

# **BUYER/SELLER BEWARE: EMPLOYMENT ISSUES IMPACTING THE SALE OF A BUSINESS**

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## **I. ACQUISITION ISSUES**

- A. Due Diligence (see attached Due Diligence Checklist)
- B. Allocation of Risk within Purchase Agreement
- C. Statutory or Common Law Risk and/or Successor Liability

## **II. INVESTIGATIONS**

- A. Workforce
- B. Agreements
- C. Plans
- D. Disputes and Litigation
- E. Compensation Arrangements
- F. Benefits
- G. Health and Welfare
- H. Labor Agreements
- I. Safety
- J. Culture

## **III. BUSINESS TRANSFEROR'S NOTICE TO TRANSFEREE OF UNEMPLOYMENT TAX LIABILITY AND RATE**

- A. UIA Form 1207 (see attached UIA Form 1207)
- B. Regardless of any agreements between the parties to the transfer, the law provides when a business is sold (or otherwise transferred), the Buyer (or other Transferee) of the business may be liable to pay the unpaid unemployment taxes and interest and may receive the unemployment tax rate, penalty, and the benefit charges of the Seller (or other Transferor)

- C. The law requires the Transferor of the business, or the Transferor's real estate broker or other agent or attorney, to complete and deliver Form 1027 to the Transferee of the business at least two calendar days (not including Saturday and Sunday or legal holidays before the Transferor's acceptance of the Transferee's offer to acquire the business
- D. Failure of the business Transferor or Transferor's agent to provide correct information is a misdemeanor, punishable by up to 90 days imprisonment and/or fine of up to \$2,500 civil liability for consequential damages resulting from the failure to comply with the obligation
- E. In general, a person or business that acquires the organization, trade, business, or 75% or more of the assets of a business will be liable for unemployment taxes, interest due the unemployment insurance agency from Seller (or other Transferor) of the business, the time of the transfer, up to the reasonable value of the business minus any secured interests in assets
- F. SUTA Dumping

#### IV. COBRA OBLIGATIONS

- A. Successor liability may exist for Buyer
- B. In a stock sale where selling group ceases to provide a group health plan, the buying group health plan must provide COBRA coverage to qualified beneficiaries
- C. In an asset sale where the selling group ceases to provide a group health plan. The buying group health plan has the obligation to provide COBRA coverage to qualified beneficiaries
- D. Parties are permitted to allocate responsibility for COBRA pursuant to a contractual agreement

#### V. THE WORKER ADJUSTMENT RETRAINING NOTIFICATION ACT ("WARN"), 29 USC § 2101 ET. SEQ.

- A. The Worker Adjustment and Retraining Notification Act ("WARN"), 29 U.S.C. §2101, et seq. provides that employers about to experience mass layoffs or plant closings must notify employees of the upcoming events.
- B. Coverage.

Generally, WARN applies to employers who have at all their sites a total of 100 or more full-time employees or 100 or more employees

including part-time employees who work at least 4,000 hours per week, exclusive of overtime.

C. When is Notice Required.

Notice is required when there is a mass layoff or plant closing. A mass layoff occurs when there is a reduction in hours that effects 500 or more full-time employees or 50 or more full-time employees if they constitute at least 33% of the active full-time employees. A reduction in hours worked means a reduction of 50% during each month of any six month period as compared to the previous six months.

D. Plant Closing.

A plant closing occurs when there is a temporary or permanent shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment and 50 or more full-time employees are laid off, terminated or experience a reduction in hours.

E. Notice.

In the event of a mass layoff or plant closing, notice must be given to the employees or their union, the state dislocated worker unit and the chief elected official of local government. Notice must be given 60 calendar days prior to the final day of work. Shorter periods of time are allowed in the event the employer is seeking capital or business which would avoid the plant closing, there is a dramatic, sudden, unforeseen circumstance forcing the plant closing or layoff, there is a natural disaster, or if a layoff extends beyond the six month period but was not originally intended to do so. The notice must contain comprehensive information regarding the site of employment, the temporary or permanent nature of the layoff, the date the layoff or plant closing is to occur, individuals affected and such other additional information as may assist in the employee following the layoff or plant closing.

F. Penalties.

Unions, governments and discharged employees are afforded the right to file lawsuits alleging damages under WARN including damages for back wages, benefits, fines and attorney fees.

G. In the sale of the business where the Purchaser elects to keep all or most of the employees, the Warn regulations indicate that an employee's termination of employment incident to an asset sale does not constitute a **LOSS OF EMPLOYMENT** for Warn purposes

VI. EMPLOYMENT SEPARATIONS-REDUCING AN EMPLOYER'S  
EXPOSURE TO LIABILITY

A. General Considerations.

Generally, reducing liability for terminating employees depends on an employer's appropriate adherence to good employment practices. Employers who have obtained "at-will" statements from their employees, have properly documented disciplinary and performance infractions, and have consistently applied employment practices and policies, generally have lower risks of liability arising out of employment terminations.

B. Exit Interview.

For any employment related termination, an exit interview should be conducted between the employee, the individual recommending the employee's discharge and a member of the personnel department. The basis for discharge should be reduced to writing and documented. The employee should acknowledge a receipt of the employment action leading to discharge and should be given an opportunity to respond thereto. The exit interview should be conducted in such a fashion as to afford the employee as much respect and dignity as possible. The employer should attempt to reduce the stress, and embarrassment of the termination process. All parties present at the termination exit interview on behalf of the employer should prepare written notes of the event. Attempt to obtain conciliations from the employee regarding the employee's understanding of the basis for termination.

