Wage-hour class action lawsuits are the top legal issue that companies face in the United States.

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**By Damian McNamara**

**Miami Bureau**

**Progressive Discipline** System Provides Lawsuit Safeguard

**Miami —** Minimizing exposure to employee lawsuits, including sexual harassment and discrimination claims—begins with hiring the right employee for your office, according to Chad K. Lang.

Fairness and consistency are important. Always treat one office assistant to the same raises, benefits, and time off as another. 'Doctors' offices are small, and there are no secrets,' said Mr. Lang, a labor and employee attorney practicing in Miami.

"I am here to help you deal with a commodity you deal with every day—your employees," Mr. Lang said at a pediatric update sponsored by Miami Children's Hospital. "They can be your greatest asset or your greatest nightmare."

Laws concerning labor and employment are about much more than worker's compensation. The only law that may not apply to a small practitioner is the Family and Medical Leave Act, which only applies to staff with a minimum of 50 employees. Although federal law generally applies to firms or practices with 15 or more employees, discrimination law applies to those with only 5.

Prevention is the best strategy. Mr. Lang recommends that you look under a microscope at every employment decision you make. He estimated that about 90% of all employer disputes are caused by 10% of employees.

Avoid general employment application forms; customize one with questions relevant to work in a medical practice, he said. Also, train interviewers to spot facial expressions that indicate lying or shading of the truth. "What if you find out 6 months later someone you hired was jailed for embezzlement? You need to know enough about employment law so you can recognize a red flag and know (when) to call someone to help."

"Fairness, documentation, and consistency—those three words can win a lawsuit," Mr. Lang continued.

There cannot be discrimination if a physician treats all employees the same. "But if you give one person a $10,000 raise and the other a $5,000 raise ... everyone will know about it. When that person leaves, whether [they leave] voluntarily or not, they sue," Mr. Lang said. And most attorneys work on a contingency fee, so there is no cost to the employee.

Wage-hour audits are another fairness issue. "You need to have someone figure out if you are treating your employees correctly. Are they truly exempt from overtime?" Mr. Lang said. "Let's say you pay someone $60,000 per year. Are they entitled to overtime? It depends on their job description."

Wage-hour audits are the No. 1 legal issue that companies face in the United States, Mr. Lang said. Beginning in 2001, the number of wage-hour class action lawsuits surpassed the number of class actions for race, sex, national origin, color, religion, and age in federal courts—combined.

Mr. Lang also addressed the perils of dating in the workplace. "I have three sexual harassment cases now based solely on a supervisor dating a subordinate," he said. "What do you think a subordinate employee will do if they are fired? They will sue, and most likely they will win."

Some employers have policies that address dating in the workplace. "What has recently become a trend is that I cannot believe a 'love contract,' " Mr. Lang said. "Some companies allow workers to date but they have to inform the employer when a relationship develops. Also, they are required to sign a contract stating that they are not being coerced."

Once a year, hire an expert to train your office managers about harassment and discrimination, Mr. Lang suggested. "Why? It's an insurance policy," he said.

An employee handbook with a specific process for making sexual harassment complaints is recommended. Complaints should be made to at least two people—one of each gender—listed in the handbook by job title instead of name. This will ensure that an employee has someone to talk with besides the person doing the alleged harassment.

A meeting attendee asked Mr. Lang about his fees. "I charge about $2,000-$2,500 to develop a new handbook or revise one. A 3-hour training once a year costs about $1,000," Mr. Lang said.

His rates as a law firm partner range from $250/hour to $350/hour. He also has trained associates who charge less per hour for consultation.

Another element of legal protection is, not surprisingly, 'documentation, documentation, documentation,' Mr. Lang said. "But don't write down anything you do not want someone to read. This sounds like something your grandmother would tell you."

Never assume your e-mail, text message, or instant message (IM) is not going to be exhibit No. 1 in a lawsuit, Mr. Lang said. "Good employment lawyers have great experts that will get e-mails and IMs. Do not assume they are gone after you delete them."

Mr. Lang's last piece of advice was 'know a good employment lawyer.'

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'Progressive Discipline' System Provides Lawsuit Safeguard

**Miami —** A "progressive discipline" system of warnings and suggestions for improvement before firing an underperforming employee maximizes chances of winning a wrongful termination lawsuit, according to a labor and employee attorney.

In addition, perform regular and honest performance evaluations and keep all employee documents under lock and key. "I suggest to my clients that they do not fire someone until there is enough of a paper trail," said Chad K. Lang, a labor and employee attorney practicing in Miami.

"Progressive discipline ... is about fairness. The No. 1 reason employees file lawsuits is they believe they were fired for no reason," Mr. Lang said. "And most companies allow workers to date but they have to inform the employer when a relationship develops. Also, they are required to sign a contract stating that they are not being coerced."

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**Data Watch**

**Proposed FY 2009 Health and Human Services Budget**

2% Temporary Assistance for Needy Families

3% Children's programs

29% Medicaid

56% Medicare

Total: $737 billion

Source: Health Resources and Services Administration