

Manager/Supervisor Risk Management

#67– 6/28/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: DFEH/EEOC

Workers' compensation is based on the statutory "agreement" that the employee gives up the right to sue their employer, and the employer agrees to pay statutory benefits to the injured worker regardless of fault. This makes workers' compensation the exclusive remedy for injured employees, except "when the injury is the result of conduct that does not reasonably come within the compensation bargain." Being discriminated against, harassed or the target of retaliation is not part of the job; an employee can recover damages for these activities, and not be limited by the exclusive WC remedy.

In addition to bypassing workers' compensation, employment claims are generally not covered by the procedural claim requirement of the California Government Code. We will take a more detailed look at this when we examine the claim requirements for employment liability claims.

While employment claims can be based on a number of theories, there are two main statutory bases for employment liability claims. There is the California Fair Employment and Housing Act (DFEH) which prohibits harassment and discrimination in employment based on certain protected classes. Its counterpart is the U.S. Equal Employment Opportunity Commission (EEOC) which enforces federal laws that make it illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex. The DFEH list of protected classes is much longer, and in addition to the categories protected by the EEOC adds sexual orientation, marital status, ancestry, mental and physical disability, medical condition, and age.

These laws both make it illegal to harass, discriminate, or retaliate. Most of the claims that we see involve allegations of harassment resulting in a hostile work environment. Less common are the claims for discrimination. The claims that we fear the most are based on allegations of retaliation. You can anticipate that any claim you receive will often involve allegations of all three.

Maybe the most important thing to remember is that these claims normally do not come as a surprise, or from isolated occurrences. There are usually a number of interrelated actions that precede the claim; these things build over time. Performance issues, conflict among workers, non-work stressors, financial problems, medical conditions, and changes in the workplace usually show up in our investigations. A person that alleges issues at work often has problems outside the workplace. It is important for a supervisor/manager to keep an eye open for these red flags, and to pay great attention as to how they might manifest themselves at work.

Of equal importance is the necessity of understanding that the supervisor/manager is the most common target for these claims. People who have been friends for years, both at work and away, find that friendship ending when they are served with a suit.

Next topic: Discrimination and Harassment