

Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

TOPIC: EMPLOYMENT LIABILITY -- DAMAGES

If a claimant is successful in pursuing an action under the state's FEHA they can recover a variety of damages including back and front pay, compensatory damages (emotional distress), and punitive damages. The same is true under the federal EEOC except that there is a cap of between \$50,000 and \$300,000 on the compensatory damages depending on the size of the employer. There are two other things that the successful claimant can receive that result in employers often taking a very hard line on employment claims. The successful claimant is entitled to having their attorney fees (not usually awarded in other civil actions) and costs paid by the employer, and the court can order reinstatement.

Often the value of an employment case is minimal; the claimant has not suffered any real damages, and while there might have been a technical violation of their rights, there is no indication that they suffered much in the way of emotional upset. If the settlement value based on damages is minimal, the cost of the uncapped attorney fee exposure if the employer loses can be out of all proportion. A local federal judge has referred to attorney fee awards as "the tail wagging the dog."

The court can also order reinstatement of the employee. It is common sense to recognize that any trust or respect that was present at the start of the claim process will probably have been destroyed. Allegations in the claim and suit, followed by depositions of the parties and co-workers, will have undoubtedly poisoned the work-place waters. Returning the claimant to that environment can be difficult for all, and creates an environment that is highly vulnerable to further allegations of retaliation. For these reasons it is common to require a separation agreement as part of any negotiation process.

Unrelated to damages, a third reason that employment claims are vigorously resisted is principle. The management team of the employer is usually convinced that they have done nothing wrong. At best the claimant is often seen as undeserving, and at worst is a perceived as a manipulating individual that is avoiding the consequences of poor performance by inventing a dispute. There is recognition that co-workers, while trying to avoid involvement, are keeping close track to the progress of the claim. The involved supervisors and managers look to their employer to back them in these claims, and have trouble accepting a negotiated compromise based on financial considerations as justified.

When compared to automobile liability or trip and fall suits, employment liability claims are very expensive to defend. The number of potential witnesses and documents means that discovery will often be extensive. The complexity of the issues generally means that the process will continue for an extended period of time, and will cause reoccurring disruptions in the workplace. For these reasons an early determination of whether to defend or compromise is essential. If we owe it, avoiding defense costs and the plaintiff's attorney costs becomes an overriding consideration.

Next topic: Civil litigation – Primer