

00:16
Welcome to today's webinar HR audits
00:18
focus areas for 2022 and strategies to
00:21
minimize risk i'm Ana Hobson from hr
00:24
simple and i will be moderating today
00:26
today's presenter is Laura from
00:28
Constangy, the presentation will be
00:30
about an hour long and if you have any
00:32
questions please submit them into the
00:34
question box and i will go ahead and
00:36
forward those
00:37
if you need more hr resources or would
00:39
like to watch more webinars please go to
00:43
com forward hrsimple.com
00:44
events and you can also go to
00:46
youtube.com forward slash hr simple to
00:49
view past webinars
00:51
hr simple provides federal and state
00:53
specific manuals we make employment law
00:56
easy our books are written by top labor
00:58
attorneys and we work with top firms
01:00
such as constanti to author our manual
01:03
vacation policies employee documentation
01:05
and hr audits are just a few of the
01:07
topics that the manuals cover so before
01:10
we get started i just wanted to learn a
01:12

little bit more about laura
01:14
she's an experienced trial lawyer and
01:16
client advocate her extensive career has
01:19
involved representing companies of all
01:21
sizes across many industries and all
01:23
aspects of employment law laura has
01:26
successfully defended clients in the
01:28
courtroom before administrative agencies
01:30
and on appeal
01:32
in addition to litigation laura has
01:33
spent her two plus decades of experience
01:35
partnering with clients to counsel them
01:37
through complex issues involving
01:39
discrimination retaliation accommodation
01:42
and wage and our compliance
01:44
lure has also developed a passion for
01:46
guiding clients through high stake
01:47
matters involving pay equity harassment
01:50
leave of absence and accommodation
01:53
is an accomplished speaker and presenter
01:55
having presented on cutting-edge
01:56
employment law topics at local and
01:59
national events as well as many online
02:01
forums
02:02
laura is board certified by the texas
02:04
board of legal specialization
02:07

so on that note i am going to go ahead
02:09
and pass things over to her so we can
02:12
get started
02:25
looks great
02:27
all right thank you
02:29
thank you so much and hello everyone
02:31
happy tuesday afternoon um my name is
02:34
laura de leon and as mentioned i'm going
02:37
to be talking to you today about hr
02:40
audits and focus aspects for us or focus
02:44
areas for uh to minimize risk going into
02:47
new year figure this is always a good
02:49
time while people are goal setting and
02:51
setting their new year's resolutions
02:53
to think through some areas where we as
02:56
hr professionals can work with our
02:58
organization to reduce risk to improve
03:02
operations
03:03
all around and so this is a good time to
03:05
do that so i'm going to talk through a
03:08
number of different topics today
03:10
but they're all sort of geared in mind
03:12
with
03:13
what are some you know proactive steps
03:15
that hr can do
03:17
in the organization to help a compliance
03:21

help improve operations and move things

03:23

better um there's my contact information

03:25

and in case you're wondering who the

03:27

voice belongs to that is me

03:29

um so you know a lot of employment law

03:33

we talk about litigation but we're also

03:35

talking about litigation avoidance

03:38

um and when we talk about lawsuits we

03:40

need to realize that there are some

03:42

things that we can control in connection

03:45

to lawsuits and there are some things we

03:47

absolutely cannot control um we cannot

03:49

control for example how an employee is

03:51

going to feel about an employment

03:53

decision or what their perception of the

03:55

work environment is but there are

03:57

factors that we can control and those

03:59

factors relate to

04:01

those policies and processes that we

04:04

have in place as employers to ensure

04:07

that our employees are treated in a fair

04:10

and equitable manner and that our

04:11

decisions are sound and that we have all

04:14

the things in place that we need to

04:16

um if the time comes to defend a lawsuit

04:20

you know we can't choose who's going to

04:22

sue us or who's not going to sue us but
04:24
we can try to put it put up our best
04:26
defense to that and so having these
04:29
sorts of policies and processes um are
04:32
you know the first and most important
04:34
step to litigation avoidance and
04:36
litigation defense
04:38
but litigation is not the only reason
04:40
why hr might want to address an audit
04:43
and i would actually suggest that
04:45
it's really better if you
04:47
try to look at issues in your
04:49
organization before they become issues
04:51
in your organization so don't wait for a
04:53
lawsuit to strike before you decide that
04:55
you need to you know revise your
04:57
handbook or re-evaluate your pro you
05:00
know a certain policy or process we want
05:02
to be proactive on that so you know in
05:05
addition to litigation avoidance you
05:07
know there's a lot of strategic reasons
05:08
why we'd want to do an audit
05:11
and some of those might resonate more
05:12
with the business leaders who you're
05:13
going to be reaching out to to support
05:15
you conducting an audit you know they
05:17

improve operations they help better
05:19
strategically align the organization you
05:22
know and a lot of times just looking at
05:24
a process that hasn't been looked at in
05:26
a while you're just overall going to
05:28
look at a better way
05:30
to
05:31
um you know to organize or run a
05:33
particular matter which will lead to
05:35
greater employee satisfaction and maybe
05:37
even additional efficiencies gained and
05:39
and how you're doing that
05:41
so
05:42
doing audits can be a pretty daunting
05:44
task um i think the sufficient apparel
05:47
um picture is a pretty app it can be
05:50
like shooting fish in a barrel you know
05:51
where do i start um there are so many
05:55
work streams within human resources that
05:57
we can tackle with an audit you know
05:59
from job posting to interviewing to
06:02
onboarding to
06:04
discipline termination leaves of absence
06:07
and just kind of goes on and on
06:09
it can be very daunting and overwhelming
06:11
um but i think there are a few key areas
06:14

uh that we can look at tend to be more
06:16
hot topic areas areas where we're seeing
06:19
some particular focus on
06:22
from
06:23
the legislature or the courts or the
06:26
eoc for example or you could look at an
06:29
area that you just particularly know as
06:31
an organization you're pretty vulnerable
06:33
at and it's been a while so it's time to
06:36
look at that
06:37
a couple of common ones fall under
06:41
the wage and hour category and by that
06:43
we mean how do we pay our employees
06:46
are they hourly you know non-exempt
06:49
hourly are they exempt salaried so those
06:52
types of laws so that's the fair labor
06:54
standards act on a federal level
06:57
then i should say um those of you who
07:00
operate um you know
07:02
in multiple states
07:04
you might find that there are some state
07:06
laws that are more restrictive
07:09
or more worrisome to the organization
07:12
you mentioned you want to focus on those
07:14
and certainly i can name some examples
07:16
of those but for purposes of this i'm
07:18

going to really just focus on federal
07:20
law um we don't want to get too far in
07:22
the weeds um with with all the different
07:25
state law nuances but you can easily
07:27
apply some of this information to
07:30
particular state law or stateside type
07:33
of audits
07:34
so
07:35
wait an hour continues to be a huge huge
07:40
fertile ground for plano attorneys um it
07:44
has been for years and years we've saw a
07:47
little bit of a dip in cases during
07:49
covid for lawsuits particularly
07:52
collective action lawsuits which are
07:55
the reversion of a class action but it's
07:58
when one or a couple employees bring
08:01
suit on behalf of a broader group of
08:03
employees
08:05
flsa claims are particularly ripe for
08:07
that sort of treatment
08:09
like i said we saw a little bit of a dip
08:11
last year in terms of those cases filed
08:14
uh but you know we're we're seeing the
08:16
momentum pick back up
08:18
um plaintiffs lawyers employee rights
08:20
attorneys love love love the flsa
08:24

