
Ten Tips for Avoiding Litigation: Tip #5 – Treat Your Employees Fairly and Consistently

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The lifeblood of every business – big, small or in-between – is its employees, aptly called its human resources or human capital. A company can have the most innovative product or service idea in the world, along with a recognized market and an excellent strategy for capitalizing on it, but, without the right people to implement the idea and the right managers to train, supervise, and motivate that staff, the idea is likely to fail. That is why your employees are your most valuable resource. At the same time, however, employees are also frequent sources of litigation for businesses, including claims for wrongful discharge, discrimination, harassment, hostile work environment, failure to accommodate a disability, wage and hour violations, failure to properly pay overtime, breach of non-compete agreements, and theft of company trade secrets, to name just a few.

Employees are much more challenging to manage than any other resource your company uses to conduct its business. Your inventory, for example, is, for the most part, fungible. If one source dries up or becomes prohibitively expensive, chances are you will be able to find a replacement source. Similarly, your equipment is generally easily repairable or replaceable if something breaks. Not so with your employees. They require training, motivation, and incentives. They take sick days, personal days, and holidays. They go on vacation, care for sick or disabled family members, and sometimes they do not get along or work well with each other. And they sue their employers with increasing frequency.

In addition, studies show that the replacement of just one key employee can cost your business hundreds of thousands of dollars. Think about the down time and lost productivity associated with the departure of the former employee, internal and external recruitment costs to find a replacement, costs of training and orienting the new employee, and the down time and lost productivity involved in getting the new employee up to speed. These are just a few of the costs associated with losing an employee.

In short, you have invested a huge amount of your company's resources in your employees. Doesn't it make sense that you should protect that investment by implementing policies to keep your employees productive, motivated, safe, healthy a relatively happy? Here are some things you can try to help accomplish that goal.

First, always treat your employees respectfully, honestly, and fairly. This suggestion might sound obvious, and it is, but it is also frequently forgotten or ignored in the normal stress of the business world. It might also sound inconsequential, but it might just be the key to reducing claims against the company by its employees. Every employee wants to feel like his or her work is valued and essential for the success of the business. Finding ways to recognize and honor all your employees' contributions will pay significant dividends. Even simple gestures will reap rewards in areas like better employee morale and increased

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productivity among your staff.

Second, don't BS your employees. They know what is going on in the world and how outside events affect the company. They also know far more than you think about changes the company is considering, especially changes that could affect them negatively. Silence and secrecy may be necessary, but outright lying to employees is never a good idea. It is guaranteed to produce a cynical, untrusting, and equally secretive staff.

Third, have clear, well-defined company policies to let employees know what behavior you expect from them, what behavior you will not tolerate, and the consequences of engaging in that behavior. These policies should be memorialized in a written employee manual or, even better, easily accessible to employees on the company website. You should hire an experienced employment lawyer, who is knowledgeable about the current state of constantly changing employment laws in your jurisdiction, to draft your employee manual. The manual should also contain procedures for addressing problems when they arise, and for reporting violations. Whom do you call when X happens? To whom do you report violations of Y policy?

Fourth and finally, once you have those company policies in place, enforce them as consistently as possible. One of the most difficult management tasks is balancing the goal of fairness and consistency versus the desire to be flexible and treat people as individuals rather than as interchangeable parts. Rigid, unthinking, and blind adherence to rules can not only damage employee morale by stifling creativity and employee innovation, but also lead to unsatisfactory and inappropriate results. On the other hand, any perception by your employees that you are showing inconsistency or, even worse, favoritism in your enforcement of certain policies can lead to divisiveness and be equally damaging to employee morale. Inconsistently enforced rules are, in some ways, worse than no rules at all.

The safest, but perhaps most difficult path to follow, is to treat rules as sacrosanct except in unusual and rare cases that require special empathy and flexibility. If you conclude that a large number of your employees could qualify for the same exception if they were to ask for it, then you should either deny the request for an exception or consider scrapping the rule. Before making any exception to a policy or rule, consider the potential consequences down the road. What will you do the next time someone else asks for the same exception, particularly if that person is someone you do not particularly like? Reward your best employees with raises, promotions, stock options, and the like, not with exceptions to company policies. The former will motivate your good employees to try to be better; the latter will make them cynical about following company rules.

There are other ways to enhance and retain your human resources, such as training your managers to know and follow the applicable federal, state, and local employment laws, and minimizing the use and severity of non-competition agreements. I will cover these topics in future installments of this blog, so stay tuned!

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