

Five Workplace Issues Every Employer Should Address Before They Become a Costly Lawsuit

5 min read

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Business owners rarely call an employment attorney when things are going well. They usually call when there is a problem, such as when a former employee files a complaint, a demand letter lands on their desk, or the Department of Labor comes knocking. By then, the meter is already running, and the bill is always higher than it needed to be.

Think of your company's legal and compliance health like your own physical health. You would not skip checkups for a decade and then be surprised by a serious diagnosis. The same logic applies to your workplace. Small issues that seem too minor to worry about today are often the seeds of tomorrow's six-figure lawsuit.

We find the same handful of risks show up in nearly every business we audit. Let's walk through five of the most common workplace issues – the ones that, when left unchecked, can quickly grow into much more serious legal exposure.

Workplace Issue #1: *Interpersonal Tension You Cannot Afford to Ignore*

Every workplace has some level of friction. But when interpersonal conflicts between employees are left to fester, they can quickly morph into hostile work environment claims brought under Title VII of the Civil Rights Act or applicable state law – especially when the conflict intersects with a protected characteristic, such as race, sex, or religion.

The same goes for unhealthy competition among staff; what starts as ambitious jockeying can tip into allegations of retaliation if someone feels they were punished for speaking up.

Issues with authority cut both ways: an employee who repeatedly ignores directives may need formal counseling, but a manager who rules by intimidation can expose the company to claims of constructive discharge under federal and state anti-discrimination statutes. Either way, documentation matters, and most companies lack sufficient documentation.

Workplace Issue #2: *When “We’re Like a Family” Becomes a Liability*

A friendly, close-knit culture is a genuine asset until it is not. Oversharing in the workplace, whether it be employees disclosing medical conditions, relationship troubles, or mental health struggles in casual conversation, can put managers in the uncomfortable position of “knowing” information they then have a legal duty to act on.

Under the Americans with Disabilities Act (ADA), once an employer becomes aware of a potential disability, it may be required to engage in the “interactive process” to explore reasonable accommodations, even if the employee never filed a formal request.

Similarly, socializing and drinking with coworkers at happy hours or company events can blur professional boundaries and fuel harassment claims the next morning – the kind that implicate Title VII and, in many states, analogous state anti-harassment statutes.

An overly familiar culture – the hugging, the gossiping, the inside jokes – may feel harmless at the time, but it can feel deeply unwelcome to the person on the receiving end, or even a third-party witness. That is the employee who eventually talks to a lawyer.

Workplace Issue #3: *The Hidden Costs of Burnout*

The always-available employee who answers emails at midnight and never takes a real day off might seem like your best worker. But if that employee is non-exempt, those late-night emails could mean unpaid overtime under the Fair Labor Standards Act.

This law requires time-and-a-half pay for all hours worked beyond 40 hours in a workweek. And even for exempt employees, burnout-driven turnover is a real and growing cost to business operations.

Workplace Issue #4: *The AI Trap: Convenience Now, Liability Later*

Companies are increasingly using AI tools to screen resumes, evaluate candidates, draft contracts, or even answer employee questions. But in regulated areas, an algorithm’s “recommendation” can create discrimination exposure you never intended:

- For example, the **ADA** prohibits selection criteria that intentionally screen out or tend to screen out individuals with disabilities unless job-related and consistent with business necessity.
- Then, there is **Title VII**, which prohibits employment practices that deprive individuals of opportunities based on protected characteristics – both of which apply to automated tools just as they do to human decision-makers.
- **On the local level, states and cities are also stepping in:** New York City, Colorado, Connecticut, and Illinois have all enacted or are advancing laws regulating AI in employment decisions.

Substituting ChatGPT for actual legal counsel when drafting your handbook or reviewing a separation agreement is a gamble no business should take.

Workplace Issue #5: *The Paper Trail Problems That Sink Cases*

Some of the most damaging issues we see involve quiet, slow-building gaps in documentation:

Lax or Inconsistent Discipline

- An employee with a dozen unexcused absences and no write-ups is almost impossible to terminate cleanly.
- Selective enforcement, or disciplining one employee but not another for the same conduct, is a fast track to a discrimination claim.

Inflated Performance Reviews

- Giving a struggling employee satisfactory performance reviews to avoid an uncomfortable conversation feels easier in the moment.
- But when you later try to terminate that employee for poor performance, those reviews become Exhibit A in their wrongful termination or discrimination case.

Informal Medical Leave Arrangements

- “Take whatever time you need” is a compassionate instinct, but a compliance nightmare. Without proper medical certifications and a defined process, you risk violating the Family and Medical Leave Act, which entitles eligible employees to 12 weeks of protected leave but also gives employers the right to require medical certification within 15 calendar days.
- Fail to follow these steps, and you may find yourself trapped in never-ending unpaid leave with no clear path to resolution and a shaky legal basis to end the employment relationship. And once FMLA leave is exhausted, the ADA may require continued leave as a reasonable accommodation, making it even harder to define an endpoint.

Loose Timekeeping and Off-the-Books Pay

- Cash bonuses, informal comp time, and off-the-clock work arrangements all may seem like small favors, but they create massive wage and hour liability.
- The FLSA requires employers to maintain detailed records of hours worked, wages paid, and overtime for every covered employee. One audit or one disgruntled employee, and the exposure can reach back years.

The Smartest Legal Bill You'll Ever Pay

None of the five issues requires a crisis to fix. They require attention and guidance from experienced employment counsel.

A proactive compliance review is exactly what it sounds like: a thorough look at your policies, practices, documentation, and culture to identify vulnerabilities before they become claims. Think of it as preventive maintenance for your business.

If it has been a while since your business last had a legal checkup, or if you have never had one, **reach out to Hinshaw's employment team to schedule a compliance review.** It is the kind of investment that pays for itself.

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