

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