

## IN-HOUSE RESOLUTION OF EMPLOYMENT DISPUTES

By Jonathan A. Wexler

Claims of discrimination and wrongful discharge are common in the workplace. Litigation remains an extremely costly and time-consuming method of addressing employment disputes, and a public proceeding can create unfavorable publicity for an employer. The average employment case takes three years to resolve, despite the fact that over 90% are settled without a trial. The drain on corporate resources—both in legal fees and in time expended by staff as fact-gatherers and witnesses—is significant.

More and more employers (e.g., CIGNA, Federal Express, McGraw-Hill, Chemical Bank, J.C. Penney) are adopting an internal system aimed at resolving employment disputes. These systems vary in design and content. Some are mandatory, and some are voluntary. Some are wholly internal, and others include external mediation or arbitration after in-house efforts have been exhausted. A company's culture and organizational structure will dictate the appropriate in-house approach.

### Examine the Company's Experience

Creating an effective dispute resolution program will not happen overnight. Design and implementation should take approximately six months. A company should appoint a task force comprised of employees from all levels of the organization to be responsible for the process. An external facilitator may also be helpful. One member of the task force should be designated to keep detailed notes of the meetings, and the group's discussions should be confidential.

The task force should study relevant corporate policies and experience in the area of employment disputes. Does the company have policies supporting equal employment opportunity, nondiscrimination, and antiharassment? If the company has an antiharassment policy, that policy likely has a procedure for employee complaints. The task force should

## IN COMPANIES THAT HAVE IN-HOUSE DISPUTE RESOLUTION SYSTEMS the vast majority of employee complaints are resolved internally—up to 90%.

gauge employee satisfaction with existing complaint and appraisal procedures by interviewing individuals that have experience with it or by establishing an open-door policy that encourages employees to step forward with their concerns.

The task force should also examine the areas in which employment-related claims have arisen—sexual harassment; discrimination on the basis of race, age, religion, disability; complaints about the fairness of company policies; benefits or wage issues—and how the company has handled them. How long has it taken on average to resolve the claims, who has been involved in the process, and what have claims cost?

Next, the task force should look at the company's corporate culture. Is it informal and open, or structured and regimented? Have employees exhibited comfort or reluctance in bringing complaints and concerns to the company's attention? The answers to these questions will provide useful guidance in designing a program that will fit into the company's culture and operations. The task force should also attempt to determine what similar companies are doing.

### Designing the In-house Dispute Resolution Program

In designing the dispute resolution program, the task force should start by determining both the specific disputes and the employee claims to which it applies. The task force must consider whether the program will cover (or exclude) issues such as termination and lesser disciplinary actions (suspension, warnings); promotion, demotion, and transfer; statutory claims (Title VII, ADA); complaints about wages and benefits; performance evaluation; and disagreements between employees and their supervisors or between coworkers.

Most successful in-house programs offer a multistep approach, giving employees several opportunities to appeal decisions. These programs also include a time frame for the accomplishment of each step, as well as a method for making relevant documents

(performance evaluations, disciplinary memoranda) available to the complainant. They begin with a facilitated discussion between employee and supervisor or manager. The facilitator should be either someone from the human resources department or another trained representative.

Some companies also designate an ombudsperson—usually a human resources executive or other managerial employee—to investigate the circumstances underlying a complaint and recommend a resolution. The ombudsperson should have sufficient access to employees and company resources to investigate properly and to recommend credible settlements. Alternatively, many companies utilize internal mediation, which involves the complainant and a company representative meeting with a specially-trained employee that mediates the discussion in reaching a mutually acceptable solution.

If the complaint remains unresolved, some companies utilize an employee review panel. The panel varies in composition; it might consist of standing members, of members chosen by the company and the employee, or a combination thereof.

The experience of companies that have in-house dispute resolution systems is that the vast majority of employee complaints are resolved internally—in many, up to 90%. Nevertheless, many companies include an external component in the dispute resolution program. Some use an independent organization, such as the American Arbitration Association, to provide mediators and arbitrators and otherwise administer the external part of the program. Moreover, a number of companies require their employees to sign predispute mandatory arbitration agreements upon hire, which make employees submit all statutory claims to binding arbitration and, concomitantly, forgo pursuing litigation in federal or state court.

### Implementing the Program

The program developed by the task force should be put in writing as policy. The company should then distribute the poli-

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## NEWS BITES: NO COMPANY IS TOO SMALL

*By Philip Zimmerman*

**T**he American Arbitration Association reports that there are now more than 500 in-house employment resolution systems in companies employing over 5 million people. No company is too

small to reap the benefits of having a system to help reduce the litigation frequently arising from workplace disputes. CPAs know that a company with as few as two employees can have an internal control system. These companies should also have a written policy statement covering discrimination and sexual harassment and communicate it to all employees. The policy should also include a statement that disputes over payroll should be directed to the payroll clerk and all other employment disputes to another person in the company. Depending on the size of the company, more features can be added, as described by the accompanying article. □