

**HAPPY HALLOWEEN!
YOU WANT TO SEE SOMETHING
REALLY SCARY?**

**Top Five Legal Causes of Action Asserted
Against Employers And
How You Can Avoid Them**

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Advice - Solutions - Litigation

TOP FIVE THINGS YOU SHOULD EXPECT TO BE SUED FOR AND HOW YOU CAN AVOID THEM

- 1. Wage & Hour Class Actions**
- 2. Sexual Harassment**
- 3. Disability Discrimination**
- 4. Wrongful Termination In Violation of Public Policy**
- 5. Retaliation**

TOP FIVE THINGS YOU SHOULD EXPECT TO BE SUED FOR AND HOW YOU CAN AVOID THEM

- **Topics to be covered**
 - **Wage & Hour Class Actions**
 - **Reasons class actions for wage and hour claims are increasing**
 - **Significant decisions**
 - **Unique issues for wage and hour claims**
 - **Preventative advice and strategic litigation issues**
 - **Sexual Harassment**
 - **Training**
 - **Investigations**
 - **Corrective Action**
 - **Disability Discrimination/Medical Leaves of Absence**
 - **Leave Under the FMLA**
 - **Continuing Need for Leave under the ADA**
 - **Engaging in the Interactive Process**
 - **Interaction of Workers Compensation with FMLA/ADA**
 - **FMLA/ADA Revisions**
 - **Wrongful Termination in Violation of Public Policy**
 - **Retaliation**

Explosion of Wage & Hour Class Actions

- **Reasons for Increase:**
 - **Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999**
 - **Private Attorney General Act of 2004**
 - **Class Action Fairness Act of 2005**
 - **Revised FLSA Regulations**
 - **Key Court Decisions**
 - **Attractive Court Verdicts/Settlements**

Appellate Court Decisions

- **Cortez v. Purolator Air Filtration Products**
(2000) 23 Cal.4th 163 [4 Year SOL]
- **Bell v. Farmers Insurance Exchange**
(2001) 87 Cal.App.4th 805 [Production/Administrative Dichotomy]
- **IBP v. Alvarez**
(2005) 546 US 21 [Donning & Doffing]
- **Murphy v. Kenneth Cole Productions**
(2007) 40 Cal.4th 1094 [Labor Code 226.7 Wage/Penalty]

Appellate Court Decisions

- **White v. Starbucks**
(2007) 497 F.Supp.2d 1080 [Permit and authorize meal periods]
- **Brinker Restaurants v. Superior Court**
(2008 – review pending) [State court recognizes flexibility in meal and rest periods as well as employee time keeping requirements]
- **Gattuso v. Harte-Hanks Shoppers**
(2007) 42 Cal.4th 554 [Alternative methods of expense reimbursement approved]
- **Schachter v. Citigroup**
(2008 – review pending) [Economic realities of compensation agreement controls]

Unique Issues In Wage & Hour Claims

- **Burden is on employer to establish exemptions and record hours worked**
- **Employer must also force employees to take unwanted meal periods**
- **Vast difference between FLSA and California Labor Code**
- **Confusing laws and Labor Commissioner interpretations**
- **Technical violations create liability**
- **Most laws provide for recovery of attorneys' fees to employees, not employers**

Example of Exposure

- **Labor Code Section 226 requires 9 items:**
 - **Gross wages**
 - **Total hours worked**
 - **Piece rate and number of units**
 - **All deductions**
 - **Net wages**
 - **Pay period**
 - **Name of employee and EIN or last 4 digits of SSN**
 - **Name and address of employer**
 - **All hourly rates and hours worked for each rate**
- **Missing any one above can result in penalties
[\$50/\$100/\$4000]**

Employee Misclassification

- **There are only three major overtime exemptions in California.**
 - **Executive**
 - **Administrative**
 - **Professional**
- **These are similar BUT DIFFERENT under federal law.**
- **Employer must comply with BOTH - especially the one that provides the most protection for the employee.**
- **The job description is helpful, but only the start of the analysis.**

Employee Misclassification

- **Executive Exemption:**
 - **Salary Test:**
 - **Must earn salary minimum of \$33,280.**
 - **Employee is paid for QUALITY of work not QUANTITY of work.**
 - **Duties Test:**
 - **Supervise 2 or more employees.**
 - **Exercise discretion and independent judgment in management.**
 - **Must be engaged in these activities more than 50% of their time.**

