



# PROTECTING YOUR MARYLAND SMALL BUSINESS

*from Discrimination Claims*

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# How to Protect Your Maryland Small Business from Costly Discrimination Claims

## INTRODUCTION

Running a business is one of the quintessential American Dreams and Maryland provides an ideal place to make this dream come true. Located in the heart of the Mid-Atlantic, Maryland provides its citizens with a diverse array of historical, cultural and geographic offerings. This also means almost any small business idea has the opportunity to thrive in the State of Maryland.

But with such great opportunity comes uncertainty. Starting and operating a business, especially a small one, is risky. Obtaining start-up capital, meeting payroll, taking on business competitors and ensuring the consistent delivery of a quality product or service is no easy task. But one of the biggest challenges small business owners often overlook is the regulatory environment. This is particularly true concerning employee rights.

The purpose of this ebook is to give you an overview of the legal framework of Maryland employment law and provide an understanding of its significance. We'll begin by describing the legal landscape you will find yourself in as a small business owner in Maryland. Then follow that with what you can do to minimize the risks of an employee from taking legal action for alleged workplace discrimination. Finally, we'll end this ebook with the importance of seeking legal advice before a problem arises, and how that can be one of the best investments you will ever make for your business.

Should you want to speak with one of our Maryland small business employment defense attorneys, please do not hesitate to call our office at (410) 514-6099 or visit our website at [www.staffordtrialteam.com](http://www.staffordtrialteam.com).

*Disclaimer: This ebook does not constitute legal advice and is not a substitute for hiring experienced and competent legal counsel, as every case and situation is unique.*



## CHAPTER 1

# The Business and Financial Risks Discrimination Claims Pose for Maryland Small Businesses

When it comes to employee complaints about discrimination in the workplace, Maryland businesses and public employers face a disproportionate number of complaints. Maryland ranks 19<sup>th</sup> in population, but in 2019, it had the 15<sup>th</sup> highest number of discrimination complaints to the U.S. Equal Employment Opportunity Commission (EEOC). The following is a quick summary of the types of discrimination charges Maryland employees filed for the 2019 fiscal year (a “charge” is just the official term the EEOC uses for a complaint):

- 1,739 charges filed.
- 33.0% of charges included at least one allegation of racial discrimination.
- 30.4% of charges included at least one allegation of disability discrimination.
- 28.1% of charges included at least one allegation of sex discrimination.
- 17.5% of charges included at least one allegation of age discrimination.
- 47.3% of charges included an allegation of retaliation.

Source: [https://www1.eeoc.gov/eeoc/statistics/enforcement/state\\_19.cfm](https://www1.eeoc.gov/eeoc/statistics/enforcement/state_19.cfm)

Note that these are just complaints to the EEOC. This doesn't include complaints to Maryland's Commission on Civil Rights and Commission on Human Relations, which enforces Maryland's state anti-discrimination laws. There are also local laws to adhere to, as well. And these local laws have their own county-level anti-discrimination commission to enforce them. So a disgruntled employee has potentially three employment agencies to file a complaint with.

## Maryland Small Businesses Must Comply With All Laws from All Levels of Government

The United States of America is a federation, meaning that individuals and organizations within its jurisdiction are subject to two or more governments. You may have never thought about government this way, but you're probably used to it without even knowing it. For instance, you're accustomed to filing both federal and state income taxes.

As a general rule of thumb, you must abide by all laws, regardless of which government imposes them. However, if there is a conflict between laws from different levels of government, the law from the higher government will usually override the lower law. Most of the time, however, there is no conflict and these laws complement each other. Taking a look at the anti-discrimination laws your small business is subject to is a great way to illustrate this.

### FEDERAL LAW

At the federal level, there are several laws that may potentially apply to an allegation of workplace discrimination. These laws will apply in all 50 states and the District of Columbia. The major federal anti-discrimination laws include:

