



VETERINARY BUSINESS ADVISORS, INC.  
*Counsel for the Veterinary Profession*

## **HUMAN RESOURCE COMPLIANCE AUDIT©**

### **Why is it so critical to complete?**

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### **What is a Human Resource Compliance Audit?**

Most businesses routinely perform annual audits of their financial policies, practices and recordkeeping to make sure there are no irregularities in their financial systems. Whether conducted by employees within the organization or by outside consultants, these comprehensive financial reviews help veterinary practices assess their financial statements with a reasonable degree of assurance that the businesses are performing within budget and consistent with financial projections.

Comparable to a financial audit, a Human Resource (“HR”) Compliance Audit is a diagnostic tool for practices to assess the health and compliance of their personnel human resources’ policies, procedures and protocols. Whether a practice employs 5 or 500 employees, this comprehensive review can help owners and managers avoid the significant legal and/or financial penalties for not complying with the vast array of complicated employment laws while ensuring their procedures are adequate and effective. In essence, an HR Compliance Audit involves identifying issues and finding solutions to problems before they become unmanageable or lead to litigation. It is an opportunity to assess what a practice is doing right, as well as how things might be done differently, more efficiently or at a reduced cost.

### **Why is an HR Compliance Audit Necessary?**

Today, practices face workforce challenges, which are unimagined, unaddressed, and immeasurably complex. Even the most forward-thinking and well-intentioned practices are bound to misstep and inadvertently violate certain federal, state and/or local statutes. Despite costly and time-consuming efforts by practices to protect themselves from employee claims of unfair treatment, employees will always seek remedies for actions they perceive to be unjust. Failure to properly comply with the plethora of laws pertaining to each of these issues can result in significant financial, civil, and in some cases, criminal penalties (For example, any employer that fails to correct the hours of a nonexempt employee who it knows is working over 40 hours per week risks losing a claim filed under the FLSA for unpaid overtime. De minimis amounts of time to read or text mail after hours may not be the grist of a legitimate overtime claim. But conducting regular and routine work after hours by a non-exempt employee using a hand-held device might give rise to employer exposure to overtime claims).

Further exacerbating the potential for non-compliance is that each state has its own employment laws that may or may not be consistent with the federal laws from which they were crafted.

There are scores of state laws that provide employee rights that are slightly different from those afforded through federal statutes. For example, federal law does not prohibit sexual orientation discrimination in the workplace, while many states do. Finally, legislation granting additional employee rights seems to be popping up on a daily basis. As a result, the human resources procedures established today may not be legally compliant tomorrow.

An effective human resource compliance audit will identify, assess and analyze those areas that may give a practice 'legal' headaches, if challenged in a court of law or administrative agency. Often performed by a knowledgeable human resource specialist or an attorney, a compliance audit of the human resources functions should be mandatory for every practice that wishes to successfully defend its employment practices and policies. Courts are more likely to respond favorably towards practices that have taken "good faith efforts" to establish legally compliant HR procedures and protocols. An HR Compliance Audit can also help owners and managers accomplish the following best practices:

- Identify employment practices and policies that are missing, outdated, or in need of revision.
- Develop a framework of analysis within which employee performance issues can be easily identified and prioritized.
- Assess and measure expected vs. actual performance to create the necessary action plans to eliminate any performance gaps.

### **Determine Your Human Resource Compliance Index**

Conducting a Human Resource Compliance Audit requires a commitment of time, money and resources. Therefore, before a practice commits to undergoing an audit, it should first determine whether an HR Compliance Audit is actually needed. While there may be many reasons for a practice to conduct an HR Compliance Audit (which is a mini-audit), some of the more compelling ones are:

- If a practice has terminated an employee for cause within the past year. It is not uncommon for terminated employees to seek retribution from former employers for what they perceived to be unfair dismissals.
- If a practice has ever been the recipient of an unfair labor charge from the Department of Labor or any other federal or state regulatory agency. Such as some kind of wage law violation.
- If a practice has realized significant growth over a period of time. Oftentimes, this growth is accompanied by hiring additional staff members, which may require adherence to different laws than would apply to smaller practices.
- If a practice has experienced turnover in key managerial or administrative personnel. Oftentimes, new employees do not receive sufficient training on proper HR procedures and requirements.
- If a practice has merged with one or more other practices, it is not unusual for HR procedures to take a "back seat" to other protocols that must be created when assimilating practices.

