

Warning

Escalating Employment Exposures

by Dan Burke & Tim Huber, ARM, CPCU

Fire. Robbery. Economic downturn. There are a number of external factors which can harm your business. Which begs the question – have you thoroughly considered the threat your own employees and potential hires pose?

While most employees come to work with the intention of furthering a company's growth and success, it is important to recognize that, in certain situations, an individual can negatively impact the company he or she is working for. A comprehensive overview of your company's risk management practices should include a risk assessment for the various employment exposures your company faces.

Gaps ahead!

Employment practices liability is a risk faced by all employers. Disgruntled current and former employees are an unfortunate reality for every privately held company. They can sue a business, its board members and its officers for wrongful termination, discrimination, harassment, failure to promote and other employment-related allegations. Because this risk is so prevalent, it is important to be aware that there are a number of gaps in traditional insurance coverage for employment practices liability. For example:

- A general liability policy excludes employment practices related claims in Exclusion E (employer's liability) and Exclusion A (expected or intended injury) in the ISO general liability form. In addition, there is usually an employment-related practices exclusion endorsement on the general liability policy.
- Workers' compensation will cover a work-related injury but not an employer's retaliation against an employee who files a workers' compensation claim.
- An umbrella policy typically has the same coverage exclusions as the general liability policy.
- Private company directors and officers liability insurance is designed to provide coverage for the individual directors and officers. This coverage can provide employment

practices liability coverage for the entity, but only if the employment practices liability coverage is chosen.

Due to these various exclusions, general liability, workers' compensation, umbrella and directors and officers policies may not cover employment exposures arising out of:

- Employee interviewing
- Testing
- References
- Employee hiring (or failure to hire)
- Orientation
- Education and training
- Evaluation
- Failure to promote
- Discipline or wrongful termination
- Employee handbooks and other employment documentation
- Selection criteria based on credit history

Protect yourself

Because your company is vulnerable to claims from former, current and potential employees who believe they were treated unfairly or that employment actions were not handled appropriately, it is imperative to have consistent documentation with respect to any adverse employment decisions. Your company may be at risk if it hasn't created and disseminated a carefully drafted set of equal employment and anti-harassment policies to its employees. The mere existence of a policy may not be enough to ensure a solid defense against a liability claim. Furthermore, managers and supervisors should receive focused

A close-up, profile view of a person's face, focusing on the nose and lips. The person has light skin and is wearing a dark, textured garment. A large, white '@' symbol is overlaid on the upper left portion of the face.

@

Mr Robert Ol
Mr Ronald are
Mr Charles
Mr Richard Perry
Mr Gillian
Mr Susan Ham
Mr John there

CONTACT DAN BURKE AT DBURKE@SSGI.COM OR TIM HUBER AT THUBER@SSGI.COM

AVOIDING SEXIST LANGUAGE

Word choices and grammatical constructions that ignore or minimize the presence and contributions of one sex in society—at school or the workplace, in business or homes, in social or personal relationships—are considered sexist. Many writers and

speakers try to avoid such sexist language, but only when it is necessary to do so.

training on the company's equal employment, anti-harassment and anti-discrimination policies.

To demonstrate that a business is taking reasonable steps to prevent harassment, the company must:

- Educate and train employees on employment laws
- Publicize policies and procedures
- Establish a complaint resolution process that employees are aware of and are encouraged to use
- Train internal investigators
- Impose effective sanctions

Any time your company hires, fails to hire or terminates an employee, your business is at risk for employment-related allegations and lawsuits. Employers may face heightened exposure to wrongful termination and discrimination accusations as a result of staff reductions, layoffs, downsizing or outsourcing initiatives. In addition, it is always important for an employer to consider any adverse impacts that such initiatives may have on older workers or minority staff.

EEOC complaints and charges

The Equal Employment Opportunity Commission (EEOC) is a government agency that was created to enforce laws against workplace discrimination. A charge from this entity can be time consuming and a great drain on your internal resources. The EEOC has the authority to bring a direct lawsuit against your organization, which can have a significant financial impact on your bottom line. The EEOC reported that the number of discrimination suits rose to an unprecedented level of 99,922 suits in 2010.¹ With work-related lawsuits increasing at such considerable rates, it is evident that every company

is exposed to potential allegations. Whether the legal action stems from a joke that was thought to be harmless or from a person whom you decided not to hire, this exposure looms around every corner.

Assess your procedures

It is important to conduct a risk assessment summary that will allow you to evaluate *all* of your company's practices, including your employment practices. This can help identify areas where your company may have significant exposures or gaps in its current insurance program that could threaten its financial well-being. Some of the key questions to ask during an employment practices risk assessment include:

- What are your company's exposures and vulnerabilities?
- What is your company's tolerance for risk?
- Is your company's insurance protection adequate?
- Have you had an attorney who specializes in employment law review your hiring and termination procedures?
- Do you have the proper documentation in place for each employee?

Neglecting your employment procedures can have devastating consequences; don't let this negatively impact your business. A proper assessment will help you develop a program tailored to your company's specific needs. SilverStone Group has many resources available to help you thoroughly analyze your employment practice exposures. Our Human Capital division utilizes a holistic approach to help you determine the procedures that are appropriate for your company and its employees. In addition to this service, we can also provide options for a comprehensive and competitive employment practices liability insurance policy.

¹ EEOC Files Nationwide Hiring Discrimination Lawsuit Against Kaplan Higher Education Corp." December 21, 2010. Accessed February 21, 2011 at <http://www.eeoc.gov/eeoc/newsroom/release/12-21-10a.cfm>