

LEGAL ADVISOR



A PilieroMazza Update for Federal Contractors and Commercial Businesses

Five Tips to Address Employee Complaints and Avoid Liability

By Meghan Leemon



Receiving an employee complaint can be a daunting and overwhelming situation for any employer, whether it be a complaint filed with a supervisor or the company's human resources department, a discrimination complaint filed with the Equal Employment Opportunity Commission (EEOC) or similar state agency, or a wage and hour complaint filed with the Department of Labor's (DOL) Wage and Hour Division. The reality is that many employers will receive an employee complaint at some point. It is important to understand what to do, and what not to do, when you receive the complaint. Generally, while it can be somewhat time consuming, the complaint should be relatively easy to handle if you follow the following five recommendations:

1 Conduct an investigation

First and foremost, you should follow all company policies laid out in the employee handbook or similar document regarding complaint investigation. Even if the complaint has been filed after the employee has left your employ, you should still treat it in a similar manner and conduct an investigation. If there are witnesses or individuals cited in the complaint, talk to them, obtain statements, and keep written records. At the time of the complaint, you may know all the facts, but it is important to keep a record and memorialize these facts in writing as close as possible to any incidents or investigations. If you do not think you can remain unbiased throughout the investigation, you may want to consider bringing in a third-party, such as outside counsel, to help conduct the investigation.

2 Preserve documents

One of the most important things to do is to retain all information related to the employee and the alleged incidents. Failing to properly collect and preserve documents related to the employee and the alleged incidents could result in court sanctions and penalties. Without proper documentation, it could come down to the employee's word against yours. And, while you may not think certain documents, including electronic files, are relevant at the time, they may become relevant later. Keep all documents even after the employee has left your employ, as EEOC and wage and hour complaints may be filed well after the date of the employee's separation.

3 Circle back with the complainant

Do not ignore the complainant. While your initial thought may be that this will go away if you ignore it, that is seldom the case. If the complainant is still an employee, acknowledge their concern and explain that you will conduct an investigation and then respond in writing once the investigation is complete. Be responsive to the complainant and acknowledge his or her concerns, even if you disagree.

4 Assess potential liability

It is possible that your employees may not have acted in the most appropriate manner. If your investigation reveals that there was any wrongdoing, be proactive and do not attempt to cover it up. Liability may be inputted to you, as the employer, especially if you were

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aware of the situation and did nothing. Similarly, the investigation could reveal that your company policies need updating. You can turn an unfortunate incident into a learning experience.

5 | **Notify your insurance company**

One item employers typically forget is to check their insurance policies. Employment practices liability insurance (EPLI) provides coverage to employers against claims made by employees, including discrimination, harassment, or wrongful termination. Generally, EPLI does not cover wage and hour complaints, but you should double check your policy to confirm. You should also check your policy to determine when you must report a claim; this could determine whether the claim will be covered or denied. If you are unsure, reach out to your insurance carrier.

The above recommendations are not exhaustive. Another item to keep in mind is to always be professional in your responses and throughout the investigation, and even if the complainant is not represented by an attorney, respond as if you are speaking or writing to a plaintiff's lawyer. A plaintiff's lawyer may jump at an employer's failure to properly handle the complaint, which can lead to a greater headache down the road. Also, understand the options available to you. After a charge is filed with the EEOC, you will have the opportunity to mediate with the employee, although this is not required. However, in wage and hour complaints, you would negotiate a resolution directly with DOL (or obtain court approval) as private settlements of FLSA claims are generally not binding or enforceable.

Understanding the do's and don'ts of investigating employee complaints can be critical in avoiding liability. Even if you do not want to have counsel involved immediately, it is good practice to have someone lined up and to provide outside perspective. You do not want to wait until the eleventh hour when the EEOC has issued a right to sue letter or you have been served with an FLSA lawsuit.

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