

5 Tips-Protect Your California Business

A Practical Guide to Avoiding Employee Lawsuits

Report for California Business Owners and Managers

Prepared by CaliforniaEmployerAttorney.com

LEGAL DISCLAIMER

- **Use at your own risk.** While every effort has been made to ensure accuracy of the information as of the publication date, laws change and this report is intended for informational purposes only.
- **This is not legal advice** nor does it substitute for legal advice. These are general tips but it's impossible to fit every situation without knowing the specific unique facts.
- **These tips are intended for California Business ONLY** laws can differ significantly by state and the tips in this guide are only intended for California based business.
- **This is not meant to be a comprehensive review.** The following are simply some of the best tips we can give based on our many years of experience with California labor law.
- **Listen to your attorney** If you have an attorney who is advising you something different than what you see here it may be more prudent to listen to that person because they have all the facts of your case while this document is general in nature. Just be sure you are using a **Labor Attorney** or one who specializes in employment law.
- **This is a FREE report** it was created with the intention to help California employers and business owners. You may share it or distribute freely as you see fit BUT it must not be sold for profit anytime or anywhere without the expressed written permission of CaliforniaEmployerAttorney.com

A Note from John...



I don't have to tell you that being an entrepreneur and business owner can be tough in our great state of California. With all the taxes, regulations and risk you have to deal with it can be stressful.

One of the things biggest threats to your business is an employee lawsuit or claim. After many years of working in Labor Law we have realized that California Labor Laws are often very advantageous to the employees and not as beneficial to the employer. This is why so many law firms are focused on helping the employee.

We have chosen to focus only on representing Employers!

As entrepreneurs and business owners, it can be tough to see our clients business threatened by "employee issues". It can be especially tough knowing that if a few pre cautionary steps were taken ahead of time most of this risk could be **dramatically** reduced.

We **cannot guarantee** you that if you follow the tips in this Ebook you will not be hit with an employee claim or lawsuit at some point. However if you follow our tips you should not only reduce the risk of a claim but also be more prepared if it were to happen.

Remember, we successfully defend California Employers every day. **We know what it's like to have your business and everything you have worked so hard for put at risk from legal action.** Our objective is to help you reduce employee related risk as much as possible.

Sincerely,

- John Fagerholm, esq

Why Preparation is the Key

What is the best way to protect your California Business?

The answer is to be as prepared as possible BEFORE you are ever faced with a lawsuit. Yes it's a pain and not something we look forward to dealing with, when we already have so many other more pressing business matters at hand.

But let me just share with you a couple of reasons why getting prepared to avoid a lawsuit is so critical.

Research shows:

- The number of civil lawsuits is increasing at 3x's the rate of adult population growth.
- 58% of California small business owners ranked employee problems as the number one concern for their business.
- In 2012 41% of companies reported an average cost to defend a single employment arbitration suit (not including the actual settlement) of over \$100,000!

As you can see the statistics are not looking good for us, California employers and business owners.

I have personally seen numerous companies completely go out of business due to just one employee litigation suit! The sad thing is that in some of these cases the employer would have a much greater chance at a favorable outcome if they just had a few key procedures and process in place.

This Ebook will help properly prepare you for the day that an employee litigation issue pops up. By taking some time and just a little bit of money you could save yourself thousands of dollars down the road and possibly even the life of your business.

TIP 1: EMPLOYEE HANDBOOKS

“There is no dispute, an employee handbook is your best and least costly way to minimize risk against employee claims. “

When it comes to preparation it ALL starts with a good comprehensive employee handbook!

For what should be in your Employee handbook you can check out this [article](#) which gives a good general overview.

It's so important to have handbooks because it defines the employer and employee expectations of each other.

In your company, your [Employee Handbooks](#) serve as the company's bylaws, which can be compared to a country's law. Like the laws of a country, your California Employee Handbooks contain all the rules governing what is acceptable and not acceptable, but in this case with various situations employers and employees can find themselves in.

You should give your Employees handbooks from the first day you hire someone, so they know what your company expects from them and in return, what they should expect from your company!

Employee handbooks can be given in various forms when an employee starts to work for your company. Some enterprises take the time to conduct orientations for new employees in order to discuss their California employee handbooks in detail.

There are some rules and policies in which the employees would be better served with an explanation so there is no room for interpretation when it comes to your expectations from them. By conducting orientations, misunderstandings can be minimized as human resource officers address every employee's question.

BONUS TIP: You should definitely make sure the employee signs his/her handbook and you have a record of it!

Aside from conducting Employee handbook orientations, it is your responsibility as a business owner to make your employee handbooks as clear and thorough as possible.

Effective California Employee Handbooks can be one of your company's greatest tools in order to avoid future costly litigation from employees!

In cases where Employees feel their rights are violated or are considering taking legal action, they will often refer first to their manuals to see if the issue is covered. If they read through their manuals and see how the company handles their situation, they will most often refrain from filing lawsuits against employers, as they know that they have already agreed to (and hopefully signed) certain procedures for how to deal with these situations when they were hired and given the handbook.

