



# Nip it in the Bud

PREVENT MANAGERIAL MISTAKES THAT CAN LEAD TO EMPLOYEE LITIGATION

Here's an attention-grabber for you:

According to the National Federation of Independent Businesses, on average, every time a small-business owner gets taken to court—win, lose, or draw—the cost is more than \$100,000.

Not interested in that hit to your bottom line? You're not alone. In fact, entrepreneurs place fear of litigation near the top of their list of business worries. And rightfully so—America is a lawsuit-happy society.

So what's a responsible business executive to do? For starters, read this quick article. It's packed with tips for preventing the managerial mistakes that commonly lead to employee litigation.

## **Make Better Hires**

Nip personnel problems in the bud by ensuring marginal employees and perpetual complainers are never hired. Train hiring managers to interview aggressively, asking open-ended questions that will bring out a candidate's "toxic" traits (e.g., lack of respect for authority, victim-like thinking). Consider including integrity and personality tests to ensure potential employees will fit in with their co-workers.

## **Put it in Writing**

From employment contracts to performance evaluations to disciplinary actions, documentation is invaluable. Protect yourself. Require written records, signed by both employer and employee, to eliminate the "he said, she said" discourse employees may use as ammunition.

## **Take Employee Complaints Seriously**

It's easy to become overwhelmed with the daily operation of your business and overlook the seriousness of an accusation. While it's important to hit numbers and meet deadlines, it's equally critical to hear out a complaining employee. Encourage your employees to come forward with complaints without fear of punishment. Address problems early and prevent them from festering.

## **Train Managers**

Conflicts between employee and manager are among the most common causes of employee lawsuits. If it doesn't exist in your organization, establish some form of mandatory managerial training on ways to avoid

and investigate sexual harassment, workplace discrimination, and other employment quagmires. Your supervisors must know how to handle difficult situations—what to say and whom to consult—to protect your company.

### **Take a Walk in Your Employee's Shoes**

When a serious employee problem arises, it's human nature to assume you're right and the employee is wrong. But such a black-and-white perspective is seldom accurate. To head-off trouble, take a step back and try to view the situation from the employee's point of view. What is he feeling? What are his motivations? You may gain a new perspective on the problem and find a way to resolve it.

### **Keep Employee Feedback Objective**

People do business with people. As a result, few aspects of employee management are purely objective. Protect yourself from liability during performance reviews by relating praises and criticisms, rewards and disciplines to the job and not the person. Praise an employee for being the leading sales rep for the past 90 days, not for being young and aggressive. Criticize an employee for failing to meet an established sales quota, not for being lazy. Feedback that characterizes the employee, rather than evaluating performance, may become fodder for a lawsuit.



### **Make Honesty Your Policy**

The truth hurts sometimes, but it's essential in business. While you may be tempted to save feelings by making up excuses (e.g., telling an older employee his position has been eliminated when in fact his performance has been poor), doing so will leave your company open to liability. When a mistake has been made, never attempt to cover it up. Shredding documents, deleting files, and recreating drafts can carry worse consequences than the initial misdeed.

### **Be Prepared for the Inevitable**

Despite your best efforts, a litigious employee may still find something to sue you about. Be ready for him—carry good insurance. Meet with an attorney to review your company's risks, identify coverage gaps, and recommend appropriate insurance. While insurance will not keep an employee from suing you, it may pay your legal costs and the amounts of any judgments against you.

#### *Disclaimer:*

*The information contained in these articles is intended to provide useful information. It is published with the understanding that the publisher is not engaged in rendering legal services. For specific legal advice, please consult your attorney.*

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