one of the reasons is it is a very old
08:26
and arcane law and you can almost always
08:30
find an issue with an employer's
08:32
attempt to comply with the flsa
08:36
and the flsa is the law that covers
08:38
exemptions requires that you pay
08:40
employees over time requires that you
08:43
pay employees for certain types of
08:46
you know work performed i mean they
08:48
always have to pay them for work that
08:50
they do but what time off the clock
08:54
should be compensated as work time such
08:56
as putting on
08:58
protective gear taking off protective
09:00
gear
09:01
waiting in line to pass through security
09:04
you know time that's not work work but
09:07
is under the employer's control so there
09:09
are a lot of fertile areas for
09:11
plaintiff's attorneys to to sue under
09:14
this area and
09:16
the other benefit of it is
09:19
the amount of dollars that can be
09:22
garnered when you have one employee
09:24
versus bringing a case on behalf of 300
09:27
employees the dollar amounts add up very
09:30

quickly if you think an flsa claim for
09:32
example
09:34
it can go back two to three years from
09:35
the date of filing that two to three
09:38
years of issues times the number of work
09:41
weeks in those two to three years times
09:44
the number of employees that you had you
09:46
know even if you
09:48
are liable or you your error is three to
09:51
four bucks an employee you can see how
09:53
that calculation quickly gets you up
09:55
into lots of money and then they get
09:56
attorneys on top of it so otherwise
09:58
small violations can definitely be
10:01
aggregated to equal big dollars and so
10:03
that's why we see a lot of focus on
10:06
these issues from
10:08
plaintiff's attorneys
10:10
a lot of the lawsuits
10:13
common lawsuit targets that you can
10:15
audit to help you reduce your exposure
10:17
so being proactive on this
10:20
one is look at your exemptions do you
10:23
have your employees classified correctly
10:26
as being a salaried exempt employee or
10:30
an hourly non-exempt employee
10:33

a lot of jobs um
10:36
are probably captured correctly you know
10:38
we've got a number of different
10:39
exemptions under federal law executive
10:42
professional administrative
10:45
there's a highly paid professional
10:46
exemption there are outside sales
10:49
exemptions but
10:50
there are usually in every organization
10:53
where i have seen a couple of jobs where
10:56
it is an absolute gray area
10:59
and they often get
11:01
you know captured or categorized as
11:05
exempt when really they should be
11:07
non-accept and over time
11:11
we tend not to pay attention to how we
11:12
classify jobs we might just keep adding
11:14
jobs to our organization and we're not
11:17
really paying attention to how they are
11:19
being classified and whether they're
11:20
being classified properly so if you
11:22
haven't looked at this in a while it
11:24
definitely bears looking at
11:26
if not every job well then certainly
11:29
there's jobs that would be sort of in
11:31
the middle gray area kind of your middle
11:34

management upper level individual
11:37
contributor
11:39
those are the types of jobs that tend to
11:41
be misclassified
11:43
for various reasons so
11:47
that should be number one on your list
11:48
because if you misclassify an employee
11:51
as
11:52
exempt from overtime but they really
11:55
should be counted as non-exempt then
11:58
there are claims there for unpaid wages
12:02
unpaid overtime maybe you weren't
12:05
handling your meal period deductions
12:07
properly
12:08
potential for off-the-clock work that
12:11
wasn't captured that
12:13
individual pays should be owed for
12:15
so that is one area that is like the
12:18
building block or the foundation step
12:20
for flsa issues so that's definitely
12:22
something you want to look at
12:24
another area is this off the clock work
12:27
and i know that is very difficult
12:29
because if it's not on the clock how do
12:31
we know about it but that is something
12:33
that can be looked at by
12:35

comparing the
12:36
amount that employees clock in or out
12:40
and they actually get paid for a lot of
12:43
this time this work is automated now
12:46
but some of it involves manual
12:47
adjustments as well and usually we have
12:50
um in lawsuits where this arises up
12:53
employees just sort of voluntarily offer
12:55
well i did it off the clock because i
12:57
didn't want to you know get in trouble
13:00
for working that time
13:01
so not just looking at are your systems
13:04
accurately capturing the time that has
13:06
worked but are your policies clear and
13:09
well communicated to employees that they
13:12
know that it is not proper to work off
13:14
the clock
13:16
mind you you would still have to pay
13:17
them for off the clock work but you have
13:19
a better
13:21
arrow in your quiver if you can say
13:24
that you know we don't allow this we
13:26
know we have to pay you but now you're
13:27
being disciplined because you didn't
13:29
follow our timekeeping policy
13:32
so
13:33

uh shoring up that policy and um and
13:36
ensuring that your data um you know your
13:39
payroll from your timekeeping to your
13:41
payroll that that is accurate you know
13:43
another thing i want to kind of point
13:45
out about off the clockwork a little bit
13:47
is just this notion of i just want folks
13:49
to be mindful of rounding issues you are
13:53
still allowed to round your time cards
13:56
up or down um based on this archaic
13:58
notion that it's very difficult to um
14:02
capture time to a key um you know
14:05
nowadays with computers we have
14:07
electronics we can tell you to the
14:09
second about when an employee comes in
14:12
and so um rounding policies while still
14:15
legal and the courts still do um will
14:18
still enforce them particularly if on
14:21
average
14:22
um it doesn't work to the detriment of
14:24
the employee you know it still is an
14:26
example of a practice that do you really
14:28
need
14:29
so that's something to look at while
14:30
you're looking at your tie system
14:32
the other issue is overtime calculations
14:34

i know a lot of organizations
14:37
outsource their payroll outside
14:40
outsource the computation of how
14:42
overtime is exactly calculated
14:45
and
14:46
we just assume that it's being done
14:48
correctly and i think that's very uh i
14:51
would encourage you not to make that
14:52
assumption and periodically look and
14:55
make sure that your payroll is being
14:57
calculated correctly that things are
14:59
being coded to the right category
15:01
there have known to be errors um in how
15:05
that is all calculated and a lot of
15:07
times those payroll organizations are
15:09
not going to accept legal responsibility
15:11
for those errors it is on you as the
15:13
employer to make sure you're doing that
15:14
right so audit it make sure that that's
15:17
doing that that's being handled
15:18
correctly
15:19
the other issue with overtime
15:21
calculations is
15:23
you know overtime
15:24
needs to be paid um at one and a half
15:27
times the employee's regular rate of pay
15:30

for all hours worked over 40 in a work
15:32
week and you think well that's easy you
15:34
know joe works 15 you know makes 15
15:36
bucks an hour and so
15:38
you know 22.50 is his overtime rate that
15:40
is true however if you have um or you
15:44
offer non-discretionary bonuses or make
15:47
other non-discretionary payments to
15:49
employees um you know for work done
15:53
that all of that additional money needs
15:56
to be ruled back in to the regular rate
15:59
of pay and included in the regular way
16:02
to pay
16:03
for overtime purposes
16:05
and we see oftentimes either employers
16:09
omitting
16:10
certain bonuses from the regular rate of
16:13
pay which means our overtime rate is too
16:15
low
16:17
or
16:18
we just see that it's not being
16:20
calculated correctly there's just
16:22
something in the logarithm that's not
16:24
working and um when we go back to do a
16:28
true up calculation maybe we're using
16:30
the wrong time frame but this math isn't
16:32

