

EXPERT WITNESS

How can HR best help the organization in a legal situation? One of the most important roles an HR executive will fill is that of expert witness for the company. Let me be clear, I am not a lawyer, and I am not giving legal advice. However, over my many years in Human Resources, I have assisted my company and outside counsel in legal proceedings, ranging from contract disputes, wrongful termination claims, injury claims, harassment claims, discrimination claims, and many other issues that have arisen in the course of business. Even the best companies, those who work hard to protect all employee's rights and promote a safe work place, are subject to claims when an employee or ex-employee perceives they have been the victim of unethical or illegal action. Dealing with the EEOC, the Department of Labor, or any local or federal body that oversees the protection of the worker, does not have to be confrontational or frightening. The HR executive, in almost all cases, will be called on to help in the discovery of the truth, and the defense of the company.

When a claim is filed, several steps will occur, and the process can resolve at any of these steps: response, mediation, settlement, discovery, summary dismissal, litigation, etc. I have had the opportunity to participate in each of these steps over time, and I am grateful to the exemplary attorneys who gave me, and my company, expert advice at every development.

Some of the advice I have received and subscribe to includes:

1. Do Not Avoid the Inevitable – Once you know a claim has been filed, immediately alert your EPL Insurer, you company leadership, and your counsel. Do not overthink this step, and do not worry about peoples “feelings” or how the claim will “look.”
2. Protect All Documents and Information - All files, emails, phone records, etc. that pertain to the claim must be made available if requested.
3. Honest Facts – Separate facts from feelings, and be sure you state the facts honestly and directly. Numbers, dates and actions are key. When in doubt, use the guide, “who, what, where, when and how.” And if possible, avoid adjectives and adverbs; they support impression and feeling more than facts.
4. Do Not Answer Questions That Are Not Asked – If you are deposed, ensure your counsel is present, and take your time. Answer only the questions that are

asked, and never try to figure things out in front of opposing counsel. Do not add on to your answer unless asked to do so, and your counsel gives you affirmation that you should continue.

Perhaps the most important thing to remember, over everything else, is to remove emotion and pause whenever you think you may respond from a place of emotion. Legal matters may feel personal, but they are not, and should not be treated as such. Exercising professional distance and sticking to facts rather than feelings will help you, and your company, as the Expert Witness.

For more information, or for answers to any questions, contact:

Russ Cusick, SPHR, SHRM-SCP
Director HR Solutions
J.N. Savasta Corp.
1350 Broadway, Suite 410
New York, NY 10018
212-922-0111 ext. 67
rcusick@jnsCorp.com