C. Releases.

One of the best ways an employer can eliminate liability upon termination of employees is to obtain a signed release from the employee. In order to be enforceable, a release should contain the following provisions:

1. Voluntary.

A release must be knowingly and voluntarily executed. The employee's signature cannot be obtained through duress, fraud or misinformation. The release should contain an express provision providing that the employee has signed the agreement knowingly and voluntarily.

2. Consideration.

The employee must receive some type of consideration which he or she would not have otherwise been entitled to but for the release. Such consideration can take the form of additional compensation, payment for health benefits if permitted under the health insurance plan, letters of recommendation, use of secretary or office facilities, or out placement services.

3. Time to Review.

The employee must be given ample time to deliberate and review the release. The courts have essentially recognized the embarrassing and stressful nature of the termination process and are thus more likely to enforce a release if an employee is given a reasonable period of time to review the documentation.

4. Express Release.

The nature and scope of the release must be specifically set forth in the document. The release should be generally broad based and apply to all forms of employment related claims which could be asserted by the employee.

5. Execution.

The release must be signed by all of the parties to the document.

6. Additional Provisions for Inclusion in a Release.

a. Reaffirmation of "at-will" relationship.

The release should reaffirm that the employee was retained on an "at-will" basis.

b. Attorney Review.

The release should provide a certification that the employee has seen or has been afforded the opportunity to review the release with an attorney. An employer's best defense to rescission of a release arises in situations where the employee has been represented by counsel.

c. Confidentiality.

The release should contain language whereby the employee agrees not to disclose the terms or existence of the release.

d. Conduct.

The release should contain language whereby the employee agrees not to act in any way which could cause embarrassment, damage or injury to the reputation of the employer.

e. Return of Property.

The release should contain language providing that any property which is in the possession of the employee which is owned by the employer shall be returned.

f. Default Provisions.

The release should contain provisions dealing with breach or default by the employee of the terms and provisions of the release. Additionally, the document may contain alternative dispute resolution mechanisms.

g. Waiver of Right to Tender Back.

Various common law cases exist whereby an employee can tender back the consideration

received in support of the release and thereafter, proceed against the employer. The release should contain a provision which provides for a waiver of the right to tender back consideration.

h. Waiver of Right of Reinstatement.

The employee should waive the right to be reinstated and/or to re-apply for a position with the employer.

7. Releases Applying to Older Workers.

Workers who are 40 years of age or older may be covered by the Older Workers Benefit Protection Act. The Older Workers Benefit Protection Act requirements apply to all releases and waivers of any claim under the Age Discrimination in Employment Act. In order for a release to be valid under the Age Discrimination in Employment Act, the release must contain the following specifications:

- a. The release must be written, understandable and must refer to claims under the Age Discrimination in Employment Act.
- b. The employee cannot waive rights that arise after the date of the release.
- c. The employee must receive some consideration which they would not otherwise be entitled to but for the release.
- d. The employee must be advised of the right to consult with an attorney before execution of the release.
- e. An employee must be given at least 21 days to consider the agreement and 7 days in which to revoke the agreement after signing it.
- f. If the waiver is offered as part of an incentive program which is offered to a group of employees, the employees must be given 45 days to consider the agreement.

VII. DISCRIMINATION ISSUES

- A. Age
- B. Disability
- C. Workers' Compensation
- D. Other protected classes

VIII. RETIREMENT PLAN TERMINATION

- A. A successor liability
- B. Withdraw liability, alter ego
- C. Adoption of plan

IX. COLLECTIVE BARGAINING AGREEMENTS

- A. Duty to bargain
- B. Contract terms
- C. NLRB claims



**HUMAN RESOURCES**

**1. General:**

*Documents Required:*

- 1.1. Current active employee census (hard copy) and digital file (preferable), including:
  - 1.1.1. Employee ID and other unique identifier (optional)
  - 1.1.2. Social Security Number
  - 1.1.3. Name
  - 1.1.4. Gender
  - 1.1.5. EEO Classification
  - 1.1.6. Job Grade
  - 1.1.7. Salary Range
  - 1.1.8. Job Title
  - 1.1.9. FLSA Code
  - 1.1.10. Other Status (FT, PT) Temporary, etc.)
  - 1.1.11. Hire Date
  - 1.1.12. Benefits Date (if applicable)
  - 1.1.13. Rehire Date (if applicable)
  - 1.1.14. Birth Date
  - 1.1.15. Salary (annual) for 2012, 2013 & YTD 2014
  - 1.1.16. Salary (hourly, biweekly, monthly, if applicable) for 2012, 2013 & YTD 2014
  - 1.1.17. Bonus & Commission for 2012, 2013 & YTD 2014

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- 1.1.18. Weekly hours worked basis (40, 37.5, etc., if applicable) for 2012, 2013 & YTD 2014
- 1.1.19. Annual Over time Income for 2012, 2013 & YTD 2014
- 1.1.20. Shift differential
- 1.1.21. Other compensation (commissions, etc.)
- 1.1.22. Department Name
- 1.1.23. Listing of Fringe Benefits which the employee currently has (i.e., Medical, Dental, 401 (k), Life Insurance etc.)
- 1.1.24. Detail Organization Chart
- 1.2. List of plan participants (if available, employees not participating) by classification, i.e., salaried, hourly, union, commissioned sales people. Include date of birth, date of hire, salary, bonus, current year-to-date and prior year's W-2 earnings, position/grade level and marital status.
- 1.3. Copies of compliance documents for Immigration Control Act.
- 1.4. All claims, actions and proceedings (other than benefit claims in the normal course) pending or threatened in connection with any employee benefit plan or employment-related matter, including, without limitation, all wrongful discharge claims and proceedings, and claims for unemployment claims, litigation's, and other proceedings under OSHA, ADEA, Title VII, and all other equal opportunity laws, including those of any state or municipality, and all deficiency and other reports, notices of violation and governmental findings regarding same.
- 1.5. List all plant closings and mass layoffs covered by ARN since its inception and all governmental, regarding same.
- 1.6. List and description of recent employee termination programs, reductions in force, early retirement windows, etc. and impact on each location in Group.
- 1.7. Department Code (division, cost center, etc.)
- 1.8. Latest annual report, proxy statement and Form 10K (if applicable)
- 1.9. Organizational Charts
- 1.10. Employee benefits budget for current year by plan.

