

TOP 10 STEPS TO MINIMIZE EMPLOYMENT LIABILITY AND LITIGATION IN 2021

Monday, January 18th, 2021

By [Ann E. Evanko, Esq.](#)

As we usher in the new year, employers are faced with continuing challenges due to COVID-19 disruptions, remote working, uncertainty with COVID-19 vaccinations, new employment laws, and the increasing demands of a workplace under stress. While employers' responses to these demands require more attention than ever, the foundation of strong employment practices will remain familiar in many ways and this framework will help you minimize your risk of being sued.

Take a moment to review and refresh your employment policies and practices so that you can create a less stressful workplace and position your business to successfully defend against claims. And, to assist you in this process, we put together a list of "Top 10" Steps to help you along.

1. Review your organization or company's employment policies and practices:

- a. Are they updated with the new NYS Paid Sick Leave Policies, and is your recordkeeping in place to comply with the requirements?
- b. Are the required posters in place?
- c. Think twice before adding restrictions on Black Lives Matter discussions or wearing BLM apparel.
- d. Do you have someone who has or is assuming the position of Human Resources Director? Invest in this person's training. A knowledgeable,

trained person is essential in these times.

2. Review your COVID-19 policies--do you have updated COVID-19 and related policies in place?

- a. Know what you can do and what you cannot do with respect to leave and payment of time off due to COVID-19.
- b. Are the policies communicated to your employees so that they know what they should expect?
- c. The worst of the pandemic may be over with vaccinations on the rise, but it will be at least another year before the full impact of vaccinations will be truly felt.
- d. Know what you can and cannot do with respect to compelling individuals in your business to have vaccinations; consider religious or disability related objections.

3. Review your safety guidelines for COVID-19, talk to your employees about what you are doing to protect them and talk to them about what their obligations are to their co-workers:

- a. Every company should have a safety plan in place.
- b. What are your employees' concerns, if any, with respect to safety?
- c. Simple safety measure may not cost much but do much to reassure employees such as providing disinfectant wipes throughout the office and near machines, providing and mandating mask wearing, check-in procedures to avoid having ill employees at work. If not addressing, it may be an easy fix. And if it cannot be addressed, know why, and provide a work around that may be equally satisfactory to the workforce without the cost and disruption.
- d. Remember that OSHA (Occupational Health and Safety Act) has certain reporting requirements and can enforce certain penalties for non-compliance with safety guidelines, including COVID-19 safety matters.

4. Review your compliance with annual sexual harassment training requirements:

- a. Does the training meet the NY requirements for content?
- b. Are you documenting employee attendance at the training session?
- c. Are you making sure everyone has the policy, has signed for it, and is aware of the procedure for reporting a complaint?
- d. Are your new employees being trained within 30 days of hire?
- e. Are you already planning your company's 2021 annual training so that it is not a last-minute scramble to meet the deadline?

5. Consider conducting annual diversity and inclusion training:

- a. New York has not yet required such training, but you should be proactive to help your workforce understand cultural differences, implicit and explicit bias, and to create a more inclusive workforce that is less fragile and vulnerable for claims.
- b. Consider developing a "box-lunch" discussion forum on a quarterly basis to discuss issues of concern in the workplace related to diversity and inclusion issues.

6. Investigate claims or problems promptly and take Immediate corrective and appropriate action:

- a. Failure to undertake an immediate investigation of an issue is often the biggest impediment to avoiding litigation. Do something. Not all investigations will be a deep-dive, as the scope depends on the issue at hand, but doing nothing is difficult to defend.
- b. Often, the investigation reassures the employee(s) that their voice is heard and that the company or organization cares. The issue often resolves by the mere act of investigating appropriately and communicating the outcome with the affected employee(s).

7. Address employment policy deviations and discipline with consistency, documentation, and thoughtfulness.

8. Keep lines of communication open:

- a. An open-door policy often leads to understanding issues of employee concern before the concern erupts into an external claim;
- b. Clear communication takes on an even more important role of effective management as workforces are dispersed with remote working conditions, creating isolation for many employees.
- c. As a leader of the business, you and your leadership team set the tone for the employees—respect in the workplace starts at the top. And, make sure the tone is appropriate for the situation as it arises;
- d. Continue engagement with your employees after formal training is concluded so that your employees retain the message(s) you are relaying.

9. Seek legal counsel and advice as needed:

- a. Seek legal counsel and advice if there is a particularly sensitive situation developing or you are unsure how to respond to an issue;
- b. If you receive a demand letter, charge of discrimination, OSHA violation, state or federal Department of Labor wage and hour claim, especially related to overtime or a question of independent contractor-employee status, seek assistance in responding. Counsel understands how certain very logical statements a company makes might be used as evidence against the company in assessing liability.

10. Be Calm:

There will always be a threat of litigation or investigation, but if you take appropriate steps to put policies in place, enforce the policies

with care and consistency, your chances of minimizing the risk of litigation is strong.