

Dear HR Knowledge, I'm concerned our managers may be making mistakes that could land us in a lawsuit.

Employment claims are on the rise and behind every allegation is a manager or employer who may have taken part in escalating the issue to that extent. How your managers treat and interact with their staff is one of the primary contributors to how well the business will perform. By identifying and avoiding some common mistakes, such as the following, companies can reduce their risk of being involved in costly and reputation-harming lawsuits.

Not following company policy consistently: Many companies have employee handbooks which include discrimination prevention and leave of absence policies. When managers fail to review such policies, or make decisions without consulting HR, this can cause employees who feel their rights have been violated to file complaints with the Equal Employment Opportunity Commission (EEOC). Even worse, if managers are applying policies only to certain employees, it can be viewed as discriminatory – both in the opinion of employees as well as in a court of law.

Lack of interview preparation: Interviews can be a minefield of legal issues, and seemingly harmless “small talk” can land the company in hot water. Make sure everyone involved in the interview process understands what they can and can't ask legally. Avoid questions that cross the line such as:

- Are you married/divorced?
- How old are you? (unless it's a bona fide occupational qualification)
- When did you graduate? (similar to asking age)
- Do you have children or intend to?
- Do you own or rent your home?
- What is your salary history?
- Do you suffer from an illness or disability?

Creating a structured interview process allows the interviewer to focus on the essential duties of the job and ensures each candidate is treated equally. Keeping interview questions job-related allows interviewers to gauge how well the applicant will perform the job and will aid in avoiding any potential claims that may arise.

Mismanaging performance appraisals: Some managers find performance evaluations a burdensome task and will postpone or forget about them entirely. This can give employees the impression they are not a priority to their manager, causing a decrease in



morale. Other managers find it difficult to offer honest and straightforward feedback when it comes to evaluating their employees. Managers who give positive reviews when performance is less than satisfactory are inviting the possibility of a lawsuit in the event the employee is ever terminated for performance issues. Not only does this hinder the opportunity to improve workplace issues so employees can be more productive, but if the employee is fired, they may assume that the termination was for a discriminatory reason, because they were never notified of performance issues. Managers must not ignore the importance of open and honest feedback.

Poor documentation of performance issues: When performance issues arise, and managers address their concerns either through reviews, warnings, or informal conversations – unless there is documentation of the discussion, it never happened. Employers must follow up performance-related conversations with documentation confirming what was discussed, and what type of follow-up is expected. In addition, it is the employer's obligation under Massachusetts Personnel Record law to notify an employee within 10 days of placing any documentation in the employee's file that may negatively affect the employee's qualification for future employment, promotions, additional compensation, or the possibility that the employee will be subject to disciplinary action.

Dismissing employee complaints: Managers are often the first point of contact with complaints of harassment, bullying, or other workplace misconduct. If they fail to take such complaints seriously, no matter how frivolous, a bigger issue lies ahead. As soon as a complaint is brought to light, HR should be informed so they can begin an investigatory process. To avoid legal pitfalls, every employee complaint, no matter how small, should be well documented and investigated.

Too quick to terminate: Impulsive, negative reactions based on first impressions and "instinct" are often the wrong thing to do in the workplace. Courts will look at whether management was quick to fire an employee rather than working through any misunderstandings or performance issues that may have occurred. There are times when employee misconduct may necessitate a prompt termination, but firing an employee without cause or reason may appear discriminatory, even when employment is at-will.

EEOC and Americans with Disabilities Act (ADA) violations: Discrimination suits are the most common type of workplace-related litigation. Employees and applicants can file claims accusing the company of overlooking them for employment, promotion, and pay raises; for wrongful termination; or for unfavorable working conditions based on race, color, religion, sex (including pregnancy), gender identity, sexual orientation, national origin, ancestry, age, physical or mental disability, genetic information, military service or



veteran status, or any other classification protected by applicable local, state, and federal laws.

The golden rule of thumb is to treat all employees and applicants equally – without regard to any aspect unrelated to their job. Employers should demand the same from their managers as well.

Most managers do not realize they can be held personally liable in some workplace litigation. Compliance in all areas of federal and state antidiscrimination laws is a must for employers to prevent expensive employee claims.

Retaliation: Employers and managers may understandably take it personally when accused of discrimination, but showing restraint and curbing any personal feelings surrounding the situation is paramount. Managers may not fire, demote, harass or otherwise react in retaliation against employees or applicants who have complained, filed charges, or participated in an investigation or lawsuit citing discrimination against the company.

What companies can do to minimize legal exposure in the future:

Train managers in employment law – Investing the necessary time and resources into training gives managers the knowledge and confidence to apply the appropriate actions in every situation. In the end, a lawsuit will always prove to be more expensive than a training seminar; however, the lessons learned are likely to be the same. Consider sending managers to HR Knowledge's [HR Bootcamp](#), or attending our [Summer Webinar Series](#) for a comprehensive overview of the fundamentals essential to those who have a direct impact on the business.

Consult with HR – Instruct managers to come to HR first with any issues that can have serious repercussions. Contact us to review your policies to make sure they are in compliance with current employment laws. [Please email us](#) and an HR advisor will be happy to assist.

Lawsuits of any nature diminish valuable time and resources that should be spent on activities contributing to the success of a business. Employee lawsuits are especially harmful, as they can result in poor internal morale and can tarnish the reputation of the business.

Don't wait until your company is the target of a lawsuit before identifying your areas of risk and educating your managers!



About HR Knowledge

Founded in 2001, HR Knowledge, Inc. is a privately funded company providing integrated outsourced HR services tailored to our clients' needs. Our full array of offerings includes managed payroll, employee benefits administration, and HR consulting and support services, such as training, compliance, custom-built software solutions, and Hiring Process Management™, our comprehensive recruitment service that takes you from finding to onboarding new talent. Our major markets are fast-growing small- and medium-sized businesses, many of which are venture-capital-backed; foreign companies expanding into the states; and charter schools. Partnering with HR Knowledge can reduce your administrative costs, minimize your legal risk, help you find and develop talent, and alleviate the HR burden so that you can focus on your core business.

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