

Protect Yourself! Employee Lawsuits Do Happen

February 10, 2014 | by Einhorn Barbarito

Will your employees sue your company for discrimination? You hope not. After all, the policies, procedures, meetings, training and employee programs you design are intended to create an environment of professionalism, trust and mutual respect. But despite the best efforts of some of the most successful companies, the headlines tell all: "Wal-Mart Close to \$2 million settlement in Gender Discrimination and Retaliation Lawsuit," and "Lucent Technologies Employee gets \$195,000 settlement in Age Discrimination Lawsuit."

First let's review the current state of the law:

The Law Against Discrimination in the Workplace

Title VII of the Civil Rights Act of 1964 prohibits race, color, religion, sex and national origin discrimination and it applies to all employers with 15 or more employees. The corresponding New Jersey statutory scheme is known as the New Jersey Law Against Discrimination and applies to all employers. The Age Discrimination in Employment Act of 1967 (ADEA) prohibits age discrimination against individual who are 40 years of age or older and applies to all employers with 20 or more employees and Title I of the Americans with Disabilities Act of 1990 (ADA) prohibits employment discrimination against qualified individuals with disabilities. The ADA applies to employers with 15 or more employees. The Equal Pay Act of 1963 (EPA) prohibits wage discrimination between men and women in substantially equal jobs within the same establishment and applies to most employers. Each of these laws has various interpretations and implications that could affect you.

What can you do to avoid a lawsuit?

Although you can never be absolutely sure you will not be sued by an employee, there are steps you can take to reduce your risk. Consider some of the key areas of exposure: hiring practices,

accommodations for the handicapped, communications with unsuccessful job applicants, hiring policies, job descriptions and qualifications, job posting policies and practices, benefit, pension and retirement plans, performance standards, reviews, rewards and sanctions, employee evaluations, and the training of management personnel. In future articles, I will explore some of these areas of vulnerability in more detail. In general, information, documentation and communication are your key defenses. A general understanding of current employment law and knowledge of your rights and responsibilities is also key. Take care to set up systems that *prove* employees receive fair treatment. If you are a large employer, plan to do all you can to help those employees who are affected by downsizing with counseling, severance pay and other transition assistance.

If you are sued....

Keeping up with changes in state and federal laws that could affect your company can be a daunting task. Bookmark our website to get the latest news or email your questions to us. If a charge of discrimination through the New Jersey Division on Civil Rights or Equal Employment Opportunity Commission (EEOC) is brought against your company, owners may try to resolve the charge using the EEOC's free mediation program. It is of course advisable to retain experienced counsel to help guide you through the bureaucratic maze of dealing with these public agencies. If you are not sure if your business is covered by these laws, or you have questions about your rights and duties, send me an email or contact me to arrange a consultation. And remember, anyone who believes that his or her employment rights have been violated may file a charge of discrimination with EEOC and by law; the EEOC *must accept* the filing of a charge and at a minimum, perform an investigation.