- **Title VII of the Civil Rights Act:** Title VII of the Civil Rights Act of 1964 (Title VII) serves as the primary workplace anti-discrimination law. It bans discrimination based on national origin, race, religion, color or sex. Title VII only applies to employers with 15 or more employees and is enforced by the EEOC.
- **Americans with Disabilities Act:** The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination because of someone's disability, perceived disability or association with someone else who has a disability. It may also require employers to provide reasonable accommodations to employees with disabilities. As with Title VII, the ADA only applies to employees with 15 or more employees. The EEOC and the US Department of Labor (DOL) enforce the ADA.
- **Pregnancy Discrimination Act:** The Pregnancy Discrimination Act of 1978 (PDA) modified Title VII to include pregnancy as a prohibited form of discrimination. The EEOC enforces the PDA and this law applies to employers with 15 or more employees.
- **Equal Pay Act:** The Equal Pay Act of 1963 (EPA) bars discrimination on the basis of sex with respect to pay. In other words, an employer cannot pay someone less for essentially the same work, because of his or her sex. The EPA applies to virtually all employers, regardless of size.
- **Age Discrimination in Employment Act:** The Age Discrimination in Employment Act of 1967 (ADEA) makes it illegal for employers with 20 or more employees to discriminate against employees aged 40 years or older. The EEOC enforces the mandates of the ADEA.



- **Genetic Information Nondiscrimination Act:** The Genetic Information Nondiscrimination Act of 2008 (GINA) is a relatively new law that is designed to prevent employers from using genetic information to discriminate against an employee in certain situations. Employers with 15 or more employees must abide by GINA's requirements and if they don't, the EEOC may take enforcement action against them.
- **Uniformed Services Employment and Reemployment Rights Act:** The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 outlaws employers from discriminating against an employee because of their military service history or requirements. USERRA applies to all employers and is enforced by the DOL and the Office of Special Counsel.

If you are found to have violated any of the above laws, you could potentially have to pay:

- Front pay
- Back pay
- Punitive damages
- Attorneys' fees and court costs
- Compensatory damages
- Liquidated damages

## STATE LAW: MARYLAND HUMAN RELATIONS ACT

In addition to complying with federal laws, Maryland employers must also comply with Maryland law. Maryland's main anti-discrimination law is the Maryland Human Relations Act (MHRA) – Md. Code Ann., State Government Article, §20-601. It complements laws at the federal level by providing more discrimination protection for employees. For example, in addition to prohibiting discrimination because of a person's race, color, religion, age, sex, national origin, disability or genetic information, the MHRA also bans employers from discrimination based on an employee's:

- Marital status
- Ancestry
- Sexual orientation
- Gender identity

Additionally, The MHRA applies to potentially more employers. Even though it generally only applies to employers with 15 or more employees, it also applies to independent contractors. Thus, if an employer engages any independent contractors, then they are included in the definition of "employee" under the MHRA and count toward the 15 "employee" threshold under the statute. Most federal anti-discrimination laws only protect employees. So under federal law, most freelancers and "gig workers" are out of luck if they face discrimination at work. Even worse for Maryland employers, the MHRA expands the employers who are subject to the statute when an allegation of harassment is made. Specifically, if an employee alleges harassment under the MHRA, then all employers with one or more employees are subject to the statute for that particular allegation of harassment.

The Maryland Commission on Civil Rights (MCCR) enforces the MHRA and individuals may file a complaint with them directly, in addition to filing one with the EEOC. If your business is found to have violated the MHRA, you could face the prospect of paying, among other things:

- Compensatory damages
- Back pay
- Civil penalties
- Attorneys' fees

You could also face non-monetary requirements, such as hiring or reinstatement of an employee and making changes to your workplace rules or policies.

## **LOCAL LAW**

Maryland state law makes it easier for employees to sue their employers for unlawful discrimination, local laws continue that trend. They do it in primarily the same way that state law did it: by adding more protected classes, or groups that may not be discriminated against.

Depending on how you want to count them, Maryland is made up of 23 counties. But not all of them provide the same employee protections against discrimination. A few of them, such as Prince George's County, Howard County and Montgomery County, will provide greater protections than what's available in other Maryland counties. Therefore, we'll use these three counties to illustrate how local anti-discrimination laws can provide even more rights within the employment context.

In Prince George's County, in addition to the protected classes provided for by federal law and the MHRA, the Prince George's County Code adds additional traits or characteristics that are protected from workplace discrimination, including:

- Creed
- Occupation
- Political opinion
- Personal appearance
- Criminal record

The Prince George's County Code's anti-discrimination provisions apply to employers of all sizes. Job applicants or employees who feel they are the victim of employment discrimination may file a complaint with the Prince George's County Human Relations Commission (in addition to the EEOC and MCCR). If you are found to have unlawfully discriminated against your employee, the Prince George's County Code authorizes the awarding of damages, which may include, but are not limited to the following:

- Compensatory damages
- Back pay
- Civil penalties

Non-monetary relief will also be available to someone who is found to have suffered unlawful workplace discrimination. This may include reinstatement or providing a promotion that was wrongfully denied due to the discrimination. You may also have to create new policies to prevent future discriminatory practices.

