Take Steps to Avoid Costly Litigation

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"The first thing we do, let's kill all the lawyers." — William Shakespeare, Henry the Sixth

How many business people have privately fantasized about Shakespeare's suggestion? The U.S. is the most litigious society in the world, and U.S. corporations are at the epicenter of the litigation craze. A lawsuit-obsessed U.S. society is not just media myth. Statistics bear it out. A study in 2006 revealed that on average about one lawsuit is filed per every 17 people per year in the U.S. And lawsuits are trending upward, particularly those directed at corporations. Some categories of employment discrimination and wrongful termination claims have grown explosively in the last few decades. Some suits are rational, others beyond the looking glass. Lesann McEnroe, a Microsoft employee, claimed she was unable to come to the office because she suffered from anxiety, panic attacks, post-traumatic stress disorder and agoraphobia. An understanding Microsoft allowed her to work entirely from home. In keeping with the adage that “no good deed goes unpunished,” McEnroe promptly sued when she was unable to come to the office because she suffered from anxiety, panic attacks, post-traumatic stress disorder and agoraphobia. An understanding Microsoft allowed her to work entirely from home. In keeping with the adage that “no good deed goes unpunished,” McEnroe promptly sued when she wasn’t promoted — even though every single position she sought for promotion required face-to-face interaction with employees. Funny? Of course, but likely not for Microsoft which, at rates around $500 an hour, had to defend itself against this travesty. As a former corporate counsel, I teach business students that in my experience, few employees ever believe they were rightfully fired. All it takes for an employer to be slapped with expensive, distracting litigation is an ex-employee who knows a bit about the system and is angry enough to use it to his or her advantage. Even if your business is in a state that follows the “at will” doctrine, this is no failsafe guarantee against employment-related suits. With this in mind, here are some tips for limiting the havoc these suits can wreak.

First, when you establish a policy related to the treatment of employees, follow it to the letter. Be consistent. An employee’s manual or handbook is not just something that moulders in the bottom of a file cabinet. It’s typically treated as a legal document, a contract, by the courts. If you like legal intrigue and feel corporate cash reserves need some whittling, just fail to follow your employee manuals. Second, when in doubt, document. An employee’s manual or handbook is not just something that moulders in the bottom of a file cabinet. It’s typically treated as a legal document, a contract, by the courts. If you like legal intrigue and feel corporate cash reserves need some whittling, just fail to follow your employee manuals. Second, when in doubt, document. Third, carefully consider whom you hire. In this electronic age, it shocks me how little beyond a cursory background check is conducted by many employers.

Some employees pore over employee handbooks and manuals, save every manager’s email, privately document every idle word spoken on the job. When they find the least weakness, they sue. They bounce from employer to employer, filing and settling suits along the way. A nice side income.

They will cost your business in time, legal fees bad publicity. When was the last time you checked out a prospective employee’s social media? Or plugged a prospective employee’s name into the docket history of your state’s court database? These are matters of public record.

You might discover that “diamond in the rough” has sued his last five employers.

The stakes are high, the task difficult, but minimizing expensive employment litigation is not beyond the wherewithal of employers. It requires a common sense approach and a bit of diligence. And diligence on the front end of the employment process beats scrambling on the back end.

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