What Not to Do: The Five Most Common Mistakes Behind Employment Lawsuits

October 14, 2010

A recent survey of business executives reveals that they are more concerned about claims made by employees than any other type of legal dispute, and with good reason. Businesses face claims by employees more frequently than any other type of suit, and the legal system sometimes seems as if it is designed more to protect the interests of employees than to produce an outcome that is fair to all parties.

- A review of court filings demonstrates that most employment lawsuits continue to concern five common issues. Employers interested in avoiding litigation with employees should assure that they have taken all reasonable steps to protect themselves against claims focused on these issues. The issues that most frequently prompt litigation by employees include:
- Misclassification- For more than ten years, suits challenging workers' classifications as independent contractors (instead of employees) or exempt employees (instead of non-exempt employees) have plagued businesses of all sizes. Although many organizations have corrected prior misclassifications in their workforce, classification errors remain common, and a frequent source of litigation. Employers that have not reviewed their classifications in recent years should do so under the supervision of counsel in order to assure that the outcome of the review (and particularly any findings of errors in classifications) can be treated as confidential pursuant to the attorney-client privilege and/or work product rule.
- Failure to provide meal periods and rest breaks- Even when employers properly classify employees as non-exempt, they frequently fail to provide meal periods and rest breaks in accordance with applicable law (or, in some cases, to maintain evidence demonstrating that they have done so). Employers should maintain written policies which confirm employees' rights to meal periods and rest breaks, as well as time records which reflect the actual times between which employees take meal breaks each day.
- Discharges following shortly after an employee's participation in some legally protected activity- Employers today are generally more sophisticated and better prepared to prevent discrimination and harassment in the workplace than they were 10 or 20 years ago, but they often expose themselves to liability for retaliation by virtue of the manner in which they respond to such complaints, or to other incidents in which employees engage in some legally protected activity. Employers that discharge employees soon after the employee engages in some form of legally protected activity (such as complaining about discrimination, harassment or some other illegal behavior) place themselves at particularly great risk.
- Failure to reinstate employees at the conclusion of a leave of absence- Many of the laws governing leaves of absence require employers to reinstate employees to work at the conclusion of their leave of absence. All too often, however, employers ignore this obligation and decide not to reinstate an employee at the conclusion of his or her leave, usually for reasons not regarded as valid by the law. Employers should confer with counsel before deciding not to reinstate an employee at the conclusion of a leave of absence.

- Trade secret and employee "raiding" claims- As the economy continues to evolve toward one in which employees' knowledge and relationships are their most valuable assets (as opposed to their ability to perform physical labor or some repetitive task), unfair competition disputes become increasingly common. When an employee leaves one company and joins another, the former employer may contend that the employee has disclosed trade secrets to the new company, or used trade secrets for the benefit of the new company. Allegations of improper solicitation are also common. Employers who are not very familiar with the rules concerning trade secrets and unfair competition should seek guidance from counsel before hiring employees who may possess confidential information from prior employers to assure that they have take appropriate steps to protect themselves against potential liability.

It is worth noting that most of the issues above involve basic principles of employment law, not complex or technical points that are beyond the knowledge of most managers. In most cases, companies are sued not because they are ignorant of some fine point of law, but because they have mismanaged an issue that arises frequently in the ordinary course of business. If you would like to discuss steps you can take to reduce the likelihood of litigation with employees, or if you have questions regarding any other employment law issues, we invite you to contact one of our attorneys:

Daniel F. Pyne, III DPyne@hopkinscarley.com
Richard M. Noack RNoack@hopkinscarley.com
Ernest M. Malaspina EMalaspina@hopkinscarley.com
Karen Reinhold KReinhold@hopkinscarley.com
Erik P. Khoobyarian EKhoobyarian@hopkinscarley.com
Shirley E. Jackson SJackson@hopkinscarley.com