In Howard County, workers enjoy greater protections from employment discrimination than are otherwise provided by Maryland or federal law. The Howard County Code prohibits employment discrimination on the basis of any protected class status as provided for by Maryland or federal law, as well as:

- Creed
- Occupation
- Political opinion
- Personal appearance
- Familial status

The Howard County Code applies to employers with five or more employees. It only prohibits discriminatory acts that occur within Howard County. However, this means someone filing a complaint with the Howard County Office of Human Rights does not need to be a Howard County resident. Potential damages your small business could have to pay if found to be in violation of the Howard County Code include:

- Compensatory damages
- Civil penalties
- Back pay

Equitable, or non-monetary relief, will also be available, including cease and desist orders stopping you from continuing your discriminatory practices. You may also be required to hire, reinstate or otherwise provide the aggrieved employee with what they would have received had the discriminatory action not taken place.

In Montgomery County, employees enjoy only a few more protections that exceed those provided for by federal and Maryland law. Specifically, additional protections that Montgomery County workers enjoy are set out in the Montgomery County Code. They provide for the same groups of protected individuals as provided for by federal and Maryland law. However, there is one additional prohibited basis for discrimination: family responsibilities. Furthermore, the Montgomery County Code will apply to employers of any size, including employers that use volunteers. Recall that Maryland's anti-discrimination law, the MHRA, generally only applies to employers with 15 or more employees, except when an allegation of harassment is made under the statute.

If you engage in unlawful employment discrimination an individual may file a complaint with the Montgomery County Office of Human Rights. If you are found to have violated the Montgomery County Code, you could have to pay:

- Compensatory damages
- Civil penalties
- Back pay

Then there are the non-monetary damages or punishments you could face, including equitable relief to stop the prohibited acts of discrimination. This might include hiring someone wrongfully terminated or modifying your hiring or firing practices to prevent discriminatory conduct.

## Real-World Examples: Maryland Small Businesses Pay the Price for Employment Discrimination

In many employment discrimination cases, the employer pays significant sums of money following a loss at trial or to settle the case. And even where the employer defeats the employee in litigation, there is still the time and economic costs of having to defend the allegations. Below are a few examples of employers who could have easily have avoided (or reduced) the large monetary damages they paid out for allegations of workplace discrimination if they had lawful policies in place, better-trained employees or better documentation procedures.

- **EEOC v. HiCare, Inc.:** An in-home care company settled a lawsuit with the EEOC for \$150,000 because it made in-home care assignments based on clients' racial preferences, including the use of special codes to convey client preferences. Source:

