

Why I represent management as an employment law attorney

Every month, I provide some insight into a narrow arrow of employment law. Because HR professionals and other management employees read this newsletter, and because I practice management-side employment law, my monthly thoughts always have a management-side perspective.

This month, I thought I'd try something a little different, and give you some perspective on why I choose to practice from the management side, along with some pointers to help you hire the right employment attorney to counsel your business.

Get it right next time

I practice management-side employment law because I want to help businesses better manage their talent.

I am not so naive to think that employers fire people only for good reasons. Companies fire employees for lots of reasons—good, indifferent and unlawful. In a perfect world, discrimination, retaliation and harassment wouldn't exist. But they do exist, and companies—even those with the best intentions—run afoul of the complexities of our myriad employment laws.

Every lawsuit, administrative charge and internal complaint is an opportunity for a company to learn from a mistake, whether legal or interpersonal. It becomes an opportunity to train employers how to handle an employee-relations problem better the next time.

I say that mistakes can be legal or interpersonal because lawsuits do not necessarily happen only when an employee suffers discrimination. Lawsuits happen because people feel disrespected, unappreciated or that they were just plain treated unfairly. It's my job to make sure employers understand this dynamic.

When employees feel aggrieved, I have two jobs: First, to help employers escape the likely litigation, and second, to get it right the next time.

In the real world

In a perfect world, I would never get a call that a client has been sued.

In a perfect world, companies would call me once a year to give their HR practices a full review, to make sure they're in compliance with the latest laws and court decisions. In a perfect world, companies would budget for proactive legal help, and understand that spending a little on legal fees up front would save a mess of headaches—and huge legal bills later.

Life, however, is far from perfect, and often I'm called only after a summons arrives.

I love the thrill of the battle that litigation presents, and victory—whether by a dismissal from a well-written

motion, a verdict from a well-argued jury case or a settlement from a well-positioned negotiation.

Yet, it's the satisfaction I get from helping clients fix their problems before they become disasters that motivates me to do my job every day.

Choosing an attorney

So, what characteristics should you look for in retaining employment counsel for your business?

1. Specific employment law experience and knowledge. When you need to terminate an employee or when an employee lodges a harassment complaint, you want to be able to pick up the phone and receive immediate advice on how to handle the situation.

Employment law is complex, ever-changing, and difficult to dabble in. An investment in someone who knows the area is one of the most important HR decisions you can make for your business.

You don't want your employment attorney to tell you that he or she will have to look into the situation and get back to you in a week with an answer.

Working with an attorney who specializes in employment law means you'll be able to get immediate assistance.

2. Willingness to get to know your business. There are legal decisions and then there are business decisions. The latter will always influence the former.

Your attorney can't provide sound legal advice without putting in the time and effort to know your business and its operations.

3. A proactive—not reactive—approach. There is nothing businesspeople like less than spending money on lawyers. However, employers are usually better off spending a few thousand dollars to spot issues before they become problems than spending hundreds of thousands of dollars to fix problems later.

Look for a lawyer who counsels you in this direction and doesn't always drive you toward costly litigation.

4. Demonstrated track record of trying employment cases. The best way to get a fair result out of a case is to have a lawyer who has actually tried employment cases.

Litigation often devolves into a high-stakes game of chicken in which the loser is the side that blinks first. If your attorney isn't comfortable in front of a jury, your chances of winning that game become a lot longer.