

Conducting HR Assessments in Advance of Employee Complaints

Editor's Note: This checklist outlines best practices that companies can follow to best position themselves to respond to employee complaints. Employers should take key measures to reduce the likelihood of litigation and possibly avoid negative publicity for the company. An employer's human resources policies, practices, and procedures should be reviewed for compliance and effectiveness before the filing of an internal complaint, agency charge, or lawsuit.

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- Conduct an HR assessment.**
- Work with legal counsel and document that the assessment is conducted “at the direction of legal counsel” to create the attorney/client and/or work product privilege.
- Mark all documents generated in the assessment process as “confidential.”
- Assessment should be broad in scope, and should include, but not be limited to: a review of policies, compensation data, I-9 compliance, training, benefits, affirmative action plan compliance, recruitment, discipline, termination, etc., and documentation of all of the above.
- Review company HR policies and related procedures.**
- Ensure that policies and procedures are compliant with current law and best practices.
- Be sure that the company's more informal practices are consistent with the company's stated policies.
- Ensure that policies are well communicated to all employees.**
- Consider publishing the policies in more than one language.
- Post the policies in frequently visited locations.
- Post policies on the intranet.
- Conduct appropriate training (in person, internet) for all employees.
- Review the effectiveness of the company's employee complaint investigation procedures.**
- Has past practice been successful in avoiding surprise public lawsuits?
- Has past practice been successful in resolving employee complaints in a timely manner?
- Bring all stakeholders into the assessment process early on:** Legal, HR, Communications, and Labor Relations (as appropriate). Include Investor Relations (as appropriate).

Practice Note: Don't assume that all professionals will understand the issues; some internal training may be required.

- **Begin assessment at the first hint of an employee dispute.**
- Don't wait until a formal complaint is filed.
- Contact legal counsel on the front end to “initiate” the investigation.
- The same diligence should be followed whether the complaint is formal, informal, or even anonymous.
- **When a dispute is suspected or a complaint (formal or informal) is filed, have one consistent point of contact.**
- This contact could be a designated person, position, or a department.

Practice Note: Keep in mind that time is of the essence, as evidence tends to weaken over time and memories lapse. On the other hand, some “witnesses” may have their memories enhanced at the urging of employees (complainants and/or alleged bad actors) which could pose a credibility issue.

- **After a complaint or lawsuit is finally resolved, review the process with key stakeholders and conduct an analysis of the process.**
- Strengths: what worked?
- Weaknesses: what didn't work?
- Opportunities: what could the company do better?
- Threats: what's on the horizon that could create exposure of loss for the company?
- **Regularly communicate with employees to demonstrate interest and to drive employee engagement.**

Practice Note: Sometimes employees file complaints because they aren't aware of available internal employee resources or an employer's commitment to providing a respectful workplace.

- **Periodically review and evaluate the entire process (items outlined above).**

Practice Note: Changes brought on by mergers, acquisitions, divestitures, layoffs, and changes in the law necessitate an on-going assessment process.

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