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Ten Simple Steps to Avoid Employment Lawsuits

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You're striving to operate as efficiently as possible to increase your company's competitive advantage and, ultimately, its profit margin. But then someone in the company steps on a legal landmine and you spend \$50,000 to win a lawsuit. If you settle or lose, you could spend \$150,000 or more, and all of the margin you worked so hard to gain is gone. You can take steps to prevent this scenario. Here are ten of them we've gleaned from defending employers in employment disputes:

1. **Make Reporting Complaints Easier.** The earlier you learn of an employee's complaint, the better. You can't fix a problem you don't know about. Providing more than one option for employees to complain ensures that they can bring legitimate issues to management's attention and that a supervisor cannot hide issues from Human Resources and upper management. Using the chain of command is often best, but employees sometimes need a direct line to their boss's boss. It promotes accountability and transparency. It may also provide a defense to a lawsuit. If an employee has available to her various ways to complain about harassment but does not take advantage of them so that the employer has an opportunity to fix the problem, she may be barred from recovery. So set up a complaint hotline and email address or make employees aware (in writing) that they can report issues directly to the director of HR if their supervisor is the problem or has ignored their complaints.
2. **Timeliness is Next to Godliness.** Be proactive. This is simple to understand but difficult to do. Once you learn of a problem, you have to respond. The company's response will obviously depend on the problem, but understand that the response – or lack thereof – will be scrutinized. Simply documenting the issue may be enough. Other times, an investigation that results in disciplinary action will be necessary. But the company must act. If management or HR becomes aware of a problem (whether it's overheard in the breakroom or received as a written complaint), it must be addressed.
3. **Document Performance Deficiencies.** As every HR pro knows, you document everything. But performance problems and conduct violations are more important than other issues. If you want to discourage a lawsuit, make sure the employee you just fired for performance issues has already been written up twice for poor performance. Under those circumstances, proving the actual reason for her termination was her performance and not her race, gender, or disability is easy. It may be awkward to call a team member out, but it's best for the team.
4. **Don't Make Exceptions.** A big part of being perceived as a fair employer is consistent application of the rules. When you make an exception for one employee, you alienate the others. So, consistent application of policies regarding promotions, vacation, pay, assignments, awards, discipline, and termination is the only way to go. After all, the alleged unfair application of the rules is the basis of almost every employment lawsuit.
5. **Train Your Front Line.** Training does not cost money, it saves money. As frustrating as it can be to pay for good training and interrupt your employees' otherwise productive workday, good training usually pays for itself many times over. Who needs it the most? Well, who interacts with employees more than any other level of management in your company? Front-line managers. They handle the day-to-day gripes that, if not handled properly, become lawsuits. So invest in your first level of

management. Train them to spot issues, to be proactive, and to be consistent. Equip them to be good managers now so they don't have to be good witnesses later.

6. **Create Specialists.** Some employment laws have become extremely complex, and expecting one person to stay on top of all of the changes is unrealistic. Use the strength of your team and spread the load. Designate a member of your HR or management team as the FMLA specialist or the ADA specialist, and make sure that person gets additional, specific, and regular training in that area.
7. **Make Your Handbook a Tool, Not a Stumbling Block.** An employee handbook is a tool that communicates a company's expectations to its employees. It should include statements addressing at-will employment; equal employment and harassment issues; work hours; leave and accommodation under the FMLA and the ADA; workplace violence; trade secrets and confidentiality of company information; work rules and the consequences for violating them; and other important issues. But often handbooks include too many policies or complicated policies with unnecessary deadlines and commitments that trip companies up. Simplify your handbook. Keep it up-to-date. And make sure employees sign acknowledgments that they received and read it.
8. **Terminate Slowly.** You're probably an employee. Imagine losing your job; it would be a life-changing event that should not be taken lightly. The decision to terminate someone's employment should therefore at least (1) be reviewed by more than one manager, (2) involve someone with Human Resources training, and (3) be well documented. If you are unsure of important facts or someone is not available to review the decision, suspend the employee and wait. Get counsel. Sleep on it. A rush to judgment can be expensive.
9. **Consider Severance Agreements.** Sometimes paying a small amount early is smart. A severance agreement usually results in the company paying an employee a few weeks (or even months) of salary in exchange for the employee releasing all claims against the company. If done correctly, this eliminates the chance of a lawsuit. If a mistake has been made, it often saves the company money.
10. **Operate by the Golden Rule.** That's right – when in doubt, treat employees as you would like to be treated. This might be a cliché, but it's also the most important step. If your team can consistently pull this off, it will significantly reduce your company's legal exposure and result in a more loyal and productive workforce.