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- 1.11. Board of Directors meeting minutes for past two years. Specifically, when votes were taken changing Employee Benefits and/or Human Resource policies and procedures.
- 1.12. Headcount Report by Business unit (or division, group, etc., whichever is applicable).
- 1.13. Description of Loans or other similar arrangements to directors, officers and employees.

### *Questions:*

- 1.14. Are there any outstanding HR regulatory issues with such agencies as the IRS, DOL, SEC, etc.?
- 1.15. Are there any issues with compliance associated with operational or internal administration or audit findings requiring follow-up or resolution?
- 1.16. Is there a written severance plan policy?
- 1.17. Are there any state laws or requirements regarding plant closings or corporate mergers regarding severance? ("Tin" parachutes) extended health coverage with employer paying full cost, etc.).
- 1.18. Who sets the policies in each of the following areas, and who is accountable for and coordinates each area?
  - 1.18.1. Recruiting/Selection
  - 1.18.2. Employee Relations
  - 1.18.3. Compensation
  - 1.18.4. Benefits
  - 1.18.5. Training/Development
  - 1.18.6. Labor Relations
  - 1.18.7. FEG
  - 1.18.8. Safety
- 1.19. Do you have a formal policy in each of the above areas?
- 1.20. Is it a published policy?
- 1.21. Has it been communicated to all employees?

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1.22. If so, how has it been communicated to all employees?

1.23. How often are the policies reviewed, and by whom?

### 2. Recruiting and Selection:

#### *Documents Required:*

2.1. Sample offer letter.

2.2. Sample employment application.

2.3. Sample employment contract.

2.4. Diagram of the hiring/decision-making process.

#### *Questions:*

2.5. Describe any oral or informal promises or commitments regarding any terms of employment

2.6. Do you have a staffing plan?

2.7. Do you have a staffing budget?

2.8. Does authorization for filling a position require that a position description be submitted if none exists?

2.9. What is the practice in determining what sources of candidates are to be selected?

2.10. What sources do you use?

2.11. Is an attempt made to fill position vacancies from within the organization?

2.12. Is job posting used to advise employees of available positions?

2.13. Are employees advised of the requirements for available positions?

2.14. Are selection devices, such as tests, used?

2.15. If so, which ones are used, and who administers them?

2.16. When would positions not be filled from within the organization?

2.17. In recruitment advertising, are full job particulars given, such as experience desired, educational requirements, location, travel required, etc.? (If advertising is used, attach copies of various ads).

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- 2.18. How many candidates are considered desirable in filling a typical job vacancy?
- 2.19. Are employees from within the organization who apply for open positions considered before an attempt is made to obtain candidates from outside the organization?
- 2.20. Who screens all candidates?
- 2.21. Have these devices been professionally validated?
- 2.22. Have managers who must interview job candidates been trained in interviewing techniques?
- 2.23. Have the interviewers been trained in the legal requirements of selection interviewing?
- 2.24. Are all candidates informed regarding the organization's decision?
- 2.25. Who makes the final selection decision?
- 2.26. Is the selection interview considered a two-way flow of information in that information about the company and the job is communicated to the candidate?
- 2.27. Is the applicant's prospective supervisor involved in the hiring process?
- 2.28. Is descriptive literature about the company available, and is it given to the candidates?
- 2.29. Does your company provide a personnel orientation and induction process for new employees?
- 2.30. Do you have a college relations or recruiting program? if so, who coordinates it?
- 2.31. Are individuals recruited from colleges treated differently from other candidates?
- 2.32. Is there a reference-checking procedure outline?
- 2.33. Do you obtain applicants' authorization before checking references?
- 2.34. Are copies of references kept for seven years?
- 2.35. Has the organization implemented the requirements of the Immigration Reform and Control Act of 1986?
- 2.36. Has the organization projected its future needs in the area of recruitment and selection?
- 2.37. Is there a relocation policy? Are there any current liabilities?
- 2.38. What is the cost per hire per category of employee (Administrative, Secretarial, Accounting etc.)?

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- 2.39. How many hires in each category did you have for the past year?
- 2.40. How many terminations, indicate voluntary and involuntary, in each category in the past year?
- 2.41. Is it company policy to rehire retirees? Is so, are they rehired as independent contractors or employees? Do they continue to receive their pension and retiree benefits?
- 2.42. What is your total employment? And what was it for each of the past five years?
- 2.43. Is turnover up or down, overall, and by category?
- 2.44. What are your hiring plans for the next 12 months, total, and by category?
- 2.45. Using a scale of 1 to 10, how do you think most employees rated the quality of the recruitment and selection function?
- 2.46. Using the same scale, how would you rate the function?

