

Woska Associates
Employment Law Group

Human Resources Policy and Practice

Woska Associates has represented employers for many years providing counseling and advice on all aspects of human resources and employment law. Federal laws provide a broad range of protections with respect to human resources management (HRM) matters including the Civil Rights Act of 1964, the Age Discrimination Act of 1967, the Occupational Safety and Health Act, the Labor Management Relations Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974, the Family Medical Leave Act, and the Americans With Disabilities Act of 1990, and amendments. State laws may complement or supplement federal regulations. In California, for example, state employment laws provide greater protections in many cases than federal legislation.

Woska Associates regularly conducts employment law training programs addressing legislation and court decisions impacting HRM. Also, the Employment Law Forum is regularly updated addressing amendments to employment and labor law legislation.

Woska Associates has assisted managers and supervisors in responding to complaints, grievances, and claims from employees and those filed with federal and state agencies. Woska Associates prepares responses to applicant or employee initiated actions, and reviews and/or prepares policies, procedures, handbooks, job descriptions, performance evaluation systems, and administrative directives consistent with the needs of the organization.

Developing policies, procedures, and other documents is a sensitive process and may subsequently become a critical issue with respect to litigation. The preparation of job descriptions, for example, providing a description of the duties, responsibilities, physical requirements, and other qualifications of a job, have a significant impact on who applies for a job. Properly written job descriptions play an important role in supporting job related and business necessity requirements that may have a disparate impact on protected groups. Disparate impact affects standards that appear neutral on their face (e.g. academic and physical standards, knowledge, abilities, and skills) but may eliminate protected groups at a far greater rate than other applicants. The outcome of a law suit may be directly related to the job description.

An employer's rules, regulations, policies, and practices impact the outcome of an employee action. For example, the same policy or rule violation occurring in two employment situations may result in entirely different outcomes with respect to an employer's subsequent action. Other factors impacting the management of the workplace

include private sector and public sector distinctions, union vs. non-union employment, and whether individual employment agreements are involved.

The following cases provide examples of situations involving HRM issues that resulted in significant cost and frustrating outcomes for employers:

Issue – Performance Evaluation

- A female employee with an accounting firm was not nominated to become a partner based on a performance evaluation program. She received high evaluations on objective factors such as business generation, but scored low on subjective factors such as interpersonal skills some of which were in terms of her sex. She was too “macho,” needed to be more of “a lady,” and used profanity. She subsequently resigned and filed a lawsuit claiming constructive discharge. She was successful in her litigation as a result of the direct evidence of the biased attitudes of the partners performing the evaluations.

Issue – Employment at Will

- A Connecticut company invited a laboratory professional in California to interview at the company’s expense for a higher paying position. The candidate emphasized his concern that the only reason he would move his family would be for “long-term” employment and the promise of job security. Members of the interview panel provided assurances which were subsequently relied upon by the candidate in accepting the position. The individual was subsequently terminated because he was an “at will” employee. He filed a lawsuit because of the assurances of job security by the interview panel. The Connecticut Supreme Court held that neither the offer letter nor any other document disclaimed the oral guarantees of job security.

Issue – Violation of Company Rules

- A company had a rule barring in-plant distribution of political literature. Union employees distributed on the company’s property a circular that urged employees to support the union and declared, in part, the union’s opposition to right-to-work laws and criticized a presidential veto of federal minimum wage legislation.

The disciplinary action taken by the company was overturned since the employees did not lose their statutory protection when they sought to improve their conditions of employment through channels outside the immediate employer-employee relationship.

Contact Woska Associates for assistance concerning Human Resources policies and practices.