

70. Does your vacation policy state: When accumulation starts? How it is to be requested? When must it be used by? If it is forfeited?

- Yes
- No
- Don't Know
- Not Applicable

Vacation pay is another one of the top three claims handled by wage and hour agencies across the country. The fight over vacation, like the fight over overtime, will often lead to a larger claim. The biggest issues are when vacation accumulation starts, how it is to be used, any cap on accumulation and if unused vacation must be paid upon termination. Under Federal law all the above is a matter of contract. In some states like California it is considered an "accrued" benefit that once earned, must be paid out at termination.

71. Do you give vacation pay based on an employee's current pay rate?

- Yes
- No
- Don't Know
- Not Applicable

Vacation pay has to be given at an employee's current pay rate - even if it's more than what they were paid when the vacation time was accumulating.

72. Do you provide accumulated vacation pay to employees being terminated in their final paycheck?

- Yes
- No
- Don't Know
- Not Applicable



As mentioned above, most states consider vacation pay to be an accumulated benefit. This means you have to pay it at the time of termination. Vacation pay is regulated on a state-by-state basis. [ThinkHR](#) is a great resource for checking on state laws like this!

73. Do you have a process in place to approve schedule changes including a request for time off, make-up time request, vacation, leave, etc.?
- Yes
 - No
 - Don't Know
 - Not Applicable

Companies should provide a uniform process to begin communication about time off/leave no matter what the reason.

74. Do you have clearly defined non-discretionary bonus plans?
- Yes
 - No
 - Don't Know
 - Not Applicable

Non-discretionary bonus plans can be based on a wide range of individual, team or company benchmarks. Since they are “non-discretionary,” it is important to identify the criteria for earning those bonuses as they are contractual in nature.

75. Do you include non-discretionary bonuses when determining an employee's overtime rate?
- Yes
 - No
 - Don't Know
 - Not Applicable

While discretionary bonuses are not included in the normal rate of pay, non-discretionary bonuses are. As a result, they impact on a non-exempt employees' overtime rate. This is one reason some companies will not provide non-exempt employees with non-discretionary bonuses.

76. Do you compensate non-exempt employees for travel time as well as time spent in training?
- Yes
 - No
 - Don't Know
 - Not Applicable

There are a specific federal, and often state, laws relating to the payment of travel time and training time. In circumstances where employees are required to be compensated for travel or training, you may do so at a lower wage rate. See <https://www.dol.gov/whd/regs/compliance/whdfs22.htm>, of course, CA has it's own rules <https://www.dir.ca.gov/dlse/wages.pdf>

77. Do you have an employee loan policy?
- Yes
 - No
 - Don't Know
 - Not Applicable



If you don't have an employee loan policy, you should. You must make the decision either to never lend money, or if you do, to assure your ability to collect it at the time of termination. In most states, you are required to have an employee sign a note authorizing the withdrawal of all, or a portion of the final paycheck to satisfy any loan obligation. Some states, including California, make it very difficult to withdraw accelerated payments owed from a final paycheck. My experience tells me it's like dealing with family and friends: if you loan money to employees, do so with the expectation that you may never get it back. Otherwise, don't loan it!

78. Does your sales compensation program spell out when a commission is "earned" and what happens to uncollected commissions after an employee leaves the job?
- Yes
 - No
 - Don't Know
 - Not Applicable

Poorly managed sales compensation plans are the source of many a claim. To prevent this exposure, you must have a clearly drafted sales commission policy. This policy has to define a) when a commission is earned, b) what happens when a client doesn't pay or returns an item and c) what happens to 'trailing' commissions when an employee leaves. In most states, an employer's obligation for payment is deemed to kick in once the sale has been procured. Noncollectability or returns are usually considered the burden of the company. An additional issue that arises is what happens to commissions that have been earned, but not paid before termination? Again, most states require payment under those circumstances. Again, this is a high-risk area for claims, and you are well advised to have an attorney review your sales commission agreement.

79. Do you comply with labor enforcement standards for the employment of minors (obtain work permits, etc.)?
- Yes
 - No
 - Don't Know
 - Not Applicable

Unfortunately, child labor violations are not just a thing of the past. If you employ child labor, it is relatively easy to comply with the various federal and state labor law requirements.

80. Do you provide your employees with an ERISA required Summary Plan Description for your benefit plan?
- Yes
 - No
 - Don't Know
 - Not Applicable

Note: These are not the summary plan documents provided by your underwriter but a separate federal ERISA requirement. To learn more, [contact me](#) or ThinkHR.



VI. PERSONNEL RECORDS

81. Do you maintain personnel records for at least four years after an employee leaves?

- Yes
- No
- Don't Know
- Not Applicable

I recommend you maintain personnel records for at least four years after an employee leaves to protect against possible claims. The statute of limitations for misrepresentation and breach of contract can be as long as three or four years.

82. Do you keep personnel file drawers locked up and limit access to them on a “need to know” basis?

- Yes
- No
- Don't Know
- Not Applicable

I recommend all personal records, not just medical ones, be maintained in a separate filing cabinet under lock and key with limited access. If the docs are online, make sure specific permissions are allowed in your HRIS platform. Documents should only be released to third parties pursuant to employee authorization or a valid subpoena.

83. Do you maintain the privacy of medical and other private matters by separating these files from regular personnel files and limiting access?

- Yes
- No
- Don't Know
- Not Applicable

Many states have what is known as a Medical Confidentiality Act. This creates an obligation to maintain the confidentiality of workplace medical files, health insurance applications, etc. HIPAA privacy regulations are also a concern. Medical records should be kept in a separately locked file cabinet with very limited access. Medical records should only be provided to third parties, including family members, with a release from the employee or pursuant to a valid subpoena. I also recommend separating immigration documents.

84. Do you maintain the following documents in the personnel file (whether in print or online):

- Resume?
- Letters of reference?
- Employment application?
- Pay records?
- Employee handbook acknowledgment?
- Drug testing acknowledgment and results?
- Police check acknowledgment and results?
- Driver's record acknowledgment and results?
- Performance appraisals and performance agreements?
- Transfer notices, layoffs and recall notices?
- Investigation notes?



