

Team resisters: How to win them over

BY WILLIAM ATKINSON

Executives who want to implement a team-managed work environment often find that they have a number of subordinates who are less than committed to making teamwork happen.

How can they win these team-resistant employees over? Ed Hopkins, an experienced expert in quality and teamwork, offers several insights into dealing with reluctant employees:

- **Be patient.** Don't worry initially about a lack of participation, but continue to monitor involvement to see that progress is being made toward creating a team environment, suggests Hopkins.

"When the [team-resistant] employee sees his colleagues participating and succeeding on the team, he may come around," he says.

- **Facilitate an easy entry.** After observing teams in action, some initially resistant individuals may be willing to try the concept out. "Try to find ways to make entry [into the team organization] easy," advises Hopkins.

- **Put the resister in charge.** An employee who worries about losing power or position may find it appealing to be asked to assume a leadership position on a team project, notes Hopkins.

- **Discuss the issue.** And answer individual objections logically, linking a need for change to the value of change for the individual.

But, if all else fails, you simply may be required to terminate the employee. "In today's business environment, you simply can't afford to carry any deadweight," concludes Hopkins.

Prior to establishing his own firm, Ed Hopkins was executive vice president for the renowned quality management firm of Philip Crosby & Associates.

Watch out! New tax consequences in employee lawsuit payouts

BY STEVEN MITCHELL SACK

Savvy executives know that when their companies are hit with employee lawsuits for alleged age, sex, or race discrimination, it's smart to structure settlements to minimize tax liabilities.

But a recent Supreme Court decision may challenge the wisdom of paying out settlements under the traditional, tax-free heading of "pain and suffering."

In June, the high court ruled on the age discrimination case of *Commissioner v. Schleier*. It decided that the \$145,629 settlement a pilot received after being forced to prematurely retire at age 60 was *compensation*, not damages for pain and suffering.

The Court said that the settlement was primarily an economic award intended to make up for lost wages from the airline's illegal act.

In the Court's opinion, no matter how injured the employee felt, the financial recovery would be the same and therefore could not be attributed to the injury.

What does court decision mean?

Historically, the IRS has found that money paid out as damages for pain and suffering is not taxable. Such damages might be awarded for personal injuries, emotional pain, suffering, inconvenience, mental anguish, and other nonpecuniary losses or sickness, such as in a sexual harassment case.

But money paid in settlement as *compensation* for lost wages, back pay and front pay, severance payments, or fringe benefits is subject to withholding taxes.

And if a settlement is structured incorrectly (for example, taxable income is treated as nontaxable), the employer is liable for the employee's failure to pay FICA and income taxes, *together* with interest and penalties, unless the IRS can receive the amount owed from the employee.

Of course, the company is also liable for its own payroll taxes.

The Supreme Court's decision has a direct impact on age discrimination cases, but it also may affect sex and race discrimination cases by not allowing any form of nontaxable award.

(Some legal commentators argue that Title VII of the Civil Rights Act of 1964 and various state discrimination laws specifically exempt damages awarded in race and other discrimination cases from being treated as income.)

What should you do?

If you decide or are ordered to settle with a complainant:

- Check with competent labor and tax counsel for advice on avoiding harsh consequences.

- Be cautious about nontaxable payment structures with ex-employees who claim age discrimination.

And, if the settlement is court-ordered, ask your attorney whether the court can clarify that the damages are due to pain and suffering.

Steven Mitchell Sack is a New York City attorney who specializes in labor law. He is the author of From Hiring to Firing: The Legal Survival Guide for Employers in the '90s, available through Dartnell.

**You may be at risk
if you treat taxable
income incorrectly.**