

Can They Really Do That? When HR Professionals Get Sued

- a. Why do lawyers do this?
 - i. Increase settlement leverage
 - ii. Drive wedge between manager and employer
 - iii. Potential for greater discovery, recovery

- b. Individual liability—NO
 - i. Title VII of the Civil Rights Act of 1964
 - ii. Pregnancy Discrimination Act (PDA)
 - iii. Americans with Disabilities Act (ADA)
 - iv. Rehabilitation Act
 - v. Age Discrimination in Employment Act (ADEA)
 - vi. Texas Commission on Human Rights Act (TCHRA)
 - vii. Texas Whistleblower Act
 - viii. Workers' compensation retaliation under the Texas Labor Code

- c. Individual liability—YES
 - i. Section 1981 of Civil Rights act of 1964
 - ii. Section 1983 of the Civil Rights Act of 1871
 - iii. Fair Labor Standards Act (FLSA)
 - iv. Equal Pay Act
 - v. Family and Medical Leave Act (FMLA)
 - vi. Texas Payday Act
 - vii. Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)
 - viii. COBRA and ERISA
 - ix. Sarbanes-Oxley Act of 2002
 - x. Dodd-Frank Wall Street Reform and Consumer Protection Act
 - xi. OSHA
 - xii. Immigration Reform and Control Act of 1986 (IRCA)
 - xiii. Tort claims
 1. Defamation
 - a. Truth absolute defense
 - b. Immunity for those providing truthful information about employee's job history and performance to prospective employer
 2. Invasion of privacy
 3. Intentional infliction of emotional distress
 4. False imprisonment
 5. Battery

6. Negligent hiring/retention

d. Criminal Liability

- i. Obstruction of justice—destroying documents or making false statements
- ii. Perjury
- iii. OSHA violations

e. How can you limit risk?

- i. Know the laws.
- ii. Policies. Up to date.
- iii. Apply policies consistently. Especially FMLA.
- iv. Steer clear of inappropriate comments or teasing. Do not permit such behavior in your presence.
- v. In investigations, do not force employee to stay in room against his/her will.
- vi. Except in situations of self-defense, avoid grabbing or touching employee.
- vii. Don't make quick decisions. Think before speaking.
- viii. Get lawyer involved early on.
- ix. Document document document.
- x. Give specific and truthful reasons for the decisions made.
- xi. Discuss steps taken to make that decision.
- xii. Follow Golden Rule. Be courteous. Compassionate. Listen. Respect confidentiality.
- xiii. Express willingness to assist employee to adjust to new circumstances.
- xiv. Insurance
- xv. Indemnity

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