

# Employer-Employee Lawsuits



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## Simple Steps to Take Now to Assist You During Litigation

- Anti-harassment policy
- Record keeping
- Anti-discrimination policy
- Complaint procedure
- Clear written job descriptions
- Accurately paying employees under the Fair Labor Standards Act (FLSA)
- Company property sign-out

## Anti-Harassment Policy

- Include an anti-harassment policy in your Employee Handbook
- Should prohibit harassment based upon
  - Sex
  - Race
  - Color
  - Disability
  - Religion
  - National Origin

## Complaint Procedure

- All employers should have a complaint procedure that your employees must follow to report harassment.
- Creates an Affirmative Defense for the employer in certain types of litigation.

## Key Elements

- Key elements that you should include in your policy related to complaints:
  - Must be specific
  - Must have several avenues of complaint
  - Must be widely, consistently and continuously disseminated to all employees

## Record Keeping

- Keep complete and accurate employment records for all employees during employment and after termination from employment including:
  - W-2s
  - Disciplinary actions
  - Benefit forms
  - Equipment sign-out forms
  - Employment agreements
  - Medical documentation (must be kept separate from rest of employee file)

## Anti-Discrimination Policy

- Written equal employment opportunity policy stating that your hiring, promotion, termination, compensation and layoff practices do not discriminate based upon:
  - race
  - color
  - religion
  - national origin
  - sex
  - age
  - disability
- Make sure that your company follows this policy.
- Limit employees who have the ability to make employment decisions within the company.



## Clear Written Job Description

- Make sure all employees are provided with a job description
  - Clear
  - Written
  - Detailed
- Helpful in defending various types of lawsuits
  - Unemployment benefits
  - Discrimination claims



# Records of Disciplinary Action

- When trying to substantiate that employee was fired due to unsatisfactory behavior, records of disciplinary action are invaluable.

## What to Include in Records

- What to include in records of disciplinary action:
  - All warnings should be in writing
  - Should have a place for supervisor to sign verifying employee was given the warning
  - Should have a place for the employee to sign verifying the employee received the warning

# Sign-out of Company Property

- Have a sign-out procedure if you provide employees with any company owned property, including:
  - badges
  - computers
  - cell phones
  - books
  - software
- Helpful if employment is terminated and employee fails to return property or equipment to the company

## Sign-out Procedure for Company Property

- Procedure for signing out property:
  - Have employee and a supervisor sign a form that clearly describes property or equipment upon sign-out
  - Keep copy and provide employee with a copy
  - Have the employee and a supervisor sign the same form when property is returned

## Classification and Payment

- Make sure you are classifying all employees accurately according to the FLSA:
  - Exempt
  - Non-exempt – must be paying overtime
- Failure to classify correctly may result in penalties imposed against you as the employer
- Keep accurate time records for all non-exempt employees

## Recent Developments

- Disparate impact Claims under Title VII (*Smith v. City of Jackson*)
  - Supreme Court ruled that to sustain a claim under the Age Discrimination in Employment Act (“ADEA”) a worker need only prove a disparate impact on older workers, not that the policies were made to harm older workers
    - Less of a burden for employees suing under ADEA