working out correctly and that's an area
16:34
of exposure so when you're looking at
16:36
that pay attention to how are you
16:39
incorporating non-discretionary bonuses
16:42
into your regular rate of pay and
16:44
ensuring that you actually are paying
16:46
your employees
16:47
over time based on those amounts very
16:50
important thing
16:51
the last topic for wage and hour that i
16:54
want to talk about um involves equal pay
16:58
um and and this can be a whole topic of
17:01
a whole other
17:02
webinar on conducting pay equity audits
17:06
um pay equity or equal pay is this
17:08
notion that men and women should be paid
17:11
the same for doing substantially similar
17:13
work
17:14
and that is the equal pay act it falls
17:17
under the flsa on the federal level
17:20
there are also a number of other federal
17:22
and state laws out there that impact
17:23
this but one thing we do know is
17:26
particularly since the metoo movement
17:28
originated officially you know on social
17:31
media i'm sure it existed before but
17:33

really came out with a splash several

17:34

years ago

17:36

since then equal pay has been an

17:39

increasingly

17:40

um

17:42

it's a bigger priority for the eeoc and

17:45

the department of labor they are

17:47

conducting audits

17:48

they are

17:50

exploring charges of discrimination and

17:53

bringing cases against employers for

17:56

equal pay violations and in fact uh just

18:00

yesterday i think the chairwoman of the

18:03

eeoc victoria lipnic gave an interview

18:07

with bloomberg law where she said

18:09

absolutely equal pay cases are part of

18:12

our priority again this year

18:15

we will absolutely be looking at

18:18

employers and how they're paying their

18:20

employees employers need to be doing

18:23

audits

18:25

and looking at their organization and

18:26

taking steps to address these issues and

18:29

i would say too those audits really

18:31

should be privileged under the

18:32

attorney-client privilege although we

18:34

know the eeoc is going to try to argue
18:36
that they're not privileged so they can
18:39
see how the fafsa just made in terms of
18:41
compensation and the analysis but equal
18:44
pay is a very big
18:46
priority um if you have not done a pay
18:49
audit in the last couple years
18:52
no matter what size organization you are
18:54
you really should take a look at that
18:56
whether do it organization
18:58
enterprise-wide or focus on a particular
19:01
business unit you should not be sticking
19:03
your head in the sand when it comes to
19:04
pay equity so i would i would bump that
19:07
up there as a
19:09
significant endeavor for a lot of
19:11
reasons um not just legal exposure but
19:14
also there's a lot of um you know
19:16
discussion socially about it a lot of
19:18
employers want to come out as being
19:21
um you know an equal pay for a place to
19:24
be
19:24
so it's a very good idea to do that now
19:27
to do that and we're not going to go in
19:29
today on the ins and outs of how to
19:31
conduct an equal pay audit that is an
19:33

entire session on its own but in terms
19:36
of finding out
19:39
areas in your organization
19:41
that you can change now
19:44
you know you can make positive change
19:46
now by addressing
19:48
any statistically significant pay gaps
19:51
do it now before
19:53
you're facing a charge or facing a
19:55
lawsuit or
19:57
if the eeoc comes back around next year
20:00
and issues um you know reissues
20:03
the pay
20:04
the compensation collection on their on
20:06
their
20:07
annual reports you know you you have
20:10
your house in order you know where
20:11
things stand so that is a very important
20:14
thing uh equal pay audits that you
20:16
should be considering uh going into 2022
20:23
um the next sort of uh topic uh for uh
20:27
audits
20:28
we've talked about paying employees
20:30
right so let's kind of take a step back
20:33
and talk about
20:34
um
20:35

our application and our hiring process

20:38

you know if um

20:40

a lot of people are hiring now um i

20:43

think pretty much everyone is hurting

20:44

for people it is a really good time to

20:47

step back and ensure your application

20:49

and hiring processes

20:51

are up to snuff

20:53

there are a number of laws that govern

20:56

the application and hiring process i

20:59

mean obviously if you're a federal

21:01

contractor you need to be doing your um

21:04

doing your analysis on your postings and

21:07

your applications and your ultimate

21:09

hires for your aap even if you do that

21:12

and even if you're not already doing

21:14

that it is a very good time to look at

21:18

your entire structure and how are we

21:21

promoting our jobs

21:22

how are we um

21:25

are we casting a wide net

21:27

how are we bringing people through um

21:30

amazingly enough

21:32

a topic such as job applications is an

21:35

area just that continues to be

21:38

um often overlooked and we have

21:41

oftentimes find issues on applications
21:43
and think about this you're using this
21:44
as a screening tool
21:46
for employees you know if you your
21:49
application process
21:50
is faltering at some level um you know
21:53
you're not going to be able to get good
21:55
employees into the organization but job
21:58
applications in addition to being one of
21:59
the first things new potential new hires
22:02
see is their data collection tool and
22:04
there are a number of
22:06
questions and areas that you are not
22:09
allowed to inquire into under our
22:11
anti-discrimination laws so for example
22:14
under title vii
22:16
we are not prohibited to obviously make
22:18
any hiring decision based on gender race
22:21
color religion national origin
22:24
under the age discrimination act we are
22:27
not allowed to make an employment
22:28
decision based on age under the
22:30
disability act americans with
22:32
disabilities act we are not allowed to
22:34
make an employment decision based on
22:36
disability plus we are limited in the
22:39

types of medical related questions that
22:42
we can ask
22:44
depending on where we are in the process
22:46
and you would be surprised
22:48
at how many times we still see
22:51
you know no no questions
22:53
on job applications even
22:55
2021 you know we still see applications
22:59
that ask for a candidate's age for
23:02
example like what is your date of birth
23:04
you don't need that information no
23:06
granted you'll say oh so what you know
23:08
it's not like we're going to use it it's
23:10
not that easy if you're asking for it on
23:13
an application the presumption is is
23:15
that you're using it as a factor in your
23:17
employment decision so someone who's not
23:19
selected can say oh i wasn't hired
23:21
because of my age and look they asked
23:23
for my age at the outset
23:25
so
23:26
take a look at your applications we
23:28
don't look at those very often they're
23:30
one of those forms that are done and
23:32
then put on a shelf right for a while
23:35
so look at your job application
23:39

don't ask for date of birth
23:41
don't ask for someone's marital status
23:46
um don't ask for someone's gender on
23:48
there you don't need that information at
23:52
the application stage
23:54
of
23:55
of selecting someone um so take it out
23:58
completely um don't ask about i know
24:01
there are a number of questions about
24:03
you know medical you know where we're
24:05
concerned about you know does this job
24:07
you know can the employees do this job
24:09
well you're allowed to ask questions
24:12
after you've
24:13
issued a conditional offer of employment
24:15
but on your application you know you
24:17
could ask a question like um this job
24:21
requires lifting over 50 pounds are you
24:23
able to perform the essential functions
24:24
of this job with or without
24:26
accommodations not list your workers
24:28
compensation injuries that you've had or
24:30
list any prior injuries yet that has no
24:32
place on a job application and i still
24:35
see that to this day on some job
24:36
applications
24:38

another
24:39
question or field that does not need to
24:41
be there
24:43
is the date of high school graduation
24:45
and you might think why what's the big
24:47
deal well you can easily do the math on
24:50
a high school graduation date and assume
24:51
someone was 18 years old when they
24:53
graduated high school and then determine
24:55
their age from that so it has been found
24:57
or is considered by the eeoc to be a
25:00
proxy for age so don't ask it you don't
25:02
need to know it if you're doing an
25:04
educational background check later on
25:07
you'll get the dates done and like you
25:09
know and you can confirm its existence
25:11
at that later stage
25:13
you don't need to know that at the
25:14
outset you can ask if you've graduated
25:16
from high school and you can ask how
25:18
much college they've attended but the
25:19
years are not
25:21
important at this stage
25:23
you also want to check your applications
25:24
for local law compliance
25:27
a number of states do have
25:29

