Legal EDGE

Minimizing the Risk of Workplace Litigation

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In today’s litigious society, no business is immune from the threat of workplace litigation. Workplace litigation refers to any lawsuit brought by an employee against his employer, in which the employee claims that his legal rights have been violated by the employer’s unlawful employment practices.

There are “many kinds of employee lawsuits, including claims of: sexual harassment, discrimination, wrongful termination, breach of employment contract, negligent evaluation, failure to employ or promote, and wrongful discipline, deprivation of career opportunity, wrongful infliction of emotional distress, mismanagement of employee benefit plans.” Although there is no surefire way to prevent such litigation, this article discusses steps that you, as an employer and O&P company owner, can take to minimize the risk to your business.

Step 1: Develop and distribute an employee policy manual

It is not uncommon for an employee who has been terminated for violating a company’s employee policy to file a lawsuit against his employer, claiming that he was wrongfully terminated because he was unaware of the policy before he was fired. For that reason, you should place all of your company’s employee policies in an employee policy manual, and update the manual periodically, whenever an existing policy is changed or a new one is added. An employee policy manual should contain information on:

- Employee holidays, vacations, family and medical leave, and sick leave
- Employee compensation (including wages, overtime pay, bonuses, and pay raises)
- Employee benefits (including medical, dental, life, and accidental death and dismemberment (AD&D) insurance; 401 (k), pension, and retirement plans; flexible spending programs; and tuition reimbursement)
- Employee performance evaluations
- Employee discipline and termination
- Employee grievance resolution (including arbitration)
- Employee dress code
- Applicant screening and hiring
- Sexual harassment policy (including reporting and investigation)

To minimize the risk of workplace litigation, you should educate your employees about your company’s employee policies, and make sure that each employee understands his obligation to strictly adhere to them. To that end, hold a staff meeting on the premises at least biannually, at which your human resources personnel or manager should:

1. Distribute copies of the employee policy manual to all employees.
2. Discuss the policies in the manual and answer employees’ questions.
3. Have each employee sign and return an acknowledgement form, which states that the employee has received a manual, read and understood its contents, and agrees to abide by its terms under penalty of discipline or termination.
4. Have each employee sign an attendance sheet to confirm that the employee has been present for the entire meeting.

Keep the attendance sheet and signed acknowledgement forms in a secure location along with your other business records. So if an employee claims ignorance of an employee policy in a future wrongful termination lawsuit, his signatures on both the attendance sheet and an acknowledgment form may help prove that he was aware of the policy.

Step 2: Develop uniform hiring practices

If denied employment, an applicant could file a lawsuit against an employer, claiming that he was not hired because of unlawful discrimination—race, color, religion, gender, national origin, age, disability, or otherwise. For that reason, you should develop a set of hiring practices for your company, and apply them uniformly to every applicant for employment, including current staff members seeking internal positions. As an illustration, consider the following set of hiring practices:

1. Compose a job description, including a list of minimum, required, and preferred skills and qualifications.
2. Advertise the position for a minimum of two weeks in print or online media, soliciting cover letters, resumes, and professional references.
3. Form a hiring committee made up of an odd number (at least three) of senior staff members. Have the committee members meet to screen and select a pool of the most qualified applicants.

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