- Discipline notices?
- Absenteeism and lateness reports?
- Termination documents?
- Unemployment and Worker's Compensation documents?
- Injury reports?
- Union membership records?
- I-9 form (maintain in a separate file or binder)
 - Yes
 - No
 - Don't Know
 - Not Applicable

Depending on your circumstances, some, if not all of these documents should be maintained in your personnel files. Use a checklist to make sure all the documents that should be in the personnel folder... are in the personnel folder. I caution against keeping 'bottom drawer' files containing disciplinary records, or any of these listed documents.

85. Do you have a policy for destroying personnel records?
- Yes
 - No
 - Don't Know
 - Not Applicable

You should have a process which tells you when records are no longer required to be retained. At that point, you should have them appropriately discarded, shredded, etc. These documents may be in paper form or online. Simply throwing them in the trash or deleting them doesn't cut it. [ThinkHR](#) has an excellent Document Retention Checklist.

VII. POSTING AND PAMPHLET REQUIREMENTS

86. Have you placed the required compliance posters on display:
- EEOC and state posters regarding discrimination and harassment
 - OSHA and state posters
 - Wage, hour and working conditions poster
 - Worker's Compensation notice poster
 - Time off for voting poster
 - Notice to employees working on federal construction projects or government projects
 - Notice of Unemployment Insurance and Disability Insurance poster
 - Employee Polygraph Protection Act poster
 - Worker Adjustment and Retraining Notice (100 or more employees)
 - Immigration Reform & Control Act of 1986
 - Family and Medical Leave Act of 1993 poster (50 or more employees within a 75 mile radius)

Note: posters in foreign languages are required where 10% or more employees speak that language.



- Yes
- No
- Don't Know
- Not Applicable

This is a listing of federally required labor law posters. Your state agencies have similar requirements. The easiest answer is to order an 'all-in-one' poster at the beginning of every new year by ordering one from my partner ALLC by [clicking here](#).

87. Do you post emergency numbers and procedures on the employee bulletin board and at other locations?
- Yes
 - No
 - Don't Know
 - Not Applicable

There are numerous federal, state, county and local ordinances requiring you to post emergency information at your company. Depending on your locale you may have to have special programs for hurricane exposure, earthquake exposure, flooding, terrorist activities, workplace violence, etc.

88. Do you distribute a pamphlet to all new hires informing them of their rights and obligations regarding Worker's Compensation?
- Yes
 - No
 - Don't Know
 - Not Applicable

The best way to keep worker's compensation claims down is to keep employees well educated. It is suggested, and in some states required, that you hand out information pamphlets regarding worker's compensation rights and responsibilities to employees, especially informing employees of the requirement to immediately file accident and injury reports. See an example at <http://www.dir.ca.gov/dwc/DWCPamphlets/TimeOfHirePamphlet.pdf>

89. Have you distributed to all your employees a sexual harassment information sheet? (Handouts in foreign languages are suggested where 10% or more of your employees speak that language.)
- Yes
 - No
 - Don't Know
 - Not Applicable

In light of never-ending headlines, lawsuits and stupidity, I strongly suggest you hand out a sexual harassment information sheet. California and other states have mandatory handouts that can be supplied by your local agency. To see the EEOC fact sheet, go to <http://www.eeoc.gov/facts/fs-sex.html>. To see California's fact sheet, go to www.dfeh.ca.gov/DFEH/Publications/PublicationDocs/DFEH-185.pdf.



VIII. PERFORMANCE IMPROVEMENT

90. Do you use some type of 60 to 90 day Introductory Period with new employees?

- Yes
- No
- Don't Know
- Not Applicable

If so, delete it! Many employers falsely believe there is an introductory period required by law. This only applies in a union or public service setting. I recommend against creating artificial barriers to disciplining new employees.

91. Do you provide your employees with a performance review on a regular basis?

- Yes
- No
- Don't Know
- Not Applicable

How you handle an employee's performance goes a long way to determining not only their productivity, but also your exposure to lawsuits. In almost every lawsuit, the performance review document comes into play. Yesterday's performance improvement process makes little sense in today's economy. Today's greatest paradox is the less you control, the more you can do. This requires managers to be leaders - not micromanagers. Check out the training I did on Performance Management on Lynda.com

92. Does your performance review system rely on objective, measurable criteria?

- Yes
- No
- Don't Know
- Not Applicable

A good performance improvement process includes objective analysis. Asking an employee to identify their performance and benchmarks is encouraged.

93. Do you make sure that employees sign and acknowledge having read their performance review?

- Yes
- No
- Don't Know
- Not Applicable

They should. I can't tell you how many times employees testify on the stand they did not understand their performance review, despite their supervisor's earnest effort to have them do so. While an employee may not agree with their review, it is important that they understand and acknowledge it. If there is a breakdown in communication between supervisor and employee, it is suggested that a second supervisor sit in to help facilitate the exchange. For those employees who 'never get it' there is always the door.



94. Do you provide a place for your employees to disagree with their performance review and place their comments?
- Yes
 - No
 - Don't Know
 - Not Applicable

As stated above, some employees will refuse to agree with a supervisor's analysis of their performance. Don't assume that your supervisors are always right! Many a company has lost a valuable employee because of poor management skills. You must give employees the ability to address any feelings of unfairness that occur at the workplace. If you don't, you'll end up with a less productive employee or none at all. HR may want to review where employees disagree to make sure no adverse conduct is involved.

95. Have you considered using a performance agreement at the beginning of the employment relationship that contains goals, resources, benchmarks and review standards?
- Yes
 - No
 - Don't Know
 - Not Applicable

The concept of performance agreements was made popular by Stephen Covey. My experience tells me Covey was 'right-on.' One of the most powerful factors in establishing relationships is having a strong sense of direction. This means that an employee understands the company's overall vision, mission, and goals and has identified and benchmarked the same for themselves. Having a written performance agreement can go a long way to creating productive and profitable employee relationships.

IX. RETENTION/TURNOVER

96. Have you benchmarked retention/turnover statistics and reasons at your company?
- Yes
 - No
 - Don't Know
 - Not Applicable

The first place to start addressing the retention/turnover issue is by benchmarking your company's statistics. There's no substitute for knowing the "who, what, where, when and why" of this issue. Conduct Exit Interviews as well. Remember, the more turnover, the more exposure to claims. Ask for a copy of my Retention Program Possibilities Worksheet.



