

Penny-wise, pound-foolish

How developing legal and consistent employment practices can save you money **Interviewed by Meredyth McKenzie**

Most companies have been faced with tough employment decisions during the past year, from staff, pay and benefit reductions to other cost-cutting measures. Before making these tough choices, you need to look at how they will impact your business, including employee morale, long-term costs and future staffing issues.

“You have to evaluate your personnel and consider whether a reduction in staff will compromise the quality of services you provide,” says Ellen Kamon, senior attorney at Theodora Oringher Miller & Richman PC. “Look at restructuring and economizing in some creative ways, instead of just downsizing. Some options include hiring or salary freezes, raising employee contributions to health care premiums, salary reductions, restrictions on company travel policies or having employees play dual roles. That way you keep people on without having to compromise staffing.”

Smart Business learned more from Kamon about how to develop legal and consistent employment practices and make sure all employees are classified properly.

What risks do you face by not evaluating employment decisions properly or not having consistent employment practices in place?

Making the wrong employment decision can have a long-lasting economic impact on your business. It will cost you more money in the long run. You will not be able to compete in the market if you terminate people who are critical to your business and cannot keep up with demands as business picks up.

You could face lawsuits, audits and labor board investigations. Wage and hour disputes can very quickly turn into class-action lawsuits. For example, a terminated employee may go to the labor board to say he or she was not paid properly and did not say anything while employed. This person was actually improperly classified. Other employees might catch wind of this and get involved, as well, which can become quite costly. You need to work quickly to resolve any job classification problems internally before you have other employees making similar claims.



Ellen Kamon
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How can you develop legal and consistent employment practices?

You need to develop a business plan and work with your attorney or human resources consultant to evaluate your business to resolve employment issues. Companies sometimes try to make this easier by having a financial person serve in the HR role, since it's tied to payroll, but this can present challenges. Financial people bring a different philosophy to the job and concentrate on saving the company money. They may not systematically evaluate employee classifications and you can run into disputes, lawsuits and audits if employees are not properly classified.

Companies should perform self-audits to make sure all employees are classified properly and paid correctly. This involves going through all job classifications to make sure each employee fits the requirements. This should be done on a continual basis to make sure you're classifying correctly.

You need to openly communicate these practices to employees and have someone available to answer any questions. All practices should be clearly printed in an employee handbook so they have a reference point.

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What are the different job classifications and how can you avoid liabilities and penalties for improper classification?

The first is independent contractor versus employee. This depends on the degree of control you exert over the person. If a person is told when to come to work and what to do, he or she is an employee.

The second is exempt versus nonexempt. Someone who is nonexempt has to be paid minimum wage and overtime. An exempt employee would be an executive, administrative person or a professional, and his or her salary would be equivalent to no less than two times the state's minimum wage for full-time employment. That person also has to be primarily engaged in duties that meet the definition of exempt work for more than half of their work time.

What must be considered to avoid California Labor Code violations when you terminate an employee?

You have to make sure the terminated employee is paid everything he or she is owed the day of termination. This includes earned but unused vacation time and wages earned. You also have to consider paid time off, which is a combination of sick and vacation time. Any paid time off that has been earned but unused should be paid at the time of termination. There are penalties for every day you do not pay somebody what you owe him or her, which can be quite expensive. You have to make sure the payment matches your policies for vacation and sick time and paid time off.

What are some employment considerations you should be aware of when the economy does start to turn around?

You will need to evaluate staffing needs and determine how you will move forward. Maybe you have to hire more people, offer other benefits or bring back benefits that were taken away during the recession. You have to constantly evaluate, because you need to be competitive once again. Keep an eye out as it starts turning around, because you don't want competitors to take away your valuable people. <<