

Avoiding Employment Practice Liability Claims

Before taking employment action against an employee (e.g. discipline, termination, denial of a request for leave of absence, rejection of an accommodation, etc.) it is important to ask the following questions:

Has the employee submitted a report or complaint (verbal or written) of any of the following?

- Discrimination, harassment, or retaliation; or
- Illegal practices, such as improper billing practices, privacy violations, poor patient care, etc.; or
- Failure to provide breaks or pay wages owed; or
- Unsafe or unhealthy working conditions, such as exposure to dangerous chemicals or substances, unsanitary conditions, lack of personal protective equipment, etc.; or
- Workplace bullying, particularly if the employee has a known protected characteristic such as race, nationality, religion, sexual orientation, etc.

If the answer is yes to any of the above, stop and seek legal guidance.

Has the employee requested a Leave of Absence due to any of the following?

- The employee's or a family member's medical condition (including pregnancy) or need to seek medical care; or
- The employee's treatment for his or her own or a family member's addiction; or
- The employee's or his or her spouse's military obligations; or
- Domestic violence, sexual assault, or stalking experienced by the employee or family member; or
- Jury duty

If the answer is yes to any of the above, stop and seek legal guidance.

Has the employee previously disclosed his or her own or a family member's medical condition?

If the answer is yes, seek legal guidance.

Has the employee experienced a workplace injury or submitted a claim for worker's compensation?

If the answer is yes, seek legal guidance.

Is there a policy or procedure which might be relevant to the situation or which may dictate proper handling?

Determine if a policy or procedure applies and, if so, apply the policy or procedure.

Is the employee a member of a union or engaging in protected concerted activities?

If the employee is a member of a union, consult the Collective Bargaining Agreement and consider seeking legal guidance.

Employees who are not represented by a union also have rights under the National Labor Relations Act (NLRA). Specifically, the NLRA protects the rights of employees to engage in “concerted activity”, which is when two or more employees (or one employee on behalf of other employees) take action for their mutual aid or protection regarding terms and conditions of employment.

A few examples of protected concerted activities are:

- Two or more employees addressing their employer about improving their pay;
- Two or more employees discussing work-related issues beyond pay, such as safety concerns, with each other; and
- An employee speaking to an employer on behalf of one or more co-workers about improving workplace conditions.

If employees are engaging in a protected concerted activity or activities, take no action and immediately consult legal counsel for guidance.

If you work in a hospital, is the employee a member of Medical Staff?

If yes, consult and follow the Medical Staff Bylaws and notify legal counsel. Maintaining the independence of medical staff processes is often critical in employee disputes.

Have you used only professional and legally appropriate verbiage in all communications and documents relating to the employee?

If not, stop and seek legal guidance. Remember all communications/documents are subject to discovery if a lawsuit is filed and subject to a public records request for public entities.

Are you fully aware of and/or knowledgeable about all employment laws which may be relevant?

If not, seek legal guidance.

Please contact Physicians Insurance by calling 1 (800) 962-1399 if you have questions, need additional information, or wish to discuss a situation and/or potential insurance coverage.

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For more information about our solutions and services, visit phyins.com.

For any questions, please call our offices at:
(800) 962-1399 Monday-Friday, 8:00 a.m.-5:00 p.m. PT
Or email us at talktous@phyins.com

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