Employee Misclassification

- **Administrative Exemption:**
 - **Salary Test:**
 - **Must earn salary minimum of \$33,280.**
 - **Employee is paid for QUALITY of work not QUANTITY of work.**
 - **Duties Test:**
 - **Provide direction on the operations of the enterprise – not the service or sale of goods.**
 - **Exercise discretion and independent judgment.**
 - **Must be engaged in these activities more than 50% of their time.**

Employee Misclassification

- **Professional Exemption:**
 - **Salary Test:**
 - **Must earn salary minimum of \$33,280.**
 - **Employee is paid for QUALITY of work not QUANTITY of work.**
 - **Duties Test:**
 - **Must be licensed in one of the enumerated professions recognized by the State of California.**
 - **Exercise discretion and independent judgment.**
 - **Must be engaged in these activities more than 50% of their time.**

Employee Timekeeping

- **Off-The-Clock Work**
 - **Employer's obligation to record all time worked.**
 - **Employee should be directed not to perform work that is not accounted for in the timecard.**
 - **Employee should sign timecard, acknowledging true and accurate recordkeeping.**
 - **Travel Time**
 - **Training, meetings, lectures, conferences.**
- **Unauthorized Overtime**
 - **Employees who work unauthorized overtime MUST be paid premium pay, but can be disciplined.**

Employee Breaks

- **Meal Periods:**
 - **Employee must receive 30-minute, duty-free meal period if they work more than 5 hours in a workday.**
 - **Period may be waived by mutual consent if the employee works 6 hours or less.**
 - **Absent exigent circumstances, period can not be waived if employee works more than 6 hours.**
 - **Employer should permit and authorize employee to take meal period.**
 - **Meal period starting and stopping times should be documented.**

Employee Expenses

- **Labor Code Section 2802:**
 - **Provides that all expenses necessarily incurred by the employee in discharge of their duties to the employer must be reimbursed.**
 - **Use of Personal Automobile – Reimburse IRS rate.**
 - **Cell phone.**
 - **Personal computer or office equipment.**
 - **Uniforms.**
 - **Meals and Entertainment.**
 - **Liability.**

Preventative Solutions

- **Conduct internal audit to determine areas of potential exposure**
 - **Review job descriptions/classifications**
 - **Follow record keeping requirements**
 - **Review payroll practices**
- **Review and understand applicable wage orders**
- **Train HR personnel**
- **Enforce meal/rest period policies**

Preventative Solutions

- **Develop timekeeping procedures**
- **Develop reimbursement policies**
 - **Uniforms**
 - **Mileage**
 - **Tools & Equipment**
- **Consider varying evaluations, job descriptions, standards, rules and procedures by location or individuals**
- **Communicate legal requirements to employees**

Sexual Harassment Claims

- **Sexual Harassment Claims have been on the rise for the last 5 years due to:**
 - **AB 1825 – requires training of management**
 - **Judicial Decisions expanding the definition of sexual harassment**
 - **Increased Jury Verdicts**
 - **Failure to Supervise, Educate & Train Employees and Management**

Sexual Harassment By The Numbers

- **\$250,000 is the average cost to litigate a sexual harassment lawsuit and pay to successful plaintiff**
- **Employee who engages in harassment is individually liable for defense and jury award**
- **\$150,000 – Average award/settlement**
- **\$100,000 - Attorney Fees and Costs**

Sexual Harassment By The Numbers

- **Approximately 13,000 charges of sexual harassment filed in the United States annually**
- **Approximately 4,300 of those charges are filed in California**
- **1 out of every 3 complaints of sexual harassment are filed in California**

Sexual Harassment By The Numbers

- **Approximately 50% of the charges filed in the United States are dismissed shortly after filing due to the EEOC's finding of "No Reasonable Cause" or that the incident complained of lacks merit or does not constitute actionable sexual harassment**
- **15% of the Charges are Filed by Men**
- **The percentage of claims by males has steadily increased in the last 10 years**

Sexual Harassment By The Numbers

- **4 years is the span of time that can pass from the incident and you getting on the witness stand to defend yourself and a jury deciding whether harassment did occur**
 - **1 year from incident to file claim**
 - **1 year for agency to investigate and conclude whether to pursue or close case**
 - **1 year to get an attorney and to decide to file a lawsuit**
 - **1 year to get to trial after a lawsuit is filed**

