

## Ten Tools to Reduce Employee Lawsuits.

In a recent series of interviews with slightly more than a dozen Chief Financial Officers about the stress of their jobs, an interesting and surprising (to this author anyway) finding emerged. To a person each CFO identified "dealing with (and paying for) employee and former employee lawsuits" as one of the top three stress factors in their jobs. It did not seem to matter whether the CFO was charged with managing in-house counsel or retained external counsel. Again, to a person, they only spoke with the guarantee of complete confidentiality fearing that acknowledging an issue in their own organization could generate negative publicity, affect stock price, have morale implications, be seen as attempts (in two instances) to influence cases before the court and, God forbid!, generate copy-cat suits.

It is important to note that these corporate officers were not taking a "my country, right or wrong" or a head in the sand approach to the issues that generated these suits. In fact, a majority felt that there was some basis in fact for some of the suits. What they found most frustrating was a sense that many of these cases could have been avoided one way or another; either proactively or through mediation or consultation. The meandering timeline of inquiry, notices, waiting periods, and depositions drove these fast-paced, bottom-line oriented executives to distraction. From reviewing the claims made in a series of employee and former employee lawsuits this author suggests a process to reduce the number of employee and former employee lawsuits.

Act upon good data. Form a task force to review all employee and former employee lawsuits (including threats of lawsuits and suits settled) over a given time period (for example five years). This team should consist of the CFO, the Vice President of Human Resources, chief in-house counsel or retained employment attorney and one person who has no personal stake or turf to protect ( a facilitator or management psychologist) to drive the process. This group should be chartered with the goal of identifying the commonalties contained in the suits. With these data in hand the organization should embark on a crash program to address whatever employment, training, supervision / management and other practices that need modification and improvement.

There are, at least, ten specific tools that any organization can use to reduce the number of employee and former employee lawsuits. Many of them may currently be in place in your organization. But if they are not used continuously and with expertise they may produce exactly the opposite of the desired effect. A brief review follows.

**1. Interviewing skills training.** Most interviewers think they are great at it - and they're not. Look at management training programs and you will often see that interviewing is neglected. Prospective employees come to your organization with their personalities already fixed, with their work histories already established, with their personal habits well ingrained and with their attitudes toward employers, co-workers and their careers already in place. If your organization is hiring people without having this data, it is at risk.

**2. Conduct reference audits.** Okay, references are increasingly difficult to get. But profits are increasingly difficult to generate too and no one has given up on them! Review your company's reference policy and procedures and conduct training to enhance the ability to generate second and third "generation" references. Imagine the distress of the president of one of this author's client companies when he learned, while defending against a former employee lawsuit, that this employee had sued her two previous employers and received substantial settlements from both. This information could have been accessed before the fact and saved time, money and stress.

**3. Bona-fide employee orientation.** Many employee orientation programs consist of signing insurance documents and giving directions to the coffee room and rest rooms. This is not enough. Your organization must make a formal presentation of what is expected of all employees. Policies and procedures must be explained and the consequences for not behaving according to them must be clearly spelled out.

**4. Institute or re-energize your formal employee probation period.** Many company policies reference a probationary employment period but very few use this tool effectively. Your counsel can explain the extent to which a clearly stated and uniformly enforced probationary period can facilitate the process of weeding out problem employees early on.

**5. Cultural diversity and sexual harassment training.** Every employee in your organization should attend, to one extent or another, cultural diversity and sexual harassment training. This need not be a prolonged experience and in some companies it is covered in the formal employee orientation session. But be sure that it is conducted in a serious, meaningful way and without a "wink and a nod" or tongue-in-cheek attitude. Going through the motions will not help your defensive posture and may be pointed out as evidence of a hostile environment.

**6. Performance appraisals.** Performance reviews are the bane of many managers' lives. They take valuable time and energy. But, notwithstanding the employees right to know how he or she is doing, they are key to building a fair, accurate and useful picture of the employee's history in your organization. Every supervisor and manager must be held to the same standards, processes and time frames regarding employee performance review. Short-term training sessions can be quite useful in achieving this end.

**7. Disciplinary practices.** Every company should have and uniformly enforce a disciplinary program. Policies must be clear as to what warrants employee discipline. Processes must be clear as to what constitutes a verbal warning, a written warning, and what accumulation of each of these warrants suspension and, ultimately, the termination of employment. All managers must be trained in these policies and procedures and all managers must use them.

**8. Termination policies and practices.** An unfortunate fact of organizational life is that some employees have to be fired. Having the right pre-hiring, training, performance management and disciplinary practices can reduce the frequency but not eliminate it

completely. Have a clear and uniformly applied policy on employment termination, career assistance and severance benefits. Exceptions to the rules will create problems down the road. An attorney who specializes in employment law is a "must-have" resource and if a career management professional is needed it should be someone who can ethically balance the former employee's and company's needs.

**9. Employee handbooks and published management policies and procedures.** These projects often fall to the bottom of the human resources department "to do" list because they are tedious, never-ending, thankless tasks. At a minimum they should be reviewed for update every quarter. There are outside firms who can monitor and manage this process for the HR department. But, when the unavoidable lawsuit does arise, all the hard work done in the eight steps above may all have been for naught if those policies, procedures and practices have not been published and distributed.

**10. Defend vigorously.** Certainly, if an employee or former employee lawsuit points out a glaring weakness in the policies, procedures or practices of your organization it is probably best to settle the suit, fix the problem and move on as briskly as possible. But some organizations, whose understandable preference is to focus is on running the enterprise, settle law suits too quickly in order to "make the problem go away". It is unwise to compare the costs of settling and litigating one specific suit. Settling an unjust, bogus or annoyance suit has hidden costs in the future law suits that will surely follow. No employment attorney this author spoke with would opine as to exactly how litigation-prone employees locate settlement-prone employers but more than a few said that, somehow, it happens.

No one of these above ten methods will completely eliminate your employee and former employee lawsuits but taken together they will reduce their number and impact.

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Phone: (941) 681-2304 • Email: drpaul@drpaulpowers.com