

How Does My HR Storage Help Employers?

Businesses of all sizes are increasingly becoming victims of lawsuits filed by their employees, usually after the process of termination has completed and no waiver of the right to sue has been agreed upon during severance negotiations. A disgruntled employee, angry and embarrassed that they have been fired, can find several ways of labeling their dismissal as either an act of retaliation or discrimination. There are several legal avenues employees can pursue that provide protection of employee rights and involve government entities that are more than

willing to investigate whether your work environment has violated any laws or rules of employment. Even if you are an employer in an “at-will” recognized state, this does not completely release you from all liability and the chance of litigation. Remember, even if you have done no wrong, defending yourself from accusations will always be an expense. The following sections outline ten mistakes that employers make that increase the likelihood of litigation and financial exposure.



TRYING TO MOTIVATE UNDERPERFORMING EMPLOYEES WITH BONUSES AND RAISES:

At some point during the year most companies offer their employees a bonus and/or raise. This may happen after a performance appraisal, at the beginning of a new year or during a prominent holiday season. It may be tempting to give underperforming employees a bonus or raise in order to motivate them to perform better. It is often times difficult, especially in smaller companies, to withhold a bonus or raise. However, giving an underperforming employee a bonus or raise in the hopes they will begin performing better will only reinforce their current behavior. If a

bonus or raise is underserved, it simply should not be issued. In addition, in the event that this underperforming employee is eventually terminated on the grounds of poor performance, they can cite these undeserved bonuses and raises as evidence that they were performing as directed. This situation will most likely result in litigation and an additional unnecessary expense for your company. You can use the My HR Storage performance action tool to show performance patterns and the steps toward termination in order to protect your place of business.



IGNORING PROBLEMS:

This is somewhat similar to the previous mistake because it leads employees to believe that they are performing at an acceptable level when problems are ignored. When performance issues are ignored it can create a snowball effect that may begin adversely affecting other employees as well. If an employee is underperforming, then he or she needs to be taken aside in a private meeting and

told exactly what their deficiencies are and what they should do to correct them. If deficiencies are ignored for a prolonged period of time and that employee is eventually terminated or passed up for a promotion or raise, the employee may react with hostility and surprise. This is usually followed by filing a claim of discrimination.

NOT DOCUMENTING EVERYTHING IN WRITING:

Any time an employee is spoken to about their performance or behavior; it should be put in writing with specific details and signed by the employee. The document should contain a plan of action, a turnaround period or date when the performance or behavior will be checked again, and placed in the employee's personnel file. This prevents the situation from turning into a "he said, she said" account of events. Verbal warnings may seem reasonable as the first step in a disciplinary roadmap but verbal warning

hold little weight and are difficult to prove in court. Also, employees will not take verbal warnings as seriously as they will take written warnings. In the case of litigation, having a clearly documented trail of these corrective meetings will serve the employer well and help build a solid defense. You can use the My HR Storage performance action tool to show performance patterns and the steps toward termination in order to protect your place of business.



LETTING EMPLOYEES ACCESS THEIR RECORDS AND/OR PERSONNEL FILES:

If an employee requests to see their personnel file, they should be allowed access within a certain, reasonable timeframe. Most companies allow their employees to access their personnel records every six months upon request although this rule varies by state. Personnel files should not include records related to the investigation of a

grievance or criminal matter, medical records, references or planning documents. Access to records regarding medical files and/or exposure to hazardous substances must be given within fifteen days from the date of request. Your employees have real time access to their personnel files via My HR Storage.



FORGETTING ABOUT TRAINING:

Training new and current employees is a necessary activity that many companies decide to overlook or don't invest enough time in because it detracts from more profitable activities. Training is even more difficult and time consuming if your company does not have professionally written standards and procedures manuals and comprehensive employee handbooks. HR360 offers 45+ different HR training videos to educate your HR team so they can prevent and correct behaviors that lead to lawsuits.

Managers and owners that are not well-versed in every policy of their company, including properly documenting performance appraisals and other corrective recommendations, can ultimately set the stage for eventual liability. You can use HR360 to create standard appraisal measures for all employees; and use My HR Storage to track reviews and performance issues to show a pattern of problems before terminating an employee.



DISREGARDING PRACTICE POLICIES:

Your company's standards, policies and procedures establish how your company operates. They set the rules for how employees should perform and behave and what the company and its managers expect from its employees. The policies also ensure that all employees are treated equally and consistently as specifically outlined in the employee handbook. Perceived inconsistent treatment, and/or favoritism, can result in an employee believing that their punishment or corrective actions were unduly harsh and unjust. This can lead to the belief of unfair and discriminatory treatment which can lead to litigation. It

is also important to regard company policies with sincerity because employees will model their behavior after their supervisors and managers in regard to their attitude toward company policies. This can lead to an unfavorable working environment that is viewed as uncaring and mismanaged. Handbook samples are available in HR360, or ask your insurance agent about subscribing to the Managed HR Portal - Ask the Pro where you can have a custom built handbook, and get answers to your HR questions via telephone or email (fee may apply).



LYING:

Anytime the truth is avoided, whether to protect feelings or for any other reason, management may be held liable when the truth is revealed and/or discovered by lower level employees. This can lead to disgruntled employees and possible litigation when the truth is avoided during the process of termination. For example,

if an older employee is terminated and told that the company is eliminating positions and a younger employee is hired to replace the terminated employee—the lie may result in a discrimination claim even if the original intent was simply to protect feelings from being hurt.

TELL IT HOW IT IS:

Terminating an employee without notice is rare and ill-advised but sometimes may be appropriate if the employee's actions qualify this abrupt dismissal. Almost always, firing without warning will make the terminated employee feel disrespected and treated unfairly. This may result in an employee that hopes to gain revenge via litigation and claims of discrimination and/or retaliation. If the

disciplinary measures are outlined in the employee handbook this can be avoided. Also, your company should be able to state whether the immediate dismissal is consistent with previous disciplinary actions and if not, why. The termination should also be accompanied with a legitimate business reason for the dismissal.



CRITICIZING AN EMPLOYEE:

When it is time for a performance evaluation or other appraisal of performance it is important to remain completely objective rather than subjective. Criticism should be coupled with praise and both directed at the position rather than the person. Detailed performance metrics and job descriptions greatly help in this arena. Using personal characteristics while

criticizing an employee is never advised, and can lead to claims of discrimination or abuse in the future—which may lead to litigation. For example, an employee that continually fails to meet deadlines should not be referred to as “lazy.” Specific job descriptions are available inside HR360 and available for sharing with employees via My HR Storage.

BOYS WILL BE BOYS:

Jokes and pictures that are disseminated through company email accounts, or even during the course of the workday via personal accounts, may result in a hostile work environment whether intentional or not. Passing comments and other behaviors can also contribute to an unwelcoming workplace environment where harassment is allowed to exist. Individually, these actions may not seem harmful but viewed over the course of a year, in their accumulated totality; they

can be viewed as severe breaches of professional conduct. Employers who know of these actions by their employees and fail to take corrective measures of discipline are setting themselves up for litigation and damages for liability. You can use the My HR Storage performance action tool to show performance patterns and the steps toward termination in order to protect your place of business. Harassment training for employees and managers is included inside HR360.



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