Reasons For Increase In Claims

- **AB 1825**
 - **As of December 31, 2005, all employers with 50 or more employees OR service providers are required to provide training to all supervisory personnel every two years.**
 - **Training must be provided for at least two hours.**
 - **Training must be provided by someone who has extensive experience in analyzing, investigating and resolving sexual harassment claims.**
- **Increased training has heightened awareness of issue by staff and supervisory personnel.**

Reasons For Increase In Claims

- **Judicial Decisions**

- **Salazar v. Diversified Paratransit Inc. (March 2004)**
 - Employer may be liable under FEHA for sexual harassment committed by clients.
- **Miller v. Department of Corrections (July 2005)**
- **EEOC v. National Education Association (September 2005)**
 - A bully does not have to be motivated by lust in order to sexually discriminate against women.
- **Lyle v. Warner Brothers (April 2006)**
 - “Creative necessity” is an affirmative defense for sexual harassment that allegedly occurred on “Friends” TV show.

Reasons For Increase In Claims

- **Favorable Jury Verdicts**
 - **Stevens v. Vons** – \$17.6 million
 - **Hettick v. Federal Express** - \$2.3 million
 - **Orlando v. Alarm One** - \$1.3 million

Three Obligations

- **Policy and Posting**
- **Complaint and Investigation**
- **Correct and Remedy**

FMLA Amendments

- **Regulations re-organized with many minor updates/changes**
- **Implemented Military FMLA**
- **Significant changes to notice and certification forms and process**
- **Did not address intermittent and reduced schedule leave issues**
- **Left basic SHC definition in tact.**

FMLA Amendments

- **Eligibility**
- **Previous Rule: 12 months of employment need not be consecutive (no limit).**
- **New rule: Count unless gap of seven years**
- **Exceptions**
 - **Military service - fulfillment of National Guard or Reserve military service obligations**
 - **Written agreement to rehire employee after a break in service.**

FMLA Amendments

- **Military Leave**
- **26 weeks per 12-month period**
- **Additional 26-week leaves in other 12-month periods are allowed for**
 - **Serious injury or illness of a different covered servicemember**
 - **Subsequent injury or illness of same covered servicemember**

FMLA Amendment

- **Serious Health Condition**
- **Minor Tune-up**
 - **Illness, injury or impairment or physical or mental impairment that involves:**
 - **Inpatient Care**
 - **Continuing Treatment by a HCP**

FMLA Amendments

- **Notice Requirements**
- **Step1: EMPLOYER NOTICE**
 - **Poster (language)**
 - **Poster in handbook or distributed once/year distribution (electronic allowed)**
 - **FMLA Policy (recommended)**
 - **Substitution of Paid Benefits**
 - **FMLA Call-in Number**
 - **Notice and Request Procedure**

FMLA Amendments

- **Notice Requirements**

- **Step 2 – EMPLOYEE NOTICE**

- **Foreseeable**

- **30 days in advance; As soon as possible and practical (dropped 2-day rule)**
- **Need not specifically request by name but must provide “At least verbal notice sufficient to make employer aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave.”**
- **Examples: info that employee cannot perform job; employee is pregnant or has been hospitalized, continuing care being provided, qualifying exigency**
- **2nd time for same condition – must ask for FMLA**
- **Must follow usual and customary notice and procedural requirements for requesting leave (e.g. written notice)**
- **Allows employer opportunity to engage with employee in “reasonable efforts” to schedule treatments**

FMLA Amendments

- **Notice Requirements**
- **Step 2 – EMPLOYEE NOTICE**
 - **Unforeseeable**
 - **As soon as possible and practical (dropped 2-day rule)**
 - **Need not specifically request by name but must provide “At least verbal notice sufficient to make employer aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave.”**
 - **2nd time for same condition – must ask for FMLA.**
 - **Must follow usual and customary notice and procedural requirements for requesting leave (e.g. written notice)**
 - **Calling in “sick” insufficient.**