X. DISCRIMINATION AND RELATED CONCERNS

97. Has the CEO, President or owner of your company made it clear to all employees, in writing, as well as verbally, that the company intends to enforce compliance with EEOC laws?

- Yes
- No
- Don't Know
- Not Applicable

There is no substitute for sending a strong message from the top that harassment, discrimination, ethical violations, and other bad behavior will not be tolerated! A well-worded message from the president or CEO in the employee handbook, employee newsletter, annual report, company-wide meeting, etc. and other documents is a good start.

98. Do you have a written policy defining how employees can complain about a violation?

- Yes
- No
- Don't Know
- Not Applicable

Again, if you do not have one of these policies, please use [those](#) available on [ThinkHR](#) as a start. It is important that these policies offer an alternative line of communication from the traditional supervisor-to-supervisor routes. Your human resources department or a third-party ombudsman is suggested. You may also consider an employee reporting service such as www.employeeconfidential.com

99. Do you have a written procedure for investigating sexual harassment, discrimination or other complaints?

- Yes
- No
- Don't Know
- Not Applicable

How you conduct an investigation goes a long way to satisfying employee concerns, as well as those of the various agencies. Your investigation procedure should assure a prompt and thorough investigation. Your investigator should engage in dialogue and address the facts and emotions involved. You can get a copy of the report I wrote on [Investigations that Work](#).

100. Do you have designated employee(s) to handle sexual harassment and discrimination complaints?

- Yes
- No
- Don't Know
- Not Applicable

As stated above, who is assigned to handle complaints is a risk management decision. Whether it is HR or another manager, that person should be trained in conflict resolution, dialogue, and investigation procedures. To find an investigator, contact me (I do investigation) or go to www.awi.org.



101. Does your investigation procedure include the following: factual summary of the complaint; identification of persons interviewed; statements obtained under penalty of perjury; findings issued; communication of findings to those on a “need to know” basis; follow-up and monitoring and finally, personnel systems improvement?
- Yes
 - No
 - Don't Know
 - Not Applicable

The listed items are basic requirements of a sound investigation process. As soon as you have a significant concern, I strongly suggest you call an employment law attorney and get some professional advice ASAP. Courts look favorably on *independent investigations* conducted by professional investigators, human resources professionals or employment law attorneys.

102. Have you inspected the workplace for inappropriate posters, calendars, jokes, or other items which could be looked upon as creating a discriminatory, harassing or hostile environment?
- Yes
 - No
 - Don't Know
 - Not Applicable

Pinup calendars, racial jokes and derogatory e-mails are just some examples of conduct that can generate a ‘hostile environment claim.’ While I am concerned about the “cleansing” of the American workplace, you have to guard against materials that would be deemed offensive or harassing under anyone’s reasonable standard.

103. Do you regularly survey your workers regarding their understanding of, or exposure to, discrimination, sexual harassment and disability concerns?
- Yes
 - No
 - Don't Know
 - Not Applicable

To protect against these claims, employers must make sure they have sufficiently educated their employees and then follow that by asking if they have been a victim of, or witness to, any of these violations.

104. Does your company have specific policies regarding office dating and the employment of spouses or others in a committed relationship?
- Yes
 - No
 - Don't Know
 - Not Applicable

Approximately one out of four committed couples have met in the workplace. A blanket prohibition against workplace dating makes little sense in light of workplace realities. The better approach is to guard against undue managerial influence, nepotism, and conflicts of interest. If you learn that a supervisor is dating a subordinate, you may want to consider reassigning one of the employees, where possible, or if that is impossible, have them sign what has become known as a ‘love contract’ acknowledging their status as voluntary and not the result of undue pressures by the supervisor. It will further acknowledge that



should the relationship end, and one party begin harassing the other, that he or she will immediately inform management.

105. Do you maintain statistics regarding employees related to age, sex, race, nationality, disability status, religion or veteran status?
- Yes
 - No
 - Don't Know
 - Not Applicable

Once you start getting into the 100 employees range, you are required to maintain statistics regarding employees you've hired relating to age, sex, race, nationality, and so on. It will be a lot easier to refer to these statistics if maintained on a regular basis than going through years of records to identify them for an agency audit or employee claim.

106. Do you file EEO-1 forms?
- Yes
 - No
 - Don't Know
 - Not Applicable

If you have more than 100 employees or you're a government contractor, you should be filing EEO-1 Forms. For additional information and a sample form, go to <https://www.eeoc.gov/employers/eeo1survey/>

107. Do you have an Affirmative Action Program?
- Yes
 - No
 - Don't Know
 - Not Applicable

If you're a government contractor, you may be required to have an Affirmative Action Program. The specific requirements are beyond the scope of this audit. I suggest you contact the EEOC, your state fair employment agency, or your employment law attorney. Also, take a look at the DOL fact sheet at <https://www.dol.gov/ofccp/regs/compliance/AAPs/AAPs.htm>

108. Does your company have a policy for complying with the Family Medical Leave Act (over 50 employees)?
- Yes
 - No
 - Don't Know
 - Not Applicable

The Family and Medical Leave Act was drafted in response to the reality of single parent and dual working households. Today, it's also becoming an elder care issue. Being sensitive to an employee's personal and family medical issues also says a lot about your commitment to them. Specific forms must be used when managing FMLA leave. Note that state laws also exist in this area. Check on [ThinkHR](#).

