

Words That Signal Opportunities To Avoid Liability

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**William A.
Nolan**

Partner
Columbus
Managing Partner

[CurrentsLetterWimage](#)One of the themes in my posts and on Currents generally is not missing out on easy liability avoidance opportunities. I want to make a stronger statement than the employment lawyer's usual, "Hey if you do X and Y, you can minimize employee liability," though certainly that is true and valuable. Rather: EMPLOYERS MISS OUT ON EASY LIABILITY AVOIDANCE OPPORTUNITIES, thereby diverting time, money and energy from building their organization and bettering their goods and services. [Here](#) and [here](#) are recent examples. These are lost business opportunities, opportunities to avoid liability. Consistent with that theme, here – in alphabetical order – are some words that should be red flags for employers and usually be cause to touch base with a lawyer [you trust to tell you](#) what you need, and not sell you what don't need:

- Accommodation: As the above-referenced posts note, managing employee health issues is the area where *the most avoidable liability is least often avoided*. (Stop and read those last 8 words again.) The opportunity to avoid liability in this area can be triggered by a number of signals, and an employee does not need to use a legal buzzword like "reasonable accommodation" or "FMLA" to trigger the employer's obligation to engage on these topics, but "accommodation" is certainly a red flag that you have such a situation.
- Harassment: Of course there is not always unlawful harassment every time somebody says this word, and there can be generic "harassment" not alleged to be on some unlawful basis, but this word is a red flag of a situation that you can more easily manage now than if you wait to see how it develops.
- Indemnification: This is less HR-specific, but it is such an easy one to flag that I do so here. Unless you are qualified to personally draft indemnification language in a contract, don't sign a contract with this word in it until you have talked to somebody who can. It can shift liability to your company, and often initial versions of indemnification paragraphs are unreasonably one sided against you. On the employment side of the ledger, this might include agreements with staffing agencies or PEOs or benefits companies.
- Lawyer (or attorney): If a lawyer other than your lawyer calls you, whether on behalf of a current or former employee or a government agency or some third agency, he/she likely is being paid to represent somebody's interests than yours or your company's. At least touch base with your counsel before having any conversation with this

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person. Likewise, an employee or former employee who claims to have a lawyer warrants that base touch as well. While experience tells us that many of those individuals do not really have lawyers, that announcement is a good trigger that you should at least strategize for a few minutes about your lawyer about how to handle that.