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5 Best Practices For Safeguarding Your Business From Wrongful Termination Lawsuits

While you may think of your team as family and believe that they would never sue you, lawsuits filed by employees are actually one of the most common causes of litigation for small businesses. In fact, nearly one in every five small business will get sued by an employee at some point. <https://sba.thehartford.com/business-management/managing-risk/is-your-small-business-prepared-for-a-lawsuit/#:~:text=According%20to%20a%20Hiscox%20study,of%20a%20half%20million%20dollars>

Of all the types of lawsuits an employee can file against you, wrongful termination is among the most common. In basic terms, wrongful termination is when an individual is fired for an unlawful reason. This includes terminations that violate anti-discrimination and other employee-protection laws at both the state and federal level, as well as terminations that violate employment agreements.

Wrongful termination lawsuits can be a huge liability, and they've been on the increase in recent years, especially with so many businesses laying off workers due to the pandemic. Furthermore, these lawsuits can be extremely costly, since regardless of whether you win the case or not, you are still on the hook for attorney's fees.

Given these risks, you should do everything you can to protect your business against wrongful termination claims, and you should consider implementing a number of proactive measures to safeguard your business. The following 5 best practices are a few of the most effective ways to protect your company from wrongful termination claims. These measures can not only reduce the chances of a wrongful termination lawsuit being filed against you, but also increase your chances of winning a lawsuit should your business ever get hit with one.

1. Understand The Law

If you don't know what constitutes wrongful termination, you can't take steps to prevent it. Discrimination is one of the most frequent bases for wrongful termination lawsuits. Both federal and state law protects workers from discrimination of all kinds, including on the basis of race, sex, religion, national origin, age, disability, and pregnancy.

Under these laws, you can be sued for wrongful termination if an employee claims their firing was related to one of these protected classes. For example, if you terminate a female employee, and she claims it was because she became pregnant, she could sue you.

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In addition to anti-discrimination laws, there are a number of federal, state, and local laws protecting employees from terminations based on a variety of other different causes. Some of these include disparate treatment, breach of contract, retaliation, and inconsistent application of company policies.

While you should do your best to familiarize yourself with employment and labor laws, consult with us to make certain that your actions, policies, and work environment are in compliance with the latest legislation affecting your particular industry and business.

2. Ensure You Have Employment Practices Insurance In Place

Many business owners do not have the right business insurance coverage, and if that's you, take the time to conduct an insurance review this week. Or contact us to support you with it. Business insurance, including employment practices insurance, will not only cover a judgment that may be incurred against your business, but it should also provide you with a lawyer paid for by the insurance company in the event that your company is sued by an employee.

3. Implement Effective Workplace Policies & Procedures

Knowledge of the law does little good if you don't put it into practice. Creating clearly defined policies detailing your procedures for hiring, discipline, termination, and dispute resolution is essential. Moreover, documenting these policies and procedures in your employee handbook and in your employment agreements is another best practice.

Keep in mind, for all but the most flagrant violations of company policies, an immediate termination can often be quite risky from a potential liability standpoint. To reduce this risk, consider implementing probationary periods for new-hires, corrective-action plans for underperforming employees, and workplace mediation programs for dispute resolution.

Finally, having formal policies and procedures in place for documenting and resolving complaints of sexual harassment, discrimination, retaliation, and other unlawful behaviors can offer your company another level of protection from potential lawsuits.

4. Use Sound Employment Agreements With Every Employee

No matter whether you have one employee or one hundred, you should require every individual who works for you—without exception—to sign an employment agreement. And such agreements can be even more vital if you employ family or friends.

Your employment agreements should clearly detail the terms and conditions for the working relationship, so everyone who works for you understands exactly what's expected. Effective employment agreements can protect you from wrongful termination by clearly establishing the

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employee's responsibilities, your rights as employer, and the circumstances under which the employment relationship may be terminated.

As your business lawyer, we can help you create effective employment agreements for your team to ensure you have robust contractual protections for not just wrongful termination suits, but every other potential claim related to the employer-employee relationship.

5. Document Everything

If an employee you fire does sue you, the most powerful weapon in your defense is complete, thorough, and contemporaneous documentation. The last thing you want is to ask a judge or jury to simply "take your word for it," when trying to prove an employee's actions provided grounds for termination.

Thoroughly documenting all employee incidents, along with the corrective measures you took as a result, can not only provide strong evidence to defend against a lawsuit, but it can often be enough to get a claim thrown out before it reaches trial. Ideally, this process should be a collaborative effort with the employee, and all incidents should be documented in writing as soon as possible following the particular action.

Collaborative documentation includes having employees read and sign that they understand why disciplinary actions are being taken, and that they agree to abide by any corrective-action plan you require them to complete. As your business lawyer, we can not only help you develop effective documentation procedures, but also advise you on the proper corrective actions to ensure you're offering your team an appropriate opportunity to rectify their behavior, so termination is always a last resort.

A Comprehensive Approach

While these best practices can go a long way toward protecting your business from wrongful termination lawsuits, understanding all of the complexities involved with the employer/employee relationship is extremely challenging. With this in mind, you should consult regularly with us to ensure your policies, procedures, agreements, and practices are all in compliance with the latest standards and laws.

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