

Dear Employer: Is Your Door Open?

Labor & Employment Law Update

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If not, it should be. An open-door policy, (essentially a policy through which the employer makes clear to employees that they can and should bring concerns and complaints to human resources or other appropriate managers) may be the difference between substantial legal liability and a relatively prompt resolution of an employee's lawsuit.

Certain laws, including federal wage and hour and anti-harassment statutes, provide employers at least a partial defense to claims made by employees who refuse to use internal complaint procedures before filing a lawsuit. Even in the absence of a legal defense, an open door policy may allow the employer to resolve employee complaints much more quickly (and economically) than would otherwise be the case.

Some essential elements of an open-door policy are:

- The open-door policy should be written and, like other employment policies, it should include a contract disclaimer. If the employer has an employee handbook, the open door policy should be included. If there is no handbook, the policy should be handed to employees at the time of hire and at regular intervals thereafter. The employees should also sign an acknowledgment form, to be retained by the employer, each time the policy is distributed. Employers should also consider posting the policy conspicuously in the workplace, and having it translated into languages other than English if the workforce includes individuals whose primary language is not English.
- The policy should be broad enough to apply to most (if not all) concerns an employee may have regarding employment policies and practices, managers and supervisors, co-workers, and customers. Ideally, the policy will be phrased as applying to perceived discrimination, harassment, compensation errors, and all other work-related concerns, and instruct employees to bring such matters to the employer's attention.
- The policy should designate individuals to whom complaints should be made. This aspect of the policy should also advise employees that they can go outside "the chain of command" and complain to someone other than a direct supervisor if an employee's complaint involves her direct supervisor.
- Managers must be trained on the policy. An open-door policy is only as good as its implementation, and the policy on paper will have little value if the

employer does not make good faith efforts to take employee complaints under the policy seriously. As such, managers at all levels must be trained to identify that employee complaints may take many forms, and that even informal or “off the record” complaints must be taken seriously and investigated in the same way formal complaints are investigated.

- Managers must also be trained on how to document employee complaints and ensure that such complaints are promptly communicated to the human resources department or to another member of management charged with ensuring consistent and appropriate responses.
- Employees and managers should also be trained to ensure that they know that retaliation in response to open door policy complaints is forbidden.

An open-door policy is something every employer can implement. In our experience, despite the potential for employees to make trivial complaints, open door policies have proven invaluable to employers that have implemented them. In fact, an open door policy is likely to pay for itself if it prevents even one employee lawsuit.

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