

Discrimination and Retaliation Claims Set a Record in 2010: Are You Ready for 2011?

By Glenn Israel, Esq. | January 26, 2011

The U.S. Equal Employment Opportunity Commission (“EEOC”) recently reported that it received a record number of claims from employees in 2010 – nearly 100,000 new claims. Retaliation claims are the most frequently filed, but disability discrimination claims are on the rise, increasing by nearly 20 percent in 2010, and sex discrimination and religious discrimination cases continue to increase as well. Not surprisingly, the EEOC reports that the cost to employers of resolving these claims also continues to increase. We have seen a similar trend here in Maine. More of our clients are being sued for discrimination and retaliation, and the cost to resolve these claims has steadily increased. We also are seeing a marked increase in claims under the Maine Whistleblower’s Protection Act.

There are a number of reasons for this disturbing trend. The down economy has caused increased layoffs and decreased job security which has resulted in a loss of employee morale, decreased employee loyalty, and increased employee desperation. These factors have driven more employees to commence litigation over real or perceived injustices in the workplace. Experts predict that this trend is likely to continue for several years.

Now, more than ever, it is important for employers to do everything they can to avoid becoming defendants in discrimination or retaliation suits. There are some basic steps that you can take that do not cost very much and greatly reduce the likelihood that you will find yourself on the receiving end of a law suit. So, what can you do?

Develop Policies – Every employer should have an anti-discrimination and harassment policy that addresses all forms of discrimination and harassment. It also is advisable to have policies that affirmatively require managers to consider and document objective criteria when making decisions regarding hiring, promotions, discipline, and discharge.

Support and Follow Policies – Policies are only useful when they are fully supported by senior management and are consistently followed. Middle managers and rank and file employees all should understand that senior management is committed to following the established policies.

Provide Training – Policies are not always self-explanatory. Managers and employees must be educated regarding their roles and responsibilities in following and enforcing policies. This is the area where most employers fail. Once a policy has been developed and is fully understood by senior management, it is vitally important to make sure that all middle managers and employees share that understanding. Bernstein Shur offers a cost-effective online training product that can help you to provide your managers and employees with anti-discrimination training.

Implement an Effective Complaint Resolution Process – Employees need to know how to bring problems to the attention of management and they need to be encouraged to do so. Managers need to know how to respond to employee complaints and concerns. To accomplish these goals, you need to implement a complaint resolution process and provide training to all managers and employees regarding how the process works.

Maintain Complete Documentation - In the event that you are sued for employment discrimination, your best defense is a well maintained personnel file. It is important for employers to establish policies and procedures for documenting job performance and discipline issues, and to train all management personnel to follow these policies and procedures. This is another area where many employers fail to protect themselves, either by not establishing policies and procedures in the first place or by not consistently following them.

It is clear that 2011 will be another challenging year for the economy and for employers. Employers may be tempted to avoid spending the time and money necessary to develop new policies or train managers and employees. However, a modest investment in anti-discrimination policies and training now can reduce the risk of costly claims later. For more information about anti-discrimination policies and/or training, contact Glenn Israel in our Portland office at 207 774-1200, or Andrea Johnstone in our Manchester office at 603 623-8700.