

Avoiding Workplace Litigation

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More than ever businesses are being sued by employees. The growth rate of sexual harassment, wrongful termination and discrimination claims is staggering. Legal defense costs on these kinds of cases can easily run in the vicinity of \$200,000, and jury verdicts often exceed \$1,000,000, yet this continues to be an area where most companies invest little or no time on preventative cures.

Three Solutions

There are three things a business can do to dramatically reduce the likelihood of employment litigation: adopt a policy specifically stating definition, company policy, and procedure on discrimination and harassment; train all levels of employees in how to avoid these situations; and adopt a dispute resolution policy for early and effective resolution of complaints.

Adopt Guidelines & Procedures

Every company needs to adopt a specific set of guidelines and procedures defining appropriate workplace conduct making it clear that it does not tolerate harassment or discrimination and defining what the EEOC constitutes these to be. They should post this policy and distribute it to all employees.

Train All Levels of Employees

In business, we promote employees because they can close deals or because they know about manufacturing widgets rather than because they possess strong management skills. Managers must be trained in disciplining and discharging employees and conflict management.

One first step is to send a number of managers to a breakfast workshop sponsored by the Santa Monica Chamber of Commerce titled "How to Hire and Fire Without Being Sued" on October 8 from 7:30-9:30 am. For only \$10.00, this program lays out the latest trends in employment disputes and how to effectively avoid them. Contact the Chamber at (310) 393-3825 extension 10.

The next step is training employees of all levels to successfully manage workplace conflict. Our firm offers a popular workshop that covers practical techniques to efficiently resolve disputes by crafting lasting win-win solutions to conflicts before they escalate into violent or legal issues. These workshops are also effective for learning to diffuse angry people, whether customers or employees.

Bill Gates says, in his book *The Road Ahead*, "More than ever, an education that emphasizes general problem solving skills will be important. In a changing world, education is the best preparation for being able to adapt". Your team will see measurable differences in the way employees treat each other and customers after this kind of workshop.

In today's work environment, it is also important to learn the unique communication expectations that exist across cultures and from one gender to the other. These multicultural and gender issues often underlie common workplace disputes. Part of the difficulty in dealing with sexual harassment is that men and women often have different ideas about what it is. Managers need training to recognize potential hot-buttons and develop specific communication skills to help them to avert such conflict as

well as discrimination and sexual harassment claims by building an environment of trust and respect, by respecting each other's dignity.

The third step is a legal review and presentation. This three-step process can include an overall audit of the human resources department for legal compliance, a legal review of policies and materials including the company handbook, and a presentation to employees on what does and does not constitute discrimination and sexual harassment. This is followed by a presentation to management on company liability and potential personal liability if they know about and fail to act on such behavior. One such process is expertly provided by Michael Robbins of Rosenfeld, Meyer and Susman in Beverly Hills at (310) 858-7700.

Adopt an ADR Policy

All businesses should adopt an Alternate Dispute Resolution (ADR) policy to head off litigation. Many companies are having employees sign arbitration clauses in an attempt to reduce these costs. Better yet, most sign a mediation clause in addition to the arbitration clause, the intent being to mediate first and arbitrate those cases that are not successfully resolved in mediation. Those on the cutting edge are initiating an in-house dispute resolution program set up to field employee complaints before the process moves to mediation.

Most know arbitration is an adversarial, adjudicative legal process wherein each party's legal representative prepares a case in order for the neutral third party to judge the matter. Participants yield control of the outcome to the arbitrator, whose award, with very limited exception, is not appealable, even in the event of an error in law.

Mediation, by contrast, is a cooperative, collaborative problem solving process where the parties retain control of the outcome. It is essentially negotiation through an intermediary who facilitates arrival at a mutually agreeable solution. The final outcome is one where the parties have agreed to each point and a binding document is drawn and executed.

Mediation provides a place for all involved to engage in meaningful dialogue in order to foster creative win-win solutions. Working out problems promptly, when they are small, often prevents misunderstandings that occur when communication breaks down and problems escalate and fester.

A workplace dispute resolution program is the most efficient and expedient way to resolve work related conflicts and employment disputes. This program should outline a process ranging from a human resources consultation to informal and formal management review and finally a dispute resolution committee.

No business is entirely without disputes, and no one likes to talk about conflict. The difference between efficient, productive, successful businesses and others can be in how they manage conflict. The time and money spent to fight an employment case in court can stifle a small business. In addition, the management hours spent responding to discovery requests, depositions and trial preparation can devastate any business's operations. Implementing the steps described above is the best way to avoid this nightmare and focus on your company's growth and success.