

THE MANAGEMENT FILE

RESPONDING TO EPL CLAIMS

Insight for business owners and risk managers provided by SCS Agency Inc



Any business that has employees is a potential target for an employment practices liability (EPL) lawsuit. These lawsuits can be financially and emotionally draining for your company, even if you're ultimately found not liable. Avoiding an EPL claim requires management to be proactive by establishing a consistent methodology for employee policies, recordkeeping and dealing with your legal counsel and insurers.

Preventive Mediation and Arbitration

Businesses can often save thousands of dollars in litigation costs by having a third party hear claims and mediate a resolution. Many times, plaintiffs sue for damages and losses that exceed the amounts they would have settled for during alternate dispute resolution (ADR). Speedy mediation or arbitration can reduce the amount of lost wages an employee requests, limit the amount of time a company spends preparing a case and spare both sides the financial and emotional costs of going to trial.

But ADR isn't a one-size-fits-all approach to handling EPL claims. Mediation and arbitration cannot protect a company from discrimination charges brought by the Equal Employment Opportunity Commission (EEOC) or any other regulatory branch. Additionally, mediation and arbitration often ends with the company having to pay some kind of award to the claimant, even if the company is not legally at fault. When compared to lawyer and litigation fees, however, these awards are typically much less than the costs of a successful defense in court.

Responding to EEOC Charges

If a former employee or applicant seeks a discrimination or harassment charge with the EEOC, the commission will issue an administrative charge before the actual lawsuit takes place. The EEOC sends notice of the charge, listing details of the complaint and reasons for its investigation of the company. If the EEOC determines

a violation has taken place and the employer decides not to settle, it will litigate the issue and seek recompense for the affected employee, as well as impose changes to the company's regulations to make it more compliant. If the EEOC does not feel a violation has occurred, it will give notice to the individual who filed the complaint and give him or her 90 days to file a lawsuit on his or her own.

When issued, a formal charge typically lists a number of documents that the EEOC requires to begin its investigation. Whether or not it feels the charge has credibility, an employer should respond to the EEOC professionally and quickly, providing as much detail as possible. If an employer can immediately provide sufficient evidence that the claim is unfounded, it may be able to avoid a full EEOC investigation. An immediate dismissal of a claim by the EEOC can greatly reduce the employee's desire to litigate.

First Steps

Any company facing an EPL lawsuit should seek advice from legal counsel to properly investigate the incident and gather as many facts as possible. Time is essential for your attorneys and insurers to gather information and formulate a defensive strategy:

- Obtain witness statements from all employees who were involved in or witnessed the event.
- Gather company records on the plaintiff and establish a timeline of events.
- Contact your insurers as soon as the charge is made.

Good Recordkeeping

Paperwork is the most powerful evidence a company can use to bolster its case against an EPL claim. Established company policies, such as an employee handbook and records of employee training, set the standard for all company conduct and can be a major advantage in court.

An investigator or jury is less likely to find you guilty if you have records illustrating sound company employment practices. Alternatively, the absence of any documentation could be seen as an effort to cover up or avoid evidence. Keep in mind that any attempt to intentionally misfile or hide company records could be prosecuted as an obstruction of justice.

A Claimant May Want to Avoid Litigation

If the EEOC or other regulatory body decides there is enough evidence of discrimination to litigate, next steps include informing both parties of the information collected and offering an informal means of resolving the issue. This typically involves mediation by a council managed by the EEOC investigator.

An employer may ask for such mediation at any time during the investigation. If you're able to meet the demands of the EEOC and the employee filing the complaint, this route may be superior to litigation. If you're certain you're not at fault or decide the mediation settlement is unfair, you may decide to litigate instead.

EPL Insurance

No matter how many attempts are made to prevent an employment practice claim from going to court, some cases must eventually be litigated. Once a claim goes to court, it is up to an employer's attorney, employment records and insurer to protect the company from huge damages.

Even if an employer is able to avoid punitive damages, the defense fees alone can cause incredible financial

Tips for Preventing Successful EPL Claims

Use these tips to protect your business from costly EPL claims:

- Investigate candidates for employment during the hiring process, but guard their private information closely.
- Require employees to sign an "employment-at-will" policy.
- Ensure all new and current employees receive proper training, especially safety training, for their roles.
- Create and enforce a strict zero-tolerance policy regarding discrimination and harassment in the workplace.
- Immediately investigate all claims of harassment and administer discipline and training as necessary.
- Make sure your workplace policy provides at least two different methods of reporting harassment.
- Create an employee handbook and thoroughly document all evaluations, employee complaints and situations that led to termination of employment.

strain. An EPL insurance policy can protect employers from the financial consequences of such litigation. Contact SCS Agency Inc to determine the risk level of your company and how you can build a more secure employment practices policy.