

How to Prevent Those Nasty Employee Lawsuits



If you have ever been a witness at trial or gone through a deposition you know how unpleasant an employee lawsuit can be. Having done this myself I can assure you there is a better way.

Solutions:

- 1. Dispute Resolution Process and/or**
- 2. Arbitration**

While arbitration may be under attack by the courts and the current presidential administration, there is still time to implement both of the solutions listed above.

Dispute Resolution Process: While I am not an attorney, I think most would advise you that the greater due process you provide your employees the better a jury, judge and/or arbitrator will view your case.

One of the key components that I have found to be beneficial is the Peer Review Process which includes a Peer Review Committee (PRC). Let me share with you why I am a big proponent of PRC. I know PRCs make some of you nervous, to tell you the truth I was a little skeptical and nervous when this suggestion was presented to me. But as I listened and thought about it, I realized what better way to provide an employee feedback than through his/her peers! There is always a risk that the PRC may disagree with management, however, what I have experienced is that when this happens there is generally a good reason.

Below is an example of how GHRO is working with our clients and the process of the Dispute Resolution Process with an Arbitration Agreement.

Procedure:

The first step in any dispute resolution process involves an open and honest communication between the employee and his/her supervisor. In most cases, this will result in a mutually agreeable solution. Issues that are not resolved in this manner will be subject to the following Dispute Resolution Process:

- Level 1** – Employee, Employee’s Supervisor, Department Head and Human Resources. The employee or the Company will make a written request to Human Resources within ten working days of the events giving rise to the dispute, requesting a meeting among the Employee, Employee’s Supervisor, Department Head and a representative from Human Resources. This meeting will normally take place within ten working days of the written request. Should all parties not be available, this time frame will be extended. A proposed resolution of the dispute will be given by the Employee’s Supervisor and Department Head to the head of Human Resources and to the employee in writing within ten working days of the meeting. If the parties agree to the proposed resolution, the case is closed.
- Level 2** – If no mutual agreement is reached at Level 1, the Company or the employee shall request a hearing before the local site Peer Review Committee. The request for a hearing must be made in writing to Human Resources or to the employee within ten working days of the conclusion of the Level 1

proceedings. This hearing will take place within ten working days of the written request. Should all parties not be available, this time frame will be extended. The Peer Review Committee will make a written recommendation to the Site Director and the employee within ten working days of the hearing. If the parties agree with the written recommendation, the case is closed.

3. **Level 3** – If no mutual agreement is reached at Level 2, the employee or the Company may request a review by the Site Director. The request for review by the Site Director must be made in writing to the Site Director or to the employee within ten working days of the conclusion of the Level 2 proceedings. The Site Director will meet with the employee and a representative of the Human Resources department within ten working days of receipt of the written request, and will render a decision in writing within ten working days after the meeting. Should all parties not be available, this time frame will be extended. If mutual agreement is reached, the case is closed.
4. **Level 4** – If no mutual agreement is reached at Level 3, either the employee or the Company may request the services of an outside mediator. The request for mediation must be made in writing to the Vice President of Human Resources and Administration or to the employee within ten working days of the conclusion of the Level 3 proceedings. The Company shall pay the reasonable fees of the mediator and the expenses associated with the mediation. The parties shall mutually select a mediator from some recognized mediation service, such as ADR Services, Inc., ARC, or any arbitration panel established by a Court in the state in which the employee works, to select the mediator and conduct the mediation. The Vice President of Human Resources and Administration shall facilitate a meeting between the mediator, site representatives and the employee. The employee may bring anyone to this meeting that can help with the resolution process. This meeting will take place as quickly as possible given the schedules of all sides. Employees will not be paid for time they miss from work to participate in the mediation proceedings. If mutual agreement is reached, the case is closed.
5. **Level 5** – If no mutual agreement is reached at Level 4 or if either party wishes to pursue statutory or common law claims against the other, the employee and the Company will be subject to Binding Arbitration as provided in the Arbitration Policy and Acknowledgment document in your Employee handbook. The party seeking arbitration shall file a written demand for arbitration with the American Arbitration Association and serve a copy on the other party within 30 days after the conclusion of the Level 4 proceedings; except that in any matter involving a statutory or common law claim the demand for arbitration must be filed and served no later than the expiration of the statute of limitations applicable to the claim at issue. The Vice President Human Resources and Administration or designee and the employee shall mutually select a neutral arbitrator to hear the case and the parties will arrange for the services of the arbitrator. The employee will be responsible for the arbitrator's fee and that of the American Arbitration Association up to the amount that the employee would be required to pay to file the same claim in court. The Company will pay the balance of the fees of the arbitrator and the American Arbitration Association, subject to the power of the arbitrator to award such fees and costs as part of the ruling on the claim. The arbitrator's decision is final and binding and there is no further appeal other than as provided for in the Arbitration Policy set forth. The final award shall be enforceable as provided under applicable federal law or the law in which the employee works regarding the enforcement of arbitration awards.

So why enforce a binding Arbitration Agreement?: Simply put, arbitration agreements are less expensive and more predictable. When I have put arbitration agreements in place my customers have seen a dramatic

reduction in legal fees sometimes as much as 95%. While employees may complain that they are “giving up their rights” the reality is:

1. Arbitration is much faster in resolving the dispute: Lawsuits can take 2-3 years to resolve. Arbitration on the other hand can be completed within weeks and/or months.
2. Arbitration is less expensive for both the company and the employee: Contrary to what most people think, not all plaintiff attorneys work on a contingency basis. The expense is almost always less to the company.
3. Arbitration is more predictable: Arbitrators are not nearly as likely to award large settlements as are juries.

With every up side to there can be a downside. So what are downsides to implementing a binding arbitration agreement policy?

1. Arbitration agreements could lead to more claims than you would normally see. Given the relative ease of filing such claims versus a lawsuit some employees may be more likely to use the process. Fortunately, this has not been my experience.
2. The current legal climate is unpredictable. You could invest in putting such an agreement into place only to find out that some court may rule they are unenforceable.
3. Arbitration agreements need to be well written and according to law, so it’s advisable that they be drafted by an attorney with specialized knowledge in this area.

Are you interested in learning more and/or implementing a Dispute Resolution Process and Arbitration Agreements? GHRO has the experience and resources in this area, give us a call (949) 797-2035 or e-mail me, Jeff Stinson at jstinson@ghrogroup.com

Written by Jeff Stinson

Jeff Stinson is the President of Global Human Resources Outsourcing (GHRO) a full service Human Resources outsourcing company in Irvine California. GHRO specializes in helping companies grow by better utilization of their people.

Jeff has been involved in the management and development of human capital for the past 29 years. Before founding Global Human Resources Outsourcing (GHRO) he ran a successful Human Resources consulting practice (JDS Consulting). Prior to JDS Consulting, Jeff functioned as a senior human resources executive for several companies where he led human resource teams on three continents in the manufacturing, telecommunication, software and entertainment industries.

Jeff earned a Bachelor of Arts and Master of Arts degree in Public Administration from California State University, Fullerton. In addition to his university education Jeff also holds designations as a Senior Professional in Human Resources (SPHR); Global Professional in Human Resources (GPHR); Certified Compensation Professional (CCP); Global Remuneration Professional (GRP); and Certified Benefits Professional (CBP). He has also been an instructor at the Universities of Redlands, Phoenix and Chapman for the past 25 years.

You can find out more about GHRO by visiting our website at www.ghrogroup.com