

Staying Ahead of Employment Practices Liability Risk

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No human resource manager wants to hear that an employee feels discriminated against or harassed. It means that workers don't feel safe or comfortable at their job, which hurts morale and productivity. And it also means that, if not promptly addressed, a lawsuit may be on the horizon.

In the world of employment practices liability, it's a well-known risk.

"Gender, age, race, or national origin discrimination and harassment complaints account for about 96 percent of the EPLI claims coming across a claims person's desk," said Joe Werner, Director, Management Liability and Specialty, Nationwide Insurance.

Most companies know that having an employee handbook that outlines expectations and consequences for workplace behavior, as well as clear policies and procedures for handling a complaint, are the best ways to mitigate the risk of a lawsuit.

But legislative and regulatory changes could make EPLI risk more dynamic and complex.

Emerging Employment Practices Risks

State and local laws can vary from federal regulation – and often have higher compliance standards.

"The new medical marijuana laws are a good example of state-specific legislative changes," Werner said. "There are currently 29 states that allow marijuana for medicinal purposes. This could potentially open the door for new discrimination claims."

Employers in a state with legalized medical marijuana cannot discriminate against an employee with a legitimate marijuana prescription. But they also have to be wary if a worker is using marijuana on the job. The law does not yet address whether employers can or should make accommodations for employees using medicinal marijuana.

"It's a gray area. But as more states allow marijuana for medical use, I think we'll start to see discrimination claims coming in around this issue," Werner said.

Even if companies have all their ducks in a row regarding policies and practices to prevent the known risks of harassment and discrimination, they need to remain vigilant and monitor these regulatory changes to stay ahead of emerging issues.

Practicing Proactive Loss Control

No matter what changes come down the pike, companies have a few ways to protect themselves.

Education and training are key. Human resource managers should stay up to date on the legislative changes happening in their city and state, and determine if those changes will impact their risk exposure. Training employees thoroughly and regularly on employment law and on workplace policies regarding harassment, discrimination, and ethical behavior in general can help to prevent problems.

Managers and the HR team should also know when and how to investigate if an employee reports feeling discriminated against or harassed in any way at work.

But even those measures will occasionally fail. When that happens, companies need to know who to turn to for legal advice. Because of the variances between state and federal laws, relationships with attorneys who specialize in employment law in their specific state are critical.