

SMALL BUSINESS ADVISORY



From the Law Offices of Helene Horn Figman

Employment Law Applies To Small Business Too

Many small business owners don't realize they must follow the same employment laws as big companies even though they have fewer workers and other resources.



Even though small companies lack the legal, financial, and personnel resources of big companies, they must still follow many of the same laws in areas of employment. For example:

- Massachusetts law requires that group health plan coverage for employers with between two and 19 employees must provide continuation benefits (similar to COBRA)
- Employers must maintain “personnel files” and that an employee is permitted to see his or her own personnel file
- Employee medical information must be kept separate from other personnel documents
- Employers must pay employees for attending training and meetings that are required
- Employers must post a policy against sexual harassment and distribute the policy annually

Often small business owners think they are in compliance when in fact they are not. Take the requirement to distribute a sexual harassment policy annually. Simply *posting* a policy is not enough — you also have to *give* the policy to employees every year.

Keeping proper files, writing good job descriptions, communicating policies, and obeying other employment law not only keeps you legal, it should also help your business run more profitably. On the other hand, not knowing what you don't know seldom makes sense — either for you or your employees.

About Attorney Figman



A member of the Massachusetts Bar for 26 years, Helene Horn Figman has combined a successful employment law practice with an active involvement in business consulting and agency law. She has successfully litigated before all courts in Massachusetts and the

United States District Court. She has represented corporations and individuals before M.C.A.D., E.E.O.C., Civil Service Commission, Division of Unemployment Assistance, and the Social Security Administration. Her background includes management of her own law firm, appointments as a visiting lecturer in contracts and labor law at Bridgewater State College, and four years as an administrative hearings officer for the Massachusetts Commission Against Discrimination.

Stay Out of Court — Write Those Job Descriptions



An employee lawsuit can be an expensive, distracting, and morale-shattering ordeal for any small business. One of the most effective tools for avoiding that ordeal is the job description. It's also a tool your business should be using anyway.

You may think that because you have a business with only 15 or 20 employees that everyone knows their own job responsibilities. Why, then, would you need formal written descriptions?

First, they enable employers to review the requirements of the job with prospective employees — and do so in a way that does not violate the prospective employee's rights. Suppose you are interviewing a handicapped person. You cannot ask the applicant if he or she has any disabilities. However, you *can* ask if she or he can perform the duties set forth in a written job description. Job descriptions are also crucial for assessing disability claims. An employee can send the job description to his treating physician. By reviewing the document, the doctor will have a better understanding of the tasks his patient is required to perform. And if the disabled employee seeks a "reasonable accommodation" to perform these tasks, a job description is crucial to assess whether the "essential functions" of the job can be performed (with or without the accommodation). Having relevant qualifications in print will also help avoid discrimination claims. That's because each applicant will see the exact same educational and work experience requirements. Most importantly, a properly written job description saves valuable time. It helps identify the best candidates to interview in the first place, and answers many of the candidate's questions before the interview even starts.

Policy Manual Pitfalls

Most employees want to follow the rules. Help them, the right way.



Your policies and procedures manual sets the ground rules for what employees should and should not do at work. It helps assure that those rules are consistent, that they are communicated, and that they are legal. To make sure that they are, you should seek the advice of a professional. One pitfall to avoid: turning a policies and procedures manual into a contract between a business and its employees. Make sure the manual contains specific and clear disclaimers that say the employment relationship is one which is "at-will".

Here's another pitfall: using "boilerplate" do-it-yourself policies taken off the Internet or from business planning textbooks. Don't be tempted to "borrow" the manual from your friend's dental practice or from your spouse's truck repair shop. A company's policy manual reflects the way it does business, its own corporate culture and business requirements.
