

# HR's 6 biggest legal mistakes ... and how to avoid them



Employee legal complaints against their employers have spiked in the past decade. The EEOC [said recently](#) that employee job discrimination claims (race, sex, disability, religion, etc.) rose in all major categories in 2016. And one in five employers will face an employment charge, with the average cost to defend/settle such charges running at \$125,000, says a Hiscox insurance [report](#). The average judgment for employment lawsuits that go to trial is about \$200,000, while one in four cases resulted in judgments above \$500,000.

For HR professionals, one small misstep—by themselves or a supervisor—can cost an organization dearly in time, energy and legal costs. Here are the six most important legal mistakes that HR professionals need to protect against:

**1. The wrong words in interviews and job ads.** Job interviews are a minefield of legal problems. That's why interviewers should never "wing it." Have a list of questions, each of which should focus on job-related information. Make sure anyone who talks to candidates knows to avoid topics that could generate hiring-bias lawsuits. That includes issues like age, race, religion, disability, national origin, marital status, etc. All questions should focus solely on this one topic: *How well can this person perform the job?* Also, avoid these taboo topics when advertising the job. (See our list of [25 Off-Limits Interview Questions](#).)

**2. Wage-and-hour mistakes.** Employee pay lawsuits have spiked by 300% in the past decade. The higher risk has been led by an intense new focus on independent contractor classification, exempt/nonexempt status, unpaid internships and joint employer status, all of which has created a perfect storm for Fair Labor Standards Act (FLSA) lawsuits. Make sure employees are classified correctly (exempt vs. nonexempt). Set a policy on unauthorized overtime. Use progressive discipline for employees who work off-the-clock, but pay them for all time worked, whether it was approved or not. Properly calculate overtime pay. (Note: Read our [6 Do's and Don'ts](#) for reducing the risk of wage-and-hour suits.)

**3. Rough take-offs and landings.** The beginning and end of an employee's tenure are the most legally risky. Some ways to ease the danger: Don't ask for specific documents to complete new hires' I-9 Forms—this could quickly lead to a national origin bias case. Make sure to submit notice of new hires to your state. Avoid making legally binding promises to new hires—even a seemingly innocent statement like "You'll be with us a long time" could be seen as a binding contract if the person is terminated soon after.

Make sure terminated employees can't point to a discriminatory reason for their firing—race, sex, disability, religion, age (over 40) or retaliation. Keep terminations private and dignified. Employees should never be surprised by firings—they should always have been given enough feedback ahead of time to see it coming.

Document all discipline and performance feedback given to each employee. (For more advice, see [\*Don't add fuel when you fire: 6 tips for terminations.\*](#))



**4. Allowing an expectation of electronic privacy.** Make sure employees know that their computer usage can and will be monitored. You should have a computer usage policy that says, among other things, “employees should have no reasonable expectation of privacy while using their company-issued computers and other electronic devices.” Also, guard employees’ data closely from hackers and snooping co-workers.

**5. Failing to train supervisors.** Employers need to go beyond, “*Welcome, here’s your handbook.*” Make sure managers know their legal limits in interviews, hiring, day-to-day management and terminations. The biggest mistake to warn against: overly rosy job reviews by managers that become legal evidence when the person is later fired for poor performance. Tell managers to keep it real in reviews, and to keep an ongoing performance log for each employee during the year.

**6. Failing to accommodate.** Employers have a legal duty to offer “reasonable accommodations” when an employee has a disability, is pregnant, is called to military duty or wants to engage in a religious observance. Make sure managers (and you) know those responsibilities. The biggest accommodation mistakes are made with disabled employees. Who must you accommodate and how far must you go? Read [\*ADA: The Limits of Accommodation.\*](#)

Avoiding these six key mistakes won't guarantee a lawsuit-proof existence for you and your organization, but it will go a long way toward keeping the lawyers at bay.

## Train your managers about the 'Dirty Dozen' mistakes

Most employee lawsuits are not triggered by great injustices in the workplace. Instead, simple management mistakes and *perceived* slights start the snowball of discontent rolling downhill toward the courtroom. Even worse, some laws—including federal overtime law and the Family and Medical Leave Act (FMLA)—allow employees to sue their supervisors *directly*, meaning a manager’s personal bank account could be at stake.

**Training memo** You can teach your organization's supervisors how to avoid legal trouble by distributing our Memo to Managers article on the 12 biggest mistakes that harm an organization's credibility in court. Download the article, [\*The Dirty Dozen: Manager Mistakes That Spark Lawsuits\*](#), and distribute in an email, in print or in your next company newsletter.