



Advice from the Experts: Preventing Small Slightings from Becoming Lawsuits

By Carisa Crawford-Chappell

Many plaintiffs often say that if they had just received an apology or if their complaints were taken seriously, they would never have sued. While some lawsuits are unavoidable, others happen only after a series of events, slightings, and misunderstandings—a domino effect that can often be diffused before judges and courtrooms become involved. Even companies that are truly committed to diversity at all levels are not totally immune to internal lawsuits stemming from race or gender conflicts. How, then, to prevent that first domino from falling? The key, according to legal experts, is for companies to take proactive steps to prevent small incidents from turning into full-blown lawsuits.

Diversity & the Bar® spoke to leading industry experts about prevention strategies, and they all pointed to several key actions that every company should take to lessen the likelihood of landing in court: responding to complaints quickly regardless of the significance of the incident, ensuring that layoffs during economic downsizing do not disproportionately impact any racial group, making sure that repetitive complaints are not only addressed but also resolved, communicating face-to-face in lieu of using email to avoid the mixed messages that are inherent in this format, and ensuring that diversity is viewed as a business issue—to name a few. However, as indicated by those interviewed, one of the most important prevention techniques is having strong communication strategies.

Keep the Doors of Communication Open

Whether dealing with employees, customers, or clients, communication is the overwhelming factor in preventing small occurrences from turning into lawsuits. Without proper communication, the doors are left open for error and confusion. Avoiding the situation will not make it go away, according to the experts. In fact, not addressing the problem immediately can cause the issue to escalate even faster.

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In addition to having a clear channel to raise and address a complaint, experts, including Robert Meade, vice president at the American Arbitration Association, say there has to be someone who cares and is willing to investigate every concern.

Another communication issue is the abundant use of email, which can hinder a company’s open door policy. Technology advances, while helpful, can cause misunderstandings, says Theos McKinney, director, field sales diversity at AstraZeneca Pharmaceuticals in Wilmington, Del. He advises that email, in particular, should not be used to respond to employee or client complaints. “Managers are overusing email, and it spirals out of control. Managers should reduce the amount of feedback given via email and take the time to respond in person.”

Concerned and Sincere

Arin Reeves, a diversity consultant with The Athens Group in Chicago, has found that in a lot of cases, people who file lawsuits feel they have been personally affronted on both a professional and an emotional level. Whether it is a customer, business partner, or employee, the feeling of being overlooked or mistreated does not go away easily and often leaves the plaintiff looking to reciprocate the hurt.

“A lot of corporations think that they’ll be able to placate plaintiffs with some type of monetary compensation without realizing there is a real emotional feeling like you’ve been robbed,” says Reeves. She notes that when a customer returns a defective product, that individual might feel that the corporation has done something wrong, but is not personally offended. However, for an employee who feels he was passed over for a promotion or raise, it is not just a wrong he wants righted, but he is hurt, angry, and also wants an apology.

“When corporations ignore that additional dimension, it becomes a sure-fire way to end up in litigation because it’s the dimension that people won’t let go of—even if you offer them compensation,” says Reeves. “If it doesn’t let them feel better about that hurtful and insulting experience, they will continue to push for litigation; they may just want you to say you’re sorry and that you were wrong.”

It is vital that the person who was wronged believes that company representatives are concerned about the issue. If the complainant feels there is genuine concern, he or she is less likely to pursue a lawsuit.

“For example, if someone says, ‘I notice there’s not a lot of women in leadership here,’ if your response is, ‘We just haven’t had any talented women in the organization’ or, ‘They must be leaving to have babies before they get to that level,’ then you’re setting yourself up for litigation,” says Reeves.

Reeves recommends that employers address such comments without being defensive. “That particular woman might have just been looking for a better answer, like, ‘You’re right; we should really do something about encouraging more women into leadership,’ however, from the more defensive response, she would have derived sexual discrimination more than anything else,” Reeves points out.

Respond Quickly

“Employers need to respond quickly to complaints,” says Ernie Haffner, a senior attorney with the Equal Employment Opportunity Commission. “One of the biggest mistakes employers make is thinking it’s not going to happen to them and not anticipating possible lawsuits. They don’t take the preventive steps necessary to stop it from happening in the first place.”

Mallory Duncan, general counsel of the National Retail Federation in Washington, DC, concurs. “When the customer, who may have a small complaint, is ignored, the customer suddenly decides that there is something much worse at stake than being ignored, something is genuinely wrong with the product or service and it tends to get blown out of proportion,” says Duncan.

McKinney believes that while there is a small percentage of employees who fabricate issues, overall, employee complaints are usually genuine. McKinney says that AstraZeneca’s training program, “Micro Inequities in the Workforce,” takes the approach that small things are just as important as big things, and, in turn, need to be treated with the same amount of attention before they escalate.

Being silent and evasive will not resolve the issue, according to Essie Calhoun, chief diversity officer at Eastman Kodak Company in Rochester. "When incidents do occur, the most important thing is to listen, investigate, and take action," says Calhoun.

Resolve Repetitive Complaints

Reeves says that repetitive complaints are another big problem. "I can't tell you how many organizations I deal with that call me in to help with one particular incident and they say that this is the seventh or eighth time this has happened," says Reeves. "When you allow something to occur over and over again, even if you're dealing with it well and it's not resulting in litigation, with each occurrence your chances of someone taking it to litigation is a lot higher because they feel that the culture of the organization isn't changing."

Retail Complaints

The retail industry handles millions of complaints each week, generally falling into one of two categories: "They tend to be rather modest claims such as disputes over merchandise or they tend to be larger things such as slip-and-fall accidents," says Duncan. Duncan says that it helps retailers to solve customer disputes before a lawyer gets involved and sets unrealistically high expectations in a complainant's mind about an award. Thus, this same approach should be used when handling employee complaints. He emphasizes that while the "customer-is-always-right" philosophy is a good one to adopt, he warns of a small number of customers who will take it to the extreme and make things very difficult.