Furthermore, another benefit of clear, professionally written California Employee Handbooks is they will help reflect your company's vision and mission, making it clear for your employees where they are headed and what is expected of them.

With this, you can expect increased productivity due to minimal misunderstandings and issues.

Having a harmonious environment to work with every day is often consistent with clear, defined expectations, a big plus for employees as well **YOU** the employer.

Many lawsuits that threaten your business **CAN** be avoided with a minimal investment in Employee Handbooks.

Therefore, as a California Employer you should **NEVER** hire a new employee without **FIRST** having reliable, professional and complete California Employee Handbook on your side.

We believe so strongly in the importance of having good handbooks that we now offer our own handbooks for less than a \$100!

We created these at such an affordable price because we know how helpful they are and we wanted to make it a "no-brainer" decision for California Employers.

These are based on the same handbooks we have used to protect hundreds of California business owners.

You can find them here and they are available instantly for download after you purchase.

[California Employee Handbooks](#)

Tip 2: Classify Your Employees Correctly

Employee misclassification is one of the biggest problems for California employers.

There are basically two types of workers you can have:

- Regular Employee
- Independent Contractor

Depending on the classification the worker falls under there are significant and consequential differences. Having a standard employee you will have to adhere to California's strict laws and regulations including wages and tax withholdings and stringent wage orders dealing with overtime and breaks.

If the worker is classified as an independent contractor, there is less liability as you're generally not responsible for their accidents, or any tax liabilities.

The problem is to be classified as independent contractor the worker must fall under certain guidelines. It's extremely common in California for employers to misclassify a worker. We have found that with at least 68% percent of the new employer clients we work with they have made that mistake.

This can be a very costly mistake as workers may try to sue for "back" benefits and pay trying to argue that they were misclassified as an independent contractor when really they should have been considered an employee.

Tips to Determine Independent Contractor Status

Making this all more difficult there really is no set definition of an independent contractor in the state of California. In general, California defines an independent contractor as "not an employee." (So helpful right?)

The Fair Labor Standards Act, and decisions by state employment and enforcement agencies to determine the classification of an independent contractor have discussed many ways that workers can be justifiably be classified as an independent contractor.

Here is a long list of factors from all the different tests to use when trying to determine if your worker can be classified as an independent contractor:

- **Needs very little control**
- Distinct Occupation
- Occupation type is of a specialist without supervision

- Specialized skill
- Provides own tools or equipment
- Hired for a short period of time
- Paid by the job
- Duty not part of employer's regular business
- Neither party sees relationship as employer-employee
- Hiring party not a business or benefits business
- Minimal instruction
- Minimal training
- Not personally rendered by worker
- Not a continuing relationship
- No set hours
- Full time not required
- Work off premises
- Minimal reporting
- No expense reimbursement
- Significant investment of equipment used
- Opportunity for profit or loss
- Hired by others
- Service available to general public
- No right to discharge or terminate at any time

You will not need to meet all these requirements for them to be considered an independent contractor but if they meet most it's a good litmus test.

There are a ton of advantages to having independent contractors as opposed to employees.

- Do not have to pay payroll taxes
- Do not have to pay the minimum wage or overtime
- Do not have to comply with other wage and hour law requirements such as providing meal periods and rest breaks
- Do not have to reimburse workers for business expenses incurred in performing their jobs
- Do not have to cover independent contractors under workers' compensation insurance
- Not liable for payments under unemployment insurance, disability insurance, or social security

Despite that, if you misclassify a worker and lose a lawsuit you could lose hundreds of thousands of dollars and possibly your business.

Before classifying a worker as an independent contractor I highly recommend you [contact](#) a California Employer Attorney to see if the situation meets the requirements.

Tip 3: Document EVERYTHING

Imagine the worst case scenario and you are in a court room being sued by an ex-employee. They are making outrageous and untrue claims about their treatment at your company. You know what they are saying did not happen so either you (or your lawyer) give your side of the story.

Now think about the third party person who is listening to your side and their side. How do they decide who is telling the truth?

Now what if you pulled out of your briefcase months or even years of documented proof backing up your claims? You have written reports dated and signed by the ex-employee showing they acknowledge breaking procedures spelled out in their employee handbook (from Tip 1 remember?). You pull out printed emails where you professionally warned or reprimanded them.

Look, honestly the state of California is very sympathetic to employees over employers, but if you pull out a signed employee handbook and a documented history of events and how they were handled, you just increased your chances of success in your case by about a thousand percent!

The bottom line is you need to have exact procedures in place on how to deal with any employee situations. When these situations happen you need to put the procedures in place, have the employee acknowledge it in writing and save those documents. You will be so happy you did when and if, you ever find yourself defending against allegations and your lawyer will love you for it!

Tip 4: Procedure on Terminations

California is an “at-will” employment state right? So what is considered a wrongful termination?