109. Do you have a Pregnancy Leave policy?
- Yes
 - No
 - Don't Know
 - Not Applicable



California, as well as other states, have separate pregnancy disability leave laws. Depending on your company size and state you're in, you may have to post such a policy or place it in your employee handbook. Again, this information is readily available from your state fair employment agency ThinkHR. See https://www.eeoc.gov/laws/types/pregnancy_guidance.cfm For CA go to <https://www.dfeh.ca.gov/resources/frequently-asked-questions/employment-faqs/pregnancy-disability-leave-faqs/>

110. Are any jobs or departments staffed predominantly by men, women, minorities or by employees over or under 40?
- Yes
 - No
 - Don't Know
 - Not Applicable

Unless related to a bona fide occupational qualification (BFOQ), disproportionate staffing can lead to 'glass ceiling,' discriminatory hiring and other types of discrimination claims. See https://www.eeoc.gov/eeoc/foia/letters/2005/titlevii_ada_job_requirements_descriptions.html

111. Are all employees given equal consideration for advancement and challenging job assignments?
- Yes
 - No
 - Don't Know
 - Not Applicable

The inability of women and minorities to obtain upper-level management positions is known as the 'glass ceiling.' The glass ceiling is a source of employee dissatisfaction, agency investigations, and class action type lawsuits. The opportunity for a promotion or significant job assignment has an enormous impact on one's career. If the profile of your upper-level management is disproportionate to that of the rank and file, a glass ceiling initiative may be appropriate for your company. Note: if you are a government contractor you may be required to implement a glass ceiling initiative. For more information, go to www.dol.gov and The Glass Ceiling Research Center at <http://glassceiling.org>.

112. Do you have a mandatory or early retirement program? If so, have you checked with an attorney to make sure it complies with age discrimination laws and ERISA?
- Yes
 - No
 - Don't Know
 - Not Applicable

While generally acceptable, early retirement programs can run into age discrimination, ERISA and wrongful discharge issues. This area is much too complex for discussion in this audit. If you are considering such a program, you should have it reviewed by an employment law attorney. See https://apps.americanbar.org/litigation/litigationnews/top_stories/032510-mandatory-retirement-policy-age-discrimination.html

113. Do you make an affirmative effort to accommodate disabled workers?
- Yes
 - No
 - Don't Know
 - Not Applicable



The Americans with Disabilities Act requires employers with 15 or more employees to ‘accommodate’ disabled workers. This accommodation is required so long as no ‘undue hardship’ would be imposed on the company. In CA the law applies to companies with 5 or more employees. See the [Job Accommodation Network](#).

114. Do you have any employees in a light duty or accommodated job positions?
- Yes
 - No
 - Don't Know
 - Not Applicable

The concepts of ‘light duty’ (Worker’s Compensation) and ‘reasonable accommodation’ (Americans with Disabilities Act) have a very similar theme. There is, however, a major distinction. Someone who is on ‘light duty’ is arguably in a temporary position until his or her work-related disability heals itself. A disabled person who is ‘reasonably accommodated’ must still be capable of performing the essential functions of their job. For example, a forklift operator who is on ‘light duty’ can instead do paperwork if it is available. On the other hand, a forklift operator whose disability prevents them from performing the essential functions of their job, even with ‘reasonable accommodation,’ does not have the right to a ‘light duty’ position. These are both high exposure situations that should be delicately handled, supported by the backing of professional advice. Again see the [Job Accommodation Network](#).

115. Do you understand your obligations under HIPAA for maintaining medical privacy?
- Yes
 - No
 - Don't Know
 - Not Applicable

Maintaining the privacy of medical information is an important employer obligation. To learn more, go to <https://www.hhs.gov/hipaa/for-professionals/index.html>

116. Are you familiar with the rights of employees and employers under the National Labor Relations Act?
- Yes
 - No
 - Don't Know
 - Not Applicable

Unionization is nothing more than outsourced management with its own agenda. If you are unionized, make sure you work with an attorney who specializes in union negotiations. If you are unionized or not, know your rights! See www.nlrb.gov.

117. Have you adopted a social media policy? Is it in your handbook?
- Yes
 - No
 - Don't Know
 - Not Applicable

This is a ballooning risk management nightmare. It has been impacted by NLRB rulings as well. See <https://www.nlrb.gov/news-outreach/fact-sheets/nlrb-and-social-media>



XI. LEGAL COMPLIANCE TRAINING

118. Do you conduct any training regarding the issues of sexual harassment?

- Yes
- No
- Don't Know
- Not Applicable

Sexual harassment continues to be a significant source of employee claims and non-productivity. When managers and employees are not educated in this area, they tend to make stupid mistakes that escalate into larger claims. The off-hand remark, the racy e-mail, the inappropriate dinner, are all types of actions that can be easily avoided through education. I can help you with live training, or you can 'do-it-yourself' using the [ThinkHR](#) program.

119. Do you conduct any training regarding the issue of diversity/discrimination?

- Yes
- No
- Don't Know
- Not Applicable

What was just stated about sexual harassment applies here. The issue of teaching tolerance not only helps to avoid lawsuits, but it also helps to make employees that much more productive. Educating on these issues must be considered a process. The EEO website www.eeoc.gov has a wide range of case studies and 'best practices' you can adopt for your company.

120. Do you conduct any training regarding the issue of age discrimination?

- Yes
- No
- Don't Know
- Not Applicable

The battle between the ages is heating up in light of today's new technologies. Very simply, Millennials, X'ers and Baby Boomers have differing needs and motivations. It will be a challenge for your organization to keep these forces in alignment. Not just to avoid compliance issues but for productivity purposes as well. Consider mentoring and reverse mentoring programs. See <https://www.eeoc.gov/laws/types/age.cfm>

121. Have you considered training in the areas of conflict resolution, employee disciplining or employee motivation?

- Yes
- No
- Don't Know
- Not Applicable

If interested, check out the training on [ThinkHR](#), [Lynda.com](#) or give me a call!

122. Do you maintain an attendance record of training participants?

- Yes
- No
- Don't Know
- Not Applicable



You should maintain a compliance training log to assure that it is getting done and in case of an agency audit or employee lawsuit. You can assign and track training by using the learning management system on ThinkHR or your LMS/HRIS.

123. Do you have a written procedure for handling employee claims?

- Yes
- No
- Don't Know
- Not Applicable

Many companies have a written procedure for handling employee claims. If you have a procedure you should stick to it to avoid unequal treatment claims. If you don't have a written policy, you should at least have one person in charge who will go through a similar process every time.

XII. STANDARDS OF CONDUCT AND DISCIPLINE

124. Do you have an employee handbook which is up-to-date and reviewed by an employment law attorney during the preceding 12 months?

