

VALENCIACOLLEGE

You'll Be Hearing From My Lawyer

Strategies for Dealing With Potential Litigation and Preparing
Your Team to Prevail

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Why So Many Lawyers?

- More laws schools and law school graduates than ever
- Causes of action that include attorneys' fees awards
- Litigious society

Why Do People Come After Us?

- Large employers
- Potential for multiple claims
- Assumption of deep pockets
- Hope for quick settlement
- Preying on our PR Fears

Assessing the Threat

“I’m going to have to talk to my lawyer about this.”

“I spoke with a lawyer and they said what you are doing is illegal.”

“If you do not do what I want, I will have to pursue my legal options.”

“You’ll be hearing from my lawyer directly.”

Assessing the Threat

“Your institution has retaliated against Ms. James by failing to promote her after she complained about sexual harassment by her supervisor, Mr. Smith.”

“We will pursue all legal and equitable remedies available, up to and including litigation.”

“Please preserve all documents and materials related to Ms. James.”

“Ms. James has suffered significant economic damage as a result of your institution’s actions.”

“Govern yourself accordingly.”

Red Flags That Litigation May Really Be Coming

- Demands for precise amounts of \$\$\$
- Requests for insurance information
- Naming the agency or court they are going to file with

What HR Can Do Now

- Stay calm!
- Engage legal partners, supervisory team, other HR partners
- Review, assess, and complete documentation
- Retain documents, create a chronology of events
- Share EVERYTHING with the legal partners to effectively and thoroughly assess the risk
- Guard against retaliation

When the Threat Comes In

HR thinks about...

- Accurately reflecting events and perspectives
- What DON'T we know?
- Do I know the person who made the decision, and do I trust them?*
- Is this person still here?

Lawyers think about...

- Preserving records
- What the defense is going to look like
- If the lawyer knows the real facts
- How good the lawyer is and whether they are being paid
- Stopping the bleeding

First Response

- Litigation Hold
- Internal notifications
- PR/social media

Telling the Supervisor?

- Retaliation fears
- Insurance coverage
- Are they named?
- Lit holds

About those records...

- What makes good records
- The one document you should always have
- Know your role
- The Statement Dilemma

What Litigation Looks Like

Agency Claims

- Prerequisite to discrimination lawsuit
- No claims for money
- Mediation possible
- No access to complaint or charging party's evidence
- Broad look, little law
- Decision not on merits
- Insurance coverage?

Lawsuits

- Federal or State court
- Money damages
- Specific elements
- Need lawyers
- Discovery
- Insurance
- Stakes
- Final decision

Preparing for Agency Claims

- Everything and anything
- Educated guesses
- Lists

Preparing for Litigation

- Witnesses
- E-discovery
- Deadlines
- Outcome control

Bad News

- Examples
- When to tell your lawyer
- Who does the telling, how, and where
- Options