

Employee Law Suits and How a PEO Can Help

In This Paper: Covering the risks of employee lawsuits and the steps you can take to mitigate that risk.

Author - Jim Bordonaro
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This article is intended as basic information only, it is not intended as legal advice, nor is it inclusive of the varying state laws that may apply, which may or may not be more restrictive. We encourage you to speak to your human resource professional or to consult an attorney for specific questions applicable to your company and employees. Information current as of publish date.

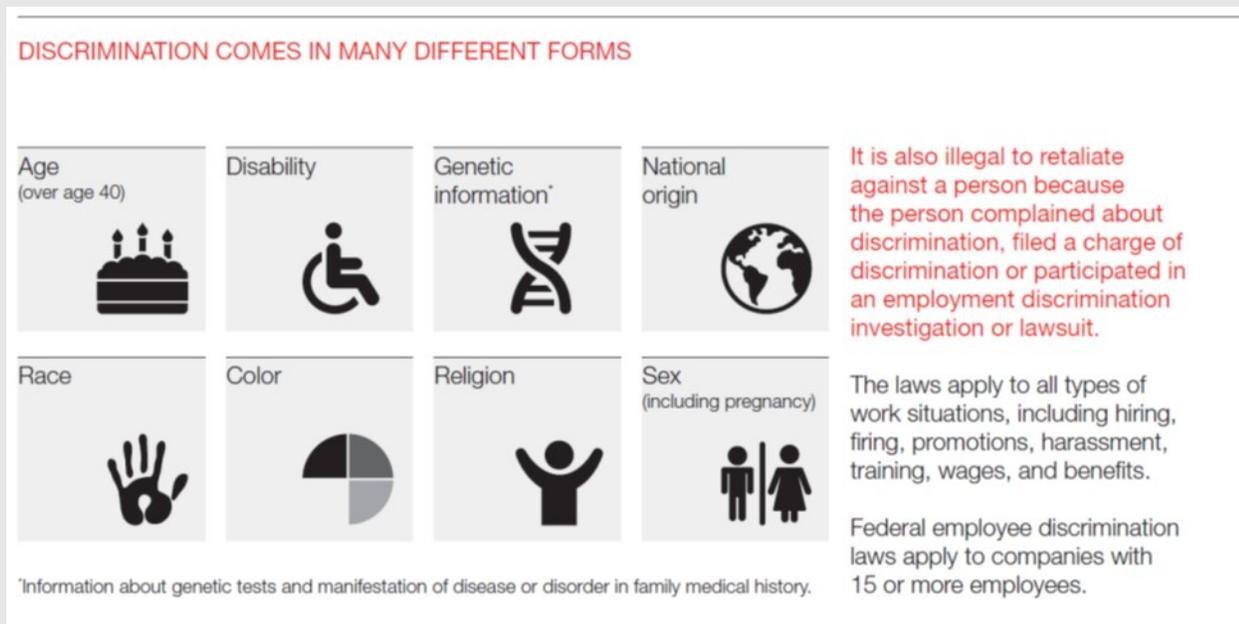
Companies face a wide array of challenges in operating their business. One risk that many companies neglect to think about is employee law suits. Often companies make the mistake of assuming they have no risk in this area; thinking that their company is like a family and their employees would never sue them. Sadly, this is not the case, and statistics reveal that “close-knit” companies are just as likely to incur litigation from employees as any other company.

While causes of actions range widely, this article will focus on a type of lawsuit generically called Wrongful Employment Act law suits, and how you can prevent them, and minimize your risk if you are brought into one.

Wrongful employment type suits include (Fig. #1 below):

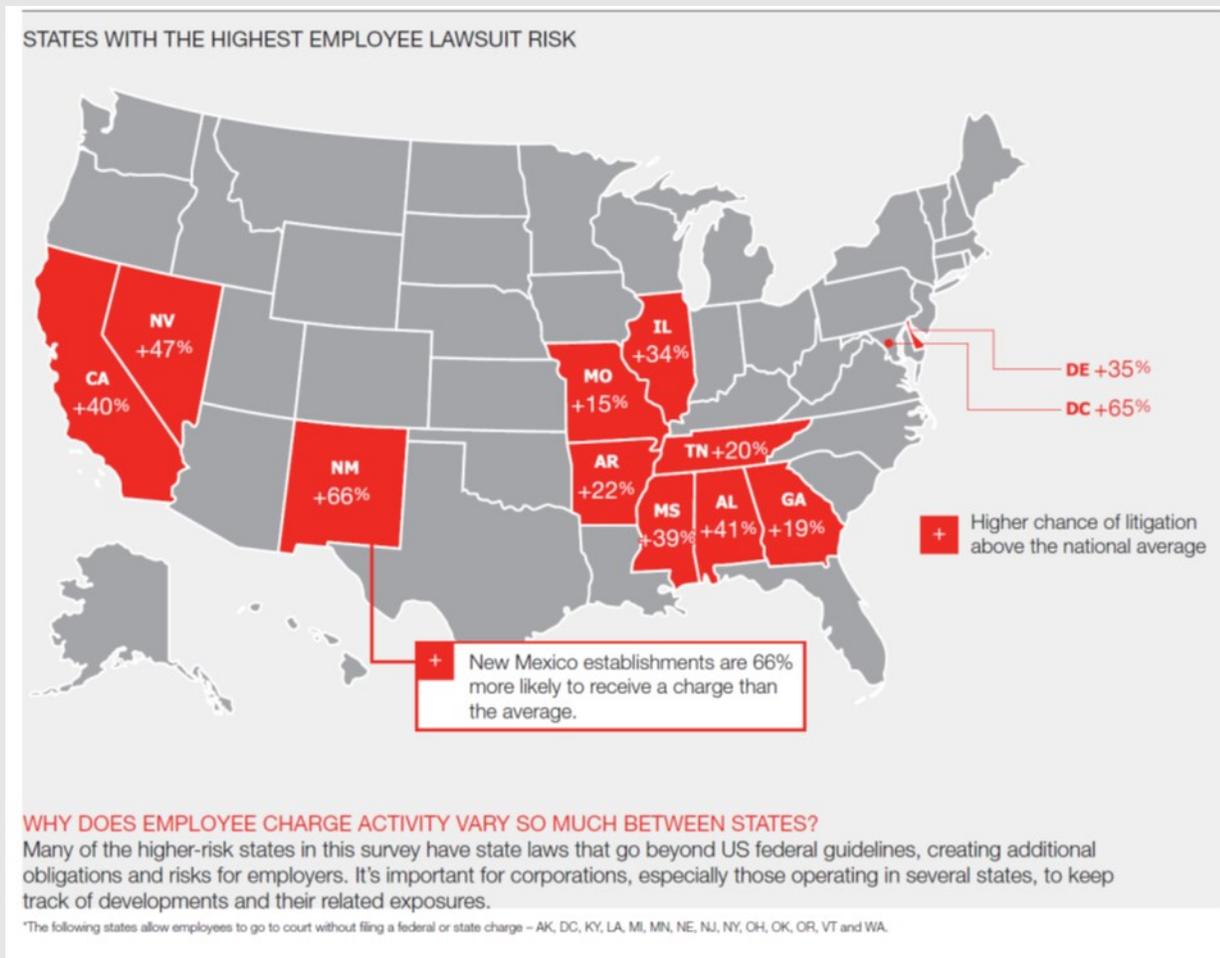
- Age discrimination (over 40)
- Disability
- Genetic information
- National origin
- Race
- Color
- Religion
- Sex (including some pregnancy issues)
- Retaliation (adverse employment actions based on the above)

