

CHECKLIST OF EMPLOYMENT ISSUES FOR
DUE DILIGENCE

Employment Law Perspective on
Mergers and Acquisitions

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I. Employment Policies, Practices

- Employment handbooks, past and current
- Employment/personnel policies and practices
 - sick time
 - vacation
 - leave time (incl. family/medical leave requirements, federal and state, if any)(victims of domestic violence, school visitation leave)
 - short term disability
 - long term disability
 - holidays
 - harassment (sex, race, disability etc. combined)
 - internet
 - attendance
 - call-in
 - severance
 - performance reviews
 - flex-time
 - telecommuting
 - overtime (including “safe harbor”)
 - educational reimbursement
 - substance abuse and testing
 - smoking
 - solicitation
 - bulletin board posting
 - timekeeping
 - at will (and records of acknowledgment)
 - arbitration (separate agreement)
 - breaks
 - probation

- privacy
- dress code
- moonlighting
- confidentiality
- ethics
- loyalty
- non-competition
- patents
- eeo (equal employment opportunity)
- benefits (Summary Plan Description, underlying Plan documents, amendments, resolutions, carrier plans)
- Supervisor manuals, procedures
- Posters
 - EEO
 - Unemployment Comp
 - Polygraph Protection
 - FMLA
 - OSHA
 - Worker's Comp
 - Ill. Equal Pay for Women
 - Ill. Dept of Labor Min. Wage, Overtime, etc.
 - IDOL VESSA
 - USERRA
 - Others

II. Employment Agreements

- Non-competition agreements, covenants not to compete
- Confidentiality agreements
- Trade secrets
- Non-solicitation agreements
- Patent, intellectual property agreements
- Ethics agreements
- Employment agreements
- Phantom stock purchase agreements
- Verbal agreements
- Severance agreements
- Arbitration agreements

III. Employee Files

- Personnel files, location, access, contents, checklists
- Medical information files (confidentiality, access)

- I-9's, correctly filled out, up to date
- Employment applications, past and present
 - Compliance re arrest, conviction restrictions (Ill. law)
 - At will statement
 - Truth or consequences statement
 - Authorization to conduct background check
- Release forms for background checks, etc.

IV. Claims by Employees

- Audit letters from attorneys to auditors regarding employment claims and litigation.

Internal complaints, grievances, allegations of unlawful conduct

- Discrimination: sex, age, race, national origin, religion, sexual orientation, veteran's status, disability (handicap)
- Harassment (especially sexual: records of investigation, results, responses; constructive discharge claim, training, publication of policy, discipline, personnel file, other file records, complaint procedures)
- Retaliation: discrimination, worker's compensation, whistleblowing (OSHA, criminal violations)
- Wage claims
- Overtime claims
- Requests for personnel record review
- Breach of employment contract
- Other wrongful conduct, torts
- Workplace violence (incidents, threats, responses)

External complaints, allegations of unlawful conduct

Discrimination

- EEOC
- Ill. Dept. of Human Rights
- Ill. Human Rts. Commission
- Cook County Commission on Human Rights
- Chicago Commission on Human Rights
- (Evanston human rights commission)

Overtime

- U.S. Dept. of Labor (FMLA, overtime)
- Illinois Dept. of Labor (overtime claims, overtime audits, minimum wage, underage, wage claims, personnel records request)
- OSHA

- III. OSHA
- INS
- NLRB (union, unfair labor practices)
- Federal courts (local, other states, districts, circuits)
- State courts
- Arbitrations
- Claim details
 - Date of claim
 - Type
 - Venue
 - Defenses
 - Current status
 - Docket
 - Exposure, damages, reinstatement, injunctive
 - Settlement status
 - Evaluation, prospects
 - Persons responsible for oversight
 - Status of key witnesses
 - Contact information for attorneys on both sides
- Settlements
 - With employee(s)
 - With agency (including conciliation agreements)
 - Continuing obligations (references, confidentiality, training, monitoring, reporting, posting, payments, outplacement, non-disparagement, hiring, non-hiring, promotion, personnel records)
- Unemployment compensation
- Challenges to U/C rate, rate experience
- Worker's compensation (internal, Industrial Commission)
- Injury records (W/C, OSHA logs)