FMLA Amendments

- **Notice Requirements**
- **Step Three: ELIGIBILITY/RIGHTS & RESPONSIBILITIES (form)**
 - W/in 5 days of employee notice
 - Like I-9 – need to complete form fully (e.g. reason not eligible)
 - Only one notice per year/event needed
 - Once eligible – remain eligible for event for leave year
- **Step Four: DESIGNATION (form)**
 - W/in 5 days of getting info from Employee (e.g. certification)
 - Like I-9 – need to complete form fully
 - Must notify if fitness for duty and include essential functions
 - Retro OK if either no harm to employee or both parties agree event was covered.
 - Ragsdale penalty: employer liable if harm suffered by failure

FMLA Amendments

- **Conclusions & Action Items**
- **Obtain and Post New Poster**
- **Update Handbook**
 - **New Leave Entitlements**
 - **Paid Time Coordination**
 - **WC/STD Coordination**
- **Update Leave Request Procedures**
 - **Notice (handbook)**
 - **Leave Notice and Request Call-in/Forms**
- **Obtain New Forms and Plan Your Procedure**
 - **Eligibility/Responsibility Form**
 - **Designation Form**
 - **Certification (4 forms)**
- **Study new Medical Certification Form and Decide Who Will Decide if a SCH Exists Based On Returned Forms**

What hasn't changed: reasonable accommodation

- **Employer need not accommodate disabilities that are "direct threat" to employee's or co-workers' health or safety (unless accommodation will remove "direct threat")**
- **Employer need not create a job, displace another employee, or promote a disabled employee as a reasonable accommodation**
- **Employer need not waive production requirements that are required of all other employees in the job**
- **Employer may move employee to part-time or lower-paying job as a reasonable accommodation and pay accordingly**
- **Employer should (and, in some jurisdictions, must) engage in "interactive process"**

What else hasn't changed

- **Pre- and post-employment medical examination processes, including drug tests**
- **Confidentiality of medical information**
- **Exclusions of certain conditions:**
 - **“Sex-based”**
 - **“Psychological-criminal”**
 - **Current use of illegal drugs**

Bottom line

- **Should be easy to identify who is “disabled” – (ANSWER: just about everybody who claims it)**
- **Employers should expect slow start but accelerating requests for reasonable accommodation that will have to be considered**
- **Expect (eventual) dramatic increase in EEOC charges and lawsuits alleging disability discrimination**
- **Employers will lose “fallback” position in litigation**
- **Management will have to be well-educated**
- **Employers who use medical criteria in making employment decisions are strongly cautioned to get a post-ADAAA assessment of their criteria**

EEOC's "reasonable accommodation" priority

- 1. Try to accommodate employee in his or her regular job**
- 2. Try to move employee to different job that is similar to regular job in terms of duties, pay, and status**
- 3. Try to move employee to different job, including part-time job (with part-time pay and possible loss of benefits)**
- 4. Place employee on medical leave**
- 5. Terminate employee**

Other Areas of Concern

- **FMLA, ADA and Workers Compensation Issues:**
 - **Industrial injuries covered (physical and mental) may be also be FMLA-type events.**
 - **Under Workers Compensation laws, no set length of leave.**
 - **Leave determined by employee's desire/ability to return to same position or utilize vocation rehabilitation benefits.**
 - **Pursuant to Labor Code §132a, employee cannot be treated differently in regards to the terms and conditions of employee due to the occupational injury.**

TOP TEN ADA MISTAKES BY EMPLOYERS

- 1. Confusing “reasonable accommodation” with “light duty”**
- 2. Failing to consult with the employee (not engaging in the interactive process)**
- 3. Not following the EEOC’s reasonable-accommodation priority**
- 4. Paying too much attention to formal, written job descriptions**
- 5. Paying too little attention to the way jobs are actually performed in the real world**

TOP TEN (cont.)

- 6. Making accommodations that you don't legally have to make and that DON'T make good sense**
- 7. Failing to make accommodations that you don't legally have to make but that DO make good sense**
- 8. Being inflexible**
- 9. Failing to document adequately**
- 10. Failing to train management and employees about treating disabled co-workers with respect**

Disability Discrimination Claims

- **Increase In Disability Claims**
 - **Broadening of Disability Definition**
 - **State/Federal Cases Interpreting Employer's Obligation under ADA and California's Fair Employment & Housing Act (FEHA)**
 - **Confusion of interaction of FMLA and ADA**
 - **Failure to Communicate With Employee While On Leave**
 - **Decreased Workers' Compensation Benefits/Increased 132a claims**

