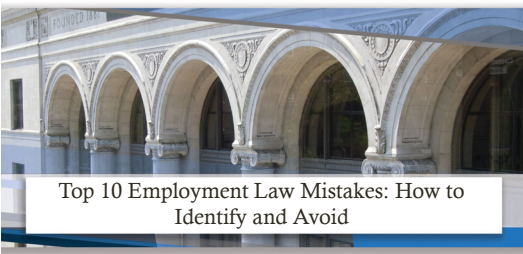


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Top 10 Employment Law Mistakes: How to Identify and Avoid

Iowa Engineering Conference
Tuesday, May 14, 2019

Today's Presenter:



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Why Does Legal Matter?

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Top 10 Mistakes to Avoid:


1. Independent Contractor Status
2. Protecting Trade Secrets and Proprietary Information
3. Overtime Laws
4. Anti-Discrimination and Anti-Retaliation Laws
5. Disability Protections
6. FMLA
7. Necessary Handbook Policies
8. Background Checks
9. Drug and Alcohol Testing
10. Deductions from Pay

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Independent Contractor Status

- **Mistake:** Misclassifying Employees
- Who is an Employee and Who is an Independent Contractor?
- Why does it matter?



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Protecting Trade Secrets and Proprietary Information

- **Mistake:** Neglecting to Protect Your Information
- Ways to Protect:
 - Agreements
 - Covenant Not to Compete
 - Non-Solicitation of Customers/Clients
 - Non-Solicitation of Employees
 - Confidentiality
 - Iowa Code
 - Federal Trade Secrets Act

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Overtime Laws

- **Mistake:** Misapplying Overtime Laws
- Who Gets Overtime?
- Why Isn't Paying a Salary Enough?
- What Does "Work" Mean? Do I have to pay Non-Exempt Workers for Answering Phone Calls and Responding to Emails?



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DOL's New Proposed Overtime Rule

- NOT in effect as of today
- **Proposed Rule** would (among other changes) raise the salary basis level from \$455 to \$679 per week (\$35,308 per year)
- DOL published the proposed rule on March 22, the public has until May 21 to comment
- Recall from 2016, there can be twists and turns, so don't make any changes yet, but keep this on your radar

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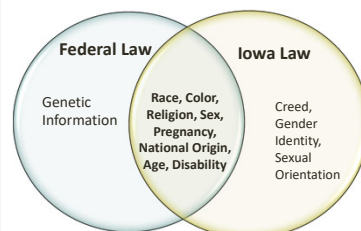
Anti-Discrimination and Anti-Retaliation Laws

- **Mistake:** Not having proper anti-discrimination and anti-retaliation provisions in your employee policies.
- **Mistake:** Not training.

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Protected Classes



Protected Classes: race, color, religion, sex, pregnancy, national origin, age, disability, genetic information, creed, sexual orientation, gender identity

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Violations of Title VII and Iowa Civil Rights Act Include:

- Taking Action based on Protected Category – disparate treatment
- Harassment
- Segregation and Classification of Employees
- Pre-Employment Inquiries – Hiring/Interview
- It is also unlawful to RETALIATE against an individual for opposing employment practices that discriminate based on protected or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation

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Disability Protections

- ADA
 - Requires employers to provide "reasonable accommodations."
 - Requires employers and employees to engage in "interactive process."
 - How can I help you?



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Implicit Bias

- What is Implicit Bias?
- Why is Implicit Bias important?



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Implicit Bias Training in Organizations

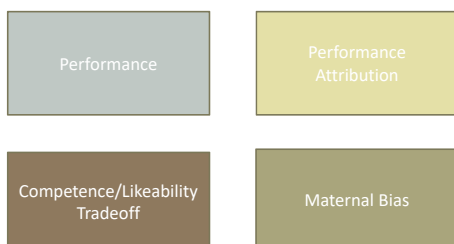
- Starbucks: Closes 8,000 stores to conduct unconscious bias training
- Google, Facebook and other companies are looking at how unconscious or implicit bias impacts the workplace



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Four Common Types of Bias



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Performance Attribution Bias

- How is credit attributed?
- How is blame attributed?



Unbiasing. Retrieved from <https://newwork.withgoogle.com/subjects/unbiasing/>

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Counteracting Performance Attribution Bias

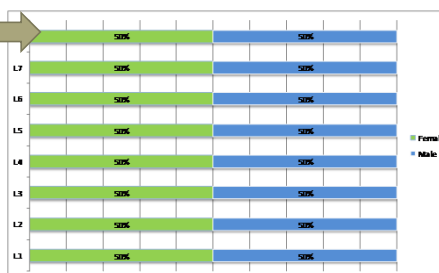
- Set rules & norms for meeting dynamics
 - No interruptions, everyone speaks
- Interrupt the interrupters
- Attribute carefully - noting contributions and attributing success



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Tiny Bias Can Have Big Consequences

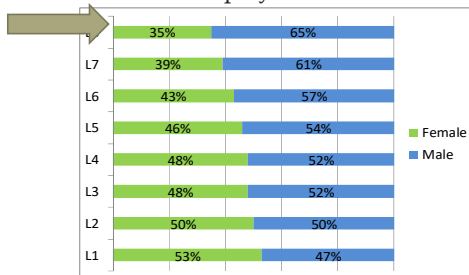


Male-Female Differences: A Computer Simulations. Retrieved from: <https://newwork.withgoogle.com/subjects/unbiasing>

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Tiny Bias Can Have Big Consequences: Only 35% of Level 8 Employees Would be Female



Male-Female Differences: A Computer Simulations, retrieved from: <https://network.withgoogle.com/subjects/unbiasing>

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Evaluate Organization Culture

- 1) Zero Tolerance of Harassment or Discrimination?
- 2) Aggressiveness Rewarded?
- 3) Who are your Leaders?
- 4) What is the Message from your Leaders?
- 5) Do you foster a culture of **civility** and **respect**?

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Take the Implicit Bias Test

What are your implicit bias?

You can take Harvard's implicit bias test:

<https://implicit.harvard.edu/implicit/takeatest.html>

Examines Bias Like:

- Race
- Gender
- Disability
- Sexuality
- Skin-tone
- Religion
- Weight
- Gender-Science
- Gender-Career

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FMLA

- Is my company covered?
- Do you have a written FMLA policy?
- What Triggers FMLA?

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Necessary Handbook Policies

Mistake: Not having an employee handbook

Necessary Pieces of Handbook

- EEO Policy
- Anti-Harassment Policy
- Anti-Retaliation
- Vacation, Sick or PTO
- FMLA, if applicable
- Drug / Alcohol Testing, if applicable
- Any other policy that is critical to the Company or its Employees



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Background Checks

Mistake: Completing a background check that is not FCRA compliant.

- What is FCRA?
- What does FCRA require?

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Drug and Alcohol Testing

- **Mistake:** Requiring drug or alcohol testing without reviewing Iowa's Drug Testing Law
- What are the Requirements of Iowa Drug Testing Law?



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Deductions from Pay

- **Mistake:** Deducting disputed wages from final paycheck.
- The law: Iowa Code 91A.5. Allows deductions only if:
 - The employer is required or permitted to do so by state or federal law or by order of a court of competent jurisdiction; or
 - The employer has **previous written authorization** from the employee to so deduct for any lawful purpose accruing to the benefit of the employee.

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Freebee #11 -- Commissions

- **Mistake:** Not having a commission agreement in place for employees that earn commission pay.

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Questions?

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