Increased Headcount May Equal More Responsibilities in 2017

Overview

An increase in employee headcount is a positive thing, right? It is a measure of a company's success. Having more employees allows the company to run more efficiently and be more productive, which increases profits.

While this is certainly positive, increases of employee headcount over a certain threshold also affects your company's responsibilities in the following 4 areas:

#1—Federal Civil Rights Laws

When employee headcount increases to 15 or more employees, employers become subject to two of the federal civil rights laws – Title VII and the Americans with Disabilities Act ("ADA"). In addition, when employee headcount increases to 20 or more employees, employers become subject to another federal civil rights law – the Age Discrimination in Employment Act ("ADEA").

Title VII prohibits discrimination on the basis of race, color, religion, sex (including pregnancy), and national origin in the terms and conditions of employment, including hiring, compensation, employment benefits, advancement, employment training, assignments and termination of employment. It also prohibits sexual harassment as well as harassment based on an employee's race, color, religion and national origin.

The ADA prohibits discrimination of qualified individuals on the basis of disability (including being regarded as having a disability) in the terms and conditions of employment, including hiring, compensation, employment benefits, advancement, employment training, assignments and termination of employment. It also prohibits harassment against disabled individuals.

The ADEA prohibits discrimination on the basis of age (40 or older) in the terms and conditions of employment, including hiring, compensation, employment benefits, advancement, employment training, assignments and termination of employment. It also prohibits harassment against individuals aged 40 and over on the basis of their age.

Under all three laws, an employer is a "covered employer" if it employs the threshold number of employees (or more) in 20 or more workweeks in the current or previous calendar year. These workweeks do not have to be consecutive.

State Civil Rights Laws

An increase in employee headcount may also cause a company to become subject to the civil rights laws in your state.

#2—COBRA

When employee headcount increases to 50 or more employees, a company may become a "covered employer" under the federal COBRA law.

Under COBRA, an employer is a "covered employer" if it employs at least 20 employees on more than 50% of its typical business days in the previous calendar year. Our HR Professionals are available to assist you with this analysis.

As a covered employer under the FMLA, your company (through its group health plans) will be required to offer continuation of coverage on a self-pay basis when coverage eligibility ends due to certain qualifying events.

State COBRA Laws

An increase in employee headcount may also trigger "mini-COBRA" benefits under the laws in your state.

#3—Available Leaves of Absence

When employee headcount increases to 50 or more employees, a company may become a "covered employer" under the federal Family Medical Leave Act.

Like the federal civil rights laws, an employer is a "covered employer" for purposes of the FMLA if it employs 50 or more employees in 20 or more workweeks in the current or previous calendar year. These workweeks do not have to be consecutive. Our HR Professionals are available to assist you with this analysis.

As a covered employer under the FMLA, your company will be required to provide FMLA benefits and protections to eligible employees and comply with other responsibilities required under the FMLA. This includes:

- Providing protected leave to eligible employees for qualifying reasons;
- Notifying all FMLA-eligible employees of their FMLA rights in your employee handbook.

#4– Affordable Care Act

When employee headcount increases to 50 or more employees, a company is considered a "large employer" for purposes of the Affordable Care Act ("ACA") and the company must comply with ACA's Employer Shared Responsibility provisions.

Under ACA, an employer is a "large employer" for purposes of the law if it employed an average of at least 50 full-time employees or a combination of full- and part-time employees that equals at least 50 employees during the previous calendar year.

Under the ACA's Employer Shared Responsibility provisions, large employers are required to either offer minimum essential coverage that is "affordable" and that provides "minimum value" to their full-time employees (and their dependents), or potentially make an employer shared responsibility payment to the IRS (the so-called "pay or play" provision). Large employers also have information reporting responsibilities which require employers to send reports to employees and to the IRS regarding minimum essential coverage offered to employees.

For more information on the ACA's Employer Shared Responsibility provisions, please contact an HR Professional or see the IRS website regarding the Employer Shared Responsibility Provisions.