

Employment Law Issues Continue To Pose Risks

Resource Type: Risk eNews

Topic: HR Risk and Employment Practices

Employment practices lawsuits continue to be among the more prevalent and most draining legal actions that a nonprofit is likely to face. Discrimination claims filed with the EEOC rose 9% in 2007 — the biggest jump in close to a decade. Nearly one-third of those claims included an allegation that the employer retaliated against an employee for exercising a legal right, such as filing a discrimination suit, or “blowing the whistle” on an allegedly illegal practice of the employer. Most states have their own whistleblower protection laws. The federal *Sarbanes Oxley Act* also makes it a crime to retaliate against an employee who raises allegations of financial impropriety or accounting mismanagement. In two opinions issued just this past month, the US Supreme Court has affirmed that employees have the right to bring retaliation claims against their employers under various federal anti-discrimination statutes, even though the specific laws make no mention of a cause of action for retaliation. [See *CBOCS West, Inc. v. Humphries*, No. 06-1431, 553 U.S. ____ (May 27, 2008) (Section 1981, a Reconstruction-era civil rights statute that prohibits race discrimination, also prohibits employers from retaliating against an employee who raises complaints about race discrimination at the workplace) and *Gómez-Pérez v. Potter*, No. 06-1321, 553 U.S. ____ (May 27, 2008) (federal employees who complain about age discrimination are protected from retaliation by their employers under the Age Discrimination in Employment Act (“ADEA”).]

Meanwhile insurance industry statistics inform us that having an internal grievance procedure that effectively captures employee complaints and compels employers to conduct investigations into employee concerns about discrimination and other perceived unfair or illegal practices, AND that prohibits supervisors or the nonprofit from retaliating against employees who raise such concerns, is an effective tool in avoiding lawsuits. Don’t get caught between a rock and a hard place. When an employee makes noises about discriminatory or illegal practices: listen; promptly investigate the allegations; and determine whether any inappropriate conduct or practices have occurred. If so, take action. And don’t forget to close the loop with the employee. Employees who never hear what happened in response to their complaints are the ones who are most likely to assume that their complaints fell on deaf ears. Their next move may be to call an attorney, or contact a federal or state regulator, which could trigger an investigation of the nonprofit’s practices.

The trend of an increasing number of retaliation claims is likely to continue with these recent Supreme Court holdings. In this environment it is even more important to have the right policies in place and keep your supervisory staff up-to-date with the latest developments in the employment law area.

The Nonprofit Risk Management Center welcomes questions and comments at 703.777.3504 or info@nonprofitrisk.org.