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Vital Business Solutions Newsletter

The summer season is almost over and so is quarter 3. Are you ready for quarter 4.....the final countdown for this fiscal year? Have you met your company goals so far this year? If not, you still have time! How about your Human Resources goals?

One area in Human Resources I think you should not ignore is the increasing Equal Employment Opportunity Commission (EEOC) claims from disgruntled employees. Our focus for this newsletter is for you to review the typical complaints and to implement some of our recommendations. The last thing you want to deal with during the end of the year is an EEOC investigation. **So I ask of you, please take the time to read this article.**

How to Handle EEOC Claims

According to the EEOC Fiscal Year 2012 Congressional Budget Justification report, **the Private Sector Enforcement program** achieved the following in 2010.

*In fiscal year 2010, the EEOC secured more than \$319.3 million in monetary benefits through its private sector administrative enforcement activities, the highest level of monetary relief obtained through administrative enforcement in the Commission's history. Overall, the EEOC secured both monetary and non-monetary benefits for more than 18,898 people through charge processing. Through our strong enforcement activity, we achieved 104,999 resolutions, our second highest level ever, with a merit factor resolution rate of 19.2 percent. (Merit factor resolutions include mediation and other settlements and cause findings, which, if not successfully conciliated, are considered for litigation.) Our focus on achieving changes to **workplace practices, procedures and policies** through our private sector administrative enforcement activities yielded improved workplaces for more than 6.2 million individuals.*

Although many cases were won by EEOC, consider the remaining percentage of the cases that were dismissed for various reasons including duplicate claims and withdrawals of complaints. Nearly 65 percent of the dismissed claims were found to have *no reasonable cause*. However, you have to be prepared to respond and review all the claims thoroughly because the moment you don't, that could potentially cost your company from thousands to millions of dollars.

Typical Employee Complaints:

Historically, the most common types of claims filed were those of race and sex discrimination. Although these particular types of claims remain prevalent, other types of claims are emerging at an alarming rate. The most prominent of these emerging types of claims is Retaliation. Other emerging EEOC claims are Disability discrimination, Wages and Pay practices (handled through DOL), and most recently Unemployment discrimination. It seems that the rise in EEOC claims are closely linked to new employment laws, such as:

- ADA Amendments Act (ADAAA)
- Genetic Information Nondiscrimination Act (GINA)
- Lilly Ledbetter Fair Pay Act
- Fair Employment Opportunity Act of 2011 (still a bill; H.R. 2501)

The increase in claims filed may also be a result of the high rate of unemployment. Employees who are laid off or terminated and unable to find another job have created a larger group of people who may potentially file claims. The EEOC has implemented a more user-friendly system for filing claims and has provided extensive training for EEOC employees in an effort to be more efficient and effective in enforcing discrimination laws.

Responding to EEOC Calls:

When you receive an EEOC claim call or notification, the objective is to convince the EEOC representative that the company's position in the claim is correct and that the company has not treated the charging employee in a discriminatory manner. You should respond to EEOC claims by:

- Presenting the company's defense.
- Telling the company's story clearly regarding the employee's allegations only.
- Including evidence showing that the claim is without merit.
- Providing the EEOC with the information and documents it needs to make a determination in the company's favor.
- Present the relevant facts pertaining to the allegation in a logical way so they lead to the conclusion that the company's position is correct.
- Provide context for those investigating the charge by sharing information about the employer's operations, work environment, policies and practices.
- Respond to all allegations in the charge without enlarging the scope of the complaint, but emphasize the most important and substantial issues.
- Anticipate the kinds of follow-up questions that might be asked by investigators and include information that answers such questions.

Recommendations to Avoid EEOC Calls:

In light of the rising number of claims, and the prediction that claims will continue to increase, the EEOC has made efforts to handle that increase. You must also be prepared to address claims such as discrimination and harassment in order to decrease the potential for costly litigation. Every company that receives Federal contracts should provide "periodic" and "effective" training for all employees, in addition to having a thorough discrimination and harassment policy. Having such training serves as a strong defense for the employer-defendant facing a discrimination claim. Failure to provide such training can actually increase liability and damages when dealing with an EEOC claim.

You should also have a process for employees to report concerns of harassment or discrimination. Without a grievance, open door or harassment reporting process, you leave employees with no choice but to seek assistance outside of the company. It is critical that you have policies in place that will protect the employee and provide guidance through any complaint an employee might share with management and/or the HR department.

Finally, consult with your HR or legal counsel for advice on handling EEOC matters. **Vital Business Solutions** has HR experts to develop and implement processes to control issues that may lead employees to file EEOC claims. Just give us a call at 202-832-1388, if you have any questions.

Extreme Weather Conditions and Emergency Planning

The current effects of the recent weather conditions in the Northeast region of the United States are reminders of why it is important to prepare for extreme weather conditions and workplace emergencies.

Preparing for workplace emergencies means having the following in place:

- Policies and procedures for inclement weather and other workplace emergencies.
- Up-to-date confidential internal telephone listing.
- Guidelines on specific restrictions during emergencies.
- Evacuation plans and responsibilities for employees' safety.
- Communication plan to handle disseminating important time-sensitive information and reminders to employees.
- Public relations plan and responsibilities for dealing with the public and the media.
- Relevant training materials for managers and employees.

It is important to keep your employees and your assets safe during workplace emergencies. Your HR professional is the ideal person to work with you to assess your current preparedness and recommend systems that will be effective, should an emergency arise. Government agencies such as the Center for Disease Control (CDC - <http://www.cdc.gov/>) and Homeland Security and Emergency Management Agency (HSEMA - <http://dcema.dc.gov/dcema/site/default.asp>) are also helpful resources for you and your employees.