

2008 SoCalBio HR Conference
February 29, 2008

Reducing the Risk of Employment Litigation

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Reducing the Risk of Employment Litigation

Overview

1. Properly Document the Employment Relationship
2. Prevent Sexual Harassment Claims

Documenting the Employment Relationship – Getting It Right at the Outset

Offer Letters – A consistent source of disputes

- ▶ Compensation terms – bonuses, equity grants, severance (CLARITY!!!)
- ▶ exempt/non-exempt classification
- ▶ at-will employment – “with or without cause or advance notice”
- ▶ integration clause – complete agreement; written modifications

Action items

- ▶ Update your template
- ▶ Legal counsel review



Documenting the Employment Relationship – Getting It Right at the Outset

Arbitration Agreements

- ▶ Claims heard by an arbitrator; no jury trial
- ▶ Strategic decision – IP rights; no appeal
- ▶ All employees or selective use
- ▶ Strict rules for enforcement – discrimination/harassment claims

Action items

- ▶ Consider all relevant factors
- ▶ Update existing agreements



Documenting the Employment Relationship – Getting It Right at the Outset

Equity Documents

- ▶ Timely
- ▶ Correct terms
 - ▶ vesting start date
 - ▶ vesting schedule
 - ▶ acceleration triggers
- ▶ Get documents signed!!

Handbook Acknowledgments

Preventing Sex Harassment Claims

Sex harassment claims -

- ▶ As rampant as ever
- ▶ Hit high and low
- ▶ Can be devastating for companies and individuals
 - ▶ cost
 - ▶ bad PR
 - ▶ personal liability



Preventing Sex Harassment Claims

What's new:

- ▶ Strict liability for supervisor's offsite conduct
- ▶ Investigations are not sufficient remedial action
- ▶ Short delay in reporting harassment no bar to liability

Preventing Sex Harassment Claims

Action items:

- ▶ Meaningful sex harassment policy visibility
- ▶ Training! Training! Training!
- ▶ Prompt and thorough investigations with follow up
- ▶ Electronic systems policy – right to monitor and review email



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Partner

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Richard H. Frank is a partner in the Cooley Godward Kronish Litigation department. He joined the Firm in 1989 and is resident in the San Francisco office.

Mr. Frank's practice focuses on employment law and general business litigation.

He has represented clients in litigation before state and federal courts in the areas of wrongful termination, discrimination, sexual harassment, whistleblower retaliation, contracts and trade secrets. Mr. Frank has also represented clients in arbitration and mediation proceedings, and before state and federal agencies such as the Equal Employment Opportunity Commission, California Department of Fair Employment and Housing and New York State Division of Human Rights.

Mr. Frank's employment law practice also includes pre-litigation counseling for clients in the U.S. and overseas in areas such as employee hiring, discipline and separations, staff reorganizations and reductions-in-force, consultant and independent contractor agreements, employment practices and policies, and trade secrets protection.

From 1997 to 1999 Mr. Frank served as Employment Counsel for the National Broadcasting Company in New York. He was responsible for a broad range of employment law matters for NBC's operations in North America, Europe and Asia, including the Company's network, stations, cable, Internet, news and sports divisions.

In 1993, Mr. Frank served as trial counsel in the San Francisco City Attorney's office, handling jury and court trials.

Prior to joining Cooley, Mr. Frank served as a law clerk to the Hon. A. Andrew Hauk, senior district judge of the U.S. District Court for the Central District of California.

Mr. Frank received a J.D., *cum laude*, in 1987 from the University of California, Hastings College of the Law, where he was a member of the Thurston Society and the Order of the Coif. At Hastings, he served as managing editor of *Comm/Ent*, *Hastings Journal of Communications and Entertainment Law* from 1986 to 1987. He attended the University of California, San Diego, and received a B.A., *cum laude*, in Radio-Television-Film from Bowling Green State University, Bowling Green, Ohio, in 1984.

Mr. Frank was admitted to the California Bar in 1987, and is also admitted to practice before the U.S. Courts of Appeals for the Second and Ninth Circuits, and the U.S. District Courts for the Northern and Central Districts of California. He has authored articles on various employment law topics and given numerous seminars on employment law issues.