

## Five Ways Employers Can Avoid Discrimination Actions

Training employees is as important as finding talent.

Assisting with employment-related matters is a part of our regular work for advisory firms. Recently I discussed these issues with my partner, Scott Unger, who advised me of the top five employment-related considerations for an advisory firm employer:

**1. Have a well-drafted employee handbook.** A well-drafted employee handbook will assist employees with finding the answers to their questions along with setting forth your company's philosophy, guidelines, benefits, policies and procedures. It also will provide employees what is expected of them. For example, the Financial Services Industry is required to have policies and procedures in place to protect customers' nonpublic personal information.

In addition, the handbook should set forth policies and procedures for ensuring compliance with both state and federal privacy rules. Moreover, the handbook should state your company's policies and procedures relating to ensuring compliance with both federal and state employment laws. Having policies and procedures in place (and adhering to them), likely will aid your company in defending a state or federal employment discrimination lawsuit.

**2. Hold yearly anti-discrimination training.** Yearly anti-discrimination training will help employees understand their obligations under the law. The purpose of this training includes: communicating to employees that work-place discrimination will not be tolerated; teaching them what is discriminatory; explaining the consequences of engaging in discrimination; and outlining where to report discrimination if they see it or believe they were subjected to discrimi-



nation. Yearly anti-discrimination training is likely to help any organization if it is ever accused of engaging in unlawful discrimination.

**3. Create and implement policies and procedures for reporting discrimination.** Employees should not only understand *when* they should report allegations of workplace discrimination, but also to *whom* they should report it.

You should provide multiple options when it comes to making these kinds of reports. It is also extremely important to communicate these policies and procedures in your written employment handbook and during the yearly training. It also is recommended that you place information concerning your company's anti-discrimination policies and procedures in breakrooms.

**4. Honest and regular performance reviews.** If an employee is having any kind of problems and/or issues, it is critical that it is reflected in performance reviews. If that employee were to later sue for discrimination, then there is at least documentation as to the non-discriminatory reasons why your company decided to terminate their employment.

Giving a troubled employee a stellar review is likely to be problematic if the employee asserts that their employment was terminated for discriminatory reasons. It's difficult to tell the jury that you let the employee go because they were not performing when reviews contradict that story.

**5. Don't underestimate importance of discrimination allegations.** Upon receipt of an allegation of discrimination, set forth orally and in writing, your company's anti-retaliation policy. Remind everyone that it is unlawful to retaliate. Explain what could constitute retaliation. Under both federal and state law, retaliating against someone who asserts they witnessed, or was the victim of discrimination, is a separate unlawful offense. In other words, even if the employee's claim of discrimination is not credible or sustainable, retaliating against them for asserting the claim will trigger a violation of the law.

Also important is to take effective remedial steps to stop discrimination. Your company should carefully and thoroughly investigate all accusations. Often it is recommended that the investigation be conducted by an outside law firm or investigator, to avoid allegations of bias. While the investigator may not be able to completely decide factual disputes, their recommendations should be followed carefully. Deciding to ignore the investigator's recommendations can be problematic and lead to liability. **IA**

Thomas D. Giachetti is chairman of the Investment Management and Securities Practice Group of Stark & Stark. He can be reached at [tgiachetti@stark-stark.com](mailto:tgiachetti@stark-stark.com).