kind of peculiarities that you can or
25:32
cannot ask at the applicant stage or
25:34
they might want you to give
25:37
notices
25:39
of certain types of rights that they
25:41
might have um and as some employers have
25:45
kind of state addendums rather than
25:47
having a different application for each
25:49
state
25:50
you don't want to um you know you just
25:52
have certain state addendums but pay
25:54
attention to your state laws um and see
25:56
what they would require um one item
25:59
that's not on here that i should have
26:01
put on this slide is make sure that your
26:04
job application
26:06
no longer asks for salary history of
26:09
your applicant
26:10
usually in the job history section we
26:13
asked folks to list out their last job
26:16
who was your manager why did you leave
26:18
how much did you make that last part is
26:22
almost uniformly prohibited a lot of
26:25
states prohibit that question from being
26:28
asked um a lot of courts and the eeoc
26:32
will consider that a proxy for an equal
26:35

payoff violation um and the idea is that
26:40
um
26:41
women uh
26:42
make less than men in a given job and oh
26:46
you know generally i mean this is a
26:47
grave overstatement but i mean it is
26:49
there's a pay gap um in the united
26:51
states
26:52
and by asking someone what their prior
26:55
pay was
26:57
you are perpetuating the cycle of
26:59
discrimination if a female applies for a
27:02
job um and says well at my last job i
27:04
made forty thousand dollars you're gonna
27:06
think okay well i can offer her forty
27:08
five thousand dollars for the job and
27:09
she'll be happy but if the guy's like oh
27:11
i made fifty thousand dollars at my job
27:12
because he's a guy and made more money
27:15
and so you base your hiring pay off of
27:18
his historical pay
27:19
you're going to just be offering him
27:21
more than that and that's
27:23
propagating like i said continuing on
27:26
the um the theme of paid discrimination
27:29
so
27:30

a lot of courts are saying you cannot
27:32
bathe
27:33
your
27:34
hiring pay your starting pay decisions
27:36
based on salary history and have gone a
27:39
number of states have gone a step
27:41
further and said you cannot even ask
27:43
that information so if you are operating
27:46
in one of those states that has that law
27:48
and there are probably about 20 or so
27:50
states and localities that have that ban
27:52
on it now you don't want to ask that
27:54
question just block it out
27:56
so example of local law compliance there
28:00
the last area uh for in the application
28:03
and hiring process is this ban the box
28:06
um notion and that's that's the
28:09
terminology given to
28:12
um
28:13
the um prohibitions on asking an
28:16
applicant about their criminal history
28:19
at the outset of employment on their
28:21
application you know um
28:24
job applications typically have a
28:26
section on them let's ask have you been
28:29
convicted
28:30

of a felony within the past 10 years or
28:33
convicted of a misdemeanor have you been
28:35
arrested or on probation well you should
28:37
never you're not allowed to ask about
28:39
arrest first and foremost but you were
28:41
allowed to and in some places you still
28:43
can
28:44
at the pre-offer phase ask about a
28:47
criminal history and you know the idea
28:50
is that hey you know we're not going to
28:52
why waste our time on an applicant if
28:53
they're just going to fail our criminal
28:55
background check you know we kind of
28:56
want to know at the outset well
28:59
the issue is and why a lot of states and
29:02
localities have had ban the box meaning
29:04
you cannot ask this those questions on
29:07
the application you need to wait until a
29:11
conditional offer of employment has been
29:13
made was because it's kind of twofold
29:16
one is that
29:18
statistically we find that such
29:20
questions have the impact on
29:22
discriminating against
29:24
people on the basis of race
29:26
african americans and latinx individuals
29:30

um tend to
29:32
have
29:33
you know be pulled over more by the
29:35
police have higher conviction rates etc
29:38
and so by having that as a bar at the
29:41
outset
29:42
we are in uh unintentionally having a
29:45
disparate impact on these races the
29:48
other component of it is is we're not at
29:51
this notion that hey people who have
29:53
paid their debt to society deserve a
29:55
second chance you know let's let them
29:57
try to get employed um and rehabilitate
30:00
themselves and reintegrate in society
30:02
and if you're just going to forever
30:03
penalize these people for having a
30:06
criminal background it just perpetuates
30:09
the cycle and you will see recidivism
30:11
etc with that so that's the logic behind
30:14
the ban the box initiated and this is a
30:16
state by state issue
30:19
so you again it's an area where you want
30:21
to be very cognizant of the local law in
30:24
your area and whether they ban the box
30:27
in this and you have to wait until a
30:28
later time
30:30

so be very cautious about that you don't
30:33
want to ask impermissible questions you
30:35
know at the outset for that
30:46
another aspect of the application and
30:49
hiring process that you would want to
30:52
audit or take a look at
30:54
um with respect to your background
30:56
checks um is your favorite process and
30:59
documents and so what that is is the
31:01
fair credit reporting act and the
31:03
federal law does a lot of things
31:06
in connection with employment when you
31:09
as an employer are getting a background
31:12
check run
31:13
using a third party or third-party
31:15
information
31:16
to look into someone's background
31:19
whether it's their criminal background
31:21
you know maybe
31:22
for some job that could be a financial
31:24
background or you're talking and getting
31:26
you know various different types of
31:28
just data from other sources
31:31
on your employees you need to provide
31:33
them one a notice
31:35
that you're going to do this you need to
31:36

give them a notice of their rights under
31:38
the fair credit reporting act which must
31:40
be on a stand-alone document can't have
31:42
anything else on it
31:44
and that you also have very specific
31:47
communications that are issued if
31:50
something comes back on the background
31:52
check that would disqualify the person
31:54
from employment you need to send them a
31:57
pre-adverse action letter
31:59
that tells them what happened
32:01
what was seen and give them a chance to
32:04
challenge it so it's a very orchestrated
32:06
event and a lot of employers will you
32:08
either do this in-house or you outsource
32:11
it with your background check vendor
32:12
which is completely fine however
32:15
with the payroll vendor you need to
32:18
stay on top of them and have their
32:20
process reviewed
32:22
what does the notice look like what does
32:24
the acknowledgement look like because
32:25
they have to give consent to do a
32:27
background check does it have all the
32:29
bells and whistles that are required
32:30
either on a federal or state level and
32:32

what is their process for issuing these
32:35
adverse
32:36
pre-adverse action and adverse action
32:37
letters you as the employer are on the
32:39
hook
32:41
and there was it's not so bad now um as
32:43
the last couple years there's a very
32:44
good supreme court case that came down
32:46
that sort of clamped put the clamp on
32:49
the size of class actions in this area
32:52
but it's it's a gotcha area basically
32:55
for plaintiff lawyers that could lead to
32:57
big exposure for you so
32:59
check the um work that your vendors are
33:01
doing or double check your compliance
33:04
with that
33:05
um you know with that process again
33:07
these are documents that tend to be once
33:09
we put them in place we kind of don't
33:11
look at them again for a while
33:14
so it's good to dust them off as part of
33:16
your review of your application process
33:18
and hiring process to ensure that
33:21
they're the most up-to-date uh documents
33:23
that we have available
33:26
um the next one is uh okay i9
33:30

