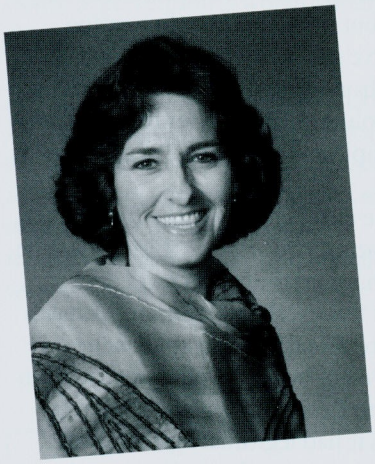

What Law Firm Administrators Should Know About Preventing Litigation with Employees

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The *New York Post* headline reads, "Bias Suit Slaps Law Firm's In-House Inter-Lewds," detailing a female attorney's allegations of sexual harassment at the hands of law partners. *The American Lawyer* describes the allegations of a Pakistani-American attorney who was fired by Clifford Chance after a Jewish female partner allegedly "set her up to fail." The *New York Times* reports that an associate has sued Sullivan & Cromwell, claiming he was harassed because he is a homosexual. If your firm were on the receiving end of a claim of employment discrimination, would you feel satisfied that the law firm administrators did all they could to prevent the employee dispute from escalating to a litigation? This article will raise ten questions about the state of employee relations at your Firm that will help you assess the Firm's readiness to prevent employment disputes from occurring or resolve such claims before they become expensive, demoralizing and highly publicized legal battles.

1. ***Recruitment & selection: is every employee involved in the hiring process aware of prohibited pre-employment inquiries?*** Typically, law firms advertise in the Law Journal, use head-hunters, or recruit on-campus. Resumes are screened, applicants are called for initial interviews, candidates meet with several attorneys, and some are even taken to lunch or dinner. The firm should be sure that everyone who meets a candidate understands that discrimination laws apply to recruitment, selection and hiring so that they avoid discussing topics like marital status, parental status, age, medical conditions or other questions of a personal nature that may be prohibited under employment laws. Sample interview questions should be circulated and interviewers should be briefed as to appropriate conversation for interviews as well as appropriate criteria for selection. If possible, firms should video-tape model "mock" interviews for those on the hiring committees.

2. ***Day-to-day interactions in the workplace: have all employees and attorneys received diversity and sensitivity training?*** Law firm personnel spend many hours in the office, often under pressure. Some lawyers and support staff rarely see the light of day or have time to socialize outside of work. In addition, law firms are typically hierarchical, which may result in opportunities for those with relatively greater power to exploit power imbalances between employees. Thus, there is ample possibility for inappropriate social relationships to arise, for insulting things to be said, and for bosses to treat support staff or less-experienced attorneys disrespectfully. When employees feel that they are treated unfairly, they may conclude that they are being harassed or discriminated against. Sensitivity training should be conducted at all firms for all personnel, on an on-going basis. The recent punitive damages verdict against Madison Square Garden reflected, in part, the Garden's failure to train its managers about sexual harassment, discrimination and retaliation. In today's climate, training employees in these areas is essential to individual career development and the firm's ability to retain a diverse and global workforce.

3. ***Firm response to risky conditions: do all employees and attorneys know what to do if they see or overhear what may be discriminatory or harassing conduct?*** Every employee must know who to contact if they experience, observe, or hear about potentially harassing or discriminatory conduct. Some employees feel powerless to intervene and are uncertain who has authority to receive complaints. The firm must be sure to identify and train the individuals who will be responsible for addressing problems involving employees. Whoever is designated to receive complaints must also know how to investigate and respond to them, which is essential for resolving conflict, as well as demonstrating that the firm has acted reasonably to identify,

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prevent and remediate potentially inappropriate situations.

4. ***Expectations regarding performance: does the firm have written job descriptions and objective performance measures?*** Even after a careful interview and selection process, there may be disappointment with an employee's job performance and an employee may feel that the job is not as described during the hiring process. Such disagreements and disappointments are more easily managed when there are documented job descriptions and performance goals. Written job descriptions and models for success help to avoid a clash of expectations that may lead to employee disputes.

