



# Poricanin

Practical Counsel. Industry Insight.

## Labor and Employment and Human Resources Services

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The road to find, train, manage, and develop talent—and sometimes terminate—employees is paved with regulatory challenges and legal risks. Businesses must establish effective human resources management strategies that avoid the costs and disruption of litigation, lengthy government investigations, and other third-party intervention with their business operations. At the same time, businesses must be poised to identify and attract the best talent, maintain and grow their reputations as employers-of-choice, and drive strong engagement and performance from their talent.

We provide outsourced Human Resources services for the day-to-day requirements and challenges, as well as sophisticated labor and employment law counseling to employers in all industries. Poricanin has a comprehensive approach that allows us to respond to the needs of businesses and employers of all sizes. We have depth in virtually all aspects of workplace law in every industry. Bringing a strategic dimension to our services, we seek to understand a client's commercial objectives, risk profile, key stakeholders, and unique workplace challenges. By doing so, we are able to provide clients with sound legal advice and practical counsel. That is our promise.

## ▶ Poricanin Counsels Employers in all Aspects of Employment Law and Human Services

### Hiring, Onboarding & Off-boarding

- Employers not only have to worry about finding the most qualified talent for their organization, but a myriad of laws that are constantly changing impact the recruitment, selection, and hiring process. We work with your organization to make sure you know those laws and can implement them in your operations without sacrificing your search for the top talent. In this regard, the consultants and attorneys at Poricanin offer counsel regarding:

### Talent Acquisition & On-Boarding

- Assessing and training on interview techniques and tools, ranging from the traditional approaches of discussions around structured or behavioral questions, to video conferences, and other electronic tools.
- Ensuring that job descriptions are written in a way that effectively establishes critical qualifications while also complying with equal opportunity laws.
- Addressing recruitment challenges and opportunities, such as using social media and internet job boards to promote job opportunities, and communicating realistic job previews, internet databases and social media.
- Evaluating testing in all its forms, including advising employers how to select appropriate and defensible tests, how to conduct job analyses and validation studies, how to generate



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and read adverse impact reports, and consideration of non-testing alternatives.

- Advising on compliance with immigration-related requirements for newly-hired employees.
- Providing effective guidelines to conduct applicant screening in a manner that comports with the Fair Credit Reporting Act and state and local ban the box laws.
- Designing efficient and effective onboarding and new-hire placement systems.
- Satisfying the unique requirements applicable to businesses operating in New York, as well as throughout the country.
- Advising on the proper classification of workers, including when to classify workers as employees or independent contractors, or when to classify as exempt or non-exempt under Federal and state wage statutes.
- Counseling on the use of temporary workers, both from the perspective of the staffing agency and the businesses that engage them, evaluating joint-employment risks and mitigation strategies.

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## Reductions in Force & Business Restructuring

- Advising clients concerning notice requirements under the federal Worker Adjustment Retraining & Notification (WARN) Act and state law analogs.
- Assisting employers to design tools for selecting which employees will be laid off or separated.
- Preparing severance packages with separation and release language.
- Working with employers on ensuring separation agreements comply with the Older Workers' Benefit Protection Act (OWBPA).

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## Separations & Separation Agreements

- We prepare concise documents that clearly reflect the parties' economic agreement and incorporate releases of legal claims, drafted to comply with the specific federal and State laws that are implicated.
- Reinforcement of any restrictive covenants for employees who are exiting

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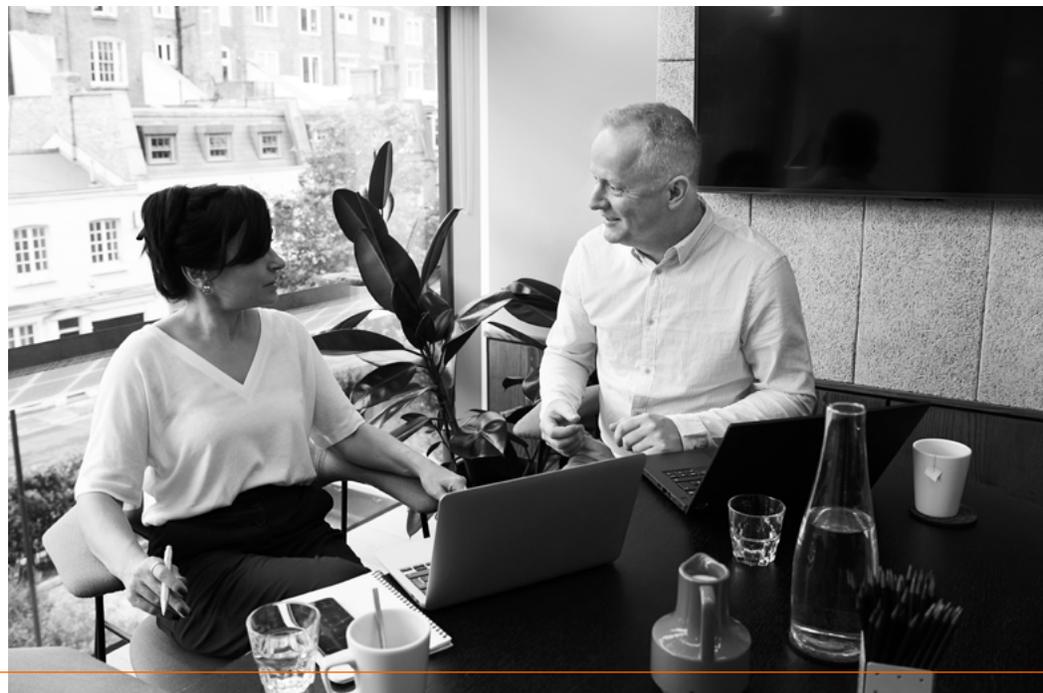
## Background Checks