documentation

33:32

um

33:33

so this is another the i9 documentation

33:36

this so a lot of people roll their eyes

33:38

at this it's a very painful process it

33:40

can be but it is also an area

33:42

that is very worthwhile to audit

33:44

particularly if you are in an industry

33:48

that might be targeted by the government

33:50

or a focus point for the government for

33:52

undocumented workers so the i9

33:54

documentation as you know is the

33:56

documents that we all have to

33:58

a format we all have to fill out we

34:00

provide two forms of identification to

34:02

confirm that we're eligible to work in

34:04

the united states okay

34:06

and it's a form that hasn't changed in a

34:08

lot of years

34:09

and people fill them out we sign off on

34:11

them we shove them in a cabinet with the

34:13

other i9 documentation and we just never

34:16

think of them from that point on

34:18

except that a government can come on in

34:20

and audit our ini forms to make sure

34:22

that we

34:24

are actually employing people who are
34:26
legally authorized to work in the united
34:27
states and if something is a myth on
34:29
those i-9 forms then you can be subject
34:32
to fines and penalties
34:35
for that so it is a very good uh idea to
34:39
audit those documents
34:42
every couple years
34:43
whether they maintain paper form or even
34:46
electronically
34:47
one
34:48
go through them
34:50
um and first off you get rid of the ones
34:53
that you don't have to maintain anymore
34:54
if someone's no longer with you and you
34:56
pass the retention period get rid of
34:58
them
34:59
but do you have them on all your current
35:01
employees sometimes shockingly
35:04
we might not have one on someone or it's
35:06
partially filled out um especially if
35:09
you have like remote workers um who
35:11
maybe didn't come into headquarters to
35:13
go through regular orientation that had
35:15
to be filled out remotely maybe it's
35:17
sitting on someone's desk somewhere and
35:18

never got turned in so make sure you
35:20
have it on everybody um so that's a
35:23
number one that's probably the easiest
35:25
part of the process the next one would
35:27
be well let's look at some of them and
35:30
are they completed correctly
35:32
um now depending on the size of your
35:34
organization and your bandwidth um some
35:37
folks choose to look at all of them
35:40
others do a random sampling of every
35:42
tenth person you know whatever your
35:44
process is
35:45
maybe you look at it as you can but you
35:47
want to look and make sure they're
35:49
completed correctly
35:51
as every
35:52
everything kind of uh sold out every box
35:55
filled out
35:56
does the address match the address on
35:59
the id card
36:01
um you know things of that nature if you
36:03
make changes you are allowed to make
36:05
changes um to the i9 form to make it
36:09
correct to correct it you just need to
36:12
uh we usually suggest that you make the
36:14
changes in a different color pen
36:16

and then initial and date the date that
36:19
the change was made you know to
36:20
adequately capture the fact that it was
36:22
changed but at least it's changed and
36:25
the document the data is on there is
36:26
correct that's
36:28
a big a lot of times we see issues with
36:30
that uh where they're not filled out
36:32
correctly and then the last category
36:34
that you want to look at with respect to
36:38
i9 documentation are if you have
36:41
employees who are with you on a work
36:44
authorization of some sort that times
36:46
out like let's say an h-1b visa
36:49
are you going back in and have it hasn't
36:52
been updated and re-verified
36:54
because you know it's not just one and
36:56
done
36:57
where you fill up the i9 and you don't
36:59
have to go back and look at it if
37:00
someone's only on a work authorization
37:02
and the work authorization is only for a
37:04
couple of years
37:05
did you go back and are you redoing the
37:08
i9 verification
37:10
when that work authorization is up and
37:13

so going back and updating and
37:15
re-completing the i9 form has that been
37:18
done for that population so it does take
37:21
some diligence
37:23
um certainly um and it's a form it's not
37:26
exciting but it is very much an area
37:29
um that you don't want to overlook so i
37:33
would strongly recommend that y'all take
37:35
a look at your ini documentation too
37:38
when you're doing a kind of a refresh of
37:40
your application and hiring process
37:45
so
37:46
a different topic and trust me i know
37:48
i'm going through a lot of hot topics
37:50
here
37:52
don't get overwhelmed we'll talk at the
37:53
end about prioritizing right these are
37:55
just to give you ideas of areas not that
37:58
you absolutely have to do all of them
38:00
some of these might be
38:02
not a partner to you or are not such a a
38:05
burning issue for you because maybe you
38:07
did that last year or you know you don't
38:09
have issues in that area so don't feel
38:11
you have to do all of these to be an a
38:13
student um but another topic or another
38:15

kind of general area
38:17
that
38:19
can benefit
38:20
from an audit
38:22
involve leaves of absence and time away
38:24
from work
38:25
again areas where you know maybe not a
38:29
lot has changed
38:31
structurally or process wise since we
38:34
first implemented the process
38:36
but with time
38:38
you know we get a little bit lesser with
38:40
the process maybe we're not being as
38:42
diligent as we should so it definitely
38:47
can benefit you um to go back and audit
38:50
key parts of these to make sure that the
38:52
process is still working
38:54
is there anything we can do to fine-tune
38:56
it are we making any legal gaps that
38:59
need to be corrected so the first one on
39:01
here is
39:03
paid sick leave um you know a couple
39:05
years ago you know the world before
39:08
covet one of the things that we
39:10
employment lawyers were sort of pulling
39:12
our hair over was just this
39:14

proliferation of paid sick leave
39:16
ordinances either on the state or local
39:19
level um it started with well it it just
39:23
has blown up all throughout the country
39:26
requiring employers to provide a certain
39:28
amount of paid sick leave to their
39:29
employees and a lot of these these laws
39:32
have very technical cruel rules
39:35
carryover rules um usage rules
39:39
um you know that sort of thing well um
39:42
you know going back in and checking to
39:45
see
39:46
how is that going are we is our are we
39:48
accruing properly
39:50
are is our process working in terms of
39:53
employees taking their pso or is a lot
39:56
of it going unused
39:58
um are we seeing any abuse in this area
40:01
those are areas with paid sick leave
40:03
that are are pretty good to follow if
40:05
you have to have notices up are you
40:07
posting those notices are you including
40:09
the right things about that information
40:10
in your packets so
40:12
page sick leave is a good area to look
40:14
at it has been a few years since we've
40:15

had
40:16
you know significant developments in the
40:19
area which means we've probably gotten a
40:21
little complacent on
40:22
it um another thing with leaves of
40:25
absence and this is likely with just
40:27
your medical leaves of absence fmla or
40:31
non-fmla medical
40:33
look at your employee communications um
40:35
how long has it been if you have
40:37
template letters which you should um you
40:40
know
40:40
have in place by now it's usually very
40:43
helpful to have template letters
40:45
acknowledging a request
40:47
for a leave of absence granting a leave
40:49
of absence scratching an extension
40:51
denying you know those sorts of things
40:54
but when is the last time you've really
40:55
looked at those letters
40:57
um take a look at them look at what is
40:59
your process
41:00
for sending those out who's managing
41:03
that process and even if you outsource
41:06
this to a third party administrator
41:09
take a look at these communications are
41:12