- Yes
- No
- Don't Know
- Not Applicable

Employee handbooks are one of the most important forms of written communication in the workplace. Not only should they set forth the company's policies and procedures, but also share a vision for opportunity and growth. I recommend your employee handbook go through an employee 'smell test' before going final. Have your employee handbook reviewed on an annual basis. [ThinkHR](#) has an excellent 50 state template. I know... I helped to write it!

125. Does your employee handbook contain policies for the following subject matters?

- "At-will" employment
- List of desired conduct
- List of prohibited conduct
- Drug and alcohol use
- Progressive discipline
- Moonlighting
- Conflicts of interest
- Sexual harassment and discrimination prevention
- Family and medical leave
- Pregnancy leave
- Jury leave
- Grievance mechanism
- Disability accommodation and leave
- Acknowledgment of receipt (provided & signed prior to start of employment)?



- Yes
- No
- Don't Know
- Not Applicable

These are some of the typical employee handbook provisions.

126. Do you have a uniform enforcement policy for employee discipline?
- Yes
 - No
 - Don't Know
 - Not Applicable

The word discipline is derived from a Latin word whose root meaning is 'to learn.' What lesson needs to be learned? The first question to ask when addressing employee conduct is 'was the employee's conduct self-induced or systemic in nature?' According to Dr. W. Edwards Deming, nine out of ten employee failures are systems failures - not because the employee did not want to do a good job. If it is the employee, then you must get them to 'own' their problems.

127. Does your disciplinary policy permit management to exercise discretion as opposed to setting forth rigid disciplinary steps?
- Yes
 - No
 - Don't Know
 - Not Applicable

Rigid disciplinary steps come from union and public sector employment. They are not required with private employers. You have to find the delicate balance between creating uniformity in discipline versus hand tying managerial discretion.

128. Do you use a standard employee warning form?
- Yes
 - No
 - Don't Know
 - Not Applicable

You should. Remember: process, process, process.

XIII. TERMINATION

129. Do you have a well-documented personnel file before disciplining or terminating an employee?
- Yes
 - No
 - Don't Know
 - Not Applicable

Document, document, document is a phrase you continually hear from employment lawyers. Despite this sage advice, employer after employer finds itself defending a disciplinary or termination action without proper documentation. Document facts, not just observations.



130. Do you have a standard pre-termination procedure or checklist?

- Yes
- No
- Don't Know
- Not Applicable

Going through a sound employee termination process is just as important as going through a sound hiring process. Any time there is a lack of uniformity you expose yourself to discrimination and wrongful discharge type claims. [ThinkHR](#) has a good checklist.

131. Are all terminations independently reviewed and approved?

- Yes
- No
- Don't Know
- Not Applicable

A large number of lawsuits have been the direct result of a knee-jerk termination. Every termination decision should be independently reviewed by a human resource manager or other manager to make sure emotions are not running high and that your termination process is being followed. If you have the slightest concern, it is well worth it to contact an employment law attorney. If you have an EPLI policy, it may offer a reduction of your retention limits for seeking advice in advance.

132. Do you provide terminated employees their full pay including accumulated vacation, commissions, etc. at the time of their termination?

- Yes
- No
- Don't Know
- Not Applicable

Most states require that you immediately pay an employee all of their accumulated wages at the time of termination. This requirement is relaxed by a few days when it is the employee who quits. The failure to pay final wages on time generates unnecessary wage and hour claims.

133. Do you supply laid-off or terminated employees with a handout regarding their unemployment rights?

- Yes
- No
- Don't Know
- Not Applicable

California and other states require that you supply laid off or terminated employees with a handout regarding their unemployment rights. Whether required or not, it is good practice! These handouts should be readily available from your state unemployment development department office.

134. Does your reference policy limit itself to dates of employment, last position held, and last rate of pay?

- Yes
- No
- Don't Know
- Not Applicable



The issue about providing references has caused much frustration for employers. Unfortunately, employers are reluctant to 'say it like it is' for fear of being hit with a slander or misrepresentation type claim. As a result, employers are reduced to giving 'name, rank and serial number' references only. Note: 36 states presently have laws providing a 'good faith' stand and for employer immunity when giving references.

135. Do you refrain from providing letters of reference where an employee was fired for a good cause?
- Yes
 - No
 - Don't Know
 - Not Applicable

Many companies will do anything to get a poor employee out of their hair. Including writing them a positive letter of reference when they shouldn't. Anything short of 'radical honesty,' provided in 'good faith' can put you at risk. In a well-publicized case, a boarding school that terminated a professor for sexual harassment wrote a favorable letter of reference under pressure, only to find itself being sued approximately a year later for misrepresentation when the teacher harassed a student at his new place of employment. Don't let this happen to you.

136. Do you assign one specific person for giving references?
- Yes
 - No
 - Don't Know
 - Not Applicable

Assign one person for giving references so that you don't find direct supervisors, or even worse, indirect personnel supplying third-party references. Give an anonymous call to your company one day and see how reference giving is handled.

137. Do you conduct an exit interview with all employees who are terminated or voluntarily resign?
- Yes
 - No
 - Don't Know
 - Not Applicable

Make every effort possible to conduct an exit interview with departing employees - no matter the grounds for their departure. If their employment ended in a poor supervisor/subordinate relationship, then have the human resources manager or another supervisor conduct the exit interview. The exit interview does two things: 1) gives a last minute check for possible claims of discrimination, harassment, wrongful termination, etc. and 2) allows an employee to 'tell it like it is' so that you can get some hard and fast feedback about your management practices.

138. If you have a severance pay plan, does it comply with ERISA requirements?
- Yes
 - No
 - Don't Know
 - Not Applicable



A severance plan which is offered as a benefit of employment, may be subject to the restrictions of the Employee Retirement and Income Security Act (ERISA). If you offer such a plan, I suggest that you have it reviewed by an ERISA attorney.