- Advising multi-State employers regarding various State-specific laws regarding the use of criminal history data in making hiring decisions.
- Preparing policies and procedures related to use of background checks in the hiring process.
- Preparing Fair Credit Reporting Act disclosure and notice forms and ensuring proper usage of the same by employers.
- Advising employers concerning ban-the-box laws enacted by local jurisdictions, like New York City.

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## Drug Testing

- Advising clients regarding drug-free workplace policies and preparation of the same.
- Counseling concerning federal and state laws that may affect an employers' ability to require applicants and newly-hired employees to take drug tests.
- Evaluating how to interact with job candidates and new hires who disclose or who are determined to be using medicinal or recreational marijuana, in view of the various State laws permitting lawful use of such substances.
- Hiring employees with disabilities whose disabilities and limitations are disclosed post-offer of employment and through drug-testing.



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## Employment Agreements & Covenants

- Drafting employment agreements and/or employee handbooks with proper restrictive covenants, including noncompetition, nonsolicitation, anti-poaching agreements, and confidentiality clauses.
- Ensuring implementation of such restrictive covenants is supported by adequate consideration, depending on State law.
- Evaluating and crafting agreements for multi-jurisdictional employees to maximize likelihood of enforcement by management.

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## Termination Counseling

- Counsel employers the legal and business risks associated with individual or mass terminations or business closures.
- Conduct a termination risk analysis and partner with clients to develop a termination protocol to ensure that all termination decisions are implemented consistently and in a way that best protects the business interests and minimizes risk.
- We ensure that clients are fully informed before they make the final decision to terminate an employee and are best positioned to implement any termination decision effectively while minimizing risk and taking full advantage of opportunities.

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## ▷ Talent Strategy & Development

We help employers in all industries, of all sizes and formations, in building a positive and encouraging work culture and a work environment that will attract and retain the best talent. In this regard, Poricanin assists employers with:

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### Management of "Gig" Workers or Contractors

- Poricanin helps counsel employers concerning classification of workers as contractors or employees and, where necessary, reclassifying workers who from contractor to employee while minimizing the risk of triggering litigation or a government audit.
- Preparing agreements to solidify and bolster the status of workers as independent contractors.
- Advising employers on compliance with State or local laws that regulate the relationship between companies and contractors (e.g., the New York City Freelance Isn't Free Act).
- Assisting employers in devising policies for management and oversight of contractors.

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## Workplace Training

- We provide trainings that are required by law (e.g., New York Sexual Harassment Training) and also training that employers need to foster a positive, compliant, and productive work culture, such as:
- Managing Employee Attendance – Training for Supervisors
- Employee Leave Laws – Training for Administrative and Executive Employees
- Wage and Hour Law Compliance – Training for all Managerial Employees
- Staying Union Free – Training for Management
- How to Respond to Union Organizing – Training for Management
- Best Hiring Practices – Training for Hiring Managers
- Preventing Harassment and Discrimination in the Workplace – Training for all Employees
- Fostering a Positive Workplace Culture – Training for all Employees
- Protecting Your Trade Secrets and Confidential Information- Training for Managers
- Poricanin's training programs are interactive, in-person, and we follow through with clients after the trainings to ensure the principles are being implemented in the workplace. We also stay involved with the client months after the training, to ensure the training is being implemented and, more importantly, effective. Where needed, we make changes or provide additional hands-on training and support to ensure the business is moving in a positive direction and that the workplace culture is improving.

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## Discipline & Performance Management

- Provide written policies, training management on implementing – consistently – those policies and handling difficult disciplinary and performance situations.
- Assist employers in all stages of performance management, including daily, informal feedback, setting goals, annual formal performance appraisals, and when necessary, the discipline process.
- When formal coaching and discipline is needed, Poricanin has extensive experience in designing and implementing start-to-finish solutions for clients, from coaching and feedback, oral and written warnings, performance improvement plans and action plans to final warnings or terminations. The firm tailors these solutions based on the client's size, business model, culture and current needs. We help clients move through the process effectively to determine what steps are needed, depending on their specific circumstances.