<https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1242&context=condec>

- **EEOC v. Norfolk Southern Railway Co.:** The railway company settled a case where a female employee in its Baltimore, Maryland trainyard alleged her employer failed to promote her to yardmaster because she was a woman. A company anti-nepotism policy prevented her training and advancement, but such a policy was not enforced with male employees. The railway company agreed to pay the female employee \$60,000 and offer her the next available yardmaster position at the Baltimore train terminal. Source: [www.eeoc.gov/eeoc/litigation/reports/upload/Annual-Report-2011-finalcorrectedJS6-16-15.pdf](http://www.eeoc.gov/eeoc/litigation/reports/upload/Annual-Report-2011-finalcorrectedJS6-16-15.pdf)
- **EEOC v. Endoscopic Microsurgery Associates, P.A.:** A federal jury awarded \$350,000 to three former female employees of a medical practice. When working for the practice, the women had to endure repeated unwanted sexual advances then retaliation when they complained about the unwanted behavior and rejected the advances. Source: <https://www.natlawreview.com/article/eeoc-wins-jury-verdict-350000-sexual-harassment-and-retaliation-victims> and <https://www.jdsupra.com/legalnews/even-the-doctor-is-not-immune-87600/> and <https://www.eeoc.gov/eeoc/newsroom/release/7-24-12.cfm>
- **EEOC v. Axiom Staffing Group, Inc.:** A job applicant was denied a position because of a disability concerning her back. In addition to refusing to place her, defendants made derogatory comments about her disability, including saying she would be “too much of a liability because of her back.” The case settled for \$35,000 plus equitable relief, including additional ADA training. Source: <https://www.eeoc.gov/eeoc/newsroom/release/8-12-10.cfm>
- **Freeman v. The Center for Pain Management, LLC:** A state jury in Howard County awarded an employee \$150,000 for the discrimination and harassment she endured due to her disability. After showing signs of Parkinson’s disease (which she was later diagnosed with), she was subject to being called names, including “gimp,” “Coach” and “Barbaro.” The nickname of “Coach” came from a high school football coach who walked with a limp and “Barbaro” was in reference to a thoroughbred horse that broke its leg during the Preakness Stakes horse race. Source: <https://lawyersusaonline.com/wp-files/lawyers-usa-weekly-update/august-18-2012.pdf>
- **EEOC v. Adams Jeep of Maryland, Inc.:** Employee alleges that her employer not only refused to provide her with reasonable accommodations for her bipolar disorder, but she was subject to workplace insults, including being called a “psycho” and “pill popper.” She ended up being fired when on medical leave. The case settled, with the employer paying the employee \$50,000 and instituting a written policy educating all employees about disability discrimination and harassment. Source: <https://www.eeoc.gov/eeoc/newsroom/release/3-23-12.cfm>

## Maryland’s Strong Employee Protections Mean Employers Must Be Proactive

Lawyers aren’t always held in the highest regard among business owners. Many business owners view lawyers as “Negative Nancies” or “Party Poopers” because they’re always telling them what they can’t do or constantly getting in the way of a grand business plan. In a way, there’s some truth to this, especially in the employment realm.



But what seems like nagging from an attorney is usually an instance of your attorney looking out for your best interests. In the long-run, this will save you time and money. But to gain these benefits, you need to be proactive with your Maryland small business policies.

By getting a little bit of legal advice now, you can reduce the chances of having that disgruntled employee who wants to cause trouble and cause financial harm to your business. And despite your best efforts, should you have to deal with a disgruntled employee, you'll be prepared to handle their accusations in the most effective way possible. Being a smart business owner means anticipating future problems. This can involve hiring an employment defense attorney to:

- Conduct a risk analysis of your business and address areas of probable legal exposure.
- Address workplace issues early, at the first signs of possible trouble.
- Develop policies, such as employee handbooks.
- Create documentation procedures to deal with employee issues.
- Design training programs to help employees identify, stop, report and resolve discrimination, harassment or other workplace problems.

You can try to do some of these things yourself without the help of an attorney. And it might save you a little bit of money right now. But it could potentially cost you a lot of money or even your entire business, later on. One way to look at it is to think of your attorney as an insurance policy. It costs a little bit of money today, but it can prevent having to pay a lot of money tomorrow.

The bottom line is that by consulting with an attorney now, you make it less likely you'll have to deal with a disgruntled, or another unhappy, employee. And in the off chance you have to deal with one, taking steps to anticipate the potential problem will make it far easier and less costly to handle when a problem does arise. If you want to start a dialogue with a Maryland employer defense attorney, feel free to call our office at (410) 514-6099 or visit our website at [www.staffordtrialteam.com](http://www.staffordtrialteam.com).



## CHAPTER 2

# The Importance of Documentation for Small Businesses to Protect Themselves

There's a saying in the legal and business realms that goes something like, "if it's not in writing, then it didn't happen." Nowhere is this more true than in the employment law context. Without some sort of objective record, such as documentation in a personnel file, it's difficult to convince someone else (especially a judge or jury) that a particular event, agreement or understanding took place at work.

For instance, imagine you're trying to fire an employee for repeated absences and tardiness. But your employee claims you fired them because of his religious beliefs. How will you prove that you're right and they're wrong? Yes, you can say they were late on multiple occasions and missed many days of work. But your argument will be made far easier if you have documentation that can substantiate what you're claiming. But there are other key benefits for Maryland small businesses to document performance and behavior issues.

Keeping good documentation can fix workplace issues before they become major problems. We can use the troublesome employee who's always late to work as an example. If you make note of each instance of them showing up late, ask them to sign the note confirming they are aware that they were late to work and will face consequences if it continues, it might stop this unwanted behavior immediately. The employee understands that this behavior is not acceptable and that if it continues, they will be fired. And if it doesn't stop them from showing up to work late, the signed note will be useful evidence for justifying the termination.