they still up to date is the tone right
41:14
for how we want to convey
41:16
these issues to our employees um is are
41:20
we
41:21
covering all of the topics that the law
41:24
says we need to cover in these
41:26
particular areas do we have the right
41:28
attachments to these letters i mean fmla
41:30
letters have like
41:32
i say a gazillion that's a little glib
41:34
there are several notices and
41:36
attachments that you give out you know
41:37
you get out the notice of rights you
41:39
give out a blank medical certification
41:41
form you give out some some employers
41:44
give out faqs um on the leave of absence
41:47
process or attach their policy to it are
41:50
there today are those really those are
41:52
those the correct forms um if you use
41:55
for example
41:57
the um department of labor's medical
42:00
certification form template are using
42:02
the most up-to-date ones they change
42:04
those every so often and often without a
42:06
lot of fanfare so make sure you're
42:09
sending out the correct information and
42:12

use this as an opportunity as well to
42:14
make sure the contacts that you have
42:16
listed for those policies or those
42:18
processes is correct you know the last
42:21
thing you want to do is have on a letter
42:23
saying hey call suzy q if you need more
42:25
information and physique left the
42:28
company two years ago so it's a big dead
42:30
end uh it just looks bad to the
42:33
employees a but if you are in litigation
42:36
over denial of a leave of absence or
42:39
some other failure to reinstate or
42:42
retaliation under the fmla your
42:44
documentation and communications are
42:46
going to be heavily heavily scrutinized
42:49
so
42:50
um you know it's not the end of the
42:51
world certainly but hey why does it have
42:54
to be wrong if we can
42:56
add this to our to-do list and look at
42:58
these communications and ensure that
43:00
we're sending out the most up-to-date
43:02
information to our employees
43:05
um the other two topics on this slide
43:08
deal more with um
43:11
preventing abuse
43:12

uh of leaves of absence um you know
43:15
under the fmla employees can take
43:17
intermittent leave you know meaning
43:18
you're not taking leave in one big chunk
43:20
of time you're taking it in a couple of
43:22
hours at a time or maybe a week at a
43:24
time or a day at a time
43:26
they can be very difficult to monitor
43:29
and to track
43:30
well you should absolutely be auditing
43:33
your people on leave
43:35
and looking at
43:37
how long have they been out on these
43:39
when was the last date
43:42
that we sent something now granted this
43:44
might be more
43:45
of a critical issue if you are doing
43:48
these advances in house
43:50
but still it would still be important to
43:53
look at with your vendor if you use a
43:55
tpa so you can ensure that the trains
43:58
are running on time with respect to your
44:00
leave of absence right i mean the whole
44:01
reason why you have an administrator or
44:03
someone managing it is to help ensure
44:05
that people are getting out on leave
44:07

when they need to and that they're
44:08
coming back when they're supposed to
44:10
um but with intermittent leads are you
44:12
keeping track of the intermittent time
44:14
up are you decrementing that time from
44:16
their leaf bank and are you doing it
44:17
properly and do we have documentation to
44:19
support it a lot of times it comes in
44:22
and no one's looking at it
44:24
or maybe there's been a change in your
44:25
organization and the person who used to
44:27
look at it isn't there anymore and it's
44:29
just sort of followed by the wayside
44:32
are your employee approvals up to date
44:34
intermittently can be recertified um it
44:37
can be recertified you know every six
44:40
months so go in the file and see hey
44:43
when's the last time we got an update
44:45
from this employee from there to certify
44:48
their need for this lease
44:49
maybe they don't need it anymore and it
44:52
could be a situation where they're
44:53
taking advantage of it because everyone
44:55
just knows they have this on file but
44:57
they don't have it on file anymore
45:00
so look at that
45:01

it also helps to look at those employees
45:03
who are on what i call the lingering
45:06
leaves who are just kind of on leave
45:08
and are out there
45:10
no one knows where they are
45:12
or
45:12
how long they've been out or when
45:14
they're coming back
45:16
really good leave of absence management
45:19
has you
45:20
knowing where your employees are having
45:22
a return to work date and if that date
45:25
comes and passes
45:27
you're following up with that employee
45:28
to see when is the updated return to
45:31
work date and can we accommodate that um
45:34
there are a lot of organizations i see
45:37
in this this happens so it's not a fault
45:39
saying where there's someone who's just
45:41
been out there um well reach back out
45:44
you know get that up to date so we know
45:47
are we bringing this employee back or do
45:48
we maybe need to think about other you
45:51
know other options for this person's
45:52
employment so
45:54
look at your leaves of actions
45:56

especially if you have a lot of usage
45:59
look at your leaves of absence and
46:02
ensure that you're using all the checks
46:04
and balances that you have at your
46:05
disposal to clamp down
46:08
on abuse
46:12
the next category
46:14
um and i think this is my second to last
46:17
one um involves an independent
46:19
contractor audit so
46:21
there's a lot of i don't think there's
46:24
anything really pending now to change
46:27
the independent contractor analysis but
46:30
this goes to how you classify employees
46:31
or individuals who work for you are they
46:33
employees or are they independent
46:35
contractors
46:36
employees we have on a w-2 we withhold
46:39
taxes we contribute to social security
46:42
you know the irs knows about them ahead
46:44
of time um
46:46
and they're processed that way
46:48
independent contractors are not they're
46:50
paid through a 1099 a tax form taxes are
46:54
not withheld from any of their pay
46:56
they're not contributing to social
46:58

security at least the employer is not
46:59
making the employer deductions for
47:02
various unemployment taxes and social
47:05
security etc so they're treated
47:07
differently from that perspective
47:09
there was about
47:11
i'm going to say maybe 15 years ago a
47:13
huge set of lawsuits about
47:15
classification of employees companies
47:18
were not classifying employees correctly
47:20
they were classifying them as
47:21
independent contractors and thus
47:23
depriving these individuals of
47:26
stock options and benefits the irs was
47:28
getting mad because you weren't doing
47:29
all the employer withholdings that you
47:31
were supposed to and it led to a lot of
47:34
monetary exposure millions of dollars of
47:36
exposure so since then we've really
47:39
tried to keep a tighter lock on how are
47:42
we classifying individuals as employees
47:45
or independent contractors
47:48
it is a somewhat of a complicated test
47:50
and i know employers are various levels
47:53
of sophistication on this some companies
47:56
have no idea who's out there in their
47:58

organization if you're not an employee

48:00

we have no idea who you are

48:02

because maybe we let the local manager

48:04

just bring people on to do things now

48:06

and then or you know or or we could be

48:08

very sophisticated and we have a you

48:11

know a whole you know either a third

48:12

party who brings these people on or we

48:14

have a very robust review process you

48:16

know or at least we know where they are

48:18

but we kind of think we know where they

48:19

are and we kind of think we're okay with

48:21

how they are

48:22

this can be a very big undertaking but

48:25

think about this on how important it is

48:27

to ensure that you are classifying your

48:29

workers properly you do not want the IRS

48:33

jumping down your throat and auditing

48:35

you and determining that you've missed

48:36

classified workers and owe all of these

48:39

taxes and all of these withholdings that

48:42

you have not made for yourself or on

48:44

behalf of the employee

48:46

that can be a very unforgiving situation

48:48

to be in and you certainly don't want to

48:50

face a lawsuit by employees indicating

48:52

that they were misclassified and didn't
48:54
get benefits so the irs has criteria um
48:58
and you know this is another area where
49:00
some states laws are different
49:02
they have different tests that they want
49:04
you to follow in california for example
49:06
very different called the abc test that
49:08
they want you to follow when determining
49:11
whether someone's an employee or
49:12
independent contractor
49:15
but for the federal perspective um you
49:18
the irs has guidelines out there um that
49:21
they follow they generally look to
49:24
things like um how much control does the
49:27
company have over the individual in
49:29
terms of
49:30
how they are doing their job on a
49:31
day-to-day basis
49:33
um what are the business aspects of the
49:35
relationship is the in the individual
49:38
work for multiple
49:40
other organizations more of a freelance
49:42
type of thing or are they fully
49:44
dedicated to us
49:45
um and then you know other types of
49:48
relationship things like is there a
49:50

