4-Point Plan To Avoid Costly Workplace Mistakes

Insights
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When a California Court of Appeal revived a workplace lawsuit alleging state law disability discrimination and retaliation claims that had originally been dismissed by a trial court, it did more than decide that the mistaken application of a legitimate company policy could leave the employer on the hook for resulting claims. The court's decision illustrated the critical importance of training supervisors and human resources (HR) representatives who deal with disability accommodation or termination decisions and how costly it can be when HR fails to address such mistakes promptly. Healthcare HR leaders *everywhere* should take note of this stark example, and learn a simple four-point plan to minimize risks, because the issues in this case can arise anywhere.

Background: Errors Compounded By More Errors
John Glynn was a pharmaceutical sales representative for Allergan when he took medical leave due to a serious eye condition. About six months later, when Glynn became *eligible* for long term disability (LTD) benefits, a temporary employee in Allergan's benefits department sent him a letter stating that his employment was being terminated because he could not return to work by a date certain, with or without reasonable accommodation. The letter misapplied Allergan's policy, insofar as his employment should not have been terminated at least until after he was *approved* for LTD benefits.

Moreover, it was undisputed that Glynn could have returned to work with a reasonable accommodation – in this case assignment to a job that did not require driving. Critically, evidence showed that Glynn had repeatedly asked for help obtaining such a job and applied for several open positions, all to no avail. Right after his termination, Glynn emailed a letter to the HR department and its director, accurately stating that he had never applied for LTD, expressing his interest in working in any job that did not require driving, and specifically complaining about the mistaken application of policy and his termination.

Glynn then filed a lawsuit, claiming disability discrimination, failure to engage in the interactive process and retaliation, among other things. When Allergen's chief HR Officer finally replied to him, she admitted that Glynn should not have been terminated and offered reinstatement with retroactive pay and benefits. Although she admitted that the process could have been handled better, the HR Officer's letter said the temporary employee who sent the termination letter "sincerely believed" that her actions were appropriate. After Glynn rejected Allergan's offer, the trial court ruled in the employer's favor on several of his claims, including disability discrimination and retaliation.

Allergan's Defense Undercut by Error, Fumbling of Glynn's Complaints

The court of appeal reversed the trial court, stating that even if the temporary employee's mistake was reasonable and made in good faith, those facts alone would entitle Glynn to take his claims to trial. It also reinstated his retaliation claim, noting that his emails to HR attempting to return to work had been ignored and that Allergan was not sincere about returning him to work in a comparable position.

Since Glynn was terminated two months after he complained, the court opined that a jury could conclude that the decision was retaliatory. It was also significant that even though Allergan was aware of its misapplication of policy immediately after terminating Glynn, the company waited nine months – until after a lawsuit was filed – to offer reinstatement.

4-Point Plan To Avoid Costly Mistakes

Even though this scenario unfolded under California law, it illustrates the type of fact pattern than can occur anywhere. Regardless of where it occurs or whether the employee files suit under state or federal law, the employer is left to deal with an expensive and painful mess. Savvy leaders, however, can take away some great points to use in helping them avoid similar disasters in the future. The most important lessons can be summarized in four major points:

1. Train anyone permitted to wield the authority of the company.
2. Trust, but verify.
3. Always respond to complaints in a timely manner.
4. Look at the "big picture" before taking an adverse employment action.

1. ***Train, Train, Then Train Again***

   This case vividly illustrates how a good faith error can result in disastrous consequences. It also raises a question about whether a temporary employee should be given the authority to terminate any employee without some level of review and approval.

   The bottom line is that the healthcare employer is responsible for the acts (and errors) of anyone it authorizes to act on its behalf. It therefore pays to ensure, beyond any doubt, that individuals given the authority to hire, fire, discipline, receive employee complaints, or to grant or deny benefits is fully trained to perform their duties properly, and of course, within the bounds of the law. This training includes teaching the individuals when to seek guidance from HR or counsel.

   This precaution extends well beyond people who perform administrative tasks. It encompasses supervisor and managers who regularly wield the authority of the employer. To give someone authority to make weighty decisions without training them is to invite calamity. Also keep in mind that most supervisors are trained in specialty areas that have nothing to do with HR functions. Therefore, they must be reminded periodically, at least annually, about how to deal with decisions involving employees' work life.

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Finally, it is also critical to ensure that third-party vendors, such as COBRA or leave administrators, are fully familiar with your policies and practices. Indemnity provisions in service agreements may, at best, ease some of the financial repercussions of a mistake, but they will not get healthcare employers off the hook. In fact, they may provide little meaningful relief. Therefore, before empowering anyone to make decisions on behalf of the company, train them thoroughly.

2. ***The Employer Who Delegates Must Also Verify***

   By now it is clear that mistakes happen, even among well-trained individuals. The key to consistent success is to monitor and occasionally audit high-stakes areas, such as those referenced above, to verify that processes are proceeding as intended. This goes for administrative and supervisory personnel, as well as third-party vendors. Catching and correcting glitches early can save considerable costs and headaches in the long-run.

3. ***Always Respond To Complaints Timely***

   This case also demonstrates how bad a company can look when an employee establishes that they have asked for assistance without a response. This does not mean that the complaint is always valid or even justified. Nor does it mean that a complaint must be immediately *resolved*. Instead, it means that employers must be able to demonstrate that they acknowledged complaints and at least began assessing them in a prompt fashion.

   In this case, Glynn's series of emails almost literally cried out for attention. Allergen's tardy response obviously made a less-than-favorable impression on the court of appeal. Simply, it is imperative to not only publicize employees' rights and avenues for lodging complaints – healthcare employers must establish systems to identify and track them to ensure that they are addressed.

4. ***Never Lose Sight Of The "Big Picture"***

   The Glynn case also provides a stark example of how bad it looks when a company terminates an employee just a short time after the employee lodges a complaint. Close temporal proximity between an employee's protected activity, such as complaining about discrimination or other mistreatment, and an adverse action invite retaliation claims. As statistics show, disgruntled employees and their lawyers are only too happy to accept such invitations, as retaliation allegations are regularly the most common EEOC charges filed.

   This is why it is important, before making any final decisions, to consider whether an employee has recently engaged in protected conduct, such as making a complaint, taking leave, or requesting an accommodation. Employers must also evaluate whether the same or similar situations have occurred in the past and, if so, how they were addressed. Deviating from prior practices will require the healthcare employer to be prepared to credibly explain the change in course.

None of this is meant to suggest that employers are handcuffed or unable to take appropriate action as necessary. It simply means that you must be aware of the bigger picture and be prepared to address questions that will result from it.

Conclusion

In sum, regardless of how the matter is ultimately resolved, takeaways from the Glynn case serves as a stark reminder of how seemingly routine errors or oversights can mushroom into costly messes. Vigilant employers will take note.

For more information, contact the author at KTroutman@fisherphillips.com or 713.292.5602.

Related People

A. Kevin Troutman
Senior Counsel
713.292.5602
Email

Service Focus

Litigation and Trials

Counseling and Advice

Industry Focus

Healthcare