Documentation can help identify dangerous patterns of behavior, therefore allowing you to spot potential employment issues early. For example, as a small business, your organization is at significant risk of one manager's biases potentially leading to discriminatory behavior. Because of this fact, it's even more important to document every employment decision your manager makes, as well as to keep notes of the basis for that decision. Not only will this serve as evidence in any potential legal action, but it provides you

an opportunity to review the decisions your manager is making and ensure it's in line with your philosophy, company policy and the law. Without these records, it will be far more difficult to review your manager's decisions or spot problematic trends concerning his or her decision making.

Having a comprehensive record can serve as a deterrent for possible discrimination claims. For instance, let's say you have a disgruntled employee who loses his job, then hires an attorney saying he was fired because of his race. The attorney sends you a demand letter, notifying you that your former employee is considering taking legal action against you. You know the former employee is wrong and the real reason they were fired was because of a pattern of behavior where he bullied his coworkers and refused to abide by the office dress code.

In response to the attorney's letter, you send copies of your former employee's personnel file showing the various instances of where they were written up for not adhering to the dress code and numerous complaints from other employees about the former employee's conduct. In certain situations, this might be enough to end the discrimination claim right then and there. The attorney will review your response, examine the documentation and realize that not only is the client mistaken, but even if they weren't, they'd be facing a very steep, uphill battle in court.

Finally, documentation can show that you are trying to prevent, address and remedy any discrimination in your workplace. Having a discrimination reporting policy that is clear and communicated to employees provides you the opportunity to learn of any problems as they arise. This will give you the opportunity to fix them before they lead to more serious problems or a lawsuit.

But most importantly, the documentation that will result from this reporting policy can serve as a defense should litigation occur. This can be readily seen when we apply the Faragher-Elterth defense. This is an affirmative defense that employers may use when defending against allegations of hostile work environment harassment under federal law. You can't use this defense if a tangible adverse employment action has occurred, such as a demotion or firing. But assuming there is no tangible adverse employment action, two elements must exist to use the Faragher-Elterth defense.

First, the employer must be able to show that it exercised reasonable care to prevent and stop any harassing behavior. Having an anti-harassment policy can usually accomplish this. It also helps to have an anti-discrimination and anti-harassment training program in place, too.

Second, the employee unreasonably failed to utilize any employer policies to stop the harassment. Employers can usually meet this requirement by showing that the employee did not report the unwanted behavior as set out in the employee handbook. You can see that without documentation, an employer will have a difficult, if not impossible time, using the Faragher-Elterth defense.

With all these benefits that come with documentation, every Maryland small business should have the following documentation and policies established for their workplace.

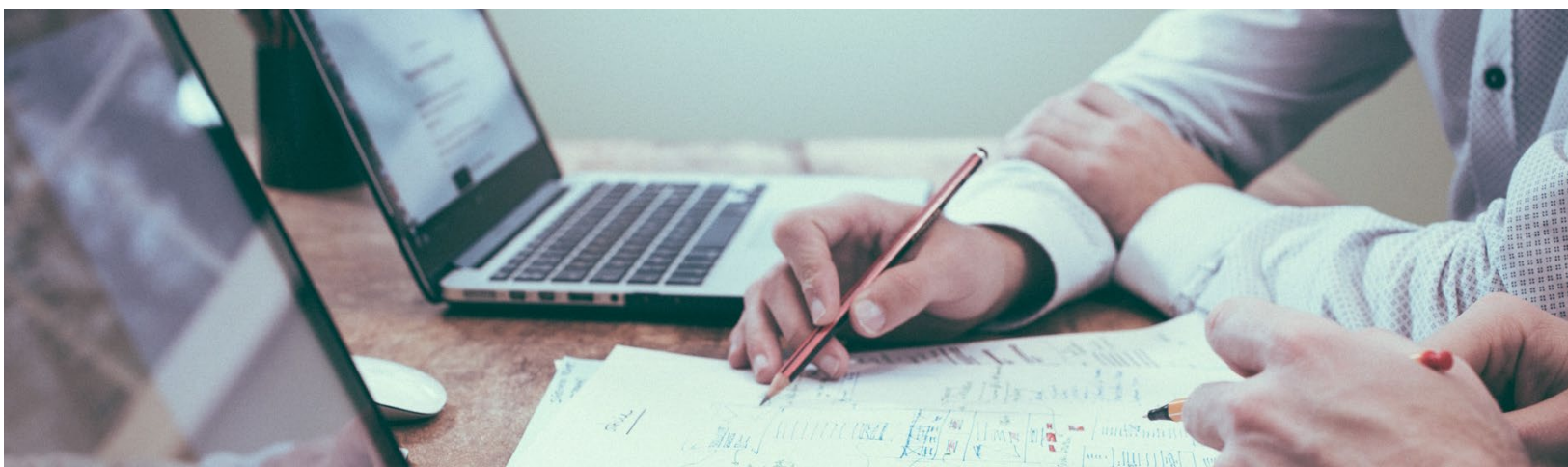
- **Employee handbook:** Employees need to know what the rules are for work, as well as have easy access to these rules for future reference. To confirm that employees know of the policies and rules set out in the handbook, all employees should sign an acknowledgment confirming receipt of the employee handbook and that they understand its requirements.