139. Does your severance pay plan require employees to sign a Release of Claims Agreement as a condition to receiving any severance package?
- Yes
 - No
 - Don't Know
 - Not Applicable

Even if you agree up-front to providing a severance upon termination, you should condition any severance upon the signing of a release. The last thing you want to do is give an employee severance pay, only to have them turn around and sue you. Know there are specific requirements for employees over 40. See https://www.eeoc.gov/policy/docs/qanda_severance-agreements.html

140. Do you have an arbitration or mediation agreement for resolving employee claims which is signed by all employees at the time of hire and maintained separately from your employee handbook?
- Yes
 - No
 - Don't Know
 - Not Applicable

Mediation and arbitration are the two most popular forms of alternative dispute resolution. Unfortunately, there is a great deal of uncertainty in this area, as the courts have failed to clearly define when arbitration agreements are enforceable and when they are not. I recommend you use them, but not without getting legal advice first. See <https://www.adr.org/Clauses> and <https://www.jamsadr.com/employment>

141. Do you supply terminated employees with written notice of termination including whether it was a discharge, layoff, leave of absence, or change of status from an employee to an independent contractor?
- Yes
 - No
 - Don't Know
 - Not Applicable

The California Unemployment Insurance Code, and that of other states, have a requirement that the employer provide the employee with a written notice of termination. The purpose of this is to memorialize the employer's position in light of any potential unemployment insurance claim. I believe it is a good policy to let an employee know exactly why they were terminated whether required by law or not. This prevents them from guessing at the 'real reason' for termination, which in their eyes seldom has anything to do with performance.

142. Are you familiar with the standards for opposing unemployment claims?
- Yes
 - No
 - Don't Know
 - Not Applicable



Many employers have a misunderstanding as to the standard for contesting an unemployment insurance claim. Where an employee acts in 'good faith,' even if they did a horrible job, they are usually entitled to unemployment insurance. It is only where they did not act 'in the best interest of the company' that any form of opposition makes sense. What is of perhaps greater importance, is the effect these hearings can have on potential employee claims in court. If you are going to oppose an unemployment claim and there is the potential for litigation, you are well advised to have professional help protect you under those circumstances.

143. Do you offer laid-off employees outplacement services?

- Yes
- No
- Don't Know
- Not Applicable

The best way for dealing with a laid-off employee who leaves and is 'eligible for re-hire', is to get them another job. I suggest you sign a contract with an outplacement service to assist former employees. Outplacement services can help an employee draft a resume, conduct his/her job search and negotiate his/her employment, all of which will reduce your unemployment insurance claims, as well as employment law claims. You may also be able to work with a temporary employment agency that will help place your former employees - especially where they are laid off due to downsizing as opposed to termination for poor performance. An excellent resource is www.jobpadhq.com.

144. Do you have a formal policy regulating layoffs or downsizing?

- Yes
- No
- Don't Know
- Not Applicable

Many a lawsuit has been filed after a layoff or downsizing effort. The greatest area of exposure is older workers who will file claims for age discrimination or wrongful termination. Do you have layoff or downsizing events reviewed by an attorney in advance?

- Yes
- No
- Don't Know
- Not Applicable

Your attorney can see things about your layoff process which you cannot see for yourself. Early retirement programs, employee ranking or rating, statistical variances, WARN Act notices and other issues should be examined. For information on WARN go to www.doleta.gov/programs/factsht/warn.htm



XIV. HEALTH AND SAFETY

145. Have you complied with all OSHA and Community Right-To-Know Toxic Substance Requirements related to your industry?

- Yes
- No
- Don't Know
- Not Applicable

Safety compliance is an issue only marginally addressed by this audit. A wealth of information can be obtained from OSHA (www.osha.gov), the National Safety Council (www.nsc.org), as well as your worker's compensation insurance carrier. OSHA remains the number one compliance expense nationwide. A safe workplace is a productive workplace. Request a copy of my report on Creating a Safe and Secure Workplace.

146. Do you have an injury prevention program (IIP)?

- Yes
- No
- Don't Know
- Not Applicable

Many states have proactive IIP requirements to prevent workplace injuries. Even if they don't, I still encourage a front-end approach. An IIP includes designating a safety officer identification of critical hazards and safety training. Again, I suggest you contact your worker's compensation insurance carrier, local OSHA or your local attorney to assist with these requirements. OSHA <https://www.osha.gov/shpguidelines/> CA <http://www.dir.ca.gov/dosh/etools/09-031/index.htm>

147. Do you have a designated safety officer that conducts periodic safety inspections?

- Yes
- No
- Don't Know
- Not Applicable

Whether required by law or not, you should have at least one person responsible for safety at your company. Their duties should include periodic inspections, as well as compliance with the obligations set forth below.

148. Do you have a safety training program?

- Yes
- No
- Don't Know
- Not Applicable

Safety training is a must. The failure to conduct safety training can lead to accidents, lost productivity, workers compensation claims, and third-party lawsuits. As mentioned earlier, include contingent workers in any such program. [ThinkHR](#) has a bunch of OSHA and safety training.



149. Do you provide incentives for creating a safe workplace?

- Yes
- No
- Don't Know
- Not Applicable

OSHA Whistleblower regulations has severely restricted employers from offering incentives based on safe workplace results. They are concerned about limiting employee complaints. You can incentivize training in best practices, but not the results. So, you can have a pizza party after your safety training but not after having 100 safe days of work! See <https://www.osha.gov/as/opa/whistleblowermemo.html>

150. Do you have an emergency response plan?

- Yes
- No
- Don't Know
- Not Applicable

Remember fire drills in school? What would happen if your company was hit with a fire, earthquake, flood, tornado, violence, power out, etc? Do you have emergency response plans and someone in charge for carrying them out? September 11th, Katrina, Joplin, Harvey and other events have made it abundantly clear just how important such a program is. See <https://www.ready.gov/business/implementation/emergency>

151. Have you conducted a safety audit?

- Yes
- No
- Don't Know
- Not Applicable

Since by definition you already appreciate the value of a compliance audit, I also suggest you conduct an extensive safety audit. Again, seek assistance from your local agency, The National Safety Council, worker's compensation insurance carrier or attorney.

152. Do you have any employees who work from home?

- Yes
- No
- Don't Know
- Not Applicable

If so, realize that their home is an extension of your workplace. You should make sure they can work without distraction and that they can work in a safe environment. Know that you will be liable to any third parties who injure themselves on a remote employee's premises.

153. Do you have occupational injury forms readily available and require that employees immediately report all occupational injuries?

