

CONSIDERATIONS WHEN YOU ARE SUED

Contact your attorney.

Get your attorney involved in the lawsuit as soon as possible. When you become aware that a Complaint has been filed, contact your attorney immediately. Once a Complaint is received, your attorney has only a limited amount of time in which to respond. When forwarding the Complaint, be sure to note the date on which it was received by the Company or the Company's agent for service of process.

Determine if you have Employment Practices Liability Insurance.

Check into whether you have an insurance policy that will potentially cover the type of action for which you are being sued. Such policies are often referred to as EPLI policies. EPLI insurance is not a cure-all. If you have this type of insurance, make sure you strictly follow the reporting procedures thereunder to adequately put your carrier on notice that a lawsuit has been filed. Your failure to provide prompt and proper notice could result in a denial of insurance coverage.

Preserve evidence—both electronic and tangible.

Although you may have already preserved electronic and other tangible evidence in the events leading up to the filing of the lawsuit, this is something that should be revisited once a lawsuit has been filed. This is especially true where the suing employee had regular access to a computer, BlackBerry or cell phone with access to an email account, the Internet, or a blog.¹ Most forms of electronic and tangible evidence are discoverable by the plaintiff. New federal court rules effective December 1, 2006, will impose special requirements applicable to the discovery of electronic evidence.

Does the lawsuit involve a current employee?

If the lawsuit involves a current employee, steps must be taken to ensure that such employee is not treated differently as a result of the lawsuit.

¹ See article on "[Preserving Evidence of Computer-Related Misconduct](#)."

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Who are the current and former employees with knowledge?

When forwarding the Complaint to your attorney, it will be helpful to you and your attorney to include a list of current and former employees who may have knowledge of facts pertaining to the lawsuit.

Will the lawsuit result in media attention?

If the lawsuit is expected to be high profile, or one that involves salacious facts, a designated media spokesperson should be prepared to respond with an appropriate Company response if contacted by media outlets.