- **Anti-discrimination policy:** Your Maryland small business must make it clear that discriminatory behavior is not allowed. This policy also serves as notice to anyone who might engage in discriminatory acts. It's a lot harder to punish someone for discriminating behavior if no explicit policy is in place saying that it's not allowed.
- **Discrimination and harassment reporting policy:** So you've made it clear that certain actions are not allowed at work. But what happens if it takes place? You'll need to set out the exact procedures employees must follow to report discrimination or harassment. You'll want this policy to also apply to retaliation. Your reporting policy should apply to employees at all levels, including executives. It should also provide at least one alternative reporting contact should the primary contact be the individual actually engaging in the unwanted behavior.
- **Leave policy:** One of the most common ways discrimination takes place at work is when an employee wants to take advantage of his or her benefits, such as leave. Perhaps you have a manager that allows one employee to have an excused absence, but not with another employee in exactly the same situation. In certain situations, this could lead to claims of discrimination. Having a leave policy can help avoid this problem. You'll need to make sure that whatever policy you have in place complies with all applicable laws, such as the Maryland Healthy Working Families Act and the Family and Medical Leave Act.
- **Reasonable accommodation policy:** If you have 15 or more employees, you may be subject to the ADA requirement that you provide reasonable accommodations to disabled employees. If so, you will want a policy in place that outlines what your employees' rights are and how to exercise them. This policy will also help executives and managers identify situations where reasonable accommodations might be warranted and how to properly respond to requests for reasonable accommodations.
- **Disciplinary policy:** Your workers are human and they sometimes make mistakes or behave badly. You'll want rules concerning employee discipline in place to avoid workplace punishments to be potentially used as reasons for discrimination claims. The disciplinary policy will make it easier for consistent application of discipline, by providing guidance to managers. This will allow them to take some of the discretion out of punishments which may lead to inadvertent inconsistencies in how employees are treated. One important element to a disciplinary policy is to have an appeal process in place allowing an employee the opportunity to defend himself or herself against any accusations made against them.
- **Performance review policy:** Performance reviews are another area where claims of discrimination commonly come up. To reduce the opportunities for claims of unfair treatment, performance reviews must be completed consistently and have standard metrics in place. This will allow employees to know what to expect and better understand their reviews. It will also make it easier for managers to review their subordinates more consistently. A good performance review policy will have at least two other elements. First, the managers must provide support for their review. Specific events that support the review must be included. Second, employees must have an opportunity to dispute their review. Without this rebuttal opportunity, the performance review procedure will seem arbitrary and unfair. So, in addition to allowing the employee to contest their

performance review, you should have a plan in place to review the employee's claims and make any adjustments to it, if necessary.

Do you want to find out more about creating the above documentation or policies? Or perhaps you already have them in place, but need to revise or update them. Either way, consider reaching out to one of our experienced workplace discrimination defense attorneys at the Law Firm of J.W. Stafford, L.L.C. You can visit our website at [www.staffordtrialteam.com](http://www.staffordtrialteam.com) or call us at (410) 514-6099.