contract
49:51
um how long is the contract for
49:54
um is it something where they are
49:55
accountable to us for hours works versus
49:58
a product at the end of the day there's
50:00
a lot of things to go through um
50:03
first step for auditing is figure out
50:05
who you're looking at right where are
50:06
all these independent contractors and
50:08
then looking asking questions about the
50:11
relationship to look at the irs criteria
50:14
now
50:15
the slide mentions there's a forum ss8
50:18
for the irs determination of independent
50:20
contractor status okay
50:22
that is a firm the irs put out that said
50:24
hey if you don't know fill up this form
50:26
and we'll tell you what we think
50:28
you probably don't want to do that
50:31
however the form and the questions on
50:33
the forum
50:34
can be helpful to use during your
50:37
analysis and your audit to help you
50:39
decide those close cases is this person
50:42
an independent contractor or are they an
50:44
employee so um there are a lot of
50:47

resources out there on how to do this
50:49
but this type of audit um will pay
50:52
dividends in the long run in terms of
50:54
decreasing your exposure
50:56
a lot of business leaders do not like
50:58
this type of audit because they lose the
51:01
flexibility and what they perceive to be
51:03
the cost savings of having an
51:06
independent contractor as opposed to an
51:08
employee you know with employees you
51:10
know darn it you got to pay them
51:11
benefits and give them vacation and i
51:14
have head count that i have to buy doing
51:15
i've got an interview you know with an
51:17
independent contractor i just call it
51:18
call my best friend from high school and
51:20
have him come in and do some work and
51:22
boom look how easy it is
51:24
so
51:24
if any of the areas
51:27
that i've identified for audits this is
51:29
probably one of the ones that i see the
51:31
most internal push back on
51:34
because it
51:36
is perceived very much not as reducing
51:39
risk and improving operations but sort
51:41

of binding the hands of our business
51:44
leaders and taking away their
51:46
flexibility
51:48
however it is as i mentioned a very big
51:51
source of efficient exposure and
51:53
liability at very big dollars if we
51:55
don't do this right um not just on the
51:57
federal level but also on some state
52:00
levels as well
52:04
so the last area i want to talk about
52:05
before i wrap it up and look at some
52:08
questions um is just to urge you guys
52:11
again look at your handbooks and
52:13
policies
52:14
um again it's not sexy it's not exciting
52:17
it's not cutting edge but my gosh when
52:20
was the last time you've actually taken
52:23
a look at your handbooks or your
52:25
policies your employment policies that
52:27
you have up there if they are written in
52:29
typewriter fonts they are too old okay
52:32
they need to be reviewed um
52:36
things change things can change year to
52:38
year
52:39
um
52:40
you know some states are very active
52:43

with issuing new laws

52:45

um and and so it has to be an exercise

52:49

that is done

52:50

every year because the laws change and

52:52

what you're required to tell your

52:54

employees changes and you want to be up

52:56

to date with that um how handbooks and

52:58

policies work out in litigation they can

53:01

either be your friend or your foe um

53:03

they can provide a roadblock that

53:06

demonstrates to a court injury not a

53:08

roadblock sorry a road map that demon

53:11

demonstrates to a court or a jury these

53:14

are the rules of the road we have the

53:16

rules of the road out there jimmy bob

53:18

did not follow the rules of the road and

53:20

therefore we terminated him

53:22

it can help you in that because juries

53:24

like policies and they want to see

53:27

companies follow their policies

53:29

it can work to your detriment though if

53:31

you have an outdated policy let's say

53:34

you haven't updated your investigation

53:36

policy

53:37

in five years well you know what's

53:39

really happened in five years with

53:41

investigations nothing much
53:43
except maybe your people who do
53:45
investigations and trust me if you
53:47
terminate someone after doing an
53:50
investigation
53:51
and they sue you and then you go to
53:53
court saying well we did a great
53:55
investigation
53:57
the first thing that person's lawyer is
53:58
going to do is we'll show you your
53:59
investigation policy and did you follow
54:02
it well no if you didn't follow it you
54:05
are going to look like there is
54:08
something else going on in the
54:09
termination of your employees so it
54:10
totally invalidates your decision your
54:13
employment decision with respect to that
54:15
employee
54:16
your new process may be heads and
54:18
shoulders better than what was in the
54:21
policy
54:22
i would say it doesn't matter it's not
54:24
going to matter as much as you would
54:25
like it to because the other side is
54:27
going to argue they can't even follow
54:29
their own policies and they expect my
54:32

client to
54:33
you know ha what you know what are ruse
54:35
so
54:36
having this stuff
54:38
up to date is very strong for you so
54:42
take a look like i said it's not
54:44
exciting but it is a very good task for
54:47
maybe some
54:48
entry-level folks or even with the help
54:51
of someone more senior and with the help
54:52
of legal counsel because you want to
54:54
make sure you're saying things the right
54:55
way and have all the legal eyes dotted
54:58
and teeth crossed
54:59
it's always good to have a fresh set of
55:01
eyes on stuff too i mean how many times
55:03
do you have multiple people read
55:05
something and everyone picks up
55:06
something different right so
55:08
read it okay i think i have made my case
55:11
with you to review your handbooks and
55:12
policies um but some policies definitely
55:16
keep in mind um your eeo policy do you
55:20
have the right protected classes in
55:22
there those can change um especially if
55:24
you are in certain locations um you know
55:27

some people just have the top five and
55:29
then say any other stats protected you
55:31
know by law others like to list
55:33
everything out some states require you
55:35
to list them all out so take a look at
55:37
your eeo policy do you have a robust
55:41
accommodation policy in there or do you
55:43
just have this one-liner saying oh we'll
55:45
accommodate employees with disabilities
55:48
you really should have a more robust
55:50
policy in there about encouraging people
55:52
to come forward with requests for
55:54
accommodation and how are you going to
55:56
handle those requests
55:57
investigations i alluded to
56:00
timekeeping policies you know make sure
56:03
that it's just correct um you know lease
56:06
of absence um if you uh fmla has not
56:10
changed significantly in the last couple
56:12
years but if your policy is older than
56:14
that um yeah you should really update it
56:17
there have been some important changes
56:18
in the last three or so years that you
56:21
want to make sure are covered by your
56:23
policy do they identify the correct
56:25
person to go through or the correct
56:27

process to go to to
56:29
report issues or to request things um if
56:33
your processes have changed you need to
56:36
account that help for that
56:38
drug use and marijuana
56:40
another big one a lot of states are
56:42
allowing medicinal marijuana a lot of
56:44
states are allowing recreational
56:45
marijuana how are you accounting for
56:48
that in your drug policy
56:50
um you might say it's no big deal no
56:53
different that's fine we should
56:54
acknowledge that
56:56
um others might have to go through or
56:59
have different language given the state
57:01
that you're in
57:02
so um that is another area where we have
57:04
seen a lot of change recently and our
57:06
policies might not have kept up
57:08
and then as i mentioned do um state law
57:11
updates
57:12
um so key takeaways okay don't feel like
57:15
you have to boil the ocean there is a
57:17
lot of stuff here hopefully i've given
57:20
you some food for thought of things that
57:22
you can think of and areas you want to
57:24

