

Risk Monitor



Minimizing Lawsuit Risk When Terminating Employees

Terminating an employee is a complicated issue no matter what reasons may exist. If handled properly, however, the employee can leave feeling little ill will toward the company, and, further, the employee may develop a plan for finding a suitable job replacement. When a termination is handled poorly, though, countless negative consequences can arise, the worst of which is a lawsuit filed against the organization by the ex-employee.

It's critical for businesses to be fully familiar with the concept and details of "Termination-at-Will," because even when a company employs workers in "at-will" states, they must still be on guard.

"Termination-at-Will" means that either the employee or the employer may, with or without notice, terminate the employment relationship at any time and for any reason, unless the reason is illegal. Although the termination-at-will statute is an important defense against an employee's lawsuit, in jurisdictions where it applies, employers should remain careful to avoid any action that might jeopardize an employee's at-will status. For example, if an employee was given verbal assurances that his/her job was secure, such declarations may be used later to contradict the employee's at-will standing.

An employee's at-will status could also be challenged when termination is based on poor performance. If an employee is having difficulty meeting performance standards, an employer's first priority and action must include holding a well-prepared evaluation meeting with the employee to address two specific issues: 1. what is lacking in his/her performance; and 2. what specific changes or improvements the employee is required to make before his/her performance could be considered satisfactory. It's important to keep the level of improvement required of the employee attainable; it's also critical for the employee to be provided with a reasonable time frame for making the changes

and/or improvements discussed in this first evaluation meeting.

The employer must be sure that the employee understands that his/her failure to comply with these objectives within the time allowed will result in termination. The specific objectives for improvement and any help the employer intends to provide the employee in his/her effort to achieve these objectives must be documented in an action plan prior to the meeting so the employee can sign it, serving as a formal agreement between employer and employee. A copy of the action plan, signed by both parties, should be given to the employee, and a copy should be placed in his/her personnel file.

The employer must continually monitor the employee's progress in meeting the action plan objectives: a critical component of the action plan's success is notifying the employee of their progress towards meeting the goals agreed upon in the action plan. By following these guidelines, the action plan serves as clear evidence that the employee was given an opportunity to improve his/her performance, and having failed to achieve the objectives, termination was a fair and final resort.

If an employee is terminated because of misconduct, employers must be able to verify that an investigation into the alleged misconduct was prompt, thorough, and unbiased. The investigation's purpose is to act as a fact-finding mission that denies or confirms the assertion that the employee did, in fact, commit the act in question. The investigation should avoid concluding whether or not the employee broke the law; instead, the review should determine whether the employee violated company policy, which is the reason for the termination.

When employees are being laid off, the layoffs must be conducted in accordance with the Worker Adjustment and Retraining Notification Act (WARN) and the Older Workers Benefit Protec-

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Welcome to our Fall 2006 Newsletter.

This is just one small way we try to add value as your insurance broker. Please feel free to contact us to learn more about anything in this newsletter or if you would like to see something highlighted in the coming issues. If you are not a client and would like to learn more about our services, visit contact us at (781)235-3100 ext 273 or visit us on the web at www.chinsurance.com.

We appreciate your business.



The Corcoran Havlin Sales Team; from left Jack Keefe, President; George Doherty, Executive VP; Mark Sawyer, Vice President; Rick Weden, Vice President; Ronald Long, Account Executive.

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Risk Management Provider Reveals Data Concerning Top Construction Defects

The 10-year housing and real estate boom in this country has been a double-edged sword for the construction industry. While the top 100 U.S. homebuilders were reported to have sold an estimated 1,000 new homes a day in 2002, such performance isn't without a downside.

In the January 2004 issue, Consumer Reports noted that approximately 15 percent of all new homes built each year have serious problems. They place this startling statistic right at the doorstep of the building boom. The construction industry has been bombarded from all sides because of this phenomenon. Building defects have resulted in lawsuits costing the industry millions of dollars, general liability insurance costs are rising, and increasingly knowledgeable consumers are more critical of the finished product and more likely to sue.

On the heels of all of this, comes a survey of quality assurance data tabulated for the construction industry that proves leading construction defects are mostly the result of failure to follow building code requirements or installation instructions. And as if to add insult to injury, the survey goes on to show most of these defects are preventable. The survey completed by Quality Built, a provider in risk management and quality assurance services, used data gathered by their field inspectors during inspections of 31,995 completed homes and condominiums across 27 U.S. states for the 12-month period ending Oct. 1, 2005.



Single-family homes averaged \$5,398 in corrected defects per home while multi-family homes and mixed commercial use construction averaged \$4,556 in corrected defects. The survey also identified the leading risk items for each housing type. With regards to single-family housing, the top defects included:

- Building paper and house wrap installation flaws
- Improper framing around windows and doors
- Missing structural straps and connectors

Multi-family and mixed commercial use construction were most frequently cited for:

- Unprotected penetrations in life-safety assemblies



- Missing fire-rated materials at electrical device boxes
- None of these defects are visible to a homeowner or building owner upon completion, but can lead to serious consequences and legal battles down the road. However, all of them can be easily corrected during construction if identified early through a quality assurance inspection.