### 3. Employee Relations:

#### *Documents Required:*

- 3.1. Written policies and procedures including employee handbook, supervisor's handbook and other official policy and procedures handbooks. Leave of absence (including sick pay and salary continuation), vacation policies and termination procedures should be included.
- 3.2. List of employees currently on a Leave of Absence.
- 3.3. State Laws and/or regulations covering severance (plant closings), mandated benefits, unemployment and any other Human Resource issue.
- 3.4. Employment agreements/contracts with rehired employees (specifically, terminated employees and retirees).
- 3.5. Separation of Employment Agreements if applicable.
- 3.6. Severance plan document, policy and description.
- 3.7. Copies of contracts with outside vendors providing EAP or Wellness services.
- 3.8. Service award program description
- 3.9. Copies of all Employee Confidentiality and Invention Agreements.

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### *Questions:*

- 3.10. Is there any HR litigation pending?
- 3.11. Are there any cases recently settled past 2 years?
- 3.12. Are there any Federal or State consent decrees?
- 3.13. Are banking services provided to employees? If so, what types?
- 3.14. Are there any special discounts for employees such as subsidized cafeteria, commuting subsidies, fitness club discounts, etc.?
- 3.15. Is an outside firm used to manage unemployment claims?
- 3.16. Is there a Wellness Program?
- 3.17. Do you offer any non-traditional benefits that we should be aware of, such as financial planning, elder care, or legal services?
- 3.18. Is the company in compliance with the Americans with Disabilities Act (ADA)?
- 3.19. Are employees given information on whom to consult about Employee Relations situations?
- 3.20. Is there an individual available with whom employees can discuss personal matters?
- 3.21. Does someone conduct exit interviews?
- 3.22. Are attitude surveys conducted?
- 3.23. To whom are attitude survey results communicated?
- 3.24. Does the organization communicate its reactions to the results of the survey?
- 3.25. Are the results compared with those of prior surveys?
- 3.26. Is there an open door policy in place that allows employees to discuss their problems. If so, describe; if not, discuss alternatives.
- 3.27. Is this policy documented and published to all employees?
- 3.28. How often has this policy been utilized in the past 12 months?
- 3.29. Does management meet routinely with the employees to inform them of business conditions and have an open dialogue about issues of mutual concern?
- 3.30. Are managers routinely meeting with their subordinates at staff meetings?

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- 3.31. Are your supervisors given information about the company's plans and progress before this information hits the "grapevine"?
- 3.32. Is the absenteeism tracked, and if so, what is the rate presently and compared to past experience?
- 3.33. Does the organization sponsor social activities for its employees?
- 3.34. If so, what kind of activities are sponsored, and what is the level of participation?
- 3.35. Is there a service award (recognition) program?
- 3.36. Does the organization sponsor a child care center?
- 3.37. If so, how is it managed and what charge is made to the employee?
- 3.38. How many employees participate in the child care center?
- 3.39. Are there non-traditional work schedules such as flex-time, 4/40, etc.?
- 3.40. Is there an employee suggestion program? If so, how is it communicated?
- 3.41. Is the program successful in improving productivity?
- 3.42. Is there a policy and procedure which details the process for employee termination, including severance pay entitlement?
- 3.43. Does the organization sponsor an employee assistance program - AP?
- 3.44. Is the program available for employees only, or for employees and dependents?
- 3.45. Is the program a broadbrush program in that it allows for counseling on all issues, or only for substance abuse (drugs & alcohol)?
- 3.46. Have there been any union drives within the last five years?
- 3.47. If so, what unions were involved, and what were the results of any elections?
- 3.48. Has the organization projected its future needs in the area of employee relations?
- 3.49. Do you have a Human Resource or Personnel department or individual?
- 3.50. If so, what role do they play in formulating your employee relations plans, strategy and programs?
- 3.51. Using a scale of 1 to 10, how do you think the employees would rate the employee relations activity?



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3.52. How would you rate the employee relations activity?

4. Executive Compensation:

*Documents Required:*

- 4.1. Plan documents
- 4.2. Communication Materials
- 4.3. Covered Employees
- 4.4. Estimates of Assets and Liabilities
- 4.5. Funding arrangements (Rabbi Trusts, Life insurance, general assets)
- 4.6. Individual signed agreements (if applicable) or generic agreement
- 4.7. Possible plans are:
  - 4.7.1. Excess Pension and 401(k)
  - 4.7.2. SERP
  - 4.7.3. Deferred Compensation
  - 4.7.4. Stock Option Plans (including ISO, RSO, NQSO, SAR)
  - 4.7.5. Employment Contracts
  - 4.7.6. COLI
  - 4.7.7. Split Dollar
  - 4.7.8. Executive Severance Plan
- 4.8. Supplementary benefits payable to retirees and former employees.
- 4.9. All plans that exist for Board of Directors (Deferred Compensation, Health/Welfare and other special arrangements).
- 4.10. Special arrangements including automobiles, auto allowances and/or parking arrangements, club memberships, tax preparation or other perquisites.
- 4.11. Listing of employees eligible for executive plans.

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### 5. General Compensation:

#### *Documents Required.*

- 5.1. Job evaluation program.
- 5.2. All salary structures or ranges for all employment categories (officer, exempt, non-exempt)
- 5.3. Key benchmark job descriptions.
- 5.4. Survey analysis of competitive market position.
- 5.5. General bonus/incentive plans for non-executive employees.
- 5.6. All stock option agreements and plans, stock appreciation rights and other stock-based compensation arrangements, contracts or plans involving employees or consultants of or with respect to the Group. (Please include a list of individuals holding unexercised stock options and other rights, the number of unexercised options and rights, the option prices, and when such options and rights are exercisable.)
- 5.7. All restricted stock arrangements including a list of individuals holding restricted stock grants, the number of shares and when restrictions lapse.
- 5.8. All vacation, leave, holiday, sick day, payroll practices and other fringe benefits including employee assistance programs, relocation policies, (domestic and international), tuition reimbursement programs, and housing allowances. Include funding source and future cost obligations to be assumed by successor company.
- 5.9. All "Golden Parachute," "Silver Parachute" and "Tin Parachute" arrangements involving the employees or consultants of the Group, including all arrangements conditioning or accelerating payment or vesting of benefits on a "change-in-control" or change in ownership of any entity involved in the Group or any position thereof.
- 5.10. All employment contracts and consultants' agreements, confidentiality and non-competition agreements, applications for employment, and hire letters with respect to employees, directors and consultants of the Group.

