

Overly aggressive defense tactics may backfire on you in court

When defending an employment lawsuit, be careful about authorizing your attorneys to use exceedingly aggressive tactics. If your lawyer goes overboard, you may end up paying the other side's attorney's fees.

Many employment laws, including the ADA, include a provision that allows employees who successfully sue you in court to collect their attorneys' fees ... on top of your own attorney's fees and any back pay or punitive damages you may be ordered to pay.

How aggressive is too aggressive? Certainly, you must be able to put forth a strong and fair defense. But when you find your attorney filing dozens of motions, requiring hours of depositions and sending out hundreds of pages of interrogatories, it's time for a heart-to-heart talk about what the case may cost you in the long run.

A good rule of thumb: If preparing for the lawsuit takes more time than doing your regular job, the defense is probably too aggressive.

Recent case: After Rubbermaid fired Khammoung Praseuth, she filed an ADA lawsuit, claiming the company could have accommodated her blood disease easily. Rubbermaid defended the case aggressively. The court docket included more than 530 entries (most cases produce fewer than 100), and Rubbermaid filed numerous motions and briefs.

The jury sided with Praseuth, awarding her \$200,000 in lost wages. Plus, the court added \$336,000 in attorney's fees to the employer's tab, saying an "aggressive litigation strategy carries with it certain risks, one of which is that a party pursuing an aggressive strategy may, if it loses, find itself required to bear a portion of the attorney's fees incurred by the other party in responding to that aggressiveness." (Praseuth v. Rubbermaid, Inc, No. 03-3147, 10th Cir., 2005)

Final tip: Overly aggressive tactics may have another negative effect: higher damages. That's because, in federal job-bias cases, a court may decide whether the victimized worker should earn his or her job back. If the trial stirs up too much animosity for a reinstatement to work, that person could also receive front pay or lost future earnings.