

# Management and Professional Liability

## Claim Scenarios

### Employment Practices Liability

#### Pregnancy Discrimination

- **The Facts:** ABC Corporation is a technology company located in California. Mary was hired by ABC as an Account Representative and worked for approximately three years. She told her boss that she was pregnant and would be taking a four-month maternity leave. Several months later, ABC lost a few major accounts and decided that they needed a reduction-in-force. Since Mary worked on one of the accounts that was lost, she was one of three employees that were let go. However, she was terminated one month prior to her scheduled maternity leave. Mary filed a lawsuit alleging wrongful termination and pregnancy discrimination and sought lost wages and compensation for emotional distress.
- **Risk Factors:** During discovery, ABC learned that Mary's supervisor had told her the company had a previous bad experience with a pregnant employee. This employee said that she was coming back after her leave but did not and left them with an empty position. The case proceeded to trial and the jury sympathized with Mary who became very emotional on the stand and spoke about how she loved her job.
- **The Bottom Line:** Due to the supervisor's statement and the close proximity in the timing of the termination to Mary's scheduled leave, the jury rendered an award in the amount of \$500,000. In addition, under California state law, ABC Corporation must pay an additional \$175,000 to cover Mary's attorney fees. On top of that, ABC paid \$200,000 to its own attorney to defend the case. In the end, ABC was out-of-pocket \$875,000.

#### Sexual Harassment

- **The Facts:** XYZ Inc. is a construction company in Detroit, Michigan. Jane was hired six months ago as a laborer and worked on a road crew in Minnesota. She was one of only two women on the road crew. When she failed to show up for work for two days, she was sent a termination letter. Two weeks later, Jane's attorney sent a letter to XYZ alleging sexual harassment by Jane's supervisor and a co-worker. Jane alleged that her supervisor, Mr. Smith, and one of her co-workers, Mr. Jones, made sexually explicit comments to her. In addition, Jane alleged that Mr. Jones grabbed her inappropriately and brushed up against her. She alleged that Mr. Jones asked her if she

wanted to have sex with him and often bragged about his sexual conquests at work. Jane said that she told Mr. Smith that Mr. Jones made her uncomfortable at work, but Mr. Smith told her "she was being a baby" and would need to deal with it if she was going to be part of a road crew. As a result, Jane alleged that she could no longer return to work as a result of a hostile work environment.

- **Risk Factors:** XYZ had a written sexual harassment policy which was reviewed by its attorney. In addition, the policy had a good reporting procedure which instructed all employees to report any discrimination or harassment to the HR department in Detroit. Jane did not take advantage of these complaint procedures which would have provided XYZ with a good defense. However, XYZ Corp. did not distribute the policy to many of its new employees on the road crew, including Jane. Only the employees in the main office received a copy of the policy and signed it. As a result, Jane reported the matter to Mr. Smith who did not handle the complaint appropriately.
- **The Bottom Line:** XYZ Inc. settled the matter for \$100,000.

#### Retaliation

- **The Facts:** RST, LLC is a medical clinic specializing in internal medicine and diagnosis. John was employed as a Medical Lab Technician for two years. He made internal complaints as well as a state complaint alleging that RST was improperly billing Medicare/Medicaid. Shortly thereafter, RST decided to fire John since he received a negative rating in his second performance review and co-workers found him difficult to get along with. The state issued a determination with regard to the improper billing and found no merit to John's allegations.
- **Risk Factors:** John was terminated while the state was conducting its investigation of RST. Thus, even though RST was found innocent of any improper billing, it still faced a retaliation claim from John for making such complaints and then being fired.
- **The Bottom Line:** RST, LLC incurred defense costs of \$150,000 in defending John's retaliation claim and then settled the matter prior to trial for \$30,000. Defense costs in this matter were high due to the need to review voluminous billing records during discovery.

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#### Disability Discrimination

- **The Facts:** MNO Corporation is an automotive parts manufacturing company located in California. Ellen worked in the main office as an administrative assistant for over six years. During the last year, she informed MNO that she had developed degenerative disc disease and arthritis of the spine. She also submitted medical notes from her doctor noting that she could not sit for long periods of time. Ellen said that she had a two hour commute to the office and could not sit in a car for that length of time. Accordingly, she requested that she be allowed to telecommute as a reasonable accommodation for her disability. MNO did not believe that Ellen could perform her job duties from home and denied her request. MNO then fired Ellen as they did not believe she would be able to perform the essential functions of her job and they needed someone in the office who could.
- **Risk Factors:** The interactive process requires an employer to engage in a dialogue with an employee to determine whether there is a reasonable accommodation that would enable the employee to perform the essential functions of the job. MNO did not appear to engage in this type of dialogue with Ellen and could have considered other accommodations besides the requested telecommuting such as job re-structuring, a modified work schedule etc. In addition, MNO did not document the interactive process and its considerations of various accommodations. Ellen filed a lawsuit alleging disability discrimination in violation of the California Fair Employment and Housing Act. Ellen alleged that MNO did not engage in the "interactive process" in good faith which is required under California law.
- **The Bottom Line:** This matter went to trial and the jury found in favor of Ellen finding that MNO did not meet the high standard of engaging in the interactive process. While the jury only awarded Ellen \$45,000 in compensatory damages since she did not present much evidence of damages, MNO was also required to pay Ellen an additional \$255,000 in attorney fees and costs.

#### Age Discrimination

- **The Facts:** TLA, LLC is a design firm. James, who is 50 years old, worked as a designer at the firm for 12 years. Over the past several years, James' work performance began to decline and TLA received several customer complaints. In response to the last complaint, TLA decided to terminate James. TLA hired a new designer, who is 32 years old, to replace James. James filed a charge with the EEOC alleging that he was terminated because of his age and replaced with a younger employee.
- **Risk Factors:** While TLA responded that it had ample reason to terminate James, many of the performance issues and complaints were not documented. Thus, there was little paper evidence to refute the presumption that James was terminated because of his age and replaced by a younger employee. During discovery, an email was uncovered which one of the firm's principals had sent noting that profits were declining and the firm needed some changes. The email then stated that "the firm needed new fresh ideas" and "could benefit from younger employees with an eye towards a more modern direction."
- **The Bottom Line:** The EEOC issued a right to sue letter and James filed a lawsuit in federal court. As a result of this evidence and the fact that TLA had little documentation to support its termination decision, it settled the matter for \$125,000. It also paid an additional \$75,000 in defense costs.