Fig 1 (From the 2015 Hiscox Guide to Employee Law Suits)



In 2015, The Insurance Journal published an online article that states “U.S. based small businesses face an almost 12% chance that they it (sic) will be hit with an employment claim, with their chances being much higher in certain states.” For companies with under 500 employees, that chance goes up to 20%. Some states with a higher than national average include California (40% higher), Nevada (47%), Illinois (34%) and Alabama (41%). (Fig. #2 next page)

Fig 2 (from the Hiscox 2015 Guide to Employee Law Suits)



While some may view 20% as a small chance, as with any type of issue, for smaller companies it just takes one claim to have a significant financial impact. The median cost to defend a claim per the most recent EEOC statistics is \$125,000.00, with settlement and judgment having a median of \$200,000.00. Even if a company successfully defends itself against a claim, the defense costs can be significant.

Not only is there potential large costs for a company, there is also the time involved in defending these matters. Hiscox states that the statistics show that the average claim lasts for 275 days (9 months).

At PEOPLEASE we know the challenges our customers face with these types of matters, and we are here to assist our customers in navigating these issues. Let's explore some things you can do to minimize your risk, and how we can help!

HAVE AN EMPLOYEE HANDBOOK

A handbook is critical to show that your company has set policies, and details how the company operates. Handbooks should also spell out what your company's general disciplinary process is (for example verbal warning, followed by written, then termination), allowing for the fact that each situation is unique. Companies then need to make sure each employee has a copy of the handbook (and that they have signed indicating receipt and acknowledgement) and that managers understand the handbook and follow it consistently. PEOPLEASE is pleased to be able to offer our customers the ability to create and maintain an employee handbook at minimal cost through our partnership with a national vendor.

HAVE A DISCIPLINARY PROCESS AND FOLLOW IT, DOCUMENTING ACTIONS

Once you have a process in place, it is critical that you follow it. If your process is a tiered disciplinary process, then follow the tiers. If your policy says an employee gets a verbal warning, then a written, then a final, and then termination, that is the process that should be followed. While there will always be exceptions to any process, you need to be able to justify those exceptions if a claim is filed. In addition to following the process, document the steps you have taken, including having employees sign their warnings. Overall be consistent in your actions so you don't open the door to a claim.

CONSULT WITH AN HR PROFESSIONAL PRIOR TO ACTING

If you have any concerns about what you are about to do, whether it is a warning of some kind or a termination, PEOPLEASE has a team of HR professionals that are available to offer insight and best practices on your situation. Depending on the complexity of your issue, this may even include a recommendation that you speak to an employment attorney before acting in order to protect you even further.

EMPLOYMENT PRACTICES LIABILITY INSURANCE (EPLI)

As part of the services we offer our clients, we currently have EPLI coverage that extends to all of our clients. This is not a fee based service for our clients, but is a value-added service that is available just for being in partnership with us! As with any type of insurance, the policy documents control, and the carrier will determine whether coverage applies. In general, however, the policy currently provides coverage for wrongful employment actions and has a self-insured retention, which is the amount you would pay per claim before the carrier will pay anything. If a claim is covered, the items covered include all legal fees, judgements and settlements.

Employee claims can be a landmine, and it's imperative that you take the right steps to minimize your risk rather than further exposing yourself to it. We are happy to lend our expertise and partner with our customers to assist them in doing just that.

REFERENCE

1. <http://www.insurancejournal.com/news/national/2015/10/28/386321.htm>
2. <https://www.hiscox.com/shared-documents/The-2015-Hiscox-Guide-to-Employee-Lawsuits-Employee-charge-trends-across-the-United-States.pdf>



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800.948.4453 | 210 Wingo Way, Suite 400 · Mt. Pleasant, SC · 29464 | www.peoplease.com