

Curses! Sued again!

Employment practices liability (EPL) – we’re basically talking about discrimination and harassment – is a curse for smaller organizations. Employee complaints and lawsuits are widespread; costs are skyrocketing. Chubb Insurance Group surveys small businesses regularly and recently found 19% **expect** an EPL lawsuit in the coming year, while 24% have had problems in the last five years. Littler Mendelson, employer defense attorneys, says it can cost \$250,000 to defend such a suit, *if you win*. Most firms – more than 60% - have little or no protection.

Sure, protecting yourself can be hard ~

Smaller organizations are much more vulnerable because they don’t have readily available resources like larger firms. It can be mind-boggling trying to keep up with expanding legal definitions (‘discrimination’ now includes ‘retaliation’ with claims increasing by double digits), with new regulations and legal trends (‘third party’ suits from non-employees are now common), with handbooks and other responsibilities.

Many executives don’t deal well with employee performance issues and don’t address problems directly or document conversations. Recent financial difficulties have created a new sense of urgency and they say, “Now I’ve really got to get rid of Fred. He’ll understand; I’ve never had problems with terminations before.”

Clients can easily become confused about ‘employment at will’ – “Well, I can fire anyone at any time.” And they don’t realize how easy it is to file a complaint with the EEOC for starters, and how distracting (and expensive) it can be to handle the resulting investigations, not to mention lawsuits. The traps and landmines are everywhere.

But you can keep it simple ~

While not rocket science, getting prepared requires a disciplined approach. If you really can’t get it done, get some outside expertise to get started and set up.

- Update your contact resources – for example, do you have a legal hotline connected to your payroll service?
- Line up your experts: have brief ‘update’ meetings with your employment attorney, HR consultant or service, insurance consultant, or broker.
- Update your company policies and procedures – and communicate and explain to all; make sure all required training is done on a timely basis.
- Focus on employee performance issues, including –
 - Goal setting – or just minimum expectations
 - Scheduled-in-advance reviews – a brief conversation can be okay
 - Documentation – for the employee and your file
 - Stick to the schedules; don’t procrastinate!
- Be open about discussing new skills and training that might be important to your business in the future: encourage employees to improve their skills; help with cross-training or a coach, even if you can’t pay for the courses. This can help your case if Fred hasn’t made any effort.
- Act on all suggestions, feedback and especially complaints: get help as needed to investigate, document and respond (usually in writing); then monitor and continue to document the issue and the resolution.
- Consider buying Employment Practices Liability insurance even if just for defense.