What Does Prevention Cost? A lot less than a Lawsuit!

By Lynne Eisaguirre

Let's recap where we are with employment lawsuits just so far in 2010.

As the New Year dawned (literally on December 30, 2009), perhaps in an attempt to get a claim off its books, **Outback Steakhouse** settled a class-action sex discrimination case for **$19 million**. The long-looming lawsuit settled claims brought by thousands of women at hundreds of its restaurant. The settlement with the U.S. Equal Employment Opportunity Commission (EEOC) was an outgrowth of an EEOC complaint filed in Colorado in 2003. In 2006, the EEOC filed suit alleging that Outback denied women equal opportunities for advancement and discriminated against female workers by denying kitchen management experience and other "glass ceiling" allegations.

In April 2010, the California's Supreme Court agreed that lawsuits could go forward against **Wal-Mart** as a class action. More than **one million** women will be part of the class, alleging that they were denied promotions, equal pay and other opportunities.

Wal-Mart has agreed to pay more than **$11.7 million** to settle yet another discrimination suit. According to the EEOC, a Wal-Mart distribution center denied

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jobs to female applicants from 1998 through February 2005, regularly hiring male entry-level applicants for warehouse positions, but excluding female applicants who were equally or better qualified.

After more than two years of litigation, **Sanofi-Aventis** has agreed to pay **$15.4 million** to settle a class action suit accusing the pharmaceutical company of systemic discrimination against female employees both in pay and promotions. The settlement on behalf of some 4,000 female sales reps employed by the company since May, 2005 includes $8.2 million to pay individual monetary claims, $2 million distributed to class members in the form of base pay adjustments, and $535,000 in service payments to the five named plaintiffs. The preliminary settlement also provides $4.6 million in attorneys' fees.

Seventeen television networks and production studios, including **ABC, CBS, NBC, Fox, Columbia, DreamWorks, Universal and Warner Brothers,** as well as several talent agencies, have reached a **$70 million** settlement in 19 age discrimination cases brought by 165 television writers. The writers alleged that the agencies refused to represent older (40 +) writers and aided and abetted the networks' and studios' systematic failures to hire them. One talent agency, **International Creative Management** settled in 2008 for approximately **$4.5 million**, while the lawsuit continued against the rest of the defendants. Arapahoe Motors, Inc., doing business as **Ralph Schomp Automotive**, has agreed to pay more than **$1.5 million** to settle a sex and age discrimination lawsuit filed by the EEOC. "Sexual harassment and sex discrimination against women in traditionally male-dominated industries, such as the auto industry, are still unfortunate realities,"

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said EEOC Acting Chairman Stuart J. Ishimaru. "Likewise, older workers continue to experience age discrimination, despite their experience, productivity and qualifications. Employers should remember that the EEOC is here to find and fight this kind of unlawful mistreatment." Supermarket chain **Albertsons** has agreed to pay **$8.9 million** to settle three Colorado lawsuits in which the EEOC alleged that it had engaged in race, color, and national origin discrimination, as well as retaliation. According to the EEOC, close to 200 employees were subjected to racist and anti-Semitic derogatory epithets, slurs, and graffiti. Allegedly, supervisors were aware of and even participated in the harassing conduct. One African-American employee, whose leg was broken by a piece of equipment at work, was allegedly left lying on the warehouse floor for thirty minutes by a white supervisor who told him that was what he got for being black. Albertsons denied that it had engaged in discrimination or harassment.

Since we're only halfway through the year, I can't wait to see what the rest of the year will bring.

TIPS: What to do to Prevent Lawsuits

I've written about this before but with the trends so far it bears repeating: prevention pays. And just like safety training, you need to repeat, repeat, repeat in order for your workforce to stay safe in their environment.

Martha J. ("Marti") Cardi, Chief Compliance Officer of the Reed Group, Ltd., as well as a long time employment attorney and former employment lawyer for The

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Sports Authority, agrees. "Clients are really short sighted because they only see the costs of outside training. Unless they've been hit by a big lawsuit they don't see it."

A recent Tennessee court decision underlines the importance of training. In *Bishop v. Woodbury Clinical Laboratory*, the federal court found that found that the company had not exercised "reasonable care to prevent" harassment because even though they had provided a policy to all employees, they had not included any training on that policy.

In terms of compliance, Cardi recommends that organizations start with the right policies. Second, you need to have adequate and well trained HR groups so that people know who their HR person is.

In addition, she frequently finds that the job performance evaluations don't mesh with the job descriptions. People are not evaluated on essential tasks which creates problems with lawsuits.

Overall, Cardi finds that fostering a respectful workplace is key. "If employees are valued and appropriately rewarded they will be less likely to sue." Also, it "needs to start at the top with modeling."

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I agree with Cardi's recommendations, especially about modeling from the top. Years ago I did a lot of work for an oil company (no it was not BP!). We were doing basic harassment and EEOC training for all their employees and managers around the country. When we started to talk about their policies, inevitably some smart aleck from the back of the room would ask: "Do these policies apply to our executives also?" I would say yes and everyone would laugh.

No one really took the training seriously because there had been a very public incident with an executive at a company holiday party. He had gotten drunk and grabbed a woman's private parts. After the melee settled, the executive was disciplined and lost part of his bonus and stock options. The problem, of course, was that most employees did not know what happened to him. They assumed that the company had done nothing since he had not been fired.

So the key is prevention: policies, HR, employee and management training and finally, modeling.

Expensive? Yes, but a lot less than a lawsuit. In these difficult economic times when training budgets are often the first to go, training can still be a good investment. Cutting compliance training when there have been a record number

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of discrimination and harassment charges over the past two years could be penny wise and pound foolish.

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