

## How To Increase The Chances You'll Be Sued

A few simple, easy to implement practices can **increase** the odds that an employee will sue you. Nothing is guaranteed, of course, but these actions have been undertaken by numerous organizations that have been sued in the past. Most of them are real winners (or losers, depending on your perspective).

### Use "Wrongful Hiring" Practices

- Hire unqualified persons who are not good "fits" in your organization.
- "Shoot from the hip" during interviews. Don't take time establishing an interview procedure or a set of questions and requirements for each position.
- Fill the position as quickly as possible. Don't waste energy on second or even third interviews, and whatever you do, only interview one or two people. Resumes clutter desktops and interviews consume time.
- Ask whatever "pops" into your head — illegal or not.
- Don't consume resources training interviewers regarding what is legal to ask under the Americans with Disabilities Act (ADA), Title VII, or the Age Discrimination in Employment Act.
- Make whatever promises you need to make to get the person hired. Make sure the candidate realizes that the position is long-term ("forever" might be a good choice of words) and set his mind at ease that he can count on regular, hefty raises. Throw employment-at-will to the wind.
- Don't worry if questions are job-related or have a business justification. Find out as much as you can about the candidate — personal or otherwise. Invasion of privacy makes for a more interesting interview.
- Seek to "clone" yourself so that prospective hires are as much like you as possible, regardless of job requirements. It also reduces the need for diversity training later on.
- Don't expend effort checking references. It devours time and "muddies the waters."

### Encourage A Discriminatory Environment

- Whatever you do, don't train your managers so they understand the elements of harassment and the basics of employment law. They already have enough to think about.
- Make sure that both managers and employees are unaware of what they should do if they have experienced or been informed of an act of harassment or discrimination. What they don't know can't hurt them.

- Keep reporting procedures secret.
- Don't waste time maintaining a current Equal Employment Opportunity (EEO) policy or disseminating it. It only increases employee expectations and kills trees.
- Rely on stereotypes as much as possible. Knowing that women can't tolerate stress well and don't like responsibility, that men can't handle issues that require sensitivity and communication, or that older workers are less productive simplifies your hiring and placement.
- Keep your doors closed. An "open door" policy can only lead to the entrance of problems. You just can't control what walks in.
- Tell employees to handle their own problems. This builds self-reliance and encourages better communication among the troops.
- Delay an investigation as long as possible. Most problems just go away if avoided.
- If you have no other choice but to investigate, do it quickly, leave no evidence (DO NOT DOCUMENT!!!), and gossip about it with as many people as possible. Think of it as "information gathering" and it may just make for fascinating conversations.
- Use corrective action tools to make sure nothing like this takes up your time ever again. Punish the victim (that discourages reporting!) and act swiftly and severely — no matter what.

#### **Don't Document, Drop Breadcrumbs, Or Leave Any Evidence**

- Insist that managers keep no records regarding employee performance and behavior. Doing this also eliminates the need to train managers how to effectively document (it's a two-fer!).
- Don't document corrective actions, including warnings, counseling, probation, terminations, etc. Better yet, don't take any corrective actions. As noted above, most problems go away.
- Don't bother making sure that employees read the employee handbook and at-will statement. Maybe just avoid that handbook altogether.
- Performance evaluations? Nobody likes them. Enough said.
- Ignore federal and state records requirements (FLMA, FLSA, OSHA, ADA, ADEA, EEO, AAP, etc.). Does anybody really know what all those letters mean anyway?

#### **Be Inconsistent And Spontaneous**

- Don't follow your own rules. Bend the rules! Make exceptions! Be creative!
- Treat similarly situated employees differently. The people you treat better will like you more!

- Make stuff up as you go along. Don't be confined by established policies and procedures.
- If you establish policies and procedures, keep them to yourself. Not communicating them ensures that they will not be misunderstood.
- Let your mood be your guide.
- Let employees wonder. If you follow policies and procedures too closely they will know what to expect.

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