V. Employee Leaves of Absence

- Family/medical leave (currently, within year, intermittent, partial, planned, expected date of return, documentation) (rolling or annual year) (contributions paid)
- Disability accommodation (employees with disabilities, requests for accommodations, accommodations provided, documentation)
- Leaves, personal (current, recent, planned, reasons, expected date of return)
- Short term disability (current, recent, planned, reasons, expected date of return)
- Long term disability (current, recent, planned, reasons, expected date of return)

VI. Overtime

- Overtime practices
- Overtime paid
- Exempt jobs (especially Administrative, computer)
- Method of determination of regular rate
- Pay deductions for time off, discipline
- Federal law
- State law (more favorable to employees)

- Independent contractors
- Consultants
- Temporary employees
- Agreements with “workers”
- Agreements with vendors (placement firms)
- Actual job characteristics
- Definitions of “employee/independent contractor”
 - Unemployment comp standards
 - Worker’s comp standards
 - Wages standards
 - Minimum wage—state and federal definitions
 - Overtime—state and federal definitions
 - IRS

VII. Experience (current and recent by location)

- Employed workers
 - Full-time
 - Part-time (define)
 - Temporary (if using an agency, examine “joint employer” issues)
 - Independent contractors
- EEO-1 reports
- Absenteeism
- Turnover
- Holidays
- Vacations
- Perks
- Wages
 - Pay differences among men, women, minorities (federal and state Equal Pay Acts)
- Hours worked (full time, part-time, overtime)
- Overtime paid
- Other terms

- Injuries
 - Accidents
 - OSHA logs (MSDS, etc.)
 - Positive substance abuse
 - Disciplinary suspensions
 - Disciplinary probation
 - Transfers
 - Promotions
 - Demotions
 - Leaves
 - Injuries
 - Family/medical
 - Disability
 - Personal
 - Jury
 - Funeral/bereavement
 - Worker's compensation
 - Claims
 - Benefits paid
 - Settlements
 - Awards
 - Insurance policies
 - Premiums paid
 - Administration
 - Types of injuries, jobs, location
 - Illnesses
 - Return to work policies, programs
 - Vocational rehab
 - Ergonomic training, consulting
 - Light duty
 - other
- Training
 - Harassment (required in Calif.)
 - Disciplinary procedures, recordkeeping, legal issues
 - Safety
- Training materials, manuals, records
- Agreements with training consultants, attorneys
- Apprenticeship, development programs
- Terminations
 - Recent (up to five years)
 - Plant closings (WARN obligations, state and federal; notices given)

- Demographics (age, race, sex, national origin, disability, etc.)
- Reasons for termination
 - Voluntary (reason)
 - Retirement
 - Discharge (reason)
 - Layoff
 - RIF
- Length of employment
- Unemployment compensation claims (paid, protested successfully, unsuccessfully)(potential, i.e., recent terminations, others only partially collecting)
- Severance payments
- Releases obtained
- Releases rejected
- Requests for personnel records
- COBRA
- Exit interviews

VIII. Labor--Union

- Collective bargaining agreements
 - Side agreements, side letters
 - Memoranda of agreement
 - Freestanding agreements
 - Agreed practices or understandings
 - Signatures (executed signature pages on agreements)
- Bargaining demands
- Proposals made by Union but not accepted in bargaining (history of bargaining)
- Proposals by Management but not accepted in bargaining
- Wage schedules
- Benefit schedules
- Work rules
- Apprenticeship programs

- Union representation efforts
- Election campaigns
- Elections, results
- Union cards
- Solicitation, visits, education
- Informal employee groups, demands, concerted action (walk outs, slowdown, petitions)

- Grievances, past, present, pending or threatened
- Dispute or complaints, responses
- Settlements of grievances
- Strikes
- Picketing
- Work stoppages, slowdowns
- Lock-outs
- Economic action
- Unfair labor practice charges
- Decertification efforts

- Arbitration awards
- Arbitration settlements, interpretations

- Obligations relating to M/A
- Notice to Union
- Bargain (over sale, over effects)
- Successors and Assigns clause—potential injunction preventing transfer
- Termination of agreement?—notice to union and management association
- Successor?
- Benefits triggered?
- WARN obligations (state and federal)

IX. Government Contractors

- Affirmative Action Programs (recent and current)
 - Minorities and Women
 - Handicapped and Disabled Veterans
- Goals, progress toward goals
- OFCCP audits, compliance agreements
- Self-identification forms
- Logs: applicant, hiring, promotion/transfer, termination
- Statement of compliance in subcontracts
- EEO-1 reports
- EEO Surveys for OFCCP