## CHAPTER 3

# Everyone Must Receive Training, Especially the Executives

As important as documentation is to protect your Maryland small business, an equally important (if not more important) requirement is that you provide the proper training for all your employees. Just to reiterate, all your employees should undergo training. Not just your managers, not just your executives and not just your front-line employees – everyone. This will increase the effectiveness of the training, serve as a reminder that your business's anti-discrimination policies and procedures apply to everyone and that no one in your business is above the rules or the law.

Having a training class or program will also demonstrate that your business is serious about the anti-discrimination policies you have put in place. It shows that the rules, reporting procedures and stance against discrimination are more than just words on a sheet of paper or window dressing.

A more tangible benefit you will gain from instituting a training program is that it will help you defend your business from liability should you get sued by an employee. For example, we previously discussed the Faragher-Ellerth defense and how one requirement to use it is that the employer must show that it took steps to prevent and to stop discrimination and harassment from taking place. And one of the best ways to show this reasonable care is to institute an anti-discrimination training program or class for your workforce.

Okay, so now that you understand the importance of training all your employees, you'll wonder how to implement such training. It might seem daunting in terms of time and expense, but it doesn't have to be expensive for your small business and here's why:

- **The training will involve everyone:** With everyone receiving training, the cost of the training per employee will be minimized.

- **Training focuses on key points:** “The devil is in the details” and nowhere is this more applicable than employment law. It’s the teaching of these details that can make training more complex and time-consuming than it needs to be. Instead, have your training program focus on the key points and ideas. This will allow you to train your employees as efficiently as possible, making the most of their precious time.
- **Training time can be kept short:** By limiting the training to the major concepts, a training program doesn’t have to last long at all. The single most important thing to teach your employees is how to spot potential discrimination issues and red flags. This can be easily done in less than 60 minutes.
- **Use technology:** If getting all your employees in one place and at one time is too much of a logistical challenge, you can ask them to watch a video recording or through a live videoconference. Having a recording of the training will also be helpful for new hires.
- **Separate training for management:** Providing separate training content to managers may be the most effective method of training all of your employees. Depending on your small business’s organizational hierarchy, you can shorten the primary training program by removing the content meant for managers and supervisors and deliver that material in a separate training session. Having a separate session for executives or management can be useful because they can serve as models for proper behavior. They will also be the primary employees in charge of spotting and recognizing inappropriate behavior. Lastly, they will likely be the ones to investigate any complaints and handle any employee discipline.

As for what exactly your training programs should consist of, that’s difficult to say without knowing more about your small business. However, there will be certain components that any Maryland employment discrimination program should have:

- List the types of prohibited forms of discrimination and provide examples to help in the identification of discriminatory conduct.
- Explain employee rights when it comes to discrimination protections, including the right to confidentiality.
- Outline the reporting process and steps employees should take when reporting discrimination at work.
- Explain your business’s rules and protocols concerning discrimination, including your anti-discrimination policies.
- Show employees what can happen if a violation of an anti-discrimination or other workplace policy occurs.
- Describe any responsibilities the employees may have to report discrimination, even if it’s not happening to them.
- Remind employees that retaliation for reporting discrimination or helping in the investigation of a discrimination claim will not be tolerated.

If you'd like some help developing or modifying your anti-discrimination training programs, consulting with one of our experienced Maryland employment defense attorneys might be a good idea. You can reach us by calling (410) 514-6099 or visiting our website at [www.staffordtrialteam.com](http://www.staffordtrialteam.com).



## CHAPTER 4

# The Benefits of Building a Long-Term Relationship with Legal Counsel

You don't know what you don't know and nowhere is this more applicable than with legal advice. Most people don't understand this until they're in legal trouble. For your small business, it might be when you get a demand letter from an employee's lawyer or a copy of a complaint that was just filed by your current or recently departed employee. At this point, you already know you need an attorney. It's when things are going smoothly and business is good that it's hard to get people to consult with an attorney.

The purpose of this last chapter is not just to reiterate how being proactive about protecting your business can help prevent future legal problems, but also to explain the additional benefits of establishing a long-term relationship with your employment counsel.

### **Benefit #1: We Get to Know Your Business**

The best advice comes with familiarity. Every business is different, with its unique challenges, characteristics and goals. An attorney can provide the most effective advice when they have the best understanding of your business.

For example, imagine you have an issue with a problem employee. From the day you hired this person, they have caused problems. In fact, soon after you hired them, you consulted with our firm about some disciplinary issues and how to protect yourself should the day come when you have to let them go. Now that day has come and you want to fire this problem employee, but predict that they will be very upset and will take legal action against you.

