

6 lessons from exposé on state agencies

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In mid-October, the Arizona Republic published a five-part series on its investigation of how Arizona state agencies resolved employment claims brought by state employees. It took the newspaper more than a year to extract public records from the state, but it eventually obtained documents detailing the state's settlement of 57 workplace claims asserted by public employees between 2009 and 2014. By the Republic's tally, Arizona taxpayers paid more than \$6 million in settlements and defense costs.

While every case involves facts unique to the employee and the workplace at issue, the Republic's exposé provides important lessons to public and private employers on the costs and other detrimental effects of employment claims.

What we've learned

(1) Most complainers also believe they are victims of retaliation. More than half of the 57 employees identified in the newspaper's exposé also claimed that they were retaliated against for coming forward with their concerns. The most egregious allegation of retaliation came from a female employee who informed Arizona Department of Agriculture executives at least three times that two male employees who were doing the same job were earning higher salaries than she was. According to her lawsuit, rather than address the gender-based pay disparity, agency executives induced a male coworker to make false allegations of sexual harassment against the woman who had complained.

The employee ultimately received a \$400,000 settlement from the state. The executives who allegedly solicited false complaints against her in retaliation for her complaint were not disciplined

and, in fact, continued to receive raises, according to the *Republic's* investigation.

(2) Don't ignore any complaint. The Arizona Department of Corrections (DOC) paid out \$1.86 million to settle claims by seven DOC employees during a five-year period. The common theme in the DOC cases was that the agency had ignored internal complaints. That is exactly the wrong approach when an employee makes a workplace complaint. Indeed, employers that promptly investigate claims of workplace harassment and take prompt and effective remedial action can use their proper response as a defense to liability in many cases.

The largest settlement payouts went to employees asserting harassment. Employees who claimed they were groped, subjected to sexual demands, or forced to endure sexual remarks and pornography ended up with some of the largest settlements. Female employees received 75 percent of the monetary settlements paid by the state during the five-year period, and they received nine of the top 10 settlement payments.

The largest settlement, however, went to a male prison guard who claimed race discrimination was the reason he was falsely accused of sneaking into a female inmate's cell, repeatedly having sex with her, getting her pregnant, and then giving her pills to cause an abortion. The false claims against the prison guard led to a grand jury indictment against him, apparently because the grand jury wasn't informed that the female inmate had confessed in writing that her allegations were lies. The state paid the male prison guard nearly \$1 million while a \$750,000 jury verdict in his favor was on appeal.

(3) Defending employees' claims can be very expensive. The state spent nearly \$700,000 defending the seven complaints brought by DOC employees during the five-year period. In one example, the state spent more than \$430,000

fighting a lawsuit brought by a female DOC employee. The case included a jury trial with a verdict in excess of \$600,000 against the state, followed by a successful state appeal to reduce the verdict by about half. One of the most expensive cases was a high-profile claim against the Arizona Attorney General's Office in which the state racked up nearly \$600,000 in legal bills before reaching a settlement for \$99,999.

(4) Defending employees' claims can be time-consuming. The *Republic's* investigation found that it took an average of nearly two years from the time they reported bad behavior for state employees to be paid settlements. Individual cases can take much longer than two years, however. In fact, the Department of Agriculture employee with the pay disparity claim fought the state for nearly six years before her claim was settled.

(5) Confidentiality clauses work. The newspaper investigation found that the state insisted on confidentiality clauses in the settlement agreements it reached with state employees. Confidentiality is a standard term in most private settlements as well. The one bit of good news from the newspaper's exposé was that, across the board, the complaining employees and their counsel kept silent and refused to comment about their cases to the *Republic*.

Bottom line

Although it isn't possible to avoid every employment claim, the *Republic's* report on five years of workplace settlements by state agencies certainly should incentivize you to do what you can to minimize claims. Having an effective internal mechanism for employees to air their concerns without fear of retaliation is key. When employees do have complaints, investigate them quickly and completely, communicate the results of your investigation, and take any remedial action necessary.

When complaints escalate beyond the workplace, consider trying to settle them early because defense costs can skyrocket if the case drags out. If you do end up paying money to settle an employee's claim, make sure to condition your payout on her promise

of confidentiality. Seeking legal advice early in the process may help you avoid the unwanted escalation of something that could be resolved as a minor issue.

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