- If a practice is truly committed to satisfying its mission statement and/or core values, it may want to review its employee practices to ensure it has established and maintained veterinary industry “best practices”.
- If your practice’s Human Resource Compliance Index is below an acceptable level.

What exactly is an Human Resource Compliance Index and how is it calculated? The index represents a numerical summary of responses to a predetermined set of probing questions. (Please see the HR Compliance Index questionnaire at the end of this article to calculate the Index for your practice). The questionnaire consists of twenty-five (25) YES/NO questions designed to help a practice identify areas of non-compliance with applicable federal and state employment laws. By answering this subset of questions extracted from an actual HR Compliance Audit, a practice can quickly and easily determine with guidance from a Human Resources professional whether an HR Compliance Audit is needed.

Any practice answering 50% of the questions with ‘NO’ as the response (at least 13 questions were answered as ‘NO’), should consider having an HR Compliance Audit performed at its facility. If you would like to discuss the results of your Index, Veterinary Business Advisors, Inc. assists veterinarians nationwide with performing HR Compliance Audits and can be reached at 908-782-4426 or through its website at [www.veterinarybusinessadvisors.com](http://www.veterinarybusinessadvisors.com).

### **The Bottom Line**

It is becoming increasingly more difficult for practice owners and managers to stay abreast of all the changes that potentially impact how applicants and employees must be treated. The legal arena in which practices must now operate continues to evolve and become more complicated. Small business owners can no longer afford being one of those who “don’t know what they don’t know”. In light of the frequency with which employment laws are being enacted, veterinary practice owners have begun to recognize the importance of ensuring their human resource policies, procedures and protocols are managerially efficient and legally defensible.

**Human Resources Compliance Index Questionnaire**

**YES**

**NO**

**Documentation and Filing**

1. Do you have a completed I-9 form for each employee hired after November 6, 1986?
  - Within 3 business days of the date employment begins, the employer needs to complete section 2 of the I-9 form and examine evidence of identity/employment authorization. \_\_\_\_\_
2. For purposes of completing the I-9 form, do you permit employees to provide any documentation or combination of documents acceptable by law?
  - Employers cannot prefer one form of identity over another for purposes of completing the I-9 form \_\_\_\_\_
3. Have you confirmed that your records retention policy for each various record complies with all applicable laws?
  - When considering what records must be kept under each federal law and state law (if applicable), the retention period for those records and the applicability of each federal and/or state law, you also need to consider that the requirements are dependent on the number of employees or the purposes for which the record keeping is designed. \_\_\_\_\_
4. Do you have a policy for retaining benefit documents in accordance with ERISA?
  - You need to consider both retaining any information under Title 1 of ERISA to verify, explain or clarify the information contained in ERISA reports and any information required to maintain records necessary to determine the benefits due or that may become due to each of its employees. \_\_\_\_\_
5. Do you have a records destruction policy that complies with all applicable laws such as FTC and FACTA?
  - Identity theft has been the country's number one consumer fraud issue. Your records destruction policy needs to protect applicant and employee privacy in line with Federal Trade Commission and Fair and Accurate Credit Transactions Act rules. \_\_\_\_\_
  - Think twice about having social security numbers on applications. Does your employment application request the applicant to provide social security number? While not illegal, it is not necessary at the application stage and now makes the application have sensitive information that requires care regarding identity theft. \_\_\_\_\_

**Recruitment & Selection**

6. Does your employment application comply with the Age Discrimination in Employment Act?
  - On your application, if you require the person's age and/or the year they graduated from school, it violates the ADEA. Disparate treatment occurs when an employer intentionally discriminates against a qualified applicant. \_\_\_\_\_
7. During the interview process, are there questions that are impermissible to ask the candidate?
  - When questioning the candidate, if you or your staff ask about marital status, children, disabilities, religion, etc, and decide not to hire the person based on the responses, the practice will be rejecting a candidate for an illegal reason. \_\_\_\_\_
8. When performing background checks, do you get written consent to proceed on a separate form?
  - All background verifications require a separate and specific consent form. The Fair Credit Reporting Act sets a national standard that employers must follow in employment screening. \_\_\_\_\_

**Human Resources Compliance Index Questionnaire**

**YES**

**NO**

9. Are your job descriptions free from any language that may be considered discriminatory?
- The ADA requires that job descriptions focus on essential functions in terms of what they actually require, not simply the ways they are currently or have customarily been performed.
10. Do you comply with the applicable laws in retaining resumes and applications of individuals not hired?
- There are a variety of federal regulations – most notably those designed to combat discrimination in hiring and other unfair labor practices – for which record retention is a condition of compliance (the ADA, Rehabilitation Act, Title VII of the Civil Rights Act, and ADEA) –keeping all resumes and job applications on file for a minimum of a year.

