

Ten Tips to Avoid Employer Liability

Employment Issues in
Today's Workplaces



Why should you be concerned about employer liability?

- **Litigation can damage your reputation**
- **Litigation takes time and money**

Tip #1 - Create an employee handbook and policy manual

- **Establishes a set of rules**
- **Sets expectations for employees**

Tip #2 - Reinforce the at-will employment relationship

- **What does at-will employment mean?**
- **Ensure that employees understand that they are at-will employees**
 - Offer letters and job application forms
 - Employment manuals
 - Train managers

Tip #3 - Draft a detailed description of each job's requirements

- **Eliminates miscommunications**
- **Establishes any minimum education and work criteria**
- **Helps evaluate whether disabled employees or applicants are able, with or without reasonable accommodation, to perform the job**

Tip #4 - Use sound hiring and interviewing practices

- **Achieve a diverse workforce.**
 - **Advertise open positions**
 - **Interview at a range of universities**
 - **Employers with at least \$10,000 in government contracts and a minimum of 50 employees must meet limited affirmative action requirements**

Tip #4 - Use sound hiring and interviewing practices

- **Provide managers with training on interviewing practices**
 - **Treat all job candidates consistently**
 - **Follow company practices and policies**
 - **Avoid illegal questions**
 - **Focus on the criteria for the job**
 - **Encourage interviewers to make a written record**
 - **Retain documents**

Tip #5 - Select the right employees

- **Verify a candidate's address and work history**
- **Conduct a background check**
 - **Ensure that investigations are equivalent for all similarly situated candidates**
 - **Ask job candidates for copies of performance appraisals from prior jobs**
 - **Consider using outside firms for background checks**
 - **Credit History and Fair Credit Reporting Act**
 - **Driving records**
 - **Personal references**
 - **Job references**
 - **Criminal convictions**
 - **Cannot exclude people from jobs simply because of an arrest record or misdemeanor conviction**

Tip #6 - Avoid discrimination

- **Make decisions based on job-related criteria**
- **Document hiring and terminating employees**
- **What is inappropriate behavior?**
 - **Consider each individual situation**
- **Take proactive measures to discourage harassment**
- **Respond quickly and investigate thoroughly**
- **Have an anti-harassment policy**

Tip #7 - Treat disabled candidates and employees fairly and legally

- **ADA prohibits employers with 15 or more employees from discriminating against disabled individuals who are qualified, with or without accommodation, to perform the job in question**
- **Have a well-drafted job description**
 - **How frequently will the employee need to perform the task?**
 - **Do other employees also perform the task?**
 - **Is the task critical to the business?**
 - **Does the job exist to perform that function?**
 - **Is the task associated with the expertise needed to do the rest of the job?**

Tip #7 - Treat disabled candidates and employees fairly and legally

- **Ask for reasonable medical documentation of an employee's limitations**
- **Engage in a dialogue**
- **When must an employer provide accommodation under the ADA?**

Tip #8 - Understand the FMLA

- **The FMLA guarantees employees the right to take unpaid time off work of up to 12 weeks in a 12-month period for “serious health conditions” experienced by the employee or an immediate family member, or for the birth, adoption, or foster care placement of a child**
- **Verify the severity of the health condition**
- **Not required to pay employees on leave, but must maintain health coverage**
- **Have sick leave run concurrently with FMLA leave**

Tip #9 - Evaluate employees

- **Have a detailed job description**
- **Treat each person equally**
- **Be consistent, objective, and evenhanded**
 - Put several reviews side by side
 - Examine the way you are phrasing your evaluation
 - “Sleep on it”
- **Give negative performance appraisals when appropriate**

Tip #9 - Evaluate employees

- **Treat performance evaluations as sensitive and confidential**
- **Permit employees to obtain a copy of their performance appraisals**
- **Require employees to sign their performance evaluations**
- **Give employees the right to attach statements to appraisals if they disagree with the evaluation**

Tip #10 - Provide references with care

- **Treat former employees consistently**
- **Do not give a letter of reference to a problem employee**
- **Verify the identify of the person requesting a reference**

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