

Eight Simple Tips to Avoid Getting Sued by Employees

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Life and work are increasingly complicated. With all of life's distractions, it's sometimes easy to forget the simple things that can help you avoid getting sued by an employee.

Here are some simple tips (and hopefully reminders):

1 Ensure a hiring procedure is in place; don't hire a walking lawsuit.

Many employers get caught up in the rush to hire new employees and fail to take basic steps in the hiring process. For example, require employees to fill out a written application for employment prior to an interview and make sure that the application is filled out in its entirety. Many prospective employees omit or "fudge" information on the application. Also look for warning signs such as: unusual gaps in employment history; erratic reasons for leaving a job (e.g., boss was hard on me; disagreed with company's policies); references who may be family members and not former supervisors; and statements such as "will discuss in interview." All of these things could be warning signs of a problem employee.

2 Ensure employer's expectations are known.

Employers should communicate basic policies and procedures as well as relevant job information to their employees. New employee orientation, employee handbooks, benefits summaries and other forms of communication are essential in informing employees of their employer's expectations. In many harassment and discrimination lawsuits, employees claim that they were never adequately trained on the company's policies. If this is true, it can be devastating to the defense of a lawsuit. Training your employees is relatively inexpensive and can reap huge rewards down the road. Why even have policies if your employees are not aware of them?

3 Ensure that employees are correctly classified.

There has been a nationwide surge in wage and hour claims filed across the country. In the majority of these cases, employees claim that they are improperly classified as exempt (and paid on a salary basis), when in fact they are not exempt and entitled to an hourly rate and overtime pay. You should make sure that all of your employees are properly classified, as the consequences for not doing so can be financially significant.

4 Ensure employees' complaints of discrimination and harassment are taken seriously.

You should have an employee handbook that contains a written policy against harassment, discrimination and retaliation. In that policy, which should be signed by every employee, there should be specific information (for employees who believe they have been subjected to such behavior) for reporting the complaints. Once you are aware of a complaint, you must immediately launch an investigation and make a determination as to whether the company's policies have been violated. If so, you must then discipline the harassing employee and ensure the complaining employee is free from retaliation for making the initial complaint (see below). Everything must be documented.

5 Ensure there is no retaliation against employees for complaining.

Virtually every law contains an anti-retaliation provision. Almost one out of three charges filed with the Bureau of Labor and Industries and the Equal Employment Opportunity Commission include some form of retaliation claim. Even if an employee's claim of discrimination or harassment is ultimately not proven, he or she is nevertheless entitled to be free from retaliation, as long as the initial complaint was made in good faith. Retaliation claims are much easier to prove in court than discrimination and harassment claims. Employers must be careful to follow through on this step and notify everyone that retaliation is strictly prohibited.

6 Ensure everyone is treated equally and fairly.

Statistics show that terminated employees who feel they were treated unfairly seek counsel and file discrimination and harassment claims. Before making a termination decision, take one last look at the facts. Who is making the decision? Why are they making the decision? Make them tell you. Have any exceptions been made in the past under similar circumstances? Has the employee who is about to be terminated made any recent complaints? Has that employee been disciplined in writing in the recent past and were they warned that subsequent problems could result in termination? Were the company's policies followed? One way for an employee to win a discrimination lawsuit is to show that they were treated differently than another employee. So, treating everyone equally and fairly will go a long way in avoiding lawsuits.

7 Ensure you pay attention to employees' medical issues.

The Americans with Disabilities Act (and many state's laws) prohibit discrimination against qualified individuals with disabilities and requires employers to reasonably accommodate those employees; the Family and Medical Leave Act requires covered employers to grant eligible employees 12 weeks of job-protected, benefits-continued leave each year; and the Employee Retirement Income Security Act prohibits discrimination against persons because they may file for covered benefits. These are highly complicated areas of the law, and become even more complicated if workers' compensation issues are implicated. If you have an employee that is disabled or requesting a leave of absence, seek HR or legal counsel before you act. An ounce of prevention in this area is worth a pound of cure. No pun intended.

8 Ensure you adopt policies regarding the proper use of computers, PDA's and cellular telephones.

Problems caused by improper use of electronic devices in the workplace can include: claims of harassment, discrimination, retaliation and invasion of privacy; loss or theft of intellectual property and trade secrets; licensing issues; and even electronic fraud or forgery. With the invasion of texting, social media, etc., many employer's policies are simply not up to date. To effectively control your risk for a lawsuit, you need to immediately address an employee's use of social media in the workplace. An effective policy can make all the difference. ■