

## Personal Liability for Employers: The New Tort of Employment Discrimination

Employers, executives, managers and other company leaders may now find themselves open to personal liability for work related decisions. Thus, there are increasing—and legitimate—fears that routine, day-to-day employment related decisions concerning salaries, leaves of absence, and benefit issues may haunt them personally.

Recently, a U.S. Court of Appeals ruled that a hotel president was personally liable for multiple wage hour violations because he had ultimate control over the business' day to day operations and, therefore, was instrumental in causing violations of the Fair Standards and Labor Act. Likewise, another U.S. Court of Appeals ruled that a public supervisor can be held personally liable for retaliatory discharge against an employee. Moreover, the Tennessee Supreme Court even created a new tort in a case that a supervisor can be held personally liable for discriminatory practices.

To no surprise, there has been a noticeable and continual increase in employment disputes filed both against the actual employer and an individual executive or manager. This trend has been perpetuated by plaintiffs' counsel to force settlements and to forcibly avoid situations where the executive escapes personal liability for wrongdoing by hiding behind the corporation. This theory of litigation argues that executives and managers will be more careful if they fear that they might be held personally liable for more of their actions.

Currently, state courts continue to provide the best venue in which to try personal lawsuits against employers for two primary reasons. First, state discrimination and employment laws are more flexible than their federal counterparts in allowing for personal liability for various workplace violations. Second, state laws are constantly being broadened and liberally construed by courts to allow for potential lawsuits against employers. Nonetheless, personal liability can arise from claims in federal court. Examples include violations of the Fair Labor Standards Act, the Equal Pay Act and the Family and Medical Leave Act.

So, what does this mean for individuals responsible for day-to-day operations? At present, the answer is unclear beyond the obvious: (1) continue to abide by all relevant laws and corporate policies; and (2), a

substantial amount of time, money and effort may need to be expended to defend against personal liability lawsuits.

For employers, it is even more important to provide all persons in a managerial capacity clear cut policies and guidance concerning relevant laws, regulations, and policies. It is only natural that managerial employees will file suits for indemnification against their employers for failing to properly advise them of their legal obligations. Thus, the importance of updating policies and communicating these changes to managerial employees is further heightened.

If you have any questions with regard to this article or employment law compliance please contact any of the attorneys at Enterprise Law Group at (312) 578.0200.