

BUSINESS LAW REPORT

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Prepared by JAY D. FULLMAN A PROFESSIONAL CORPORATION
800 SOUTH BEACH BOULEVARD, SUITE A, LA HABRA, CALIFORNIA 90631
Telephone (562) 694-6005 or (714) 255-2960; Facsimile (562) 697-7700
E-Mail: jdfullman@mminternet.com

HOW TO BE SUED WITHOUT HARDLY TRYING

Now that I have your attention, you probably already knew that it is easy for someone to make you or your business the target of a lawsuit. Sometimes litigation against you just can't be prevented. And, sometimes you need to file suit to protect your business interests. There are, procedures you can follow to try to avoid employment related lawsuits.

GOOD HIRING PROCEDURES

One easy way to be sued is to illegally discriminate (or appear to illegally discriminate) in the process of advertising for and interviewing job applicants. Since age discrimination laws prohibit discrimination against people who are 40 years old, or older, your advertising and interviewing process should not seek information on age. Similarly, due to prohibitions against discrimination based upon race, ethnicity, religion, and sex, no inquiry should be made in these areas when advertising for and interviewing prospective employees. Even topics in seemingly casual conversation might be improper (or misconstrued by the job applicant) if the discussion has no connection with work-related issues.

Therefore, the safest course of action is to (1) carefully review employment advertising to assure it only addresses job information and employment criteria, (2)

prepare a list of questions to be asked during the interview process, (3) review the interview questions to assure all are job related, and (4) don't let the interview process stray into legally impermissible areas.

GOOD EMPLOYMENT CONTRACTS

The only problem with oral employment contracts is that they "are not worth the paper they are written on." A good employment contract is one that specifies (1) the job to be performed, (2) the rate and manner of compensation, (3) what grounds exist for termination, (4) that the contract can be terminated "at-will" by either party, and (5) that there are no parts to the employment agreement that are not specifically set forth in the contract. The employment contract should be kept as simple as possible.

To assure that the employment contract will be enforced (in court if necessary) never suggest that the contract is "just a formality." Also, don't promise an employee they will always have a job with your company "as long as they do a good job," as that (or similar statements) might change an employee's "at-will" status. For the same reason, don't use a probationary period for new employees, since that implies that employees become "permanent" when the probationary period ends.

GOOD EMPLOYEE HANDBOOK

Having your company's rules, policies, and procedures recorded in an employee handbook is an

excellent idea. However, the wording in the handbook can be critical. In addition to accurately stating the rules, policies, and procedures you expect employees to follow, the handbook should clearly state (1) that the handbook is not an employment contract or part of the employment contract, (2) that employees may be terminated at will and (3) that the employer reserves the right to change the company rules, policies, and procedures.

Then, FOLLOW THE HANDBOOK! A written disciplinary procedure is of no value to the company if it is not followed. It is also of little value to adopt another company's handbook. Your employee handbook should reflect your policies, as recorded with the assistance of a qualified professional.

GOOD DOCUMENTATION

All employee matters should be documented. Keep copies of advertising copy, resumes, employment applications, interview checklists, interview notes (including for those not hired), job evaluations, disciplinary action, termination process, and exit interviews. Providing written job evaluations on an annual basis is wise. Supervisors should always give honest reviews, even if it hurts. And, have employees sign for receipt of written evaluations. A little extra attention now to documentation relating to employees can help avoid extra headaches and the expense of employment litigation later.