Disability Discrimination Claims

- **Definition of Physical Disability**

- **Government Code Section 12925 (k): "Physical disability" includes, but is not limited to, all of the following:**
- **(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following: (A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine. (B) Limits a major life activity. . .**
- **(2) Any other health impairment not described in paragraph (1) that requires special education or related services.**
- **(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.**
- **(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.**
- **(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).**

Disability Discrimination Claims

- **Definition of Physical Disability Does Not Include:**
 - **(6) . . . sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.**

Disability Discrimination Claims

- **Recognizing When An Employer's Obligation Is Triggered Is Key:**
 - **Over 50 Employees, federal FMLA and California Family Rights Act (CFRA) laws apply.**
 - **Employee must have 12 months and 1250 hours of service.**
 - **ADA and FEHA may require a reasonable accommodation even if FMLA/CFRA does not apply.**
 - **Does the situation trigger any obligation under California's Paid Family Leave or State Disability Insurance?**
 - **Is a Leave of Absence always required?**
 - **What type of documentation can be requested?**
 - **Is this a workers' compensation matter also? Possible 132a Claim**

Disability Discrimination Claims

- **Pregnancy Disability Leave of Absence:**
- **FMLA leave may be taken for any of the following reasons:**
 - **For the birth of the employee's child or to care for the employee's newborn child;**
 - **For the placement of a child with the employee for adoption or foster care;**
 - **To care for the employee's spouse, child, or parent who has a serious health condition;**
 - **For the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position.**

Disability Discrimination Claims

- **Pregnancy Disability Leave of Absence:**
- **The FMLA requires covered employers to allow eligible employees to take leave of up to 12 weeks in a 12-month leave year period.**
- **Leave may, but need not, be taken in one continuous block of time.**

- **The Fair Employment and Housing Act (“FEHA”)
(Government Code §§ 12900 – 12996) :**
- **Requires employers to grant pregnancy disability leave to eligible employees.**
- **Full time employees are entitled to four months (88 working days) of leave**
- **Pregnancy disability leave is unpaid**

Disability Discrimination Claims

- **California Family Rights Act (“CFRA”):**
- **The right to take a CFRA leave is separate and distinct from the right to take a pregnancy disability leave.**
- **Leave is generally permitted under the CFRA for the same reasons as under the FMLA except that under the CFRA, the term “employee’s own serious health condition,” does not include the employee’s disability caused by pregnancy, childbirth, or related medical conditions.**
- **Maximum possible combined leave for both pregnancy disability leave and CFRA leave for the birth of a child is 4 months and 12 workweeks.**
- **Assumes the employee is disabled by pregnancy, childbirth or related medical conditions for 4 months and then requests, and is eligible for, a 12-week CFRA leave for reason of the birth of her child**

Disability Discrimination Claims

- **Document The Employment Situation:**
 - Record acknowledgement that employee has received and/or reviewed all required posters and notices.
 - Train management to advise HR when an employee is out for 2 or more consecutive days.
 - Provide LOA request forms as soon as possible.
 - Communicate to employee what leave or benefits the organization is providing.
 - Engage in a dialogue (interactive process) with the employee about the time off, ability to work or return to work, and whether or not another accommodation is available.

Disability Discrimination Claims

- **Things To Avoid:**
 - **Verbal communication about the leave authorization, the length of the leave, terms of the leave, and what is required before the employee is allowed to return to work – DOCUMENT IN WRITING.**
 - **Not considering alternative reasonable accommodations that would allow employee to return to work sooner – LEAVE IS NOT ALWAYS THE ANSWER.**
 - **Issuing discipline while on leave – ONLY IN EXTREME SITUATIONS.**
 - **Replacing individual – DEPENDS ON LENGTH OF LEAVE AND BUSINESS NECESSITY.**
 - **Eliminating position – ONLY IF PART OF A RIF OF MORE THAN 1!**

Disability Discrimination Claims

- **Things To Avoid:**
 - **Rushing to terminate the day after FMLA leave has been exhausted – ADA MAY REQUIRE LONGER LEAVE.**
 - **Not issuing leave paperwork with serious workers compensation injuries requiring a leave – FMLA/ADA MAY APPLY AS WELL.**
 - **Treating someone special – WHAT IS DONE FOR ONE SHOULD BE DONE FOR ALL.**
 - **Not issuing COBRA as soon as possible – AFTER FMLA EXHAUSTED OR IMMEDIATELY IF NOT COVERED BY FMLA.**

