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Keeping Up With Employment Law – How Having An Attorney Can Save Your Business Money

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When it comes to protecting your business from employment-related lawsuits, local attorneys agree that there are four main things every business owner needs to do: stay abreast of changing employment laws; keep thorough documentation and files for all employees; ensure employees are regularly trained about is-

sues such as harassment; and retain a business law firm to advise in labor matters.

According to attorneys from the Long Beach offices of Clinton & Clinton Attorneys At Law, Marron Lawyers, and Tredway Lumsdaine & Doyle, the top reasons employees file lawsuits against businesses

are for claims of wage and hour-related issues, misclassification of employee status, harassment or retaliation, and discrimination.

When asked to identify the common thread among businesses that have had employment-related lawsuits filed against them, Paul Marron, principal and founder of Marron Lawyers, told the Business Journal, “To be frank, the common thread is that it will happen.”

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Keeping Up With Employment Law

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“Almost inevitably it happens to any business, particularly one with growth,” Marron said. Owners of growing businesses work less closely with employees and may pass on managerial duties to others. That loss of direct oversight sometimes results in situations where lawsuits can occur, Marron explained.

“It’s really important for employers to pay attention to the environment within their company,” Holly Gagas, junior partner at Clinton & Clinton, told the Business Journal. Gagas heads up the firm’s employment law section. “It is most important to communicate with supervisors and employees regarding any applicable laws, including any changes in laws,” she added.

Keeping up with changing employment laws may not be an easy task for already-busy business owners. “For a business owner to completely stay up on employment laws, it cedes the business owner’s need to focus on generating money and growth of the business,” Marron said.

He continued, “Some good approaches are as follows: obviously have a good law firm that represents the company and get involved in trade associations for the industry, because the trade associations typically have the money and resources to educate membership about important employment law issues.” He also recommended joining the California Chamber of Commerce, which he said “has tremendous resources, particularly for small employers, on how to deal with



Paul Marron, principal and founder of Marron Lawyers in Downtown Long Beach, told the Business Journal that employment-related lawsuits are almost inevitable for business owners. To better protect themselves, business owners should make sure their workplace policies are clear and provide proper training on human resources issues, he said. (Photograph by the Business Journal’s Evan Patrick Kelly)

employee and human resources issues.”

When it comes to any employee-related matters it is important to properly and thoroughly document hours worked, overtime hours and complaints of any kind, according to Pamela Tahim, senior associate at Tredway Lumsdaine & Doyle. Doing so enables business owners to defend themselves when lawsuits arise.

“We see a lot of employers still not using time cards or proper time reporting sys-

tems,” Tahim said. If an employer doesn’t properly document when employees clock in and out, for example for lunch breaks, the employer has no evidence of how many hours the employees worked or if they took the required meal time. “It’s really critical that they have their employees clock in and out or put it in their time card . . . because if somebody turns around and says well ‘I wasn’t paid for my lunches,’ how are you going to defend it?” Tahim explained.

A common misstep employers make when it comes to lunch breaks is allowing or requesting their employees to perform their duties during lunch, Tahim noted. “They need to make sure that the employees are completely relieved of all of their duties for their meal and rest breaks,” she stressed. “They can’t say ‘okay, well you are going to take your lunch at your desk and you are going to answer the phones.’ The employer is automatically liable for that,” she said.

“Another problem we see is failure to properly track overtime hours,” Tahim said. Business owners need to understand that “the burden is on the employer” to keep track of overtime hours – not on the employee, she noted.

Gagas said a common mistake business owners make in relation to wage and hour laws is failing to provide a final paycheck and full payment of benefits to an employee on the day a person is fired.

In her experience practicing law, some of the most common lawsuits against employers are related to misclassification of employees as exempt (from the requirement for overtime pay and other protections) when they are actually nonexempt, Tahim said. There are three classifications of exempt employees, including those in professional, executive and administrative positions, she explained. Each of these classifications comes with its own set of requirements.

“It is very important for employers to make sure that they have a job description for employees who are in these exempt categories,” Tahim said. To be labeled exempt, 50 percent or more of the work an employee does must qualify under the requirements

of one of the exempt, she explained. If an employee is misclassified as exempt, “then the employer has to pay for overtime wages . . . [and] missed meal and rest breaks” in addition to financial penalties, she noted.

Another common misclassification occurs when a business owner mislabels an employee as an independent contractor, Tahim said. If an employee is “coming to your office every single day and you’re directing the way they work and you’re supervising them, then they are not an independent contractor,” she said. Frequently, she sees lawsuits related to misclassification of truck drivers and security guards as independent contractors.

Under California Senate Bill 459, willfully misclassifying an employee as an independent contractor results in a \$15,000 to \$25,000 fine per violation, Tahim said.

To better protect themselves against employee lawsuits claiming harassment, discrimination or retaliatory practices in the workplace, business owners need to thoroughly document any complaints, Gagas and Tahim emphasized. “Documentation is really important [for] any reviews and any complaints about employees or by employees,” Gagas said. “Any investigation [of these complaints] needs to be documented and completed thoroughly.”

“When there is a performance problem or there is a dispute within the office between an employee and another employee or a supervisor, always promptly investigate and document,” Gagas said. “And have the employee acknowledge it in writing.”

To prevent such claims from being made in the first place, business owners should

make sure their supervisors and management staff are trained in matters of harassment, Gagas said. She recommended that all employees receive the same training.

Of critical importance in avoiding lawsuits is hiring the right employees, Marron said. “Probably the most significant [factor in employment lawsuits] is hiring the wrong employee,” he said, adding that background checks are important measures when hiring. “Hire slow, fire fast. In other words, if possible, bring employees on temporarily to see if they are going to work out,” he explained. “But if employees don’t work out, fire them sooner rather than later.”

Business owners who aren’t so careful in their hiring practices may find themselves taken advantage of. Marron said that, in his experience, many employees who sue their employers “are problem employees who take advantage of very worker-friendly laws in the State of California to manipulate poor performance into multiple reasons for suit, such as discrimination, unpaid wages, unpaid overtime, breaks not provided, et cetera.”

Both Marron and Tahim advise business owners to purchase employment practices liability insurance. “That covers wrongful termination suits,” Marron said. “If the employer has insurance, the employer is really protecting himself from basically going out of business” due to litigation-related costs, Tahim said.

All three agreed that one of the best steps business owners can take to prevent litigation – and save money when it does occur – is to retain a law firm to advise on business and employment law. “Have somebody on your speed dial,” Tahim said. ■