

## **Employment Liability Threat Grows; What to Watch Out for**

One of the biggest lawsuit threats U.S. businesses face is from their own employees. Any company with staff — be that one or 500 — can be sued, and even if the case never goes to court, it can create a significant burden for your business.

While most cases are settled out of court, they can drag on for as long as two years. Even if they are dismissed as meritless, the employer is often out thousands of dollars as a result.

To best protect your business from these types of claims, and more, you need to learn how to identify potential claims, avoid practices that can expose you to litigation, and create formal policies for your personnel and management.

Currently, the employee-initiated litigation trend includes the following claims:

**Discrimination** — There are a number of protected classes in the U.S. workforce and, as we march forward, more are being added. The key for employers is to have policies in place that treat everyone equally in the organization, ensure that certain groups of people are not kept from advancing in their jobs, and ensure a harassment-free workplace.

**Unequal pay** — Most of these actions are filed under the Federal Equal Pay Act or state laws, like the more stringent California Fair Pay Act. And you should know that there are moves afoot to beef up the federal version to the same standards as the California law.

The Golden State's Fair Pay Act bars employers from paying workers of one gender less than those of another for "substantially similar" work. Violations can result in penalties for the wage differential, plus interest and liquidated damages.

To avoid liability, you should conduct a self-audit that looks at the following:

- Have you updated job descriptions, including established criteria for assigning values such as skill, education, seniority and responsibility?
- Are you consistent in your pay for similar jobs performed by individuals with similar skills, education, seniority and responsibility?
- Are your male and female employees given projects or clients with commission or bonus potential on a consistent basis?

**Worker classification** — The federal government, individual state governments and the IRS have all been cracking down on employers who misclassify workers as independent contractors.

Besides shortchanging legitimate workers, the practice also cheats tax authorities and workers' compensation insurers. Worker classification lawsuits continue unabated, with the likes of UPS and Federal Express facing class-action suits from drivers they classified as independent contractors.

What you can do:

- If you are considering classifying anybody as an independent contractor, you should be sure of their status and check to see if they pass federal and state labor, IRS and workers' comp tests for classifying workers.
- Classify workers who perform similar tasks consistently.
- Conduct classification audits on a regular basis.

**Wage theft** — These kinds of lawsuits typically involve accusations that the employee was not paid what they were due. Some of the more common allegations include:

- Requiring staff to work off the clock.
- Not providing meal and rest breaks as required by law.
- Failure to pay overtime.

To avoid being sued, you should write clear and consistent policies and train managers and supervisors on them.

### **Don't forget insurance**

Employment practices liability insurance should be your final backstop, and while you may think you are bulletproof because you treat everyone fairly, remember: experts say that between 30 and 40% of employee-generated lawsuits against their employers are frivolous.

Even if you are the subject of a frivolous lawsuit, you will still spend time and money fighting it.

An EPLI policy will cover you for:

- Legal costs, including costs of defending a lawsuit in court, whether your company wins or not.
- Judgments and settlements.

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