

Don't Leave Your Business Hanging by a Thread



Six Ways Your Business Can Get Into Employment Law Trouble

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Introduction

The costs of defending frivolous employee lawsuits can strangle a business, yet many claims can be prevented by taking a few proactive measures in advance. Sadly, I've counseled business owners who wish they'd known this sooner. I hope you'll join the ranks of those who chose not to leave their businesses hanging by a thread . Consider your exposure. Take action to minimize it. Consult with an attorney. Read on and learn more...

1

Sexual Harassment Claims

Do you know how your managers and employees behave in the workplace? The fact is many workplaces are playgrounds for sexual banter or other like conduct deemed “innocent” by the offender.

Lower-level employees often feel powerless to stop such behavior. Left unaddressed, such behavior can eventually escalate into a lawsuit for substantial damages.

Consider taking the following action steps...

- Make sure your business has adopted and distributed a written anti-harassment policy to each employee.
- Implement procedures to ensure that your employees can report harassment without fear of retaliation.
- Thoroughly investigate harassment claims and discipline harassers if the claims are substantiated.

2

Losing Customers and Trade Secrets

If you have been in business for any length of time you have undoubtedly developed customer lists, proprietary business systems and other information that may constitute trade secrets. What would you do if your employees suddenly walked out the door to work for a competitor or to start a competing business?

Consider taking the following action steps...

- Make sure you have drafted and distributed a company handbook that spells out that your employees may have access to proprietary information and trade secrets and you expect it to be protected from disclosure to third parties.
- Consider having employees sign a non-compete agreement. Don't skimp by doing this yourself; have an attorney draft an agreement that is appropriate to your industry.

3

Having to Defend an NLRB Complaint

If you're like the vast majority of business owners you probably have little idea what the National Labor Relations Board (NLRB) does, or if you have an inkling, you think it only has power over union workplaces. Unfortunately, over the past several years, the NLRB has greatly expanded its reach into non-union workplaces and is aggressively addressing issues like social media and other modes of communication between employees discussing work conditions. A number of non-union employers have been the target of NLRB investigations and penalties.

Consider taking the following action steps...

- Make sure your employee handbook doesn't interfere with an employee's right to discuss working conditions with co-employees.
- Consider whether your business practices interfere with the right of employees to discuss working conditions.

4

Getting Sued for Negligent Supervision

This is truly a nightmare scenario for any small business owner...being accused of letting an impaired or perhaps violent employee injure or kill someone while on the job. Lawsuits seeking compensatory or punitive damages are certainly a worry but now OSHA has gotten in on the act and is investigating businesses for “unsafe working conditions” due to potential violence. The fact is that there are many ways to prevent this nightmare scenario.

Consider taking the following action steps...

- Implement an alcohol and drug-free workplace policy.
- Review your liability insurance policies and determine whether negligent supervision claims are covered.
- Implement a complaint procedure allowing employees feeling threatened in the workplace to report their fears.

5

Exposing Your Company to Unpaid Overtime Claims

Overtime wage cases are the “hottest” of all employment law cases. A big part of the reason is attorney’s fees: the wage and hour law drafted by Congress in the 1930s contains a very lawyer-friendly attorney fee provision allowing plaintiffs’ lawyers to bring small cases dwarfed by their own large fee demands.

Class action-like cases significantly magnify the problem. You do not even need to get sued to be in serious trouble: the Department of Labor can initiate its own investigation and levy fines and penalties.

Consider taking the following action steps...

- Maintain accurate job descriptions for each employee. Make sure that the description matches the work actually performed. Consult with an attorney to determine whether the position is or isn’t exempt from the overtime laws.
- Audit wage and pay practices to ensure compliance with the overtime laws.

6

Getting Sued for Terminating a Whistleblower

Whistleblower cases are in vogue. There are basically two types of whistleblower cases. Employers can be sued for retaliating against an employee for “blowing the whistle” on an alleged violation of law. “Qui tam” lawsuits, basically bounty hunting case that can be brought by former employees exposing fraud against the government, can expose a business to multi-million dollar liability.

Consider taking the following action steps...

- Make sure your employee handbook contains provisions to deal with internally reporting alleged illegal activity.
- Implement procedures to ensure that your employees can report illegal activity without fear of retaliation.

ABOUT MARCUS CASTILLO



Marcus A. Castillo is Board Certified in Labor and Employment Law by the Florida Bar, one of the first lawyers in the state to achieve that distinction. He also has attained an 'AV' rating, the highest rating given by the Martindale-Hubbell legal directory. Since 2007, Marcus has annually been named a Florida Super Lawyer. In 2010, Marcus was listed among Florida's Legal Elite by Florida Trend Magazine signifying his place in the top 2% of all attorneys in the state.

From 1999-2002, Marcus served on the faculty of the Employment Law Trial Skills Program sponsored by the Florida Bar and Stetson University College of Law. From 2005 – 2007, he was an instructor for the Florida Bar Board Certification review course for Labor and Employment Law. Marcus has frequently spoken on employment and ERISA law topics.

Marcus graduated with honors from the University of Florida in 1979 and obtained his law degree from Stetson University College of Law in 1983 (U.S. Law Week award winner). He is admitted to practice in the U.S. District Court for the Middle and Southern Districts of Florida, the Eleventh Circuit Court of Appeals and the U.S. Supreme Court.

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