#### *Questions:*

- 5.11. Average merit increase, and average promotional and adjustment increases for past three (3) years.
- 5.12. Functions currently provided by employees who will not be transferred to buyer as part of Group.
- 5.13. Is there a pay program in effect and currently being administered?

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- 5.14. What are your employee definitions (FT, PT, Temporary, Peak, etc.)?
- 5.15. What is the work week (40 hours)? When does it start/end?
- 5.16. How is overtime calculated? Shift differentials?
- 5.17. Is there a stock purchase plan independent of any qualified or non-qualified stock ownership or option plan?
- 5.18. Is a booklet summarizing the compensation program distributed to all new employees?
- 5.19. Is there a formal job evaluation program?
- 5.20. Who evaluates positions for compensation purposes?
- 5.21. Is the company in compliance with the Fair Labor Standards Act (Wage and Hour Law)?
- 5.22. Are salary and wage rates for positions communicated to the individuals filling these positions?
- 5.23. Are salary and wage rates for positions within a department communicated to all its members?
- 5.24. Is there a formal plan for salary and wage increases?
- 5.25. Who approves a salary or wage increase?
- 5.26. Are there regular dates for salary and wage reviews?
- 5.27. What is the longest time anyone may go without a salary or wage review?
- 5.28. Do you have performance evaluations, other than for salary or wage reviews? If so, attach a copy of your performance evaluation form.
- 5.29. Have supervisors and/or managers been trained in how to do reviews?
- 5.30. Are inflationary trends considered in reviews and/or rates?
- 5.31. Is longevity a key factor in determining increases?
- 5.32. Are managers provided with annual guidelines for salary/wage reviews?
- 5.33. Do you know of any wage or salary inequities in your present wage and salary program?

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- 5.34 Does the organization conduct annual compensation surveys of similar organizations, organizations in the same geographic area, and/or competitive organizations?
- 5.35 Are the results of such surveys communicated to employees?
- 5.36 How often are the surveys conducted?
- 5.37 Is it the organization's policy to pay competitive salaries and wages?
- 5.38 Are the evaluations of specific positions periodically reviewed? if so, how often?
- 5.39 Does the organization have bonus/incentive plans? If so, briefly describe who is eligible, and the payoff.
- 5.40 Are they published and communicated to those eligible?
- 5.41 Are they based on individual performance?
- 5.42 Are they based on the organization's performance?
- 5.43 Are they considered to be part of the total compensation program?
- 5.44 Are there equity programs, such as stock options?
- 5.45 If so, what kinds of plans exist, and how successfully have they met the design objectives?
- 5.46 What concerns do you have about your compensation program?
- 5.47 Using a scale of 1 to 10, how do you think employees rate the compensation activity?
- 5.48 How would you rate the activity?

## 6. Benefits:

### *Documents Required:*

#### 6.1. Pension Plan

- 6.1.1. Plan Document and subsequent amendments.
- 6.1.2. SPD and other employee communications materials.
- 6.1.3. Favorable determination letter and, if there have been any amendments since the determination letter was issued, a legal opinion regarding subsequent amendments.
- 6.1.4. Latest Form 5500 filing, including auditor's report and PBGC filing.

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- 6.1.5. Any comments/opinions regarding compliance with the Tax Reform Act and subsequent regulations.
- 6.1.6. Pension Committee Meeting Minutes for past two years.
- 6.1.7. Results of nondiscrimination testing, if applicable.
- 6.1.8. Most recent Actuarial Valuation Report and SFAS 132 figures.
- 6.1.9. Projection or budgeted figures for current and previous year's Contributions and Expense.
- 6.1.10. Latest statement of assets. Also details of any annuity holdings, if applicable. if assets include GIS's, provide a copy of the contract.
- 6.1.11. Current retiree and terminated vested data including sex, date of birth, benefit amount and form of benefit.
- 6.1.12. Trustee report detailing investments.
- 6.1.13. Name and address of actuary, accountant, Trustee, fund manager.
- 6.2. 401(k)Plan:
  - 6.2.1. Plan Document and any subsequent amendments.
  - 6.2.2. SPD and any other employee communications material.
  - 6.2.3. Favorable determination letter and, if there have been any amendments since the determination letter was issued, a legal opinion regarding subsequent amendments.
  - 6.2.4. Form 5500 filing including auditor's report.
  - 6.2.5. 401(k) Committee meeting minutes for past two years could be the same committee which is responsible for Pension Plan.
  - 6.2.6. Results of ADP/ACP nondiscrimination testing for prior year and projections for current year.
  - 6.2.7. Latest statement of assets.
  - 6.2.8. If assets include GIC's, provide a copy of the contracts.
  - 6.2.9. Name and address of recordkeeper, accountant, trustee, fund manager.
  - 6.2.10. Number of participants and company cost.