If you were to hire another law firm for help, the advice they provide will not be given in the same context as asking our firm for help. That's because our firm has been helping you deal with this employee from the very beginning. Therefore, we have a more complete picture of what's going on and what could

happen in the future. This allows our legal advice to be more pertinent, compared to another firm that has no context beyond some personnel notes you give them.

## **Benefit #2: We Can Be a Trusted Partner You Can Feel Free to Ask Questions**

Admittedly, asking for legal advice doesn't come naturally for most people, especially business owners. When a legal question comes up, your first instinct is probably not going to be to call our firm or another employment law attorney and that's okay. But to most effectively prevent legal headaches as quickly as possible, that instinct needs to change.

It's a lot easier (and cheaper) to pick up the phone and call our office to ask a 20-minute question about how to deal with a problem employee than it is to figure things out on your own and hope for the best. Having a long-term relationship with our office will make doing this easier for you. Being able to break through the initial hesitation is half the battle. After that, reaching out to consult with our firm will become second-nature for you. Think of us not simply as a law firm that just answers legal questions, but as a trusted business partner that can help you achieve your business goals.

## **Benefit #3: We Will Partner with You to Serve as Your Go-To Employment Defense Counsel**

Once you establish a relationship with our firm, you'll feel comfortable reaching out to us to help you with your legal issue or question when it first comes up, as opposed to when it's a more serious problem. We partner with our small business clients and create packages that allow our clients to call us and discuss legal issues and solutions for a set monthly fee that fits both their budget and their legal needs.

In addition to providing you with sound and effective legal guidance, we also will help you avoid issues on the front-end with your employees. For example, we can help you create a training program for your employees and managers so that you can learn how to prevent a disgruntled employee from taking down your business or costing you a large amount of money.

## **Benefit #4: Risk Analysis**

I'll let you in on a little secret about what it takes to be a lawyer. One of the most important skills we have is something we call "issue spotting." This is exactly what it sounds like – the ability to spot issues. If you don't have any legal training or experience, something as mundane as an interview question asking if a job applicant has kids may seem harmless. But in some cases, an innocent attempt to break the ice during a job interview could lead to a discrimination lawsuit, especially if that particular job applicant is not offered the job.

As an employment defense attorney, we know that asking a question like that during an interview is asking for trouble. In other words, we've learned to spot that as something that can lead to a lawsuit in the future. Establishing a continuous relationship between your business and our firm allows us to better



review your business practices, policies and procedures to find any employment conflicts that are just waiting to turn into a possible lawsuit.

No small business is immune to an angry employee who decides to take legal action. But we can reduce the chances of this happening by examining how your business is currently run and identifying and reducing high-risk behaviors.

## **Benefit #5: Keep You Apprised of the Law**

The law is constantly changing. New laws get enacted by legislatures every year, judges release opinions that create new case law every single day and government departments and agencies establish new rules or regulations on a regular basis. Much of this will not affect you or your business. But occasionally, there will be a new development that may change how you should operate your Maryland small business.

For example, a new law might be enacted that makes it illegal to ask a job candidate about their criminal or compensation history. Or a court might expand (or restrict) the use of restrictive covenants, such as a noncompete or non-solicitation agreement. This might mean you need to alter your new hire application form or what you are legally allowed to ask new hires to sign on their first day on the job.

Keeping up with this on your own is time-consuming and often difficult to understand. But our Maryland employment defense attorneys make it a point of staying up-to-date with these developments. Our business depends on learning about these changes immediately. Having this information can better help us represent our clients. It can also provide you with an opportunity to get this new information as well. By having a long-term relationship with our firm, we will be on the lookout for these developments that affect your business. And should we come across something, we'll let you know so you can spend your time running your business, not keeping up with the most recent legal development.

If you'd like to consider establishing a continuous, long-term relationship with an employment defense firm, please contact us. You can call us at (410) 514-6099 or visit our website [www.staffordtrialteam.com](http://www.staffordtrialteam.com). We can set up a time to discuss your situation and how our firm can help you protect you and your small business from discrimination claims, disgruntled employees and other employment-related legal problems.

*Disclaimer: This ebook does not constitute legal advice and is not a substitute for hiring experienced and competent legal counsel, as every case and situation is unique.*