1. GOOD HIRING PRACTICES SAVE YOU MONEY

- Workplace litigation is expensive
- Start with a lawful ad and employment application
  - CT, MA, RI and VT have passed "ban the box" laws
- Background Checks
  - Fair Credit Reporting Act
  - State Laws (e.g., CORI in MA)
- Lawful Job Interview Questions
- Job Descriptions
- Offer Letters
2. DON’T OVERESTIMATE WHAT AT-WILL EMPLOYMENT REALLY MEANS

You operate in an “at-will employment” state. But what does that mean?

It does not mean employers can do whatever they please.

It means: you can terminate someone for any reason you want, so long as the reason is not specifically illegal (like discrimination).

Bottom line: Always have a good reason.

3. HAVE WRITTEN EMPLOYMENT POLICIES AND PROPERLY DOCUMENT DISCIPLINARY ISSUES
3. Have Written Employment Policies And Properly Document Disciplinary Issues

- Written policies: EEO and harassment-prevention are a must
- Some of the New England states require distribution of an anti-harassment policy and regular employee training; all require posting information about the law prohibiting sexual harassment
- Document discipline, even “verbal warnings”
- Performance reviews

4. Prevent And Address Harassment Claims By Your Employees

- Prevent harassment through policies and training
- Promptly investigate harassment complaints
- Take effective action to stop harassment
- Beware of: off-premises and non-employee harassment
5. Classify Employees Properly And Pay Them All Wages They Have Earned

- Workers are presumed to be "employees" unless you can prove "independent contractor" status
- Titles don’t matter, duties do
- Employees can’t waive their right to overtime pay
- Know your state laws on travel time and sleep pay
- The minimum wage in all New England states except NH are higher than the $7.25 federal minimum wage
- Class action wage claims are on the rise and are expensive (double back pay (triple in MA), attorneys’ fees)

6. Understand Employee Rights To Engage In “Concerted Activity”
6. Understand Employee Rights To Engage In “Concerted Activity”

- The National Labor Relations Act gives employees rights to engage in concerted activity for mutual aid and protection
  - Two or more employees acting together
  - One employee acting on behalf of others
  - For the benefit of the employee and co-workers
- Applies to employees of union AND NON-UNION private employers
- Not protected?
  - Reckless or malicious behavior, such as sabotaging equipment, threatening violence, spreading lies about a product, or revealing trade secrets.
  - Personal grudges.

7. KNOW YOUR OBLIGATIONS TO PROVIDE LEAVES OF ABSENCE

- Many applicable laws, depending on reason for absence:
  - Disability or illness (or family and medical leave)
  - Parental leave
  - Military service
  - Military service of employee’s loved one
  - And more…..
- CT, MA and VT have paid sick time laws
- The lesson? You cannot “just say no”
- Other employees may complain, but leaves are the law
8. KNOW YOUR OBLIGATIONS TO ACCOMMODATE A DISABILITY OR RELIGIOUS BELIEF

The duty to reasonably accommodate: disability and religion

The interactive process
• Don’t be responsible for the communication breakdown
• Assumptions are dangerous

Drawing the line: what accommodations are not reasonable?

9. DON’T TURN A WEAK DISCRIMINATION CLAIM INTO A STRONG RETALIATION CLAIM
9. Don’t Turn A Weak Discrimination Claim Into A Strong Retaliation Claim

- A how-not-to manual: After an employee complains, make sure he or she is fired or disciplined for something
  - as soon as possible after complaining
  - for which the employee was never disciplined before
  - using ambiguous language (“attitude,” “not a team player,” “not a good fit”), . . .
  - with no evidence suggesting legitimate reasons for the action.
- Investigations should not be “winner take all.”

10. STRIVE FOR AN ISSUE-FREE WORKPLACE

- Have an open door approach (or someone else will)
- Listen to and respond to employee concerns
- Be fair and consistent when disciplining employees
  - Communicate the rule/expectation at issue
  - Explain how the employee broke it or failed to meet expectations
  - Tell the employee how to correct the problem
  - State the consequences for failing to correct the problem
THANK YOU

With 800 attorneys practicing in major locations throughout the U.S. and Puerto Rico, Jackson Lewis provides the resources to address every aspect of the employer/employee relationship.