

7 Ways to Manage Lawsuit Risks

Many business owners and managers think they know their employees well.

They are on a first name basis. They know their families. They see and talk to them every day. It doesn't seem to be an area that has much risk. This is sadly not true, and let me tell you why.

Managing employees also means managing risk. Unhappy employees may start legal actions; so may former employees. Issues can include discrimination, sexual harassment, wrongful termination, or complaints for back pay or overtime.

One of my clients owned several restaurants in New York City. The client called me because one of his waitresses was threatening a sexual harassment lawsuit against the company. Allegedly, a bartender had made sexual advances, and she claimed the owners knew but did nothing. I investigated the claims. The result was the bartender was fired, the waitress agreed to a monetary settlement, but a much more expensive lawsuit was averted.

Many business owners and managers do not have basic policies and procedures in place to protect their business in such cases. Implementing some simple personnel policies will greatly reduce the risk of costly litigation.

After the sexual harassment situation was resolved, I reviewed the restaurant company's employee handbook. I added a specific section explaining in detail the steps any employee should take if they felt that they were being harassed or discriminated against, or if they had any other issue involving their employment. This included speaking with their manager in confidence, or if that was not appropriate, going directly to the owner with the issue. I also counseled the owners to document all incidents in writing as an important defense in case of legal actions.

Further, we held several employee meetings to discuss the new policies, distributed a new copy of the employee handbook to each employee and had them sign for it. The message to employees was that we want to hear about problems before they blow up. The lesson for the owners was that a friendly and informal atmosphere could be hiding potentially costly legal problems.

Here are some questions you need to ask yourself:

1. Do I have an Employee Handbook, and does it have every policy I need to protect myself?

An employee handbook is critical to protecting you in a lawsuit, along with being an effective way of communicating company policies and culture.

Solution: Have a professional assist you in creating a legally compliant handbook. Give one to every employee and new hire, and make sure they sign a statement that they have received it. Update as necessary.

2. Do I have an “employment at will” statement?

Solution: Add this policy to your handbook and written offers of employment:

“You are not hired for any definite or specified period of time even though your wages are paid regularly. You are an at-will employee of the Company and your employment can be terminated at any time, with or without cause and with or without prior notice. Company policy requires all employees to be hired at-will and this policy cannot be changed except by a written document signed by you and an Officer of the Company. There have been no implied or verbal agreements or promises to you that you will be discharged only under certain circumstances or after certain procedures are followed. There is no implied employment contract created by this Handbook or any other Company document or written or verbal statement or policy.”

3. Do I have legally required labor law posters in a prominent place?

The law requires that you make labor laws visible and accessible to all employees.

Solution: purchase labor law posters from vendors, or download them for free from state and federal labor department websites. Post them in an employee area (break room, locker room, etc.) or post them online in the employee intranet.

4. Do I have a Progressive Discipline Policy?

Progressive discipline means that there is a standard, uniform way in which you handle discipline and termination. This is very important defense against charges of discrimination.

Solution: add a progressive discipline policy to your employee handbook. This policy may include verbal and written warnings, suspension and termination as the last step, except where misconduct justifies immediate termination. The key is to document everything in writing, and to not “play favorites.”

5. Do I document employee performance?

Employee evaluations are an important part of communicating expectations and goals with employees. They also serve to protect the company in case of terminations for unsatisfactory performance. As with progressive discipline, documentation is critical to your defense.

Solution: create a standardized system of written performance evaluations, focusing on goals and results, and stick to it.

6. Do I train my managers in the basics of communication and handling employee concerns?

Policies are only as good as the managers who communicate and enforce them. Managers must be trained in how to handle a variety of employee concerns, from performance issues to sexual harassment.

Solution: Identify the core areas that require management training, and develop an educational program help develop your managers. This may include seminars, on-line resources and management books.

7. Do I have Employment Practices Liability Insurance?

EPLI protects business owners against many kinds of employee lawsuits, including discrimination, harassment, wrongful termination, and breach of employment contract. These policies will reimburse your company against the cost of defending a lawsuit in court and for judgments and settlements, whether you win or lose.

Solution: Your insurance agent can give you details of a policy that fits your needs.

Answering these seven questions will go a long way towards protecting your business in case of an employee lawsuit. Contact us to help implement these solutions.