- Yes
- No
- Don't Know
- Not Applicable



One of the best ways to keep down worker's compensation expenses is to immediately report occupational injuries. The sooner an employee is under managed care, the better off for you and the employee. Managers must clearly identify the employee's obligation to report any injuries in a timely fashion. The latest OSHA forms can be found at www.osha.gov/recordkeeping/.

154. Do you immediately report all occupational injuries to your Worker's Compensation insurance carrier?
- Yes
 - No
 - Don't Know
 - Not Applicable

Just as employees have to timely report to you, you have to timely report to your worker's compensation carrier. And for the same reasons. Very simply, the sooner these claims are addressed the sooner they are resolved. Staying proactive in this area can also reduce your experience modifier (MOD), saving you money in the process. Go to www.osha.gov/recordkeeping/ for forms and regulations.

155. Do you start a new OSHA log every January which records all employee illnesses and Injuries?
- Yes
 - No
 - Don't Know
 - Not Applicable

Creating a new OSHA log every January is a basic agency requirement. See <https://www.osha.gov/recordkeeping/>

156. Do you have a hazardous substance communication policy?
- Yes
 - No
 - Don't Know
 - Not Applicable

One of the foremost concerns of OSHA is the reporting and disclosure of any hazardous substances to both employees and the agency. For more information see www.osha.gov and www.atsdr.cdc.gov/atsdrhome.html.

157. Have you established a return-to-work program for employees injured on the job?
- Yes
 - No
 - Don't Know
 - Not Applicable

There is no substitute for keeping people healthy and working on the job. The purpose of a 'return-to-work' is to do just that. For an excellent article read <http://www.asse.org/assets/1/7/Return-to-WorkProgramsArticle.pdf>

158. Do you review your losses with your Worker's Compensation agent or carrier?
- Yes
 - No
 - Don't Know
 - Not Applicable



Few experts know more about safety in the workplace than your worker's compensation insurance agent or carrier. They have the same financial interest that you do in reducing claims. Most carriers would welcome the opportunity to review your claims history and to suggest ways for minimizing losses and the cost of your insurance.

159. Do you provide employees access to an Employee Assistance Program (EAP)?
- Yes
 - No
 - Don't Know
 - Not Applicable

Employees Assistance Programs (EAP) are an important component of a well-rounded health plan and also very valuable when it comes to reducing stress, drug abuse, violence, and other workplace horrors. To learn more about EAP programs go to www.eapassn.org.

160. Have you conducted an ergonomics study?
- Yes
 - No
 - Don't Know
 - Not Applicable

Ergonomics is the study of the relationship between workers and their physical environment. It has come to light in recent years because of the explosion in repetitive stress syndrome claims. See www.hfes.org. Also take a look at www.ergoweb.com and www.osha.gov/SLTC/ergonomics/index.html.

161. Do you have a safe VDT policy which addresses exposure, eyesight and carpal tunnel syndrome issues?
- Yes
 - No
 - Don't Know
 - Not Applicable

Millions of American workers sit in their cubicles every day glued to a computer monitor. This places incredible pressure on their eyes, wrists and back. A company that does not consider ergonomics will have workers who are less productive, fatigued, file claims with greater turnover. As with anything else, there is a cost/benefit analysis associated with ergonomics. If your worker's compensation carrier can't help you, search out an ergonomics expert in your area. P.S. I love my stand-up desk!

162. Have you identified liability exposures related to job stress?
- Yes
 - No
 - Don't Know
 - Not Applicable

Job stress is at an all-time high. In large part due to employees feeling 'out of balance' in their personal lives. The level of perceived job stress goes a long way towards defining an employee's level of commitment, as well as their propensity to either cause or be the victim of problems. You can obtain a great deal of information from your worker's compensation and health insurance carriers related to job stress. They may even be willing to speak to workers at no cost. Take a look at <https://www.cdc.gov/niosh/topics/stress/>



163. Do you have a formal policy which has been memorialized in writing, for managing the potential for violence in the workplace?
- Yes
 - No
 - Don't Know
 - Not Applicable

Violence has emerged as an important safety issue in today's workplace. It's most extreme form, homicide, is the second leading cause of fatal occupational injury in the United States. On average, three workers die each day under violent circumstances! Also, hundreds of thousands of workers, particularly those in the healthcare and service sectors, experience some type of non-fatal violent assault on the job. Environmental conditions associated with workplace assaults have been identified and control strategies implemented in a number of work settings. See <https://www.osha.gov/SLTC/workplaceviolence/>

164. Does the company have a "no weapons" policy compliant with state law?
- Yes
 - No
 - Don't Know
 - Not Applicable

Most states have addressed the right to bring weapons into the workplace, on the company premises such as the parking lot, etc. Make sure you have complied to your state law. State gun laws can be found at <https://www.nraila.org/gun-laws/state-gun-laws/>

165. Have you conducted an indoor air pollution inspection?
- Yes
 - No
 - Don't Know
 - Not Applicable

We are often exposed to a greater level of pollutants when we are indoors, than when we are outdoors. Energy conservation measures have minimized the infiltration of outside air and contributed to the buildup of indoor air contaminants. Employee complaints often result from items such as smoke, odors, low-level confinements, poor air circulation, thermal gradients, humidity, lighting, workstation design or noise. Again, I direct you to OSHA's website for additional information on the indoor pollution subject. NOTE: some 'whistleblower' lawsuits have been filed over the issue of indoor pollution. As with any other employee complaint, it is important not to retaliate against those who speak up - whether they are right or wrong. For more information, take a look at www.epa.gov/iaq.

166. Have you considered an employee wellness program?
- Yes
 - No
 - Don't Know
 - Not Applicable

Effective employee wellness programs can help develop employees with greater levels of energy, less absenteeism, less turnover, less job stress and higher productivity. Contact your insurance broker and also look at the web page of the Wellness Council of America (www.welcoa.org). There is also information available on ThinkHR.



