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Avoiding The Danegeld: Discouraging Me-Too Claims Following A Settlement

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A thousand years ago, Viking warriors would invade a town and threaten to destroy it if the townsfolk did not pay a tax called a "Danegeld" (meaning to pay the Dane gold). Of course, once the town paid the Danegeld tax, the Vikings saw the town as an easy mark – one to which they would return to and demand payment all over again. Essentially, this was the Middle Ages equivalent of a mobster shakedown: promising to "protect" your property to make sure nothing happens to it. We've all heard news stories of million dollar settlements of harassment and discrimination cases, which quickly have been followed by brand new "me too" type-lawsuits alleging similar claims. Indeed, the news recently has been replete with such stories. Obviously, the merit of each claim stands on its own and we don't know enough about the details of these cases to judge their merit. But, it stands to reason that widely publicized settlements and payouts will incentivize others to jump on the bandwagon so they can seek their own payday – in short, a modern day twist on the Danegeld.

Some companies try to discourage subsequent lawsuits by taking a hardline stance on settlement; yet this strategy presents its own challenges. Several years ago, I handled insurance-related tort cases, and one insurer steadfastly refused to settle *anything*. The company's rationale was that its reputation for opposing early settlements would send the message to prospective plaintiffs that the insurer was no easy mark: if you sue their insured, you are in it for the long-haul. This approach was effective and worked for that company. Needless to say, however, they went to trial a lot and had hefty legal bills. Such a bare-knuckled approach to litigation is not for everyone. Most employers don't face a barrage of legal claims like an insurance company and most cannot easily afford to pay legal fees associated with regular trials or risk damages associated with losing. Thus, it is no surprise that the vast majority of employment cases settle before trial. Fortunately, employers need not choose between the opposite extremes of settling everything and settling nothing. But avoiding the Danegeld-trap takes a measure of planning, patience and skill. Here are some key strategies to consider:

Consider hiring and developing competent human resources professionals who can resolve problems and quell disputes before they become lawsuits.

The minute a claim is filed, it becomes public knowledge; anyone – from current and former employees, to news reporters to curious friends and family

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members – will have access to the information. One of the most effective ways to avoid a litigation feeding frenzy and prevent unwanted publicity is not to have anything to discuss. In short – be as boring as possible.

If a lawsuit is unavoidable, consider only sharing details about it on a need-to-know basis.

This is also a good strategy for handling internal complaints as well. While employers cannot prevent public knowledge about the *existence* of a lawsuit, they can at least control public disclosure about the details. As a corollary, if an employee rushes to the press about the lawsuit, what is gained by following suit? Although there are exceptions, most cases are resolved in court based on the law and the facts. Attempting to steer public opinion also may be counter-productive. Indeed, it may just increase attention to a claim that otherwise would have gone unnoticed; worse, the employer's actions could backfire and stoke the fires of public anger against it and invite the filing of more claims.

Consider keeping settlement discussions strictly confidential.

Settlements are private contracts; if plaintiffs want to cash the proceeds, then they have to agree to the terms under which the cash is being offered. Adopting confidentiality restrictions (by both employer and employee) should discourage plaintiffs from showboating, thereby reducing chances of "me-too" claims.

Of course, a confidentiality provision is not a cloaking device – others will know (a) that a lawsuit was filed and (b) that it was settled, presumably for something. But, the key details, including what, if anything was paid, will remain between the employer and employee. And, even if a confidentiality provision does not successfully stop a plaintiff from blabbing about the amount of the settlement, it at least will give the employer the chance to turn the tables, and pursue the plaintiff for breaking the promise of confidentiality. Think of it not as "buying silence," but buying sanity.