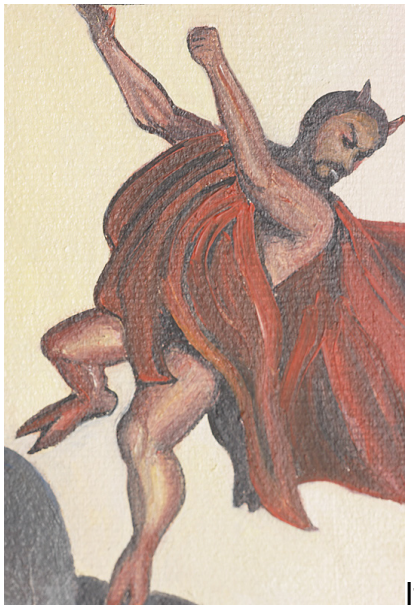
# To guarantee an employment lawsuit, just follow these five "worst practices"

By Robin E. Shea on August 12, 2011



It's not just London that is suffering from unrest these days -- there is reason to believe that American workplaces are far from heaven, too, even for those who are still fortunate enough to be employed.

The *Wall Street Journal* recently reported that approximately 75 percent of departing employees would not recommend their former employers to others looking for a job, almost a 100 percent increase over the "disgruntlement index" from 2008.

Meanwhile, the Equal Employment Opportunity Commission received more than 99 thousand charges in 2010, an increase of approximately 6,000 since the prior year. No telling what the numbers will be for 2011. My guess is "atrocious."

Want to guarantee you'll be sued, even if you're 100 percent in compliance with the law? Here are five employer "worst practices":

**1. "They can have my unemployment when they pry it out of my cold, dead hand."** Be sure to fight every unemployment claim filed by every terminated employee. OK, maybe you can make an exception for those who are caught up in a reduction in force, but that's it. It's good to make your ex-employee feel like he's backed into a corner. And if the fight is worth fighting at all, it should be a fight to the death. If you lose the unemployment case at the hearing stage, appeal it as far as you can go -- that will help your ex-employee learn to do better at his next job.

**2. The EEOC is offering to mediate? So what?** Don't give those bureaucrats the satisfaction! They'll just be pushing their agenda and letting this undeserving ex-employee tell you to your face why her feelings are hurt and take what little money she can weasel out of you. Sure, occasionally she'll settle for no money at all, and the charge will be dismissed without even a position statement, and you can get a full release of claims in exchange, but you're 100 percent in the right, so you don't need it. *You're going to win!* It's a matter of principle -- you'd rather pay your lawyers to defend you in court for the next two or three years than pay a nickel to this bimbo.

**3. If an employee can't perform the essential functions of the job* because of medical problems, then tough darts.** The ADA says they're out of luck. Heck, even the ADAAA does. So what if the Obama EEOC has made disability discrimination enforcement a top priority? You're on rock-solid ground. Don't lift a finger to help your sick or injured employee qualify for short-term or long-term disability, or for Social Security disability -- that's his problem. It's not under your control, anyway.

**With or without a reasonable accommodation, of course. If the employee can perform the essential functions with a reasonable accommodation, then that would have to be offered.*

**4. Never let 'em "quit."** If you're firing an employee, be sure that the record clearly reflects that she was fired. In disgrace, preferably. Whatever you do, don't offer her an opportunity to save face and "resign." A forced resignation won't be worth a darn in court anyway because they'll treat it as a "constructive discharge." Better to just let the chips fall where they may. If that means she'll have to spend at least six more months looking for another job (and turning to the EEOC in desperation before her charge-filing period runs out), so be it. What doesn't kill her will make her stronger on her next job.

**5. Whatever you do, don't offer severance unless it's a RIF.** Sure, you normally get a full release of claims when you offer severance, but why pay if you don't have to? You haven't done anything wrong -- your ex-employee has. Save your money. You can use it to pay your lawyers after he sues you. (You may need a little more.)

*Finally, don't forget to let your boss know what you have done. He or she will admire your principles and will think the risk of litigation and legal fees were, like, totally worth it. I bet you'll get a promotion.*