

Avoiding Personal Liability for Employment Actions



First, the good news

A manager cannot be found personally liable for employment-related decisions under the federal civil rights laws that protect employees from discrimination, including Title VII of the Civil Rights Act of 1964, the Genetic Information Nondiscrimination Act (GINA), the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA). Under these laws only the legal entity that employs the claimant (or to which the claimant applied for employment) may be sued. A manager can be named as a defendant in his or her “official capacity” as an agent of the employer, but the manager does not have any personal exposure for liability.

Some state civil rights laws specifically provide for personal liability for decision-makers for certain types of discrimination, most often for sexual harassment and retaliation cases.

Now, the bad news

These federal laws provide for personal liability for managers and other decision-makers:

- Family and Medical Leave Act
- Equal Pay Act
- COBRA
- Employee Retirement Income Security Act (ERISA)
- Occupational Safety and Health Act (OSHA)
- Immigration Reform and Control Act.

Managers can also be found personally liable for other actions, including:

- Slander or libel.
- Assault and battery (i.e., hitting or attempting to hit an employee).
- False imprisonment (i.e., confining an employee to a room against his or her will).
- Withholding overtime pay under the federal Fair Labor Standards Act.
- Intentional interference with an individual’s contractual rights (i.e., causing another employer to fire one of its employees).
- Intentional infliction of emotional distress.
- Conspiracy to violate someone’s legal rights.



Every day human resource professionals and other managers are required to make decisions and take employment actions that may adversely affect employees. As a result, some employees may file administrative complaints or lawsuits against the company. Some laws provide that the individuals who made the decisions may be personally liable for the resulting employment actions. Under these laws, a manager or human resource professional can be sued in his individual capacity rather than as an agent of the company.

Note:

These types of actions are beyond the manager’s normal authorized job duties. Frequently, they are intentional acts meant to harm or demean the employee and are not within the scope of employment.

Keep your policies up to date and follow them consistently.

Written policies let your employees know what to expect and provide guidelines for their consistent administration. Policies need to comply with current law and must be consistently followed or they can be used against you in court.

Thoughtfully consider issues and make decisions based on reason, not emotion.

Don't be pressured into hasty decisions. Take time to thoroughly investigate the situation including checking your policies, practices, and applicable laws. Make informed decisions that are not arbitrary or discriminatory. Discuss the matter with an HR expert or legal counsel, if appropriate.

Document, document, document.

Make a complete written record of your investigation, your decision, and the rationale for the decision. Documentation adds credibility and helps to refresh your memory if called upon to justify the decision at a later time.

Explain the decision to the affected employee.

Often employees feel they have been treated unfairly or illegally because they do not know the rationale for the decision. Point to specific policies or business needs that support the action taken, where possible.

Avoid saying or doing anything that gives the appearance that you are acting in your individual capacity instead of on your employer's behalf.

Include your job title when signing company documents and letters.

Urge your organization to consider purchasing employment practices liability insurance (EPLI) or check existing policies (e.g., general liability) to determine whether individuals are covered.

Even without EPLI coverage, the employer may be obligated to defend you if you are sued as an individual for decisions made in the course of your normal job duties.


As the saying goes, "The best defense is a good offense." The best way to avoid personal liability for employment actions is to do your job as a manager in a manner that is in compliance with the law and with your organization's current and legally compliant policies. Conducting your day-to-day business in a consistent and thoughtful way and documenting your employment decisions and their rationale will place you in the best possible position to defend yourself if you should be the target of an employee claim or lawsuit.

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A manager may be sued in his or her individual capacity (rather than as an agent of the company) for several reasons. A disgruntled employee or former employee may be angry at the person he perceives made the decision to discipline, terminate, or take another employment action against him. This usually occurs when the individual believes the action was personal—perhaps as a result of personal friction between the two individuals—rather than as a result of the operation of the company's policies. A second reason is that the manager may be viewed as another source of damages (i.e., money). In addition, suing the manager may put more pressure on the company to settle the matter out of court. Finally, in some cases a manager's actions may have been so offensive or outrageous that they are beyond the scope of his employment.

Taking these steps can minimize a manager's chances of being personally targeted in a lawsuit.

MRA's HR Hotline can help you!

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