

# Top Ten Mistakes that Lead to Employment Law Problems

The workplace is changing. It's becoming more diverse, more regulated, and more unpredictable. The challenges and risks facing employers today have never been greater. What mistakes expose employers most? Here is a brief overview of the ten biggest legal mistakes employers make.

## **1. Managers/Supervisors who mishandle an employee complaint issue.**

Failing to report complaints (especially regarding harassment and discrimination), failing to conduct an adequate investigation, and failing to take proper remedial action are detrimental to the workplace. These mistakes not only damage employee morale but also make the company a prime candidate for a lawsuit.

## **2. Failure to understand and grant reasonable accommodations.**

Under the American with Disabilities Act (ADA) employers must "reasonably accommodate" disabled employees by making changes to any job requirement that prevents a disabled employee from being capable of performing their job.

## **3. Managers/Supervisors who fail to give constant feedback (good and bad) to employees and who fail to document problems**

Documentation becomes crucial when the employer can no longer tolerate an employee's unsatisfactory performance and decides to terminate him/her. Without sufficient documentation, the employee's personnel file does not reflect his/her poor performance, thus giving the employer little or no justification to discharge the employee. A lack of documentation can expose the employer to potential lawsuits alleging discrimination.

## **4. Managers/Supervisors who fail to apply policies/procedures/rules consistently and regularly.**

If managers/supervisors only apply policies occasionally or have a tendency of overlooking certain ones, their actions may easily be perceived as discriminatory, especially in regards to major employment decisions like promotions, disciplines and terminations.

## **5. Failure to check references and failure to conduct a thorough background check, which results in hiring the wrong person for the job.**

References are the best tool an employer has when deciding whether or not to hire an applicant. Although it may be a tedious task, you can learn a lot from a former employer, which not only helps you pick the right person for the job, it also gives you fair expectations about the applicant's abilities.

## **6. Performance evaluations: Failing to provide them and failing to be honest and complete.**

Sloppy, incomplete performance evaluations do nothing to help the company or the employee and often lead to trouble down the line. Without a set method of evaluation (i.e. a rating scale, review schedule, etc.) employers expose themselves to accusations of unfair treatment and discrimination.

## **7. Failing to understand and follow the ever-changing wage and hour laws.**

Employers of all shapes and sizes are getting hit left and right with either class action or multi-plaintiff lawsuits for a variety of wage and hour violations. Claims of unpaid overtime and misclassification (salaried vs. hourly / exempt vs. non-exempt) are the hottest topics right now. To ensure you don't become the next target, you need to conduct a thorough audit of the job responsibilities of each employee, review payroll records to ensure employees are getting paid appropriately for all hours worked, and check with managers and employees to ensure that they are receiving their entitled breaks and meal periods.

## **8. Manager/Supervisor's own failure to follow policy (thus setting a bad example).**

Employees will follow your lead as to what policies to follow and which to ignore. A supervisor/manager represents and acts on behalf of the company and therefore should be the ideal role model of what the company stands for.

## **9. Failing to quickly discharge poor performers.**

If an employer continues to retain an employee for a prolonged period of time despite poor attendance records, poor performance and multiple warnings, trouble is most likely on the way. When these employees are finally discharged they are the most likely to sue. The more seniority an employee has (especially despite poor performance history), the more difficult it is to justify termination.

**10. Failing to train employees and supervisors on all relevant policies and procedures.**

Often, training is provided to simply meet legal requirements. Although the legal aspects of training cannot be ignored, there are numerous other reasons to provide both supervisor and line employee training. Higher morale and productivity, loyalty to a company who wants to develop its employees, and a genuine sense that the company wants to make sure its employees are informed of their rights and responsibilities are just a few of the reasons employers should invest in company-wide training.

Although this is by no means a complete guide on how to prevent employment law problems, it helps identify areas that are most vulnerable. Now that you are aware of the top ten mistakes made by employers nationwide, you can realistically assess your workplace and the policies and procedures that govern it.

For a review of your current policies and procedures, and assistance with avoiding employment law problems, contact Instant HR Solutions today.

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