5. ***Personal Time-Off: does the firm have a leave policy that complies with the Family & Medical Leave Act and covers medical, pregnancy, and family care issues?*** Recent surveys of employee satisfaction, including a survey of attorney attitudes toward work performed by the American Bar Association in 2007, confirm what most firms are experiencing: that employees today value time off from work and flexibility more than employees of older generations. While firms of more than 50 employees are required to have formal leave policies under the federal Family & Medical Leave Act, all firms would be well-advised to have leave and flexible work policies in order to be able to recruit talented personnel, but also to motivate and retain them.

6. ***How to get ahead: does the firm have objective criteria for advancement?*** With few opportunities for lawyers to advance (partner, counsel, or out the door) and with relatively few administrative departments, law firm personnel may be unsure of how to build a career path at a law firm and how they can qualify for raises and promotions. When any chance for advancement is dependent upon subjective criteria, there is a greater possibility that negative decisions may be seen as unfair or based on discriminatory criteria, like who you know rather than what you know. Thus, it is up to law firm administrators to counsel decision-makers to adopt some objective criteria for awarding bonuses, salary increases and promotions within and across departments.

7. ***Politics and policies: is there anyone who can stand-up to "rainmakers" and "senior partners" if they treat support staff or junior attorneys disrespectfully?*** There are some law firm personnel who just don't get it. Despite best intentions, they may be impolite, aggressive, and rude in their interpersonal interactions. Awkward incidents may take place at firm functions like holiday parties, client dinners, or other social occasions. Some people may believe that the usual policies and procedures don't apply to them, making it difficult to retain employees who work for or around them. To avoid low morale and to protect the firm against possible litigation or liability that may result from such insensitivity, there must be some employee or committee with the ability and authority to address the powerful who run afoul of ordinary rules of civility.

8. ***The electronic age: are there policies regarding appropriate usage of internet and electronic communications systems?*** Employee use of intranet and internet, cell phones that ring all day, employees who wear earpieces and those who do not -- all provide numerous occasions for miscommunicating, wasting time, and disturbing the work and concentration of others. Even more important, however, is that most employees do not realize that nothing they say or write on firm electronic communications systems is "off the record." Just recall the summer associate at Skadden Arps who inadvertently sent "to all personnel" an e-mail about doing nothing but eating expensive sushi lunches and ended up being a front-page news story! Therefore, it is absolutely essential for firms to train their employees regarding "netiquette."

9. ***The exit sign: does the firm have a termination procedure?*** Firms must be sure to have a termination procedure to prevent "knee jerk" reactions resulting in abrupt terminations of employment. Employment litigation often results from a "botched" termination: the employer believes it had legitimate grounds for terminating an employee, but no one ever stopped to communicate these reasons to the employee, nor gave the employee an opportunity to respond or plan for a respectable exit strategy that would enable the employee to transition from one place of employment to another. Firms must have a system of "checks-and-balances" to be sure that there is a well-documented business reason for the termination, which is clearly communicated to the employee, who is afforded the opportunity to communicate his or her side of the story.

10. ***Building a respectful workplace may lead to better firm performance: does the firm link a workplace culture of respect and dignity with excellent client service?*** Studies of workplaces that follow "best practices" indicate that better employee relations really do help the bottom line. Firms that treat their personnel more respectfully enjoy better communication among employees and clients, have less turnover, and produce more work, more efficiently and effectively. Can anyone posit a good argument against that proposition?

In sum, law firm administrators who conduct the suggested 10-point audit will do themselves and their Firm an invaluable service. With data-points in hand, it will be easier to recommend measures that will improve employee relations and

help to prevent or resolve distracting, unproductive, and potentially, illegal, employment disputes. Simply put, an ounce of prevention is worth a pound of cure!■

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