

Dirty Dozen: 12 manager mistakes that raise lawsuit risk

Lawsuits by employees against their employers have grown tremendously in the past decade. Sometimes those lawsuits have merit, sometimes they don't. But, either way, those lawsuits cost time and money to fight—money that is better spent on product development, training and raises.

Even worse, some laws—including federal overtime law and the FMLA—allow employees to sue their supervisors *directly*, meaning a manager's personal bank account could be at stake.

Here are 12 of the biggest manager mistakes that harm an organization's credibility in court. Use these points as a checklist to shore up your personal employment law defense:

1. Sloppy documentation

Most discrimination cases aren't won with "smoking gun" evidence. They're proven circumstantially, often through documents or statements made by managers. Documents, particularly e-mail, can help the employee show discriminatory intent. Always speak and write as if your comments will be held up to a jury some day.

2. Not knowing policies, procedures

Courts expect supervisors to know their organization's policies and procedures. If a manager admits ignorance, legal experts say juries typically view that as purposeful, not forgetfulness.

That's why it's vital to make sure you understand company policies. Don't make decisions based on a vague memory of a policy. Double check it or check with HR before taking action.

3. Inflated appraisals

Performance reviews are one of the most important forms of documentation, yet managers sometimes inflate the ratings for various reasons. If a manager later tries to cite "poor performance" for that same person's termination or demotion, those overly

positive appraisals create a heap of credibility concerns.

Be direct, honest and consistent.

4. Shrugging off complaints

Turning a blind eye to any employees' complaints of unfairness or perceived illegal actions is a guaranteed credibility buster. Comments like "I'm not a baby sitter" or "Boys will be boys" will jeopardize your standing in court.

5. Interview errors

It may be easy to answer the question, "Why did you hire that person?" But managers often run into trouble when they have to answer, "Why did you reject certain other candidates?"

That's because rejection decisions typically aren't well-documented and the decision-maker may not recall the reasons later.

During interviews, stay away from any question that doesn't focus on this central issue: How well would this person perform the job he or she has applied for? Never ask about age, race, marital status, children, day care plans, religion, health status or political affiliation.

6. Changing your story

If an organization changes its reasoning for making an adverse employment decision (firing, discipline, demotion, etc.) in midstream, its credibility is shot.

Be straight with employees from the start about reasons for discipline. Don't sugarcoat your comments.

7. 'Papering' an employee's file

Most managers hear the mantra, "Document, document, document." But it's possible to *overdocument*, especially when it occurs right before a firing. Courts will be able to see through a rush of disciplinary actions cited in the days before a termination.

Be consistent in documenting negative and positive performance and behavior of employees. It's best to

keep a "performance log" for each employee, regularly making notes in each file.

8. Being rude, mean-spirited

An organization can have the best case in the world, but if the key supervisor comes across as rude, insensitive and mean, the attorney's job of selling the case to the jury will be much harder.

Use the golden rule in handling staff.

9. Careless statements to feds

When responding to charges filed with the EEOC, employers often have to submit position statements. Managers may be called upon to help provide some of that information. You can bet the employee's attorney will review these statements, particularly affidavits, and introduce them at trial, especially if your story has changed. Keep your story consistent.

10. Lack of legal knowledge

Juries will expect—and the plaintiff's lawyer will encourage them to expect—that employers stay abreast of developments in employment law. Refresh yourself regularly on your organization's policies, read communications sent from HR and, when in doubt, ask questions.

11. Dictating accommodations

Under federal law, employers must make "reasonable" workplace changes to accommodate an employee's disability. How to choose those accommodations? It must be a give-and-take process to reach a solution, the law says. Managers too often try to dictate the solution.

12. Firing employees too fast

Managers who fire without first trying to improve the worker's performance will appear insensitive and potentially discriminatory in court. Conversely, managers who try to improve things before resorting to firing will stand a better chance of avoiding a lawsuit.