

# Top 10 Ways To Prevent Employee Lawsuits



**Presented by: Heffernan Consulting**



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## Disclaimer

- The information presented is general in nature and is intended to present an overview of employment practices. The written and verbal contents of the presentation are not intended to constitute consulting and/or advice and no client relationship is established between the presenter and attendees.



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## Presenter: C.J. Westrick, SPHR

- National Certification through the Human Resources Certification Institute (HRCI) as a Senior Professional in Human Resources (SPHR) since 2002
- Founded HR Jungle, HR consulting firm, in 2006
- 20+ years in HR management
- Former President of National Human Resources Association (NHRA) – San Diego Chapter



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## Today's Objectives

- What to review
- What to have in writing
- Learn the government's hot buttons
- Practices that can help you avoid claims



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## A Piece of News

- **IXL Learning** was sued by EEOC for retaliation because fired employee who posted on Glassdoor.com that company was discriminatory. *[CEO had investigative meeting with employee at the same time security was closing down employee's access.]*
- **Victoria's Secret** paid \$12 million settlement over company requiring workers to call in on day scheduled to work to find out if they needed to report to work or stay home. *[Since this was settled, no court decision on whether this was work time.]*
- **Supercuts** paid \$2 million settlement based on allegations managers weren't reimbursed for work done using personal cell phones and vehicles. *[If company requires use of personal property, company must pay for the "convenience."]*



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# 1. Review Employee Handbooks

- Created by a professional
- Legal compliance
  - Location-specific laws
  - CA sick leave
  - Harassment prevention
    - How to file a claim
- Company specific policies
  - Benefits and eligibility
  - Behaviors and processes
  - Insurance during leaves
- Sufficient notice of changes



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## 2. Train Managers on Policies

- Organizational consistency and preferred processes
- Ensure compliance
- Understand potential harassment



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## 3. Do Your Due Diligence

- Why due diligence is important
- What's possible after the hire
  - Reasonable suspicion
- Review your interview testing process
- Recognize what value references provide



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## 4. Be Careful With Money

- Wage and hour claims can go back 4 years
- Do you pay penalty pay, as needed?
- Are you paying for required use of employee's cell phone?
- Do you pay for non-exempt travel time?
- Are your paychecks always correct?
- Do your wage statements have the correct information?



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## 5. Avoid Misclassifications

- Exempt vs. Non-Exempt
  - Meals and overtime
- Employee vs. Independent Contractor
  - EDD and IRS



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## 6. Pay for Sick Leave

- Still a lot of confusion
  - Over 29 different versions in CA
- Written policy
- Understand protections provided by law
- Why to consider a separate policy instead of PTO



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## 7. Be Aware During Leaves

- What is a negative action
- Which leaves are protected
- How you can terminate during a leave
- Preferring the “replacement” versus the employee



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## 8. Pay Fairly

- Fair Pay Act / Equal Pay Act
- CA's law restricting wage discussions
- Attorneys say they will be the only people making money from this law
- Need documentation regarding justifications
- Review your pay structure
  - Hiring pay
  - Merit increases
  - Market value of positions



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## 9. Terminate Cleanly

- Don't procrastinate
- Email your thoughts to management
- Never surprise the employee with termination
- Keep termination meetings short
  - Minimal comments and documents
- Avoid common use of severance



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## 10. Obtain the Right Advice

- Do not assume the same laws apply to all companies
- Do not assume if “everyone does it” that it’s legal
- Do not assume there are special rules for your industry



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**Thank  
You** *Mahalo*  
*Tack* **Kiitos**  
*Grazie* *Toda*  
*Obrigado* **Thanks**  
*Takk* **Merci**  
**Gracias**



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