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- 6.2.11 Trustee report detailing investments.
- 6.2.12 All trust instruments, annuity contracts, guaranteed investment contracts ("GIOCs") or other funding vehicles for such plans.
- 6.2.13 Any investment management agreements relating to investments of all or a portion of such plans' assets.
- 6.2.14 All fiduciary liability insurance policies and fidelity bonds for such plans.
- 6.2.15 The most recent actuarial valuation reports for all defined benefit plans of the Group.
- 6.3. Health/Welfare Plans
  - 6.3.1. Plan documents for all benefit plans including medical, life (all types), STD, LTD, dental, retiree medical, Section 125, and reimbursement accounts.
  - 6.3.2. SPD's and other employee communication materials
  - 6.3.3. Employer and employee contribution schedules for all plans including COBRA.
  - 6.3.4. Copies of all contracts with insurance companies, HMO's or TPA's including stop loss arrangements and ASO agreements.
  - 6.3.5. Form 5500 filings for the last 3 years.
  - 6.3.6. FAS 106 figures for retiree benefits.
  - 6.3.7. Statement of financial experience for indemnity plans.
  - 6.3.8. Is there a VEBA? if so, provide
    - 6.3.8.1. Copy of Plan Documents
    - 6.3.8.2. Plan Coverage
    - 6.3.8.3. Reserve Accounts
    - 6.3.8.4. Name of Trustee
    - 6.3.8.5. Trust Document
    - 6.3.8.6. Audited financials
- 6.4. Are any plans self-assured? If so, provide details of Incurred But Not Reported (IBNR) reserves.

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- 6.5. Copy of Workers' Compensation policy/contract.
- 6.6. Copies of reports, claims, injury statistics for past three (3) years, and funding arrangements for workers' compensation. Copies of legal counsel's opinion letters on pending workers' compensation cases.
- 6.7. Copies of the current state disability (non-occupational) reports for plans insured in a state insurance fund.
- 6.8. Any existing estimate of the actuarial present value of the liability for post-retirement health, dental and life insurance benefits for current retirees as well as the estimated liability for future retirees, including ABO, PBO and actuarial assumptions.
- 6.9. Copy of general notification to employees required under COBRA (Code S4980B) and form letters distributed upon employment commencement and upon the occurrence of a qualifying event for all Group health plans.
- 6.10. Copy of HIPPA Certificate of Coverage (ERISA S701).
- 6.11. All claims experience reports and related data (claims reserves, etc.) for the last 24 months for all health and life insurance benefit plans with respect to the Group, broken down between retirees and active employees.
- 6.12. Any other available information similar to that requested above which would facilitate an analysis of the medical or life insurance benefits claims experience regarding the Group.
- 6.13. Enrollment statistics for all plans broken out by level of coverage (i.e. single, two-party, family).

### *Questions:*

- 6.14. How are the Health and Welfare Plans administered? Staff? Systems?
- 6.15. Are the plans self or fully insured?
- 6.16. Are there Reimbursement Accounts? if so, how are forfeitures handled?
- 6.17. Do you have a tuition reimbursement program? if so, are there any employees currently drawing benefits? What is the dollar value of this commitment?
- 6.18. How is the Pension Plan administered? Staff? Systems? Who is the Plan Trustee? Plan Administrator? Actuary? Investment Advisor? Counsel?
- 6.19. Who is on the Pension Committee?
- 6.20. Has the Plan been amended to comply with the Tax Reform Act and subsequent regulations?

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- 6.21. Are there any prior plan issues that affect the administration of the current plan?
- 6.22. Have the employees received information on whom to consult about benefit questions they may have?
- 6.23. Are benefits periodically reviewed? if so, by whom? And how often?
- 6.24. Are competitive organizations or organizations in the same geographic area regularly surveyed to determine the competitiveness of benefits?
- 6.25. How often and how is the survey made?
- 6.26. Is an individual accountable for continually reviewing legislation effective benefits and benefits trends?
- 6.27. Have studies been conducted to determine what type of benefits the employees want?
- 6.28. Has consideration been given to the possibility of cafeteria type benefits?
- 6.29. Are different benefit plans available for different levels within the organization?
- 6.30. Is one individual accountable for insuring all benefits meet local, state and federal benefits legislation such as ERISA and the Tax Reform Act of 1986? Who?
- 6.31. Has a discrimination test been performed? When?
- 6.32. Are the costs to the organization of benefits for individual employees communicated to employees?
- 6.33. How often is this information communicated and how is it accomplished?
- 6.34. What has been the trend for rising medical costs and have cost containment features been implemented to control the cost of medical coverage?
- 6.35. Do employees share the cost of the benefit programs, and if so, how much does the organization pay relative to the employee? (13e specific for each program.)
- 6.36. For what primary purpose does the organization provide benefits (philosophy)?
- 6.37. Does the organization comply with the requirements set forth in COBRA?
- 6.38. Who administers the COBRA Compliance, and have there been any complaints filed as a result of the administration?
- 6.39. What is the current COBRA enrollment?
- 6.40. Have 5500's been filed in a timely manner?



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- 6.41. Has the organization projected its future needs in the benefits area?
- 6.42. How far into the future has it made this projection?
- 6.43. What benefits do you provide List each program and attach a copy of the Summary Plan Description.
- 6.44. How is the 401(k) Plan administered? Staff? Systems? Who is the Plan's Trustee? Plan Administrator? Recordkeeper? Investment Advisor? Counsel?
- 6.45. Is there a Company Match? If so, what is the vesting schedule?
- 6.46. How are forfeitures handled?
- 6.47. If you have a 401(k), have you performed a deferral test? IF so, who performed it? When?
- 6.48. Using a 1 to 10 scale, how would you think the employees rate the benefits program?
- 6.49. How would you rate the program?
- 6.50. Is there a Sick leave policy? A short-term disability or salary continuation program? How do they interact?

