

To Prevent Claims, Pay Attention to Employment Practice

All organizations must effectively deal with employment practice as a business function. In addition to insurance to protect against claims, manager training, and specific risk management practices for lowering the probability of employment practices claims are essential.

“It is my experience through observation that human services agencies spend far too much of their organization’s money, time, and energy on discussing personnel and employment practice issues,” says Brian M. Block, ARM, ARM-P, director of risk management Brown & Brown of Lehigh Valley, Inc.

Most organizations, of course, purchase insurance due to the potential liability inherent in their employment practices. But this only provides part of the protection needed. Also required are a zero tolerance for management-by-exception policy and experienced, competent human resource personnel who are an integral and effective component of the organization’s management team.

Block adds, “Discussing potential claims internally and, if necessary, with corporate counsel, and expedient reporting and discussion with your insurance agent or broker, are also necessary to protect your organization.”

Investment in middle managers training is another very important factor in controlling employment practice exposures. The training should include risk management techniques for dealing with potential new hires, present and future employees, and practices involving progressive discipline and dealing with voluntary or involuntary termination of employment.

The following risk management practices and tips are designed to assist your organization in lowering the probability of employment practices claims.

1. The **interviewing and hiring process** should result in a contingency letter sent to the successful candidate outlining the terms of employment and the conditions that must be met for the offer to be valid. Non-successful candidates should be sent a letter simply stating that they have not been chosen. Never make promises that you cannot keep to new hires or offer explanations as to why an individual was not offered a position. Be sure to follow-up on contingency requirements, and document every transaction, communication, and conversation.
2. It is imperative that **employee orientation or training** be more than a cursory review of benefits and an individual’s informed consent sign-off review of the employee handbook or organization’s policies. It is the employer’s responsibility, through both the centralized processes of human resources and at the programmatic level as a supervisory responsibility, to fully orient, mentor, and monitor the new hire’s compliance with policy.

3. The provision of **high quality, competent, and regularly-scheduled supervision** protects the organization from hearsay, employee reactions, and random supervisory interventions that exceed necessary boundaries of interaction. The supervisor's ability to coach, praise, and give progressive discipline equally to all direct reports is a cornerstone to avoiding employment practices claims.
4. **A performance evaluation** is the correct time to summarize a year's worth of effort on the employee's part. There should be no surprises experienced by the employee during a performance evaluation. It is an objective look at whether or not the employee accomplished all phases of their job during the previous year.
5. **Employees that do not follow policy**, ask that they be managed by exception, consistently push the boundaries of their relationships within the work environment, and are generally a difficult or uncooperative member of the team, should not be tolerated. As long as the rules of supervision and performance evaluations are met, progressive discipline should be used to reign-in or terminate this type of employee. Second chances simply do not work when considering fair and equitable treatment for all employees.
6. There is a job to do, and failure to do the job should result in **progressive discipline** at the minimum, and termination should it warrant.
7. For non-union organizations, consider the term **at-will employment**. From a risk management perspective, deal with terminations without cause directly and without explanation. You do not have to explain why the termination is occurring, and should offer very little as to why the employee is terminated. For cause terminations may also be handled this way, but it is best to have all your documentation ready should or when it is necessary.
8. Organizations should have **zero tolerance for discrimination**, cultural insensitivity, and sexual harassment. These topics should be taught during orientation and annually thereafter.
9. When a **grievance is not dealt with in an appropriate way**, it becomes a claim. The procedure for a hearing should be spelled out in policy, and the final arbiter identified.
10. Class-action and individual claims have arisen from the failure of the organization to protect the employees from all forms of **violence in the workplace**. Training helps mitigate the potential for workplace violence, and meets OSHA regulation.
11. Failure to **report employment practices claims expeditiously**, and cooperatively work with the insurance company may result in denial of insurance benefit. Often there is evidence of action prior to receiving the "notification of legal representation" or intent to sue. An EEOC investigation may be an obvious example of a disgruntled

employee's intention. In order to assure the greatest potential for coverage and defense, notifying the insurer the earlier the better is good policy.

Brown & Brown recommends conducting an audit of your practices against these points for all levels of management, explains Block. "If every one of your managers knows and consistently practices these few points, congratulations. Otherwise, consider training or education to improve the competency of your managers. Remember, your middle managers' training and skill in employment practices as an essential job function is important to controlling employment practices exposures within your organization."

Brian M. Block, director of risk management at Brown & Brown of Lehigh Valley, Inc. has 23 years experience in social service administration, and 10 years experience in risk management.

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