

Small Employers Can Be Held Liable For Discrimination Under Common Law

Even if you're a small employer that has too few employees to fall under federal or state anti-discrimination laws, you are not completely off the hook for discriminatory conduct. Employees have other legal avenues when neither federal nor state law applies.

Take Kentucky, for instance. The state civil rights act covers employers with eight or more employees. An employee filed a gender discrimination, sexual harassment, and retaliation lawsuit against her employer under the civil rights act, in addition to claiming wrongful discharge and intentional infliction of emotional distress under common law. A trial court dismissed all of her claims because the company had only seven employees.

An appeals court, however, reinstated the employee's common law claims of wrongful discharge and intentional infliction of emotional distress. It held that while the civil rights act clearly exempts small employers from its application, it does not pre-empt common law claims.

Said the court: Nothing in the act or its legislative history indicates an intention to completely absolve small employers from liability for discriminatory conduct that amounts to outrageous conduct or wrongful termination. To hold otherwise would lead to the absurd result that an employer could completely escape liability for discriminatory work-related conduct by simply maintaining a workforce of less than eight employees. (Pucke v. J. A. Stevens Mower Co., KY Ct. App., No. 2006-CA-002106-MR, 2007)

MORE REASONS FOR SMALL EMPLOYERS TO BEWARE COMMON LAW CLAIMS

Employees alleging common law violations are not subject to the same procedural requirements and statutes of limitations as statutory claims. For example, employees filing sex discrimination claims under Title VII must first file a charge with the EEOC before filing a lawsuit and must file the charge within a 180 days of the alleged violation; if a charge is also covered by a state or local anti-discrimination statute, then employees have 300 days. States have a similar set up, in the form of human rights or civil rights commissions where employees must file complaints first. But employees who assert common law claims based on the same facts are not subject to those procedural requirements or time limits.