### 7. HRIS/Payroll:

#### *Questions:*

- 7.1. How are employees paid? In-house, or through a vendor?
- 7.2. What type of HRIS is used? How does it interface with Payroll?
- 7.3. Is direct deposit provided?
- 7.4. Does the Payroll system or HR'S support the benefits program?
- 7.5. How is the HR'S supported (outside vendor contracts or in-house)?
- 7.6. What software is used? Are there PC or LAN applications?

### 8. Training and Development:

#### *Questions:*

- 8.1. Who initiates requests for the type of training provided? (Name, Title)
- 8.2. Who determines the types of training techniques utilized? (Name, Title)

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- 8.3. Do all training and development programs have clearly established objectives?
- 8.4. Are training needs regularly reviewed with management?
- 8.5. Who identifies the individual training needs of employees? (Name, Title)
- 8.6. How are individual training needs identified?
- 8.7. Are subscriptions to professional journals encouraged?
- 8.8. Are memberships in professional organizations encouraged?
- 8.9. Are internal or external seminars used in training?
- 8.10. Is there any audio-visual equipment available to be used in training in-house?
- 8.11. Are training and development programs developed internally, externally or both?
- 8.12. Is the use of external training resources coordinated by an individual?
- 8.13. Is information regarding outside training resources obtained by an individual and distributed throughout the organization?
- 8.14. Has the organization made plans to meet its future training and development needs?
- 8.15. What are your training goals?
- 8.16. How do you measure the results?
- 8.17. What types of training do you provide (technical, professional development, etc)?
- 8.18. Is training tied to performance? if so, how?
- 8.19. Do you have a "Mentor" program?
- 8.20. Is a file of external training resources maintained?
- 8.21. Has the organization projected its future needs in the areas of training and development?
- 8.22. Using a scale of 1 to 10, how do you think the employees would rate the effectiveness and quality of the training and development activity?
- 8.23. Using the same scale, how would you rate the activity?

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### 9. Labor Relations:

#### *Questions:*

- 9.1. Copy of each collective bargaining agreement, and all related side-letters and similar informal agreements involving the Group. Indicate if any agreement contains assertion clauses or stipulations of insurance carrier, plan administration, etc.
- 9.2. Describe multiemployer pension plans to which the Group contributes and a description of any withdrawal that has occurred or is imminent or asserted and any estimates or determinations of potential withdrawal liability or the contribution history necessary to determine such withdrawal liability.
- 9.3. Describe any strike, organizing campaigns at non-union locations, work stoppage, unresolved grievances, labor disputes or arbitration proceedings involving the Group during the past three (3) years.
- 9.4. Schedules for upcoming negotiations, negotiation minutes from last negotiations, including union and Group proposals, settlement, etc.
- 9.5. List of employees and pay classifications which are represented by the respective union at each location.
- 9.6. Does the company have continuing access to legal counsel in labor relations matters?
- 9.7. Who in the organization has authorization to obtain counsel? (Name, Title)
- 9.8. Have managers within the company been informed about what to do in the event of a union organization campaign?
- 9.9. Are managers regularly updated on union organization methods and on legal requirements regarding managers' actions?
- 9.10. How often do they receive this updating?
- 9.11. In the event of a union organizing campaign, is there one individual accountable for the organization's response?
- 9.12. Has the individual accountable for management's role in a union organizing campaign been identified prior to the start of any campaign?
- 9.13. Is there any individual in the organization who, on a regular basis, reviews current labor regulations, rulings and activities?
- 9.14. In preparation for union negotiations, are the managers and supervisors of the employees covered by the union agreement asked for their recommendations regarding changes to the existing document?

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- 9.15. In preparation for union negotiations, are grievances and arbitration records reviewed?
- 9.16. Are parameters clearly established for possible settlements well in advance of negotiations?
- 9.17. Who is the chief spokesperson for the organization at negotiating sessions?
- 9.18. Is there an individual who attends some type of briefing seminar or updating conference on labor matters just prior to negotiations?
- 9.19. Does your organization actively consult and share information with others in the same industry or geographic area?
- 9.20. Is there an individual accountable in the organization for overseeing the final settlement of all grievances?
- 9.21. Are records of all grievances maintained and analyzed?
- 9.22. Are grievances investigated within 5 days of receipt?
- 9.23. Is it management's policy to settle grievances at the lowest possible level in the grievance procedure?
- 9.24. Are grievances reviewed by legal counsel at any point in the grievance procedure prior to arbitration?
- 9.25. Who represents management at arbitration hearings? (Name, Title)
- 9.26. Briefly describe arbitration procedures. Who is involved from the company in each step?
- 9.27. Has the organization projected its future needs in the area of Labor Relations?
- 9.28. On a scale of 1 to 10, how do you think most employees would rate the quality of Labor Relations activity?
- 9.29. How would you rate its quality?
- 9.30. Attach a copy of the union contract.

## 10. Equal Employment Opportunity:

### *Questions:*

- 10.1. Copy of current Affirmative Action Plan and most recent EEO-1 report.
- 10.2. Are all legally required bulletin board notices posted at all locations?

