

# THE LAW OFFICES OF ALEX W. CRAIGIE

## **Avoid Employment Claims And Lawsuits With These Six (Relatively) Easy Changes**

California employers! In case you haven't yet figured it out, you're a target. While it's a terrific place to live and work, our state has the most stringent, punishing employment laws anywhere. California employers are under attack and need to do everything possible to protect themselves from claims and lawsuits. At best, an employment claim is a distracting nuisance. At worst, it will ripen into a lawsuit that could cripple, even destroy, your business.

The good news? There are small, relatively easy adjustments you can make to your policies and practices that, if faithfully followed, should help your business avoid these costly headaches. Here are six.

### **No. 1: Properly Classify Your Workers.**

Employers, particularly small businesses, can be tempted to "misclassify" workers. They may treat employees as "independent contractors" to avoid wage-hour rules, worker's compensation premiums, taxes and withholding obligations. They may also misclassify employees as "exempt" to avoid paying overtime and providing rest and meal periods. If you intend to treat workers as independent contractors or exempt employees, be sure the applicable criteria are met. An employment attorney or experienced HR consultant can help with this.

### **No. 2: Implement Discrimination and Harassment Policies.**

Regular training makes the difference between discrimination and harassment policies that are effective and those that are not. While most managers and employees know that discrimination and harassment are prohibited in the workplace, many do not understand what this means. It is only by providing quality training that sensitizes your workforce to what constitutes discrimination and harassment, at regular intervals, that you can effectively prevent it from occurring. Involve an employment attorney or experienced HR consultant to craft your policies and administer your training. And do so regularly.

### **No. 3: Respond Appropriately and Promptly to Requests and Complaints.**

Your employees will have needs, requests and some will occasionally complain. The key to avoiding claims and lawsuits is to recognize when a request or complaint triggers a legal duty to "accommodate" or "engage in the interactive

process.” By the same token, certain kinds of internal complaints trigger an obligation to promptly investigate. If you are in doubt whether an employee’s need, request or complaint requires accommodation, investigation or engagement in the interactive process, or unsure what that requires, seek the advice of an employment attorney or experienced HR consultant.

#### **No. 4: Understand and Avoid Retaliation.**

While most business owners and managers know retaliation is unlawful, many do not understand what constitutes retaliation. Many also fail to grasp how certain employment actions done with no retaliatory motive at all can be viewed in hindsight as retaliation.

Retaliation is any adverse action that an employer or manager takes against an employee because he or she complained about harassment, discrimination or other unlawful treatment, such as failure to adhere to a wage-hour law. Any negative action, such as a demotion or termination, which would deter a reasonable employee in the same situation from making a complaint, qualifies as retaliation.

#### **No. 5: Meticulously Follow State and Federal Wage-Hour Laws.**

Yes, this was intended as a list of six *easy* ways to avoid employment claims and lawsuits. Admittedly, careful compliance with the bewildering myriad of state and federal wage-hour laws can be maddeningly difficult. These include rules about minimum wage, overtime premiums, rest and meal periods. However, the availability of penalties and attorney’s fees for employees who sue for seemingly insignificant wage-hour violations and the availability of “class action” procedures have given rise to an explosion of lawsuits in this area.

The only way to avoid such claims and lawsuits is to comply with the applicable federal and state rules. An employment attorney or experienced HR consultant can review your practices and help ensure you comply.

#### **No. 6: Never Lay-off or Terminate An Employee Without A Severance Agreement.**

Many employers dislike paying severance to a discharged employee. However, a severance agreement that is made in exchange for payment of money to which the employee was not already entitled is generally enforceable to bar most employment claims. It is a good idea to work with an employment attorney or experienced HR consultant to draft the agreement to ensure it will be effective to bar most claims.

Employers who make a genuine effort to follow these six suggestions will be far less likely to face a costly employment claim or lawsuit.

With locations in Los Angeles and Santa Barbara, **The Law Offices of Alex W. Craigie** helps Central and Southern California employers prevent, manage and resolve employment disputes in a logical and cost-effective manner. Reach us at (323) 652-9451 or at [Alex@CraigieLawfirm.com](mailto:Alex@CraigieLawfirm.com).

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