

Special Edition

Employers Beware!

As we all know, the world economy has affected every one of us as individuals and as business owners:

- The unemployment rate is the highest it's been in almost 30 years.
- The government deficit is higher than it's ever been in its history, and;
- Many major financial institutions, stock brokerage firms and banks have collapsed due to the economic turmoil in our country.

As such, as people become unemployed, as companies begin to lay off employees, companies become targets for all types of discrimination claims;

- Unfair labor practice.
- Gender discrimination.
- Sexual harassment.
- Sexual discrimination.
- Age discrimination.
- Unfair labor practices.
- Increase in workers compensation claims, and;
- Occupational and injury claims, and the list goes on and on.

Whether these law suits are frivolous or not is not the point. In many instances, regardless of how careful you are, you have to be prepared for a potential claim. Regardless if you've done anything wrong or not, it's going to cost you a substantial amount of money to defend yourself. **Unfortunately, in most cases, even if you win the defense of the claim, you still have lost;**

- Valuable time is taken away from your business.
- Substantial legal expenses are incurred, and;
- In most cases, you cannot re-coop those expenses.

We are in a society (today) where some people want something for nothing. We are in a society where businesses are challenged every day. **We are in a society where an employee or ex employee can file a claim with a regulatory body, and whether it has any merit or not,** it is up to the corporation and the owners of that corporation to demonstrate that that employee, or ex employee's allegations are false. **In other words, you are guilty until proven innocent.**

Recently, there was a land mark case that may start to change the pendulum on discrimination cases.

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June 19, 2009

At a time when claims of job discrimination on the basis of age are climbing, the Supreme Court reversed a long standing rule which makes it substantially harder for older workers to win such cases in court.

Previously, judges across the nation have held that if a worker could show age as one of the motivating factors for a lay off or demotion, the employer was required to prove it had a legitimate reason for its action; separate from age.

In a 5/4 decision, however, the court's conservative majority threw out this two step approach to age discrimination, stating workers must bear the full burden of proving age discrimination. This was a deciding factor in their ruling.

Since employees claiming such discrimination would be unlikely to have been present when their employers discussed their planned action against them, industry analysts believe it would be extremely difficult to obtain "hard" evidence that age was the critical factor. I'm sure this ruling will be challenged, but as it stands now, The Supreme Court has said enough is enough.

Last year, the US Equal Employment Opportunity Commission stated that the number of newly filed age discrimination claims rose by 29%, the fastest of any job category. Think about that, 29%.

Several weeks ago, I wrote an article on Professional Employer Organizations called PEO's. I indicated that;

- It's a way for companies to shift some of the burden of responsibility to a third party.
- It's a way to obtain expert human resource assistance and legal assistance as part of a PEO contract at no extra cost, and;
- **It creates a dual employer relationship.**

This does not mean that you can shift your legal responsibility to a third party, but;

- You now have a partner that can walk you through the process and assist you through the legal process, and;
- You have a human resource department that can provide your company guidance in these very difficult times.

I also stated that not all PEO's are created equal. There are many PEO's in the industry;

- Some of them are industry specific;
- There are numerous small PEO's but very few large ones that are industry specific;
- The large PEO, who is properly capitalized, can provide the benefits that I described above.
- **Industry specific PEO's are the ones that, as an owner, you should review to make a determination if they can, not only improve your operating cost, but insulate you from some of these third party claims.**

In closing, these are very difficult times and with the unemployment rate continuing to climb and the economy still in the proverbial toilet, as an owner or manager of a company, it is your responsibility to protect your company to the best of your ability. When dealing with employee issues, you must deal with those issues;

- With compassion.
- Honesty and integrity, but;
- **You must also document all of your discussions and make it a record in the employee's personnel file, in case you become the victim of an attack.**

We've all been there, we've all experienced it – it's the cost of doing business; however, the better you are prepared and the better documentation you have, the better opportunity you have to prevail in such actions.

In closing, for trucking companies that don't have the financial resources to hire a human resource department or a law firm that specializes in the transportation industry, a properly capitalized PEO can be exactly what you need to guide you through these difficult times.

QUOTE OF THE WEEK

"It is easier to do a job right than to explain why you didn't."