

# Five Common HR Mistakes

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# Agenda

- Discrimination and Harassment
- Employee Classification
- Terminations
- Handbooks
- Workplace Investigation

# Discrimination and Harassment:

## Employment Practices Liability Insurance (EPLI)

- Not having it, not having it, not having it – did I mention not having it??????
- Not knowing what you have
- Thinking about representing individuals other than the company
- No, I do not get a “cut” from any insurer. 😊



## Discrimination and Harassment

- Have a policy (EPLI can help you with this sometimes...)
  - Know what is in the policy
    - Who does an employee talk to? Two options...
      - Titles not names
    - Are ALL of the protected categories and all laws covered?
      - PWFA included?
    - Retaliation covered?
      - This is often WORSE than the underlying claim
  - Review the policy (yearly and with major changes)
    - Note reviews
- Have yearly training (with sign in sheet) for EVERYONE
  - Yes, that means the “cranky” folks
  - Yes, that means the bosses
  - Employees separate from management is recommended
  - Format?
- Climate, bystander or other similar content or surveys?



## FLSA Classification

- It's not ALL about salary.
  - Cannot be exempt without a salary (that doesn't vary) - hourly wage kills virtually all possible exemptions.
  - Might not be exempt even with salary – need the duties test
- Three main types of exemptions – Executive, Administrative and Professional
  - Administrative will always be your most likely stumbling block.
- Beware the long arm of local law....
- Document, document, document –why you believe position is exempt
  - Job description
    - Watch jobs that evolve over time
- Have language in handbook requiring employees to notify of wage payment mistakes and the company's willingness to fix mistakes.

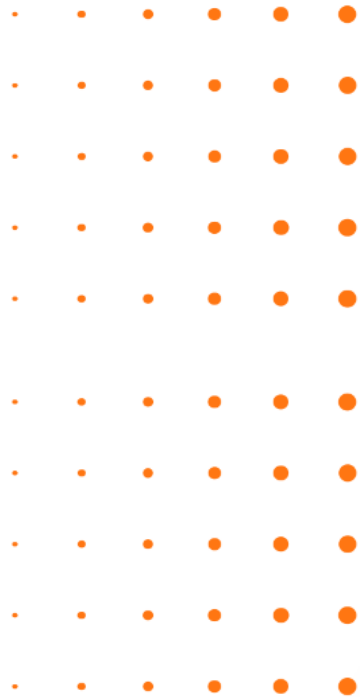
# FLSA Classification Conundrums:

- Watch the following scenarios:
  - Employee performs one job that is exempt on the weekdays. Employee needs extra cash (Christmas was expensive....) and asks to fill in as a nonexempt cafeteria worker on the weekends. Employer desperately needs cafeteria servers and agrees.
    - Is employee still exempt?
- Employer has two employees both do the same duties which the employer believes to be exempt. One is paid hourly and one is paid a salary that meets the FLSA threshold. Is this a problem?



# Terminations

- An ounce of prevention (especially with large layoffs)
- Documentation and following progressive discipline
- Same, same, same – did I mention same? Treatment as prior precedent (do you even know what prior precedent is?)
- Biggest single conundrum – What if the employee says something that makes you cringe during the termination (or discipline)? Do you reverse course?



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## Severances:

- Use judiciously – consider with large layoffs or high risk
  - High risk does NOT necessarily mean the is in a protected category – it means the employer may have messed up.
  - Note that severances can trigger the laws applicable to employee benefit plans.
  - Can be a “carrot” to stay in closure situation
- Does it open flood gates?
- Not your only chance to resolve matter. Litigation is really a delayed severance.
- Remember EPLI!





## Handbooks:

- Have one!
  - No, I'm not joking. I'm serious. So many mom and pops grow (which is great) BUT never grow/keep their internal procedures/policies in step with the growth
- Review yearly (and document)
  - PWFA? Allegheny/Pittsburgh Leave laws?
  - Right titles, locations, etc?
- Watch if you are in other states/localities
  - Uniform language, addendums?



## Workplace Investigations:

- Outside investigator vs. Inside investigator
  - Most likely investigators are attorneys, HR consultants or similar
  - Potentially turn investigator into witness (what if this is your attorney)?
- Have a witness – especially if internal investigator
- Document
  - Store confidentially away from personnel file
- Confidentiality
  - Co-workers
- Who do you interview first?
- What if someone refuses to cooperate – especially the alleged perpetrator?
- Warnings against retaliation.
- Circle back around in a timely manner with outcome
- What if it is he/she said?
- What if someone is “guilty” – do you have to terminate?

**YOUR QUESTIONS!!!**



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**Thank You**