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- 10.3. Are all bulletin boards periodically reviewed to ensure that all the required notifications are displayed?
- 10.4. Who has the responsibility to review the bulletin boards? (Name, Title)
- 10.5. Does the organization view EEO as a government requirement, a social responsibility or both?
- 10.6. Is one individual accountable for coordinating EEO activities?
- 10.7. Has the identity of that individual been communicated throughout the organization?
- 10.8. Are state and federal reports on EEO prepared and filed whenever requested or required? EE01, etc.
- 10.9. Who is the person responsible for ensuring those reports are filed? (Name, Title)
- 10.10. Have all selection devices been reviewed to ensure they meet the requirements of job analysis, job relatedness and validity as required by EEO legislation?
- 10.11. Has the employment application form been reviewed to ensure it meets all EEO requirements?
- 10.12. Is all newspaper advertising reviewed to ensure it meets EEO requirements?
- 10.13. Have all employment agencies and search firms been notified of the organization's EEO policy?
- 10.14. Are all promotion and selection decisions reviewed to ensure they meet EEO requirements?
- 10.15. Are employment statistics obtained and reviewed to ensure that promotions, demotions, and selections are made without discrimination due to race, sex, religion or country of national origin?
- 10.16. Are all those who may conduct employment related interviews aware of the restrictions placed by EEO legislation on what may be asked in such interviews?
- 10.17. Has the organization projected its future needs in the area of EEO?
- 10.18. Has the organization compared this projection to its capacity to meet that projection?
- 10.19. Are you a government contractor or subcontractor?
- 10.20. Do you maintain an individual employment file for each employee?
- 10.21. Are copies of all resumes and applications from applicants kept for a minimum of three years from the date of last contact or entry?

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10.22. On a scale of 1 to 10, how would the employees rate the EEO activity?

10.23. How would you rate the EEO activity?

### 11. Safety:

#### *Questions:*

11.1. Are records maintained on the number of accidents, days lost due to accidents and alleged incidents?

11.2. Does top management receive periodic reports in safety results throughout the organization?

11.3. Who is accountable for furnishing those reports?

11.4. How frequently are those reports generated?

11.5. Are Worker's Compensation reports filed promptly?

11.6. What is the Worker's Compensation cost trend for the last 3 years?

11.7. Do bulletin boards contain all of the required safety notifications?

11.8. Are bulletin boards continually reviewed to ensure that proper safety notification is posted?

11.9. How often are the bulletin boards reviewed, and who is accountable for this activity?

11.10. Are safety and housekeeping inspections conducted on a regular basis?

11.11. By whom?

11.12. Who received reports on these inspections?

11.13. Is safety and housekeeping training provided for all supervisors and managers?

11.14. Has first aid training been provided for all supervisors and managers?

11.15. Is someone with first aid qualifications always available during all hours of normal operation?

11.16. Has provision been made for professional medical attention during operating hours?

11.17. Is someone aware of these arrangements present and available during all normal hours?

11.18. Has provision been made for transportation of an injured worker to a designated medical facility?

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- 11.19. Are all newly rebuilt facilities, newly installed equipment and revised equipment reviewed for safety before being put to use?
- 11.20. Does the individual position accountable for safety have the authority to stop a clearly dangerous operation?
- 11.21. Has the noise level in all locations been tested to ensure that it meets government and other appropriate safety standards?
- 11.22. Has the environment, including light, air cleanliness, etc. been checked to ensure that it meets government and other health requirements?
- 11.23. Are industry safety and health standards utilized?
- 11.24. Are personal safety devices made available to employees for free or at a discount?
- 11.25. Is an individual accountable for continually reviewing the latest legislation and trends in safety and health?
- 11.26. Has the organization implemented the Right to Know Law?
- 11.27. Do you use or store any chemicals on hazardous substances in your business?
- 11.28. Are material safety data sheets (MSDS) maintained for each and every hazardous chemical in the workplace?
- 11.29. Have you file copies of MSDS sheets with the appropriate local, state and federal agencies?
- 11.30. Has the required training program been implemented that instructs each employee on how to detect the presence of a hazardous chemical, provides knowledge of any physical and health hazards presented by chemicals in the employee work area and instructs on what the employer's hazard communication standard requires?
- 11.31. Have there been any OSHA audits within the last 3 years?
- 11.32. If so, why and what were the results?
- 11.33. Do you believe you now or will in the future come under the provisions of SARA from the standpoint of utilizing or storing hazardous chemicals or substances?
- 11.34. On a scale of 1 to 10, how would the employees rate safety activity?
- 11.35. How would you rate safety activity?

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### 12. Documentation and Security:

#### *Questions:*

- 12.1. Is access to information about employees controlled?
- 12.2. Are all people who request information about employees required to show proper justification and identification?
- 12.3. Is one individual accountable for ensuring that all documentation meets all legal requirements?
- 12.4. Are there backup records for all employee information?
- 12.5. Has documentation been reviewed to ensure that it does not invade Right-to-Privacy legislation?
- 12.6. Are all files and storage cabinets clearly identified and controlled?
- 12.7. Is all outdated wage and salary information destroyed in a controlled way?
- 12.8. Are security systems regularly reviewed?
- 12.9. How often are they reviewed, and who is the person accountable to ensure they are reviewed?
- 12.10. Are personnel records maintained for 7 years for the date of last entry or termination of employment, whichever ends later?
- 12.11. Copies of all Confidentiality, Non-Competition, Invention or other similar Agreements.

### 13. Culture:

#### *Questions:*

- 13.1. Is there a stated organization culture that the organization strives to promulgate?
- 13.2. What is the stated culture?
- 13.3. What does the Organization do specifically to reinforce the continuity of its culture?
- 13.4. If the culture is unstated, what appears to be the culture of the organization?
- 13.5. How would key managers describe the culture?
- 13.6. Do objective criteria, such as turnover statistics, absenteeism rates, attitude surveys, profitability, etc. seem to reflect a culture such as that stated or perceived by management?



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- 13.7. If not, what are the inconsistencies?
- 13.8. Does the culture that exists seem to be productive or counterproductive to the business?
- 13.9. Does the company have or publish a mission statement? (If so, please attach a copy.)