Yes, it is true that California is an “at will” employment state. This basically means that you as the employer and your employees as well, can break your relationship at any time. You can fire them without having to provide some proof or cause that justifies it, and they can quit without having to give you a specific reason.

Sounds easy right? Well you own a business in California, so I don’t have to tell you that nothing is ever that easy in the Golden State!

There are a number of “exceptions” to these at-will employment rules. If you terminate an employee under one of these protected exceptions and they can prove it, well you could be in for a headache!

Let’s take a closer look at some of the areas that would not fall under the at-will employment law.

The first one is very common in wrongful termination cases:

Discrimination:

If you terminate an employee based on discrimination it could be classified as a wrongful termination. Some of the discrimination claims that an employee can make are age, gender, race, disability, sexual orientation and a few others. These are considered “protected classes”.

If you sense that you are having an issue with an employee that falls in one of these categories you want to make sure you are extra careful not to give any reason for them to believe they are being discriminated against. If you do end up firing the employee you don’t want them to use some innocent comment you made in the past against you and claim discrimination.

Another one you can get in trouble for is:

Firing for Taking Protected Time Off

Maybe you have an employee who is a slacker. Always calling in sick or not showing up for work for one reason or another, usually it seems like just when you need them most. Well just be careful you do not fire someone when they are missing work for a “protected” reason. Some of the most common ones are taking time off for Jury duty, family leave and medical/maternity leave.

If they are gone for one of these reasons and in their absence you decide your business is better off without them you will want to be very careful with what you do here. They could easily accuse you of firing them for taking one of the protected leaves. If you want to fire an employee make sure it's nowhere near the time they take one of their protected leaves (time off) absences!

Here is another big one:

Retaliation Firings

A retaliation firing is when an employee reports an employer for an illegal wrong doing and the employer retaliates by firing that employee. For example let's say an employee felt your company was discriminating against another employee and reported it. If you were to fire that employee in response, that would be considered retaliatory and is illegal. You may have heard of this situation by its common name "whistle-blower protection". It is designed to shield employee from reporting illegal acts in the work place and believe me you do not want to be accused of going after a whistle blower.

So What Do You Do?

Always err on the side of caution! As you know after reading this, California is an at-will employment state BUT (and that's a big but) if you fire someone for one of the reasons discussed you can find yourself on the wrong end of Wrongful Termination Suit.

There are a few other situations that you can be accused of wrongful termination but familiarize yourself with the ones we talked about here as they are the most common. Before firing an employee ask yourself if they fit or could possibly claim to fit any of these situations.

Just by being aware of what is considered a wrongful termination and making sure you proceed with caution if the employee fits that situation could save you from the serious headache a claim can bring!

Tip 5: Accurate Timekeeping

Another common employee vs. employer point of contention is accurate pay.

It is very important that there is a set way of employees keeping track of their time. This way if there is a dispute about overtime or amount of pay there is a record to refer to instead of it just being based on memory.

1. Make Sure You Keep Accurate Time Records –

When a lawsuit is filed by an employee, it is important to your defense to secure all records pertaining to that employee. One of the most important to track is employee timesheets/timecards. There should be some type of system that tracks on a regular basis when an employee started and ended work. Tracking employees in this way can take up much of your time if your records are maintained in paper files.

Electronic time keeping histories are much better since it is easy to record and retrieve information such as the clock in and out time, lunch breaks, days off and more. Even if you just keep it in spreadsheets we recommend you provide all employees an electronic record of their working time. It's hard to argue you should be paid when there is an existing system for entering time and the employee did not record it there.

2. Accurately Maintain Pay Records –

You should also maintain pay records for future reference. It is important to check weekly employee hours to see to it that applicable premiums are applied correctly. If an employee is filing a wage claim against you, believe me you will have a lot more credible defense if they see that you have made the effort to keep records of your pay records for employees.

Many wage claims are based on not being paid for hours worked so it's important to show when your employee was paid and how much.

3. Employee Data Should Be Secured –

You may outsource your timekeeping process in order to lighten the burden or cost on your company. If you choose to do that this is fine but be sure before entering into an agreement, you check how these third party companies store their data. Some companies store data in which you cannot quickly retrieve it when you need it. If you need this information as evidence you will want to be able to retrieve it quickly.

You will also want to be sure they are keeping this data safe and secure. The data could very well be more secure than if you were responsible for it but you still want to check and make sure they have data security policies in place.

Since law suits are inevitable, prevention is always the best cure. Defending wage claims is much easier to do when you have records of the hours your employees worked.

Conclusion

As we started off saying at the start the best way to protect your California business from a devastating employee lawsuit is to be prepared.

It will take a little time and maybe a bit of money but if you can properly prepare you will be so glad you did if you ever find yourself in the unfortunate situation of employee litigation.

Don't risk your business, take a few hours today and start to implement documented employee practices and procedures.

I hope you found this guide useful and if you ever feel like you are in need of a professional consultation to defend your California business please feel free to contact us. We offer a free initial consultation so you really have nothing to lose.

Take care and best of luck.

John

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