
5 Ways to Halt the Employee Litigation Spiral

By Michelle C. Harrell

If your company had a crystal ball and could see into the future after an employee has filed a workplace lawsuit against your company, what would you see? What lessons could you learn from the experience and what changes could you have made to potentially avoid that lawsuit? Many companies simply resolve the current lawsuit and learn no lessons from it.

I have represented companies and employees for almost 20 years in employment litigation matters. During some of those cases, certain patterns emerged that I call the “employee litigation spiral.” This “spiral” consists of several missteps or lost opportunities to resolve an emerging situation before it rises to the level of a lawsuit. Below are five simple, straightforward steps that your company can follow to potentially avoid having your company become embroiled in the rising number of employer/employee lawsuits filed each year.

1. Define company rules, policies and expectations in writing with an employee handbook and, if appropriate, an employment agreement.

Compliance with company rules, policies and expectations starts with a common knowledge and understanding of them. The simplest way to define and express them is to state them in a well-written employee handbook and to provide that employee handbook to every employee upon hire. Each employee should sign for their handbook to confirm that the employee has read and understands its contents. During times of disputes or complaints, it is easy to refer to its provisions to remind those involved of the company’s rules and policies. An employment agreement can also be used to state rules, policies and expectations relating to a particular employee. These agreements define specific obligations and entitlements for that specific employee, and can be a very useful guide if a dispute arises relating to that employee. A company that fails to have well-defined, written and published rules, policies and expectations is like a ship sailing on open waters without any navigational devices.

2. Establish a company procedure for employees to easily and openly report

potential violations of rules and policies to a neutral person.

Companies often say that they have an “open door” policy and that it should be easy for an employee to let management know if there is a problem. However, the reality is often far from management’s perception. Employees hesitate and many times withhold their concerns if they are required to first report them to their immediate supervisors. This is particularly true if the person causing them the problem is another employee who reports to that same supervisor or is, in actuality, the supervisor. This is another opportunity for the “employee litigation spiral” to activate. The employee withholds expressing the complaint, and the problem festers. If the problem is ongoing or repetitive, the complaint grows. In any lawsuits, there is a repeated theme that upper management “just didn’t know” that the problem was serious, repeated or unresolved. One solution is to implement an employee dispute reporting process that allows reporting to a neutral source that can then follow specific post-reporting protocols to surface issues to upper management if needed.

3. Consistently enforce company rules and policies.

A touchstone of sound employment practices regarding employee disputes is consistency. Employees are keenly aware when some employees are treated better or differently than other employees in similar circumstances. If an employee considers that he is treated more harshly or his complaints taken less seriously than others, the tension will rise. Consistent response to complaints will facilitate the solution process.

4. For employee disputes, utilize a mediation process early on to address workplace disagreements and complaints.

A company mediation process involves the employees communicating with each other and management towards the goals of fully expressing the underlying dispute, understanding all sides of the dispute, and achieving a resolution that allows the employees, management and the company to move forward peacefully. The mediation process focuses upon a resolution and not trying to place blame. For best results, it is productive to use a neutral, outside mediator to conduct the session so that employees do not feel intimidated and will be open to participating fully without fear of retaliation. Any resolution reached should be put into writing and signed by the participating employees. In today’s court system, most if not all employment cases are required to go through a mediation process which can be

expensive due to the mediator and attorney fees. Why not mediate the dispute early on before any lawsuit is filed and perhaps avoid one altogether?

5. Circle back with the employee post-dispute resolution to check their well-being and status.

After a resolution is with an employee, the company must not make the mistake of failing to follow up with the employee to make sure that the resolution “worked” or “sticks.” Even though a resolution may have been agreed upon, signed and implemented, if the solution does not fully and sufficiently address the problem – or a new problem has evolved – the company needs to know and deal with the situation. Otherwise, the mediation result will not be useful and the company could still end up in litigation with the employee.

Your company does not need to sit on the sidelines and wait for an employee to sue for employment-related complaints. If you implement these five steps, your company will be on its way to preventing an employee dispute spiraling its way into court.