

Protecting Your Company from Employment Related lawsuits

devra hermosilla and barb bloom

Lawsuits by employees claiming their employers violated wage and hour laws, subjected them to harassment, discrimination, retaliation, or wrongfully terminated them, just to name a few of the more common allegations, have exploded in recent years. While this increased risk may appear hopeless to you as a business owner, there are steps you can take to help protect yourself and your business from employment related lawsuits.

Educate your workforce on your company's policies. New and fast growing companies are often prey to employment claims because they have not yet designed or implemented personnel policies applying the laws to the workforce. Ignoring the protection that a clear policy and its appropriate administration can give your company is a grave and all too common mistake.

Because not all laws apply to each business, depending on the company's size, location and industry, boiler plate employee policies may not be appropriate for your company. You should, however, ensure your policies address the application and compliance with your policies on:

- sexual harassment (mandatory), general harassment and discrimination;
- family medical leave laws (if applicable); and
- payroll and overtime policies.

Remember, a good policy has no effect unless it is known to your workforce. Distribute your policies to your employees by posting them in the break room (some postings are required by law), providing handbooks, or setting up website access. Keep a signed acknowledgment from each employee that they received a copy of the policies.

Likewise, educate your management and non-management employees on your policies to help minimize and prevent lawsuits from occurring in the first place. If your workforce recognizes that certain behaviors are unacceptable and understands how to report inappropriate activity as it is encountered, you will have a golden opportunity to correct the problem and prevent an escalation.

Understand management's role as your company's agent. Your company's managers are company

agents – both to your non-management employees and to the outside world. Because their actions, even if unauthorized, may subject you to legal liability, it is critical they understand their responsibility for responding to employee harassment complaints, enforcing company policies, and interacting with outside vendors. Employers who do not understand this relationship are often caught blindsided by the cold reality that they are generally responsible for the actions of their managers just as if they had committed the unlawful act themselves. Training and vigilance are the best protection you may provide for your company.

Consider obtaining Employment Practices Liability Insurance ("EPLI"). Employment litigation can be very costly in time and expense. EPLI insures against liability for employment practices which may be excluded from other coverage. Make sure the policy covers what you need, both the intentional acts often contained in traditional employment related claims, as well as coverage for written demands and administrative charges without civil litigation. Also, unless you want to give up complete control of your defense to the insurance company, retain the right to choose your own attorney and to control settlement decisions. With employment litigation on the rise, it is no surprise that companies turn to insurance to manage this risk. Even without formal insurance, taking the proper time to understand the laws of the workplace, to train your workforce, and to keep vigil over your agents, are tried and true proactive steps you may take to help protect your company from employment related lawsuits.

Devra Hermosilla is an associate at Bullard Smith Jernstedt Wilson. Barb Bloom is a partner at Bullard Smith Jernstedt Wilson. Devra's practice includes representation of both public and private employers in all aspects of employment litigation. Barb's primary areas of practice include National Labor Relations Board and Oregon Employment Relations Board proceedings, workplace training seminars, labor agreement administration, labor arbitrations, EEOC and Bureau of Labor proceedings, and personnel policies and practices.

