

STRUCTURAL BUILDING COMPONENTS MAGAZINE (FORMERLY WOODWORDS)

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"Employment Practices - Liability" by Bob Bush

Sexual harassment, discrimination (age, sex and national origin), wrongful termination, libel, slander and other business-related practices are potential lawsuits your company could face. Right or wrong is not always the issue; just one lawsuit could break your company. Your management record could be one of spotless behavior, but a suit could cost hundreds of thousands, even millions of dollars.

Employees can interpret behavior in ways you never would expect, leaving you open to allegations. Over the past five years, the number of employee complaints pertaining to discrimination, harassment, and wrongful termination has increased dramatically. Discrimination suits alone escalated by over 150 percent in a two-year period. Fully one-third of the federal docket, and about one-fifth of state court proceedings are comprised of employee-related cases.

There have been a number of key federal statutes and acts passed that affect employee practices for your company:

1) TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

This act has the broadest coverage of any of the federal laws prohibiting employment discrimination. It addresses discrimination on the basis of race, color, religion, sex (including pregnancy), and national origin.

2) AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1988 (ADEA)

This act states a person can not be discriminated against due to age. Most of the provisions apply to companies with 20 or more employees.

3) AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

This act applies to employers with at least 15 employees and defines individuals with disabilities to include any person whom:

- Has a physical or mental impairment that substantially limits one or more of that persons major life activities (e.g. seeing, hearing, walking, talking).
- Or has a record of such an impairment (e.g. heart disease, cancer, and back injury).

4) CIVIL RIGHTS ACT OF 1991

This act expanded The Civil Rights Act of 1964 and the ADA, allowing jury trials for violations, holding responsible persons liable for declaratory or injunctive relief, as well as attorney fees and cost.

5) FAMILY MEDICAL LEAVE ACT OF 1993 (FMLA)

This act applies to firms with 50 or more employees and entitles eligible employees up to 12 weeks of leave in any 12-month period for:

- Birth of the employee's child
- Adoption or foster placement
- To care for a spouse, child, or parent
- To care for the employee's own serious health condition

6) ADDITIONAL REGULATIONS

There are numerous other state and federal laws, acts, and statutes that have made it more likely that employees will file and win lawsuits to recover sizable amounts in terms of awards. Some of the additional federal statutes include:

- The Fair Labor Standards Act
- Equal Pay Act
- Immigration Reform & Control Act
- The Older Workers Benefit Protection Act

PREVENTION IS THE KEY

There are many things you can do to decrease your chances at a lawsuit regarding employment practices.

EMPLOYEE HANDBOOK

Develop an employee handbook, in cooperation with your attorney communicating your company's employment-related policies to each and every employee at the time it is adopted, and to each employee hired thereafter. A signed acceptance form should be made a part of the handbook, with a copy kept on file to verify that each employee has received a personal copy of the handbook. The key elements or policies (as appropriate to the size of your business) of the handbook should include an:

- Prominent Disclaimer noting that the handbook itself does not constitute a contract
- Employment Relationship Policy
- Equal Employment Opportunity Policy
- Solicitation and Distribution Policy
- Sexual Harassment Policy
- Complaint Resolution Procedure
- Family and Medical Leave Policy
- Leave and Benefits
- Rules of Conduct
- Professional Automation-Technology Policy
- Conflict of Interest
- Anti -Discrimination and Harassment Policy
- Termination and Resignation Policy
- Outline of Hiring Practices

EMPLOYEE NOTICE

A notice to employees in a customized form letter stating your company's employment-related policies to each and every employee in your organization. It is an abbreviated version of an employee handbook. The notice to employees should be provided to every employee at the time it is adopted, and to each employee hired thereafter. A signed acceptance form should be made a part of the notice, with a copy kept on file to verify that each employee has received a personal copy of the notice.

GENERAL RELEASE AND SETTLEMENT AGREEMENT

One way to minimize legal risk when an employment relationship ends when employees are 40 or older is to offer a benefits package in exchange for a release of claims against the employer. There are several standard forms for this use that are acceptable. For assistance contact your attorney.

INSURANCE COVERAGE

There are a number of companies offering coverage for employment practices liability. This can be purchased as a stand alone (not part of any other coverage) basis or as an addition to the general liability policy. Most policies are on a claims made basis and usually offer at least a \$1 million limit. Most employment practices liability policies provide:

- Coverage for the company and all employees for suits by an employee, former employee or job applicant
- Coverage for claims by an employee alleging;
- Discrimination for race, color, religion, national origin, marital status, medical condition, gender, age, physical appearance, physical and/or mental impairments, pregnancy or sexual orientation
 - Wrongful Refusal to Employ
 - Failure to Promote
 - Wrongful Termination
 - Retaliatory Discharge
 - Harassment
 - Negligent Evaluation

- Negligent Reassignment
- Libel/Slander
- Invasion of Privacy
- Wrongful Demotion
- Wrongful Discipline

No brief article can give you all the details you need to protect your business. Hopefully this information will allow you to know what questions to ask your attorney and insurance agent or broker to properly protect the assets of your company.

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