

HR Compliance Law Bulletin  
Practical and Effective HR Management Advice

October 10, 2011

Spotlight

Should your lawyer be on speed dial?

by Maureen Minehan

Consider the following scenarios:

- You have hired a new employee and he wants an extra two weeks of vacation added to his employment contract.
- You need to terminate an employee for chronic tardiness after she showed up late for work (again).
- You are headed to a hearing to oppose an ex-employee's unemployment claim.
- You have just received notice from the Equal Employment Opportunity Commission (EEOC) of a completely unfounded discrimination charge.

For many employers, the desire to keep costs low makes it tempting to handle situations such as these without involving legal counsel. After all, adding extra vacation time to an employment contract is simple enough and your evidence of misconduct will surely lead to a quick dismissal of the unemployment claim, right?

### **Short-term gain, long-term pain**

Speak to any employment attorney and they can share stories of employers who failed to contact attorneys at the onset of an issue and paid the price later. While it may seem counterintuitive at first, “the earlier an employer calls, the lower their legal costs,” says **Beth** Schroeder, a partner at Silver & Freedman in Los Angeles.

“It's more expensive when we have to unravel things that have already been put in motion. It's much better to spend a few minutes or an hour talking to an attorney and pay the few hundred dollars than to find out later you've done it wrong and have to pay many times more,” Schroeder says.

### **Common trouble spots**

Schroeder says there are some situations where legal advice is a necessity. “Employers should never write employment contracts themselves. It's like entering a marriage--everyone assumes it will last forever--but most employment situations end. Don't even try to enter any kind of contract on your own.”

Terminations also warrant a phone call. “You should try to have a quick call with an attorney before a ter-

mination, even if it's a basic termination. You might think it's a straightforward termination for attendance, when in reality some of the absences were protected under federal or state law. A five- to 10-minute call can make a difference," Schroeder says.

Receiving an inquiry or charge letter from a government agency is also grounds for obtaining legal advice. "If the Department of Labor or the EEOC or any state agency is doing an investigation, never get involved on your own," Schroeder says.

Nancy Rafuse, the managing partner at Ashe, Rafuse & Hill in Atlanta, says this also applies to contact with plaintiffs' attorneys, "even--or especially--when they say 'we can informally work this out.'"

Legal input also should be sought for compensation and other decisions related to classifying employees as exempt or nonexempt. "You need to make sure your classifications are correct and you are complying with legal requirements. If you set something up wrong for a whole group of employees, you could have a class action suit," Schroeder warns.

### **Steps to lower costs**

No matter how much value legal counsel brings, employers will still be concerned about the costs. Steps they can take to limit legal expenses for general employment advice include:

- **Call early.** Often, 15 minutes of legal advice at the outset eliminates the need for additional legal involvement later.
- **Get organized .** "It's much easier for the attorney to help if the key information is organized and ready for their review," Schroeder says.
- **Hire well.** "Don't use generic attorneys. You're better off with three who are each [employment] specialists than one who's your wife's cousin," Alan Weiss, president of Summit Consulting Group, says.

"An attorney who specializes in labor law can answer many questions in 15 minutes vs. the hours of research someone unfamiliar with it will put in," Schroeder adds.

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