

## Dirty Dozen: 12 mistakes managers make that spark lawsuits

Lawsuits by employees against their employers have grown tremendously in the past decade. Sometimes those lawsuits have merit, sometimes they don't. But, either way, those lawsuits cost time and money to fight—money that is better spent on product development, training and raises.

Even worse, some laws—including federal overtime law and the FMLA—allow employees to sue their bosses directly, meaning a manager's personal assets could be at risk.

Most lawsuits are not triggered by great injustices. Instead, simple management mistakes and perceived slights start the snowball of discontent rolling downhill toward the courtroom.

Here are 12 of the biggest mistakes managers make that can spark a lawsuit or hurt your credibility in court.

### 1. Sloppy documentation

Most discrimination cases aren't won with "smoking gun" evidence. They're proven circumstantially, often through documents or statements made by managers. Documents, particularly e-mail, can help the employee show discriminatory intent. *The lesson:* Always speak and write as if your comments will be held up to a jury.

### 2. Not knowing policies, procedures

Courts expect supervisors to know their organization's policies and procedures. If a manager admits ignorance, legal experts say juries typically view that as purposeful, not forgetfulness.

That's why it's vital to make sure managers understand company policies. Don't permit decisions based on a vague memory of a policy. Have them check with HR in advance.

### 3. Inflated appraisals

Performance reviews are one of the most important forms of documentation, yet managers sometimes inflate the ratings for various reasons. If a manager later tries to cite "poor performance" for that same person's

termination or demotion, those overly positive appraisals create a heap of credibility concerns.

*The best policy:* Be direct, honest and consistent.

### 4. Shrugging off complaints

Turning a blind eye to employees' complaints of unfairness or perceived illegal actions is a guaranteed credibility buster. Comments like "I'm not a baby sitter" or "Boys will be boys" will hurt employee morale and jeopardize your standing in court.

### 5. Interview errors

It may be easy to answer the question, "Why did you hire that person?" Harder to answer is, "Why did you reject certain other candidates?"

That's because rejection decisions typically aren't well-documented and the decision-maker may not recall the reasons later.

During interviews, managers should stay away from questions that don't focus on this central issue: How well would this person perform the job he or she has applied for? *Not allowed:* Questions about age, race, marital status, children, day care plans, religion, health status or political affiliation.

### 6. Changing your story

If an organization changes its reasoning for making an adverse employment decision (firing, discipline, etc.) in midstream, its credibility is shot.

Managers should be straight with employees from the start about reasons for discipline. Don't sugarcoat bad news.

### 7. 'Papering' an employee's file

Most managers hear the mantra, "Document, document, document." But it's possible to overdocument, especially when it occurs right before a firing. Courts will be able to see through a rush of disciplinary actions cited in the days before a termination.

Preach consistency in documenting negative and positive performance and

behavior of employees. It's best to keep a "performance log" for each employee, regularly making notes in each file.

### 8. Being rude, mean-spirited

An organization can have the best case in the world, but if a key supervisor comes across as rude, insensitive and mean, the attorney's job of selling the employer's case to the jury will be much harder. Use the golden rule in handling staff.

### 9. Careless statements to feds

When responding to charges filed with the EEOC or state agencies, employers often have to submit position statements. Managers may be called upon to help provide some of that information. You can bet the employee's attorney will review these statements and introduce them at trial, especially if your story has changed.

### 10. Lack of legal knowledge

Juries will expect—and the plaintiff's lawyer will encourage them to expect—that employers stay abreast of developments in employment law. Provide managers with regular refresher training on your policies. *The key point:* When in doubt, managers should ask HR.

### 11. Dictating accommodations

Under federal law, employers must make "reasonable" workplace changes to accommodate an employee's disability. How to choose those accommodations? It must be a give-and-take process to reach a solution, the law says. Managers too often try to dictate the solution.

### 12. Firing employees too fast

Managers who fire without first trying to improve the worker's performance will appear insensitive and potentially discriminatory in court. But managers who try to improve things before resorting to firing will stand a better chance of avoiding a lawsuit.