Can You Sue If Salary Negotiations Turn Sour?

Amy Elisa Jackson | October 25, 2016

Workplace disputes are unfortunately common. From sub-par working conditions to a hostile work environment or unfair termination, there are a plethora of reasons behind workplace crises. The first step in trying to resolve any of these issues is mediation and conversation, but in some cases legal action cannot be avoided. Whether initiated by the employee or the employer, litigation may arise and one of the scenarios that this may be the case is during or as a result of salary negotiations.

While it is not against the law to be (or have) an unfair employer who shows favoritism or has poor communication, there are some illegal practices all employees should be mindful of.

To get clarity on potentially litigious situations and employee rights, we spoke to Todd R. Wulffson, managing partner in the Orange County office of Carothers DiSante & Freudenberger LLP, a leading California employment, labor and business immigration law firm providing litigation defense and counseling to California employers. Here's what you need to know before you go into salary negotiations.

Glassdoor: How can salary negotiations turn into legal matters?

Todd R. Wulffson: A common way salary negotiations turn into immediate litigation is when the employee overplays his or her hand. Telling one's boss that one has offers of employment from competitors may make some employers offer a raise – but others may simply make that employee immediately available to the competition by firing them. It's hard for the employee to claim damages in a lawsuit because they claimed to have another job offer, but if it was a bluff, the employee is now out of work and may sue. A similar result can occur if the employee berates the employer too much or gives examples of how numerous competitors offer better benefits. Again, the employer may simply make that employee immediately available to the competition, and the employee is more likely to sue, since he or she likely does not have another job lined up.

[Related: Do Race & Gender Play A Role in Salary Negotiations? A New Study Says Yes]

Glassdoor: Are there any particular topics or points of contention?

Todd R. Wulffson: What often causes problems and leads to potential litigation is the information discussed that is extraneous to the negotiation itself. Obviously, if the employer makes a harassing or discriminatory statement as the reason for denying the raise, an immediate lawsuit may be the result. Sometimes, however, the litigation may not be immediate, but still linked to the negotiation. If, for example, an employee tries to provide justification for the salary increase by offering personal information, e.g. getting divorced, needing an operation or helping a child or parent with medical issues, if the raise is turned down, the employee may be angry and believe that the employer discriminated because of the information they likely did not want to receive in the first place. The employee may not sue immediately – but the seeds of animosity have been planted, and if a negative employment action occurs in the future, the employee is much more likely to raise the discrimination issue. Employers should always be justifiably concerned about employees or applicants who volunteer personal information in any context. The employee usually has some sort of agenda, and we see "volunteered" information as the basis for discrimination lawsuits all the time.

[Related: 6 Questions You Should *Absolutely* Ask During A Salary Negotiation]

Glassdoor: Isn't it possible for the actions of managers or bosses to open up the litigation floodgates?

Todd R. Wulffson: A common way the employer causes litigation to arise from salary negotiations is by managers who perhaps said things without authority or who made implied promises. For example, to motivate employees, a manager tells them that if sales go beyond a certain point, it will mean raises and bigger bonuses for the team. Individual employees work hard, increase their sales, but the company does not increase bonuses or salaries. The ensuing salary negotiation may therefore already be doomed. Again, the employee may not sue immediately, but the broken promise may lead to a resignation followed by a labor commissioner claim or lawsuit.

[Related: "I Was Sexually Assaulted And Harassed At Work"]

Glassdoor: What should employees never do in salary negotiations?

Todd R. Wulffson: Don't compare yourself to your colleagues to justify a raise. Your raise should be based on your merit. Pointing out what others make is not justification for increasing your pay – and if there is a large disparity or discrimination issue, you are not likely to change anything by calling attention to it. Whistle blowers may bring lawsuits, but they don't get raises or promotions.

Glassdoor: Anything else?

Todd R. Wulffson: As an employee, don't try to play a sympathy card or offer personal information to justify a raise. Your raise should be based on merit, and preferably on objective criteria that shows you have brought greater value to the business. Similarly, never respond to a manager that asks you for personal information in order to decide whether you should get a raise. It's likely illegal and should always be irrelevant to the issue of whether you deserve the raise.

[Related: 13 Jobs With the Biggest Pay Raises]

Glassdoor: Is it illegal for employers to tell you not to share your salary with coworkers, per the NLRA? What should employees know about pay transparency laws?

Todd R. Wulffson: Under federal law and most states (California absolutely), it is illegal for an employer to prohibit an employee from discussing his or her compensation with co-workers. There may be a legitimate basis for the employer to advise senior executives not to share their compensation terms with rank and file employees, and employees that create unnecessary disruption in the workplace can be disciplined – but the employer cannot prohibit employees from discussing their compensation. Employers can prohibit employees from sharing other employee's compensation with third parties. Compensation is confidential personnel information, and if employee A tells someone outside of the company what employee B earns, employee A can be fired and employee B may be able to sue the company for not protecting employee B's information.

[Related: Download Glassdoor's Guide to Salary Conversations for Employers]

Glassdoor: How can employers and hiring managers avoid litigation related to salary negotiations and compensation conversations?

Todd R. Wulffson: Four things:

- Have clear, objective criteria for how compensation decisions are made – particularly for bonuses.
- Be honest and straightforward with information – particularly if it is negative. If an employee has not earned a raise, tell them why. If the company is limiting all raises to 2% and you tell employees that – make sure it is true. If an employee finds out that he or she received 2%, but another manager (who may be younger, male, white, etc.) received 10%, the employee may go straight to the EEOC or a lawyer.
- Don't allow compensation conversations to become emotional. If either side is emotional, it will likely infect the other, and someone is more likely to say something they will later regret.
- A compensation conversation is like any other business endeavor, and it is improved by proper planning. The meeting should be planned in advance, so neither side is surprised. The employee should bring information showing how he or she has added value to the business – and if the employer plans to deny a raise, the employer should similarly have information showing where improvement is needed. Failure to communicate fully and properly is often the main reason for most employment litigation, including litigation related to compensation discussions.

Got an employment law case? To contact Wulffson, email him at twulffson@cdflaborlaw.com