MARICOPA COMMUNITY COLLEGES | Office of the General Counsel Compliance

WHEN (AND IF) A DISTRICT EMPLOYEE CAN BE HELD LIABLE IN A SUIT AGAINST THE DISTRICT

This month's Melissa's Talks will cover another requested topic. I said this last month and I will say it again. I love to get emails with suggestions for topics because I am able to both answer individual questions as well as share information across the District that may be helpful to others.

Today we will be discussing liability. Specifically, we will be discussing When (and If) a District employee can be held liable if they are named in a lawsuit against the District? We will also be talking about ways to protect against being personally named in a lawsuit against the District (to the extent you can). Let's jump right in!

The Corporate Veil

Generally speaking, the rule is that employees are not personally liable when a lawsuit is filed against their college or the District, even if they are personally named in the lawsuit; but there are some exceptions to this general rule. Business lawyers often talk about the "corporate veil." This veil basically means that the District (in this case) is a separate legal entity with a separate legal identity from its employees—the District can be sued as an entity. When we talk about the corporate veil what we mean is that since the District is an entity that can be sued, its employees are behind the corporate veil and that veil protects them from being personally liable for actions of the "District," even if it is your work that is the subject of the suit. This is good news because even if an employee is named in the suit, they can be removed from the lawsuit by the District's attorneys based on the notion of the corporate veil.

Piercing the Veil

There are, however, times when the corporate veil can be pierced and employees not only cannot be removed if named in a lawsuit but also be adjudicated to be personally liable for their actions. This happens when employees act illegally or otherwise act outside of the course and scope of their employment, which could include acting outside of the District's policies and procedures. Here is an example.

The District has a policy that was developed in consultation with the Office of General Counsel that District owned vehicles cannot be used for personal travel. This policy is widely communicated and employees are both aware of this policy and sign a document acknowledging they will comply. An employee decides to take a District vehicle home with him and allows his son to drive the car. His son gets into a head-on collision, killing the driver of the car he hit. The District and the employee are sued. The employee is personally named in the lawsuit. This is an instance where the corporate veil may be pierced and the

employee may be liable because they acted outside the course and scope of their employment, knowing they were violating policy.

Every day directors and managers are required to make decisions and take employment actions that may adversely affect employees. As a result, some employees choose to file administrative complaints or lawsuits against the District. The good news is that a manager cannot be found personally liable for employment-related decisions under the federal civil rights laws that protect employees from discrimination, including Title VII of the Civil Rights Act of 1964, the Genetic Information Nondiscrimination Act (GINA), the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA). Under these laws only the legal entity that employs the claimant (or to which the claimant applied for employment) may be sued. A manager can be named as a defendant in his or her "official capacity" as an agent of the employer, but the manager does not have any personal exposure for liability. Being named in their "official capacity" means they were acting in their course and scope of employment, which means that the District would defend the actions of their employee.

There are some federal laws that provide for personal liability for managers and other decision-makers.

Family and Medical Leave Act
Equal Pay Act
COBRA
Employee Retirement Income Security Act (ERISA)
Occupational Safety and Health Act (OSHA)
Immigration Reform and Control Act.

What about immunity?

The Arizona Supreme Court abolished the doctrine of sovereign immunity in 1963. The legislature responded by passing a statute that does not create any new rights of action or liabilities but specifies circumstances in which government entities and public employees are immune from tort liability.

In the early 80's the Arizona legislature passed the Actions Against Public Entities or Public Employees Act that in addition to common immunities (such as judicial-function immunity, legislative immunity, and discretionary-function immunity), confers qualified immunity on state and other public employees in enumerated circumstances, including the failure to make an arrest; injury caused by an escaping prisoner; injury related to a prisoner's probation, community supervision, or discharge; and failing to prevent transfer of handguns.

This immunity is qualified, applying only when public employees act without willful intent or gross negligence. Public entities can be liable for their employees' intentional acts under the theory of respondeat superior, but they are not liable for a criminal felony by a public employee unless the public entity knew of the public employee's propensity for that action.

Arizona Revised Statutes §12-820 through §12-826 describe immunities that protect Arizona public entities and employees from tort liabilities.

Tips to reduce chances of being held personally responsible in a lawsuit

Managers can avoid liability in a lawsuit by practicing good habits including the following.

1. Consistently document relevant information related to employees. It's easy for memories to fade and what you remember about an event isn't always enough to prove your case—sign and date the documentation.
2. Having written records regarding your decision and rationale for your findings is one of the best forms of protection.
3. Avoid actions that appear to be you acting on your own instead of on behalf of the District—use official District communication methods such as your work email and work phone. Otherwise, if there's no proof you made the decision acting as an employee of the District.
4. Make rational decisions. You want to make decisions based on reasons and facts instead of personal emotions or feelings. You can explain and prove reason and facts. Part of making rational decisions is ensuring your decision is legally sound. Often that means consulting with the legal department or human resources department for additional guidance.
5. Clearly communicating with employees about policies can help to reduce unnecessary lawsuits made against District supervisors, managers, and directors.

If you find yourself being named in a lawsuit against the District, don't freak out! Contact the Office of General Counsel. We are here to help you in such situations. I hope you have learned something new about liability. If you have any questions, please feel free to reach out.

References:

Workforce, June 1998, Vol. 77, No. 6, pp. 119-122.

Ariz. Rev. Stat. Ann. §§ 12-820 et seq

6 ways managers can be held personally liable in lawsuits (businessmanagementdaily.com)

The 5 Most Common Lawsuits Against Employers: What You Need to Know - Lateet

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