

Employer Beware: Your Own Employees May be Your Worst Enemy

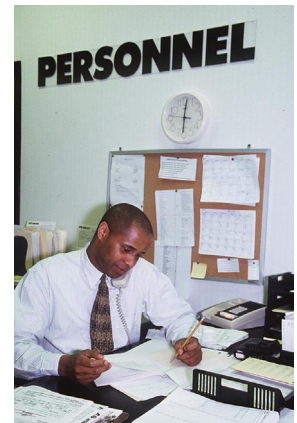
Think your company is most likely to be sued by someone outside the organization? Think again. Employees are suing their employers in record numbers. Employment-related lawsuits can be extremely costly to an employer, both in terms of money and productivity. Lawsuits alleging wrongful termination, discrimination, harassment and other related claims are often lacking in merit, but can be brought by any current or former employee who is able to articulate a colorable claim. Once the company is involved in litigation, it can choose to defend against the allegations or settle with the plaintiff. Either way, the experience can be damaging to the bottom line and cost the company untold amounts in the productivity of both management and the remaining workforce.

The vast majority of employment claims are those alleging some form of discrimination (which includes harassment) and arising under federal laws such as Title VII of the Civil Rights Act (Title VII), the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and the Equal Pay Act (EPA). All of these laws make it illegal for employers to discriminate on the basis of race, color, national origin, religion, gender, disability or age in hiring, discharging, compensation, or any other terms, conditions, or privileges of employment. Each state also has its own version of these federal laws and some provide even more protections to employees, by prohibiting discrimination on other bases, such as sexual orientation, or by not capping the amount of damages to be recovered by a successful plaintiff, as some federal laws do.

The Staggering Number of Claims

At a recent Professional Liability Underwriting Society conference focusing on issues related to employment practices liability, it was reported that employees had brought over thirty million claims against their employers by the year 2000. In fact, employment cases now constitute nearly one-third of all civil litigation filed in the United States.

The EEOC recently reported that discrimination charges filed in 2001 were at the highest level since the mid-1990s, with age and disability claims representing the largest number of suits. After years of decline, class action employment litigation is also on the rise again. A number of large, multi-national corporations such as Texaco and Coca-Cola have been the targets of such actions in recent years, leading to enormous settlements and an equal amount of press coverage. Due in large part to the posting requirements of the federal and state anti-discrimination laws and the press coverage of such huge settlements, employees are more educated and willing to sue than ever.



As with all litigation, the large majority of employment claims are disposed of before trial, either by summary disposition in favor of the employer or through settlement. The bad news for employers is that more and more cases are going to trial and more of the cases getting in front of juries are resulting in plaintiffs' verdicts, and large ones at that. A study released earlier this year by Jury Verdict Research revealed that between 1999 and 2000, the median jury award rose 44% -- from \$151,000 to \$218,000. The study also revealed that plaintiffs in age discrimination cases are getting the biggest awards -- the median age discrimination award was \$269,000 while the median gender discrimination award was only \$100,000.

The recent tightening of the economy and increase in layoffs is sure to propel these numbers even higher as more and more out-of-work plaintiffs decide they have nothing to lose in bringing an action against the employer who let him or her go.

EPLI: your best, and maybe your *only*, protection

Years ago, your Comprehensive General Liability policy (CGL) most likely extended coverage to employment claims. This is no longer the case; indeed CGL policies now routinely exclude employment claims from coverage. You may be able to obtain additional coverage for these claims through your CGL or D&O insurance, but unless it is specifically provided for, such coverage is likely excluded and unavailable. Employment Practices Liability Insurance (EPLI) policies have become increasingly available and should provide coverage for most employment claims, including the cost of any settlement or verdict, plus attorneys' fees. EPLI policies are frequently expensive, but so are the costs of defending an employment claim. Unless you are willing to take on the risk of self-insurance, an EPLI policy may be the only insurance product that can protect you once a claim is filed.