

# Lawsuit Threat Grows; What to Watch Out For

**O**NE OF THE biggest lawsuit threats businesses face is from their own employees. Any company with staff – be that one or 500 – can be sued, and even if the case never goes to court, it can create a significant burden for any business.

While most cases are settled out of court, they can drag on for as long as two years. Even if they are dismissed as meritless, the employer is often out thousands of dollars as a result.

To best protect your business from these types of claims, and more, you need to learn how to identify potential claims, avoid practices that can expose you to litigation, and create formal policies for your personnel and management. To do that, you can tailor your focus on the current employee-initiated litigation trends:

## Discrimination

There are a number of protected classes in the U.S. workforce and, as we march forward, more are being added.

The key for employers is to have policies in place that treat everyone equally in the organization, ensure that certain groups of people are not kept from advancing in their jobs, and ensure a harassment-free workplace.

## Unequal pay

Most of these actions are filed under the Federal Equal Pay Act or state laws, like the more stringent California Fair Pay Act.

The Golden State's Fair Pay Act bars employers from paying workers of one gender less than those of another for "substantially similar" work.

Violations can result in penalties for the wage differential, plus interest and liquidated damages.

To avoid liability, conduct a self-audit that looks at the following:

- Have you updated job descriptions, including established criteria for assigning values such as skill, education, seniority and responsibility?
- Are you consistent in your pay for similar jobs performed by individuals with similar skills, education, seniority and responsibility?
- Are your male and female employees given projects or clients with commission or bonus potential on a consistent basis?

## Worker classification

As a California employer, you'll need to make sure you are complying with the landmark AB 5 legislation, that made the state's independent contractor laws the most stringent in the nation.

As a result of the law, which went into effect in 2020, California employers have a narrow set of rules to follow if they want to classify a worker as an independent contractor. Here's what you can do:

- If you are considering classifying anybody as an independent contractor, be sure of their status and ensure the arrangement complies with the law.
- Classify workers who perform similar tasks consistently.
- Conduct classification audits on a regular basis if you use many independent contractors.

## Wage theft

These kinds of lawsuits typically involve accusations that the employee was not paid what they were due.

To avoid being sued, you should write clear and consistent policies and train managers and supervisors on them.

## Common wage-theft allegations

- Requiring staff to work off the clock.
- Not providing meal and rest breaks as required by law.
- Failure to pay overtime.

## EPLI coverage: A solid backstop

To protect yourself against the high costs of defending these lawsuits, you should have in place employment practices liability insurance. You might think you have ironclad personnel policies, but experts say that between 30% and 40% of employee-generated lawsuits against their employers are frivolous. Those lawsuits still cost money to defend, and your EPLI policy may pick up the tab.

An EPLI policy will cover you for:

- Legal costs, including costs of defending a lawsuit in court, whether your company wins or not.
- Judgments and settlements. ❖

