



Employment Lawsuits are like the Weather

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Have you ever heard the expression, "When it rains, it pours"? I'm sure you have, and I'm sure more and more companies have uttered those exact words within the last year. Why? According to the latest statistics released by the U.S. Equal Employment Opportunity Commission (EEOC), employers are getting rained on like never before. During fiscal year 2007, discrimination claims rose nine percent. And during the first quarter of 2008, claims rose 21 percent when compared to the first quarter of 2007. If that isn't enough, claims rose 31 percent when comparing February 2008 to February 2007. You can only imagine what the numbers will look like for fiscal year 2008 if this pace continues.

Being proactive to this down pour is an umbrella that will drastically decrease your company's chances of getting all wet. Being sued or having a claim filed against your company means wasted time and money for you and your business - time and money most companies cannot bare to give. Don't lose hope.

10 areas for companies to be proactive

1. Policies and procedures - Unwritten policies and procedures are much harder to prove to a third party. Will they believe the company (who makes thousands and/or millions of dollars each year) or the individual employee (who may be barely getting by)?
 - a. Maintain an up-to-date employee handbook
 - b. Maintain an up-to-date policy binder for managers
 - c. Maintain an up-to-date compensation program
 - d. Stay current with the changing laws and regulations

Written policies and procedures open the communication lines and enforce consistency in the workplace. They instill the feeling of fairness in employees. Written policies and procedures are becoming a critical piece in the following areas: training, disciplinary action (including terminations), and third party investigations.

2. Communication - Open communication cannot be stressed enough.

- a. Allow employees to talk in the following meetings: departmental, appraisal, disciplinary/termination, etc
- b. Ensure that employees are listened to
- c. Give timely feedback to employees

Open communication improves employee morale and decreases negative assumptions that lead to unproductive employees. Never take for granted that employees are always on the same page as the leaders of the company. Be bold and give more information to employees. Slow the presses at times to ensure that management and employees are clear as to what is happening and what is going to happen in the company.

3. Performance appraisals

- a. Allow employees to perform a self-appraisal. This empowers employees to have a say on how they are doing and where they would like to be. It also allows management to measure the gap between the employee's perception and reality. In turn, this will identify key communication areas that must be discussed in the appraisal meeting.
- b. Be cognizant of appraisal due dates. Although it is common to receive an appraisal after the date that it was due, this does negatively affect employees.
- c. Write effective appraisals. Supervisors/managers are usually performing several appraisals within a short period of time, which means a lot of thought and time on their part. This is time well spent and should be looked at as an opportunity to improve the employee, thus improving the manager.
- d. Conduct constructive appraisal meetings. An effective appraisal meeting should begin with areas that the employee is doing the best in, then focus on the areas that need the most improvement (including setting attainable goals and follow-up dates), and last, conclude with a summary of the above (i.e. here are the areas where you are doing the best in and here are the areas where improvement is needed and this is how you can get there).

4. Termination analysis

- a. Slow down the firing process. No termination must happen on the spot. Suspensions are useful in these situations to allow management to review the situation and even perform an investigation if needed.
- b. Create a checklist that forces time to be taken to count the ducks and answer the "what if" questions. Checklists often take the emotion or frustration out of the situation and guides management in a time of need.
- c. Bounce the situation off another member of management, counsel, etc.

5. Career path development - It's hard for employees to become engaged in their work and in their company when they don't have a clue as to what the company's grand scheme is for them.

- a. Give them something to shoot for and the tools to get there

b. Clarify to each employee what the company's mission is, its top three business objectives and how the employee fits into the plan
Frankly, some employees will not have what it takes to move up the ladder. Being upfront and honest in these situations is the best practice. Look for alternate routes that will still engage them in the company years from now.

6. Recognition

- a. Praise in public and discipline in private
- b. Remember that top employees are taking care of the company. Be aware how the company is taking care of them and recognizing their accomplishments
- c. Keep the mediocre, or even sub par, performers in line of sight. They may only be one recognition away from engaging themselves to the company and becoming the next star

7. Discipline - Employees need to know where the boundaries lie. Discipline is constructive feedback when the employee is outside those boundaries.

- a. Be timely when disciplining
- b. Be consistent when disciplining
- c. Do not assume that employees will eventually come around or correct themselves

Effective disciplinary action has proven to open the communication lines for employees, in effect, improving productivity and allowing a good defense for employers during a third party investigation.

8. Training - Training is communicating to your employees (management included) what is expected of them. It doesn't make sense to hire an employee and not train them but expect them to succeed in the job.

- a. Provide new hire orientation training
- b. Provide job-specific training
- c. Provide basic and job-specific safety training
- d. Provide supervisor/manager training

9. Position descriptions

- a. Should include the essential functions of the job
- b. Should be in compliance with the American Disabilities Act (ADA)
- c. Utilize the description at the beginning of employment, during performance appraisals, during promotions, during disciplinary action (including terminations) and during third party investigations
- d. Allow employees to be a part of the position description revision stages, in effect, empowering and engaging employees

10. Pre-and post-employment behavioral/personality assessments - With the era upon us when previous employment checks gets us a scarce amount of information about a person, we are left most of the time making a hiring decision based on a resume and a 20 minute interview. With growing employee turnover costs on the line, companies should learn as much as

they can about a person's behavior/personality before making the offer of employment. Most assessment tools are quick and user friendly.

- a. Utilize assessments to measure a candidate's view on absenteeism, work ethic, substance abuse, theft in the workplace, etc.
- b. Utilize assessments to measure a candidate's and/or current employee's fit for a job in the following areas: customer service traits, sales traits, numerical ability, verbal ability, energy level, decisiveness, independence, etc.

Assessments have proved to provide valuable information that can assist in making a better hiring decision or ways to identify the strengths and weaknesses of current employees and act upon them.

Conclusion

Getting caught out in the rain is an inconvenience for most people, especially employers that have no shelters to protect them. Be proactive by preparing for the forecast. Build an umbrella for your company and leave the rain for the ducks.

If you would like more information on this topic, please contact Troy Wright at 888-556-0123 or twright@honkamp.com.

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