

Goals For The New Year: Prevent And Better Defend Employment Claims

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As sure as the calendar turns to a new year, there is no doubt that employers will see new employment discrimination charges and employment lawsuits filed. So now is a good time for a check-up to see if you are well-positioned to minimize the risks of such claims in 2018. Here are three quick, general pointers:

Clear Expectations

We've all seen it, in one form or another – the employee who, when faced with termination, will say: "I didn't know that could get me fired!" While policies and procedures can't cover every conceivable workplace scenario, you can ensure that your bright-line rules are in place, updated as necessary, and that employees have acknowledged that they have received and read them.

If the last time you distributed key policies was during orientation for employees who were hired many years ago, then a refresher of your current expectations may be in order. And it helps to require and retain sign-in sheets for training sessions, too; in addition to their value in documenting that employees are on notice of workplace expectations, those signed records can prove useful in a response to an EEOC charge or as an exhibit to a motion for summary judgment.

Coaching and Counseling

Yes, at-will employment means an employee can be fired for any reason or no reason (so long as it is not an illegal reason). And certainly there are instances that call for immediate termination of employment – theft, physical fights or threats of violence, serious safety lapses that harm or nearly harm employees or customers, and similar breaches of "zero tolerance" policies. But outside of such clear-cut terminable offenses, the use of coaching and counseling can improve employee performance (hopefully) and serve as notice to employees that they must meet expectations or face further consequences.

Consistent Enforcement

Life isn't fair, yet the absence of perceived "fairness" may cause employees to complain. If you have a well-publicized and trusted internal complaint system, perhaps concerns will be raised first through that process. But unfairness – particularly if an employee sees it as tied to race, gender or other protected characteristics – can lead to charges filed with outside agencies or claims filed in court for wrongful termination.

One way to reduce the potential for claims based on alleged disparate

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treatment is to review how similar situations have been handled before making a final disciplinary decision. If you ultimately decide that mitigating factors warrant something less than termination for what ordinarily would be a terminable offense, it is a good idea to document the rationale. Managers retire, HR staff members leave the company for new employment, memories fade over time – but you still want to be able to understand prior circumstances when doing a consistency review for a new situation.