



Don't Be an Easy Target: Six Ways Your Business Can Get Into Employment Law Trouble

A HAAS & CASTILLO EBOOK

By Marcus Castillo, B.C.S.

Introduction

The costs of defending employee lawsuits can destroy 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 choose not to let their business become an easy litigation target.

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 and inappropriate conduct without fear of retaliation.**
- **Thoroughly investigate harassment claims and appropriately 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 also 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.**
- **Restrict access to proprietary information to those who need to know it and implement safeguards (password, personalized access cards) to keep the information secure.**

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 and revise those business practices if they do.**

4. Getting Sued for Negligent Hiring, Supervision or Retention

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...

- **Perform appropriate background checks on all new hires, including contracted labor.**
- **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.**
- **Insist that employees not work any overtime without supervisor approval and monitor compliance.**

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, which are

basically bounty hunting cases 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.**

Afterword

We hope that you found this eBook to be a helpful introduction to the pitfalls businesses face if they violate labor and employment laws. This information hopefully has convinced you that whatever expense you may incur to proactively address potential problems could pale in comparison to your exposure to damages and attorneys' fees if you choose to "put your head in the sand." Many of the "fixes" a business owner can and should take are not that expensive. Consult with an attorney board certified in labor and employment law who has both counseled businesses how to avoid litigation and represented them when litigation became inevitable, but also successfully sued businesses who failed to adapt and implement appropriate procedures on behalf of individuals.

ABOUT THE AUTHOR



Marcus Castillo, B.C.S.

Marcus is Board Certified in Labor and Employment Law by The Florida Bar, one of the first lawyers in the state to achieve that distinction. His practice areas include:

- AD&D and Life Insurance Claims**
- Criminal Attacks and Sexual Abuse**
- Employment Litigation**
- Premises Liability**
- Whistleblower Claims**



Marcus is also co-founder of **TrialFocus, LLC**, which employs focus groups to test the strengths and weaknesses of civil litigation cases.

Haas & Castillo, PLLC is a law firm built on reputation and referrals, not advertising.

We are a law firm of specialists certified as experts in business litigation and labor and employment law by The Florida Bar and have worked in Tampa Bay for over 35 years.

Our business and construction litigation practice, led by Lee Haas, includes these types of disputes: contracts, collections, construction, real estate, corporate, trade secrets, noncompetition contracts, and landlord/tenant, as well as appeals of these cases.

Our labor and employment law practice, led by Marcus Castillo, includes the following types of matters: ERISA and non-ERISA claims for life insurance; harassment, discrimination, and whistleblower claims; and management representation to maximize avoidance of potential claims. He has long achieved successful results for persons injured due to premises liability. These cases include negligent security, fall-down, water hazard and building defect cases. Marcus also handles the related field of civil liability for criminal attacks and sexual abuse.

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