

# Changing the Face of Your Business: Three Steps to Avoid Being Sued by Employees

By Dan Weedin, CIC

What disaster can put you out of business?

- A catastrophic fire?
- One of your vehicles disables or kills someone?
- How about a defect in one of your products?

As a business owner, have you ever considered that your largest exposure to being sued comes from your employees?

In the last 15 years, employment-related lawsuits have gone up exponentially, wreaking havoc on employer's wallets. The reason this peril trumps the others listed is because those others are commonly covered in your standard business insurance policy. Protection from being sued by employees is not.

In September 2008, a small A&W franchisee in my neck of the woods was hit with terrible news. An employee was suing the business for harassment and discrimination at the hands of a supervisor. The employer was blindsided. He had no clue this was even brewing. By December, the judge had ruled in favor of the plaintiff. The price tag? One hundred seventy-five thousand dollars in damages, a major hit to the reputation of the small family owned business, and (this is the worst part), over \$800,000 in attorney fees. Grand total of nearly \$1,000,000 for which there was no insurance.

Fortunately for this employer of thirty-four years, the community was able to help them raise enough funds to begin a payoff that will take years to cover. Plans to close were halted. Not every business can count on that.

Your employees are the face of your business. You work diligently to train, teach, and develop them to be able to grow and operate your business. How much time do you spend making sure that you are hiring and developing the right faces for your business? By being proactive in this area, not only will you help your business be more efficient, but also you will take big steps in avoiding unwanted lawsuits.

You may be asking, "I'd love to be more proactive but don't know how or even where to start." You've come to the right place! In this article, you will find out the most common ways employers are being sued by employees and three strategies you can immediately implement to protect yourself and your business.

## How Can I Be Sued? Let Me Count the Ways

The most common form of employee-related lawsuits is still gender-based discrimination, which includes sexual harassment. Many times, this involves supervisors or managers so you as the business owner are unaware of a potential problem, just as in my example. Race/Color and disability discrimination are also still leading causes of lawsuits.

However, there is a new kid on the block and he's picking up momentum. Age discrimination is the fastest growing employee-related charge in this country. Why? I believe there are several factors including:

- An aging "Baby Boomer" generation
- An increasing reliance on technological savvy among employees
- Employees needing to retire later because of economic conditions
- An ever-increasing litigious society
- An unwarranted feeling of entitlement due to time of service

The *Age Discrimination Act of 1967* deemed that employees over the age of 40 were protected for age discrimination. Heck, take a look around your business. For many of you, that may be a significant group of your employees. Terminating anyone over the age of 40, regardless of the reason, has now become a stickier wicket as this age group continues to grow. Think of it this way, all those hippies in 1967 are in their late 50's and early 60's now!

The bottom line is that there are many ways for you to be sued by those you feel are most loyal to you. It's very likely that the majority of you reading this has either been touched personally by this, or knows someone that has. Now, how do you protect yourself?

The first way is financially transferring the risk. You need to talk to your insurance broker about purchasing coverage called Employment Practices Liability Insurance (EPLI). As you read earlier, this particular peril is excluded on the standard General Liability policy. Many employers get caught unaware because of ignorance of that fact. EPLI policies have come down in premium even as lawsuits have risen. You can purchase a policy for as low as \$1,500 annually depending on the number of employees you have in your organization. As that number grows, so will the premium, and so will your risk. I recommend to all my clients to purchase this coverage even if you have just a handful of employees. No one is immune from being sued.

The second way is by using my risk management strategies...

### **Three Strategies to Keep You Safe**

**Strategy 1:** Improve Your Hiring Practices – If you make hiring the RIGHT people a priority, rather than hiring anyone due to need, you will make big strides in the right direction when it comes to employee lawsuit prevention. It's more than having them fill out an application. Here are some ideas you can add to what you're currently doing:

- *Reference checks* – make the calls. There are plenty of questions you can ask that will be illuminating. Questions like, "Would you hire them back?" Don't overlook this option.
- *Drug Testing* – I've had many clients think they found the greatest employee ever and then find out they flunked a drug test. Remember, this is the face of your business. Don't cut corners.
- *Credit Checks* – This is fairly new. Statistics show that people who have credit problems are more likely to steal money or property from you. This can come back to haunt you if you need to terminate them without firm proof.

- *Motor Vehicle Reports (MVR)* – If you have drivers operating your vehicles, this is a not debatable. You must make sure that people driving your moving billboards that can damage people and property are good drivers.

**Strategy 2:** Mentor & Monitor – This is a unique opportunity to bring your veteran workers into the mix. Take your new hires and match them up with a skilled employee to show them the ropes. Too many times, new employees are thrown into the pool; left on their own to sink or swim. There are several benefits from a Mentor & Monitor system:

- Engages your new hire immediately with other employees
- Current employees gain the opportunity to grow and feel part of the process
- New employees have a “safe” place to ask questions
- You are delegating the training period saving you time

The average time on the job of employees suing employers is eighteen months. That indicates that new employees are either not a good fit from the start, improperly trained, or in over their head too early. Mentor & Monitor takes care of two of those three concerns.

**Strategy 3:** Document, Document, Document – So important I said it three times. Document everything from annual reviews, discipline, training regimen, and conversations you feel warrant it. You should document the number of times employees are late, strange behaviors, or scuttlebutt that you believe may have merit.

If you ever have to terminate someone for cause, say related to being habitually late, then you’d better make sure you can provide written support of dates, conversations, and warnings related to that. If not, one of those nasty ways to sue we discussed earlier can rear its ugly head. If in doubt, document. Whenever you get that “gut feeling” something’s amiss, document. Whenever there’s any disciplinary actions or warnings, document. Think I’ve overemphasized? I’ve run into too many business owners who understand the importance but admit they do a poor job. I don’t care if you use a journal or your computer, if you don’t get anything else out of this article, you must start documenting better today. How well you’re able to respond to questions from an attorney will hinge on it.

I’m often asked, “How long should I keep documentation?” One word – forever. With the advent of technological storage, there’s no reason not to keep it forever. You just never know when you might need it.

Final thought – You’ve done your due diligence to protect your business and all you’ve worked for from fire, windstorm, and liability. Make sure you protect yourself from the ones closest to you. Hire the right people, teach them the right way, communicate early and often, and document everything. Finish that off with the right insurance policy and you have done all you can to make sure the face of your business is always smiling.

*Dan Weedin, CIC is President and Founder of Toro Consulting, Inc. He has been in the insurance industry since 1987 in various capacities including company underwriting, sales, risk management, and consulting. His company is committed to helping business owners reduce their total cost of insurance through a strategized risk management process.*