XV. PRIVACY AND CONFIDENTIALITY IN THE WORKPLACE

167. Do you communicate to your employees your right to inspect desks, lockers, vehicles, bags, purses, etc.?
- Yes
 - No
 - Don't Know
 - Not Applicable

The struggle over privacy versus protection in the workplace is one that will continue through this millennium. (See www.privacyrights.org) The first line of protection is not to create an 'expectation of privacy,' where there should be none. Very simply, there is very little an employee should be doing during the workday that needs to be considered 'private'. It is important to define for employees what areas are subject to search or inspection. You should communicate in your employee handbook the fact that you have the right to inspect desks, lockers, vehicles on premise, bags, purses, storage areas, etc.

168. Do you have a policy regarding E-mail, social media and other online activities usage which addresses privacy, confidentiality and harassment issues?
- Yes
 - No
 - Don't Know
 - Not Applicable

Today's new technologies have created new issues in this continuing debate of privacy versus protection of particular concern are voicemail, e-mail and the Internet. For example, statistics indicate that more than half of all pornographic internet usage occurs between the hours of 9 a.m. to 5 p.m.! This represents a significant exposure (no pun intended) to your company for claims such as sexual harassment. It also means that your employees may not be focused on what they should be.

169. Do you monitor any employee activities, including but not limited to, computer use, e-mail, phone calls, social media, video surveillance, etc.?
- Yes
 - No
 - Don't Know
 - Not Applicable

If you monitor employee's activities you should let them know you are doing so. Explain to them what you are doing and why you are doing it. The 'why' of it should certainly be a legitimate business objective. Employers who have gotten themselves in trouble in this area either don't inform their employees or monitor for allegedly legitimate reasons that are outweighed by the right to privacy. The classic example is putting video surveillance in a locker room area to prevent theft. Take a look at www.privacyrights.org/fs/fs7-work.htm for a pro-privacy viewpoint.



XVI. PROTECTING THE WORKPLACE

170. Do you have a theft prevention policy?

- Yes
- No
- Don't Know
- Not Applicable

According to the American Management Association (www.amanet.org), the statistics regarding workplace theft are staggering. Whether it is the handling of cash, merchandise, client assets or equipment, U.S. business lost over \$10 billion to employee pilferage and commercial bribery. One reason to have an anonymous employee reporting mechanism such as www.employeeconfidential.com

171. Do you have a workplace security policy?

- Yes
- No
- Don't Know
- Not Applicable

If you don't have policies and procedures related to building security laid out in writing, you are needless exposing yourself to theft, violence, and other undesirable behaviors. Here's an excellent article <https://www.boma.org/education/classroom-learning/Documents/Online%20Appendix/Workplace-Violence-Safety.pdf>

172. Do you have a cashing out and closing policy?

- Yes
- No
- Don't Know
- Not Applicable

The ability to trust people includes having proper checks and balances. Poor cash handling policies result in millions of dollars of losses and endless grief for thousands of careless retailers.

173. Is there a safe box for cash and other valuables?

- Yes
- No
- Don't Know
- Not Applicable

I don't like conducting 'social experiments'. Rather than enticing weak people into making poor decisions, you should keep cash and other valuables under lock and key with limited access.

174. Do you have a computer security policy?

- Yes
- No
- Don't Know
- Not Applicable



If you don't already have a computer security program I suggest you type in the words 'computer security' into your favorite internet search engine which will introduce you to hundreds of consultants and reams of information in this area. Your broker can help you with cyber-liability insurance.

175. Do you have a policy regarding the use of company equipment and premises?
- Yes
 - No
 - Don't Know
 - Not Applicable

Misuse of company equipment and premises can result in worker's compensation claims, safety violations and unnecessary theft. You should limit the use of equipment and premises to business purposes only, unless the employee obtains specific authorization that waives any liability. You may also want to affix permanent labels and serial numbers to all equipment.

176. Do you have an employee inventions policy?
- Yes
 - No
 - Don't Know
 - Not Applicable

In a time of accelerating acceleration, outsourced professionals, and a patent system under extreme pressure, it is imperative that you enter into patent agreements with your in-house engineers as well as your outsourced ones. For further information, contact an 'intellectual property' law attorney.

177. Do you keep your trade secrets confidential and have employees and third parties sign confidentiality and non-disclosure agreements?
- Yes
 - No
 - Don't Know
 - Not Applicable

We are in the knowledge era, which means your intellectual property is one of your most valuable assets. If you haven't already, you should have an attorney review your ability to protect trade secrets, and other "proprietary" information through the use of confidentiality, non-disclosure agreements, copyrights, etc. See <http://www.uniformlaws.org/ActSummary.asp>

178. Do your employees sign non-compete agreements?
- Yes
 - No
 - Don't Know
 - Not Applicable

Many employers make an effort to protect their proprietary information through the use of non-compete agreements. This is a subject area that varies considerably from state to state. For example, non-compete agreements are generally enforceable in New York, whereas, in California they are not. In a state such as California you may not be able to use agreements that prevent the solicitation of customers or employees. (Please consult with your local employment law attorney regarding this issue.)



179. Are all proprietary and confidential documents stored in a secure environment?

- Yes
- No
- Don't Know
- Not Applicable

One of the basic tenets of risk management is to avoid unnecessary risk exposures. Make it a point of maintaining proprietary and confidential documents in a secure environment. This will help protect against theft, espionage, sabotage, hackers and unintended disclosures. It will also help maintain them as 'trade secrets.'

180. Do you have a document disposal policy?

- Yes
- No
- Don't Know
- Not Applicable

You would be amazed at the amount of information stolen from corporate dumps every day. Regulatory agencies, competitors, private investigators and the otherwise unscrupulous types have no problem sifting through your garbage for valuable information, whether the act of doing so is illegal or not. Work with a document shredding company for the safe destruction of these materials.

That's it. CONGRATULATIONS! You should have been able to answer all of the above questions with a "yes" or "not applicable." A "don't know" or "no" answer puts you at risk of employee claims, or even worse, business failure.

This audit was conducted by: _____

Name	Date	Position/Title
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Name	Date	Position/Title
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Name	Date	Position/Title
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CALIFORNIA ADDENDUM

Throughout the employment practices audit I have made mentioned to numerous California laws. If you are in California, please see the California Employment Practices Audit Addendum.

50 QUESTION EMPLOYMENT LAW QUIZ

Think you know employment law? Challenge yourself with my quiz at <http://training.greathr.com/courses/quiz/>.