start tackling

57:26

but keep in mind you can absolutely do

57:28

this you know you should do this you

57:31

know it's the right thing to do you know

57:33

that there are areas of risk in your

57:35

organization identify the ones that are

57:37

the biggest risk for your organization

57:40

um you know you can't do it all so

57:42

prioritize build out a roadmap um huge

57:45

component though is get buy-in from your

57:48

superiors from the business especially

57:51

if it's an audit that is going to have

57:53

financial consequences like we're going

57:55

to need to invest in new software we're

57:57

going to need to hire new people we're

57:59

going to need to

58:01

increase people's pay to alleviate this

58:05

pay gap that we have and can't explain

58:07

very important to get buy-in ahead of

58:09

time

58:10

before you embark on the audit because

58:12

you don't want to spend all your

58:13

beautiful time doing an audit and then

58:15

having the business say yeah thank you

58:17

but no thanks and shove it in a drawer

58:19

so get by and partner with them have a

58:21

plan and hold yourself to it and
58:23
definitely enlist help
58:25
a lot of these things are a
58:27
multi-cross-functional team is going to
58:29
be needed uh to to work on this so
58:32
involve all your stakeholders together
58:34
and set out your plan and accomplish it
58:37
so uh thank you very much
58:41
um i don't know if we have a little bit
58:42
of time um anna to answer some questions
58:48
yes there are a couple questions in the
58:52
chat
58:54
the first one reads we have our salary
58:57
exempt employees completed time sheet
58:59
for task performed if they only work a
59:02
half day do they use a half day vacation
59:05
or do they just have a half day on their
59:06
time sheet we have always paid their
59:08
weekly salary and if they are off a full
59:11
day they use vacation and we have not
59:13
made them these partial days of vacation
59:15
but not sure if that is correct
59:19
so um assuming they're not on like a
59:22
leave of absence okay so generally with
59:24
salary employees you cannot do a partial
59:26
day deduction because that sort of flies
59:28

in the face of a partial day deduction
59:31
from pay because that lies in the face
59:33
of being a salaried employee however if
59:36
they have
59:38
vacation available or pto available you
59:41
can they still get the full amount of
59:44
pay you're just you're just taking out
59:45
of that bucket you can absolutely do
59:48
that on a partial day basis
59:53
so and that is just to answer your
59:55
question if they only work a half a day
59:58
um
59:59
yeah they you could do um you would dock
60:02
them or attribute half a day of vacation
60:05
to that time work the main thing is you
60:07
want to keep their salary the same if
60:09
they're out of vacation you can't talk
60:11
their pay they get that you just have to
60:13
keep paying them their salary but if
60:15
they have that pto or vacation yes you
60:17
can you can decrement out of that bucket
60:23
our second question is what is mandated
60:25
for an hr audit yearly quarterly and
60:28
semi-annually
60:31
yeah that's a good question i don't
60:33
think anything is mandated this is all
60:36

best practice

60:38

now with some audits

60:41

um i've seen them like every other year

60:44

some things like policies

60:46

um you know have been done yearly

60:49

pay equity audits um some organizations

60:53

do them every six months around their

60:55

pace planning cycle

60:56

some do them every year

60:58

i would certainly

61:00

say at least every year on pay equity

61:03

no longer than every two years

61:05

because things change so much

61:09

so a lot of it depends on you know how

61:11

big are you doing this and and are you

61:13

doing the entire organization that might

61:15

not be practical to do it

61:17

um so there's really no set time is the

61:19

short answer to that question

61:21

best practice grade a student would be

61:23

to audit you know certain things at

61:26

least every year

61:31

our third question is if an employee

61:35

changes their address do we need to

61:37

change that on the i9 form

61:41

you know that is a good question

61:43

i don't think you have to do that it's
61:46
really just correcting
61:48
technical errors at the time
61:51
you're not updating them as everybody
61:54
changes um it's just if something was
61:57
missing
61:58
um
61:59
from the original form that is not in
62:02
there now if it's someone that you're
62:04
re-verifying because
62:06
they've gotten an updated work
62:08
authorization form then i would say yes
62:12
you should take that opportunity to
62:14
update their address because
62:17
you know that all of that information
62:19
has changed at that time and so you want
62:21
to make sure that the information with
62:23
the new work authorization is accurate
62:30
and then our last question today is
62:31
where can i find these items on the web
62:37
um
62:38
well so i guess there's a lot of
62:40
different and we will make the slides
62:42
available
62:44
um the um i did reference the irs
62:47
guidelines um you can literally google
62:50

as your friend you can just type in irs

62:52

independent contractor test and it'll

62:55

take you i did it before i got on today

62:58

to make sure that it's still there

62:59

um you can you can definitely you can

63:02

google that um the dol has a lot of the

63:05

department of labor has a lot of good

63:06

resources with respect to

63:09

um

63:10

um the fmla uh and kind of have some

63:13

really good employer guides and fact

63:15

sheets that can help you

63:17

stay on top and determine kind of what

63:19

you need to have and to say

63:21

also

63:23

you know you can use organizations like

63:25

you know present company organization

63:27

included

63:28

that might have some checklists or other

63:30

information to help you um

63:32

you know help you on your way

63:36

we did actually get one last question

63:37

after that

63:39

sure um

63:40

it reads in relation to leave of absence

63:43

if an employee goes on leave and does

63:45

not return to the workplace

63:47

how do you move forward with termination

63:51

okay

63:52

um

63:53

so

63:55

with that um and i'll keep it very high

63:58

level because some of this can be very

64:00

fact specific in terms of why are they

64:03

out on a leave

64:05

is it for their own medical condition

64:07

i'll assume it is and not their own

64:10

family to take care of a sick parent

64:12

right

64:13

um

64:14

i would say you should communicate with

64:17

them in writing um

64:19

to say

64:20

um

64:21

ask them to provide you with a return to

64:24

work day or if they need an extension on

64:26

their leave to provide you with

64:27

information to allow you to assess that

64:30

if they don't respond to you i like to

64:32

give people a couple of chances because

64:36

it just looks better as an employer to

64:39

ensure that you've really tried to reach

64:41

out to this person you know email send
64:44
the letter fedex with the signature
64:46
um you know or some other traceable
64:48
means to ensure that they've gotten it
64:50
you send them a letter if you haven't
64:52
heard back you reach out again
64:54
and you might say two or three times is
64:57
enough but ensure that your subsequent
64:59
communication says if we don't hear from
65:01
you by this date we are going to treat
65:04
it as if you have resigned your
65:06
employment or you can say we're going to
65:08
move forward to terminate your
65:09
employment um if you think this is an
65:11
error please contact us
65:14
but you can do that if you don't hear
65:16
back from them okay
65:19
just make sure that you can demonstrate
65:21
that you have
65:22
reached out attempted to communicate
65:24
with them
65:25
and you kind of have all all of that
65:27
documentation available and then you
65:29
know the person's mia very well you can
65:32
definitely move to terminate them but
65:34
just want to make sure that you've done
65:35

that reach out and and have done that

65:41

alrighty that's all of our questions for

65:42

today

65:45

fantastic well thank you everyone i

65:47

appreciate your attention i hope that

65:49

you found this very useful you're giving

65:53

me some good ideas to take charge in the

65:55

next year

65:56

so thank you very much