Wrongful Termination

- At-will in California is the default: Labor Code, Section 2922 presumes that employee is employed at will and can be terminated at any time, with or without notice, with or without cause.**
- Presumption can be eroded and then good cause may be necessary.**

Wrongful Termination

- Wrongful Termination Claims may be better than statutory discrimination claims to address, but do have weakness.**
- Strengths – No attorneys fees for common law claims even if underlying statute/regulation/public policy (if directly violated) would entitle recovery of fees.**
- Weakness – Claim survives for two years versus most claims with one year.**

Wrongful Termination

- Do not rely on at-will status and strive to terminate only for good cause.
- Basis as to why investigations into misconduct to establish “good cause” are necessary -
 - Cotran v. Rollins Hudig Hall International, Inc. (1998) 17 Cal.4th 93: California Supreme Court finds that a reasoned conclusion that good cause exists should be supported by “substantial evidence” gathered through an adequate investigation that includes notice of the claimed misconduct and a chance for the employee to respond.

Wrongful Termination

- Before separation becomes necessary, it is important to conduct a thorough and proper investigation: It is vitally important to conduct a thorough and proper investigation and give the accused employee the right to respond to charges against him before deciding what discipline should be imposed.**

Wrongful Termination

- When interviewing accused employees, it is always appropriate to ask their side of the story and ask for witnesses to the particular incident in question. The employer should always investigate the employee's side of the case before making a final decision on discipline. Any investigation should be full and complete and properly documented.**

Retaliation

- **A claim of retaliation can be created for almost any form of complaint, including but not limited to the following:**
 - **DFEH/EEOC Charge of Discrimination**
 - **Internal Complaint**
 - **Workplace Safety**
 - **Whistleblower**
 - **Workers Compensation**

Retaliation

- **The employee engaged in protected activity (Complaint);**
- **The employer thereafter subjected the employee to an adverse employment action (Any discipline or change in work status); and**
- **There is a causal link between the protected activity and the adverse action (Factfinder decides).**

Retaliation

- **Potential Recovery:**
 - **Reinstatement**
 - **Lost Wages**
 - **Future Wages**
 - **Attorneys Fees & Costs**
 - **Punitives if company condones/ratifies**

4 Things To Learn From Today's Session

Learn To:

- Take each complaint seriously**
- Feel confident about decisions**
- Become better supervisor**
- Document the employment relationship**

Do's & Don'ts

- **Do address verbal complaints.**
- **Don't require writing – against the law.**
- **Do document the employment relationship.**
- **Doesn't exist if not in writing.**
- **Do investigate complaints.**
- **Don't reach a conclusion based on prior experiences alone or before conducting an investigation – investigate, then decide.**
- **Do advise complaining party of results of investigation.**
- **Don't forgot to monitor or follow up post-resolution.**

Use of Experts

- **Several types of professionals can assist in the avoidance or defense of these claims:**
 - **Current management personnel**
 - **Legal counsel**
 - **Financial advisors**
 - **CPAs/Accountants**
 - **Other labor consultants or experts**

Use of Experts

- **Current Personnel**
 - **Management level employees have unique knowledge concerning the application of company policies to day-to-day operations.**
 - **Supervisory employees are aware of the existence of information relevant to the claims.**
 - **Employees may have unique knowledge to impeach claimants.**

Use of Experts

- **Legal Counsel**
 - **Competent employment law counsel should be engaged from the beginning.**
 - **Key in providing necessary detection and avoidance training to HR, management and other supervisory personnel.**
 - **Prompt evaluation of claims will assist company in making an informed decision.**
 - **Issues of jurisdiction, forum, venue, or pleadings present at the outset of the case may impact outcome.**

Use of Experts

- **HR/Labor Consultants**
 - Can provide input as to the exempt status of employees named in claim.
 - Can determine if meal and rest periods are being followed.
 - Analyze whether all required expenses are being reimbursed properly.
- **Information Technology**
 - Forensic experts can assist in locating documents vital to a defense even if it has been deleted.
 - Forensic experts can also play a role in meeting the obligation to preserve all electronic evidence and search for relevant data.

Questions & Answers

- **Any Questions?**
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