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## Employee Agreements & Covenants

- Drafting employment agreements and/or employee handbooks with proper restrictive covenants, including noncompetition, nonsolicitation, anti-poaching agreements, and confidentiality clauses.
- Ensuring implementation of such restrictive covenants is supported by adequate consideration, depending on State law.
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## Employee Relations & Cultural Assessments

- Helping clients do culture surveys and strategize to develop solutions to identified problems in order to improve workplace culture.
- Assisting companies through situations that challenge their culture, such as rapid growth, a merger, or post-investigation.
- Provide training and coaching concerning an inclusive and respectful work environment.
- Helping employers develop flexible work arrangements without sacrificing productivity and accountability.
- Create and implement open door policies, reporting channels, and robust dispute resolution processes.
- Advise Boards of Directors and Trustees regarding turnaround requirements related to workplace culture.

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## ▷ Workplace Compliance

Poricanin works with employers of all sizes to ensure compliance in the day-to-day management of employees. Some of the services provided in this regard include:

### Workplace Policy & Handbook Development

- We regularly design and/or revise applicable personnel forms spanning the entire range of human resources activities, including, but not limited to, job applications and job descriptions; model offer letters; background history check notice and consent forms; leave of absence forms to comply with the Family and Medical Leave Act (FMLA); medical certification questionnaires to comply with State and Americans with Disabilities Act (ADA) requirements; performance appraisal forms; disciplinary action forms; termination notices; employee handbooks.
- Poricanin assists clients with multi-state operations in a variety of industries in formulating their policies, drafting them, and implementing them, all to comply with the array of federal, state, and local labor and employment laws.

### Workplace Investigations

- Guide clients through internal investigations alleging workplace misconduct, including sexual harassment.
- Conduct workplace investigations, including conducting interviews of key witnesses, preparing written and oral reports of the findings and assisting businesses in making decisions regarding proper remedial action.
- Interfacing with government and law enforcement officials when workplace issues result in government and law enforcement becoming.

### Union Relations and Management

- Assist employers with negotiation of first collective bargaining agreement or renewing an existing labor agreement.
- Counsel employers regarding interpretation and administration of collective bargaining agreements.
- Serving as the lead negotiator at the bargaining table and advising employers who conduct their own negotiations.
- Advise employers concerning the National Labor Relations Board and the nuances of how to respond to union organizing efforts, leafletting, and picketing, all the while staying within the bounds of the law.

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## Government Audits and Investigations

- Represent employers before federal and State government auditors who investigate employers' compliance with laws such as the federal Fair Labor Standards Act, the Occupational Safety and Health Act, Title VII anti-discrimination and anti-harassment laws, Family and Medical Leave Act, the Americans with Disabilities Act, Pregnancy Discrimination Act, the National Labor Relations Act, and state analogues, including state workers' compensation laws and unemployment insurance laws. We assist clients with understanding the rules and processes of the investigating agency, setting expectations with the investigator at the outset of the investigation, and working with the investigator and the agency officials above the investigator, if need be, to resolve the matter.
- Counsel employers to achieve compliance as part of an ongoing audit or resolution of an audit.
- Conduct self-audits under attorney-client privilege to identify and correct noncompliance prior to start of audits.

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## Administrative Charges

- Poricanin's attorneys defend employers in administrative agency investigations, such as matters that are pending before the Equal Employment Opportunity Commission ("EEOC"), Occupational Health and Safety Act ("OSHA"), U.S. Department of Labor, the National Labor Relations Act, and local administrative agencies (such as New York State Division of Human Rights, New York City Department of Consumer Affairs, New York Workers' Compensation Board, and New York Unemployment Insurance Board).

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## Managing Employee Leave & Accommodations

- Counsel employers in day-to-day issues that arise when employees take protected and unprotected leave from work, and how to counsel and/or transition those employees out of employment while minimizing legal risks.
- Training first-line supervisors on how to properly track and document attendance problems and patterns.
- Assisting employers in determining eligibility for leave under various laws that authorize employee leave, including the Family and Medical Leave Act, Americans with Disabilities Act, and state laws, such as the New York City Earned Safe and Sick Leave Act.
- Preparing policies for multi-State employers to align all the paid and unpaid leave rules and procedures across the workforce.
- Counseling employers through the steps of the interactive process for employees who have disabilities.
- Assisting employers who are overseeing and supervising intermittent leave under the Family and Medical Leave Act.
- Advising employers on investigating suspected abuses of leave policies and taking disciplinary action against employees, with emphasis on reducing legal risks.
- Conducting training for human resources professionals and managers on the interplay between applicable leave and disability laws, providing guidance on each stakeholder's role within the organization in this complicated process.

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## Wage & Hour Compliance

- Evaluate employers' policies and practices for compliance with federal and state laws governing regular rate and overtime pay, minimum wage, uncompensated work periods, meal breaks, the timeliness of wage payments, vacation pay, and Sunday and holiday premium pay.
- Review policies and practices to determine whether employees are properly classified as exempt from federal and state minimum wage and overtime requirements or whether workers are properly treated as independent contractors.
- Evaluate workers' classifications as exempt from overtime, or if reclassification to non-exempt status is warranted.
- Assist employers in all reclassification transitions with the goal of minimizing business disruption and risk of a claim by the affected employee(s).
- In the context of mergers and acquisitions, an analysis of risk and exposure under applicable wage and hour laws to strategically develop post-merger and post-acquisition risk avoidance and mitigation plans.



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