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**New Hire Orientation**

11. Do you have a prominent disclaimer in bold lettering in the beginning of your employee manual?
- The employee manual is not intended as an employment contract and your disclaimers should be prominent displayed in order to be legally defensible to protect the practice when the need arises.
12. Does your Sexual Harassment Policy include a complaint reporting procedure? (If you do not have a written sexual harassment policy in your employee manual, check “no”.)
- Your sexual harassment policy needs to contain a statement of policy, definition of harassment, specific procedures for prevention, complaint reporting procedures, timely reporting process and non-retaliation policy.
13. Is your Social Media and Non-disparagement Policy compliant with the Federal Trade Commission Regulations?
- Do you designate an employee as a practice spokesperson and that individual should be authentic in experiencing practice’s products and services in order to promote them.

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**Wages & Hours**

14. Do you maintain accurate records of hours worked by nonexempt employees?
- The Department of Labor (DOL) and the Internal Revenue Service have their own sets of requirements governing timekeeping practices and records, as well as some states may have timekeeping requirements that go beyond the scope of the federal requirements
15. Are you sure all employees are paid in accordance with the federal and your respective Fair Labor Standards Act?
- The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping and youth employment standards affecting full-time and part-time workers

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**Human Resources Compliance Index Questionnaire**

**YES**

**NO**

**Safety & Security**

16. Do you comply with OSHA requirements?

- Many standards promulgated by the Occupational Safety and Health Administration (OSHA) explicitly require the employer to train employees in the safety and health aspects of their jobs and OSHA has developed voluntary training guidelines to assist employers.

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17. Are up-to-date Material Safety Data Sheets (MSDS) available for review?

- Employers are responsible for informing and training workers about the hazards in their workplaces, retaining warning labels, and making available MSDS's which provide information on the hazards of dangerous materials; safe handling, use and storage; and on first aid steps to take in the event of overexposure.

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18. Does the practice have a "disaster recovery plan" for electronic records?

- Employers need to ensure that any electronic data back-up system complies with the same/similar legal requirements for paper based records (personnel, benefits, financial, etc).

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**Performance Management**

19. Are completed Performance Management evaluations reviewed to avoid discrimination?

- You need to ensure that the supervisors/managers are not writing or evaluating or making performance decisions based on legally protected categories.

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20. Are you aware of the laws pertaining to COBRA continued medical coverage?

- COBRA requirements start with the orientation of a new hire, not when he/she is leaving (there are notices that need to be sent within 90 days of hire). Different qualifying events affect the length of CORBA services provided and states may even have 'mini' COBRA laws that require compliance.

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21. Are terminations transacted consistently, fairly and legally?

- Do you treat similar performance issues the same, such as chronic lateness and in accordance with your employee manual?

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22. Are you aware of the laws pertaining to unemployment insurance?

- You should be informed on eligibility/qualification issues because you don't want former employees suing you for violating their rights.

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**Other**

23. Are current, applicable federal, state and local employment law posters properly and prominently posted?

- Many federal employment laws require employers to post notices informing employees of their rights in areas of the workplace that are conspicuous and accessible to all employees. In addition to federal labor law posting requirements, most states have also enacted provisions requiring employers to post certain notices within their workplaces. Posting requirements may be subject to the number of staff employed.

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**Human Resources Compliance Index Questionnaire**

**YES**

**NO**

24. Do your employees receive all required Summary Plan Descriptions for all benefits programs?

- Ensuring that employees have the most accurate and complete benefits information available to make informed choices is critical. ERISA, Department of Labor (DOL) and the new Health Care Reform require that employers fulfill important regulatory and compliance requirements by providing accurate and complete information on benefit plans.

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25. Are you sure your practice is in compliance with all applicable state and federal employment laws?

- If not, there is the potential for contention, including grievances or litigation or costly awards that make all the hard work, honest effort into building a successful practice null and void. It takes more resources (time, people and money) to legally confront an allegation or lawsuit that could have been minimized or even eliminated had compliance with all applicable employment laws and Human Resources 'best practices' been implemented accordingly.

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