"I worked with a retail company that had a very good customer service reputation, and their problem, if anything, was bending over too far for some consumers because it gave the impression that the customer could do anything," Duncan continues. "As a business proposition, that's an excellent way of running a business because it gives the company the reputation of being very customer friendly, and for the overwhelming number of customers, it means that they will come back, even if they know that they have pushed the limits."

According to Duncan, good customer relations is probably the best legal defense in retail. "Oftentimes, a case develops not because there's been a genuine injury so much as because there's a sense that the customer feels they have been rejected and they created an injury from the rejection."

Spreading Diversity

One of the most frequently filed lawsuit categories is race discrimination, which is why experts say that being diverse helps avoid some of those suits and can limit the damages when they are filed.

Calhoun says that in order to avoid lawsuits and other pitfalls, companies need to look to the future. "To respond to the changing demographics, we have to address a global, multicultural customer base," says Calhoun. "We have to focus on understanding the needs and cultures of diverse employees because that is what is going to make us more effective."

As indicated by those interviewed, minority attorneys are often more sensitive to cultural slights that majority lawyers may overlook due to their lack of familiarity with other cultures. For example, an African American or Asian American lawyer reviewing advertisements or services may raise a flag if something could be offensive to their communities. Thus, according to the experts, having a diverse staff can help corporations reduce the number of incidents that may lead them through courthouse doors.

Take Proactive Steps

"It's important to have leadership commitment and engagement that begins at the very top, from the chairman all the way down," continues Calhoun. "At Kodak, we have a senior diversity and inclusion council that engages with me and sets the direction in monitoring our progress and being leaders for the company's strategy and implementation. We also have a broader group of executives in a global diversity leadership team." There are eight corporate diversity and inclusion champions at Kodak, with each person responsible for a particular constituency within the company.

McKinney says having a diversity program in place can make it easier to resolve sensitive diversity matters without going to trial. "When someone has a grievance, their faith in the company has kind of been lost. The advantage of having some type of diversity program makes it more likely that there'll be a reservoir of good will or trust that can help employees find a resolution, short of going to war in a courtroom in front of 12 people that they don't know."

Reeves recommends that before introducing a new anti-discrimination policy, corporations need to do an assessment within the company to see exactly what kind of policy is needed. "One of the biggest mistakes companies make is that they tend to put everyone in the same training, and you need to differentiate what different people need to be trained on. For example, an executive needs to be trained differently from someone who's on the front line."

Diversity as a Business Issue

While diversity is thought of as an internal issue, it often resonates outside of the corporation or firm and into the market it serves.

Having diverse employees not only helps to deter future problems, but many experts, including Calhoun, say that it is a business imperative because it helps their corporation to understand the market better. "When you have diverse individuals at the table and they feel included, it really has a positive impact on innovation, our ability to produce products and services that will meet the needs of our customer, and in the commercializing of our products," says Calhoun.

Jennifer Coffman, who helps manage the diversity efforts at the American Arbitration Association (AAA), says, "The very nature of our business means that we have to respect diversity." Coffman adds that thousands of parties who come to AAA with conflicting views and goals are seeking options to resolve those diverse positions. "It's not just, 'Do we [AAA] have enough women or minorities on our staff?', it's really just the core of our organization."

Coffman points out that companies make mistakes by not really focusing on diversity as an issue or by not focusing on it broadly enough. She adds that it is not enough to just focus on hiring because companies also need to think about diversifying their business partners and the work that they are doing.

"An increased need for sensitivity in the area of diversity is clearly one issue that retailers have been trying to be sensitive to," says Duncan. The National Retail Federation has a diversity committee comprised of retailers who meet regularly to discuss best practices. "One overall piece of advice I give to every single client I work with is to not confuse anti-discrimination with diversity," Reeves concludes. "Even if you have an anti-discrimination policy in place, if you do not have a diversity strategy, you can still set yourself up for failure. People don't just want to see that you're not going to do something wrong, but that you're also going to do something right."

Preventing Internal Distress

Haffner conveyed that while conflicts involving race are the most common internal and external complaints, within an organization, they are closely followed by sex and age discrimination. Understanding and adhering to the EEOC guidelines are vital to avoiding lawsuits. He explains that corporations should be aware of not only intentional acts of discrimination, but also of practices that have the indirect effect of discriminating against individuals.

For example, an employer who requires that all employees speak only English on the job is in violation of Title VII, which makes it unlawful for an employer to refuse to hire, discharge, or take action affecting an employee's compensation, terms, conditions or privileges of employment because of the employee's national origin, unless an employer proves that the requirement is necessary for conducting business.

Haffner informs employers to be mindful that the decisions they make may have legal repercussions. "If, during an economic downturn, you have to lay off employees, avoid laying off a disproportionate number of older workers, or too many people in one race or gender group," he says.

"It's important to have human resources review all adverse actions, and that department should be perceived as an avenue of recourse for employees," says McKinney.

Haffner adds that it is also helpful to offer benefits that appeal broadly to everyone, such as flexible hours, domestic partner benefits, and work-sharing arrangements.

Avoiding lawsuits requires planning and attention, as well as a willingness to incorporate the various recommendations contained in this article into the organization's approach to managing people. However, as indicated by the experts, an ounce of prevention is worth a pound of cure. The most effective prevention is having happy, successful employees and satisfied consumers whose positive attitudes about the company, its products, and customer service lure others to join them. Carisa Crawford-Chappell is a freelance writer based in Bowie, Md.

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