Construction firms should take the following precautions to prevent a defect lawsuit:

- Hire a lawyer to get your contracts tightened up.
- Include Right-to-Cure, mediation and arbitration clauses as stopgap measures to prevent lawsuits.
- Find a set of national construction standards that you back and include them up front in your contract.
- Spend time going over the contract with the potential home buyer before they sign to make sure they understand what they're signing, and agree to the construction standards you've specified. If your attorney agrees, consider allowing clients three days to review the contract before signing, or three days after signing to cancel the deal.
- Create a small fact sheet or brochure for your clients that remind them of the key points of the contract - that you have the right to be notified first and granted the opportunity to fix the problem, the acceptable method for repair (included in the construction standards), and that mediation and arbitration are the next opportunities to resolve the issue prior to a lawsuit.

Long Term Care: Your Greatest Financial Threat?



What is Long Term Care? Rather than giving you a definition, just consider these names: Christopher Reeves, Ronald Reagan, Mohammed Ali, Michael J. Fox. When with a client, I often ask the following question: Have you had experience with a family member or friend who needed Long Term Care? The answer is almost always “yes”. Most of us know of people who have had a stroke, suffer from Alzheimers, have contracted Parkinsons, MS or have simply become frail by living into their 80s or 90s.

When meeting with clients, the question arises, “What are the odds of needing Long Term Care?” Consider these odds for the following risks of a \$100,000 or more loss:

- 1 in 1200 that your home will be destroyed by fire
- 1 in 240 that you will have a liability suit due to an auto accident
- 1 in 15 that you will have a major medical expense
- 1 in 3 that you will require Long Term Care

People have told me when they hear the words “Long Term Care” they immediately think: Nursing Home. In Fact, most Long Term Care is provided in one’s home or an assisted living facility. For every 2 people receiving care in a nursing home, there are 5 others receiving care at home. Did you know that a quality Long Term Care policy pays for care in the following venues:

- A person’s home

- Assisted living facility
- Adult day care
- Nursing facility

Let’s talk about what Long Term Care costs today and in the future. It is expensive and getting more so. For example, a nursing home today in Mass can cost approximately \$10,000 per month That’s \$120,000 per year. An assisted living facility costs \$6,000 per month, or \$72,000 per year. Home care costs depend upon frequency and duration of care, but I do know families who are spending between \$60,000 and \$120,000 per year. These are the costs today, but using the rule of 72 (# of years it takes money to double), these figures will double in 15 years and triple in 23 years. As you can see, Long Term Care can be a major threat to our retirement plan assets. Long Term Care Insurance will enable our retirement plans to be executed the way they were intended.

Congress has seen fit to make the purchase of Long Term Care insurance very favorable to the business owner. In fact, Long Term Care Insurance is one of the fastest growing employee benefits. Congress has provided tax incentives to employers by making the premiums tax deductible. Another great advantage is being able to pick and choose which employees to cover. These 2 advantages make Long Term Care Insurance a unique employee benefit.

Corcoran & Havlin has the expertise and resources to help their clients learn more about this important issue. We have helped many of our clients design and implement both individual and business Long Term Care Insurance programs.

Tim Graham, CLU, CLTC, has over 30 years experience in the financial services and insurance business. Tim specializes in the area of Long Term Care planning and Long Term Care Insurance. Please visit Tim’s website: www.TimGrahamLTC.com , an informational website devoted to the issue of Long Term Care.

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tion Act (OWBPA). Employers are subject to WARN stipulations if they have 100 or more employees. WARN’s policies do not include employees who have worked less than six months in the past twelve months, and/or employees who work fewer than twenty hours a week. Both private and nonprofit employers are covered by WARN and OWBPA. Additionally, public entities that operate commercially and are not part of the government are also covered. Federal, state, and local government entities, which provide public services, are not covered by either of these acts.

WARN requires covered employers to give their employees sixty days’ notice prior to either a mass layoff or a plant closing that is expected to last six months or longer. WARN-covered employers must also notify both local government officials and

the state dislocated-worker unit.

When a laid-off worker is forty or older, an employer will likely seek a release from the worker indicating that they will not sue the company on the basis of age discrimination. The OWBPA contains specific requirements for waivers of age discrimination claims. Courts have ruled that these statutory requirements are strict and unqualified, and if an employer fails to meet any of the requirements, the obtained waiver is ineffective. Employers seeking such age-related waivers should consult in-house counsel prior to pursuing these releases.

This article should not be relied upon as legal advice. Please consult with an attorney familiar with the issues and laws of your state before taking any action.

Managing Technology with a Little Help: Equipment Maintenance Insurance

The technological revolution is a double-edged sword. For every new piece of equipment that lightens our workload, there is the possibility that the machine can malfunction or breakdown completely. And the more advanced the piece of equipment is, the more time-consuming and costly its repair is. As organizations are forced to run leaner operations, skyrocketing equipment repair costs can become a significant drain on an already strained budget.

To help keep these costs under control, insurers are now offering commercial insurance coverage known as equipment maintenance insurance (EMI) to organizations and governmental entities that depend on electronic equipment, such as copiers, fax machines, computers, audiovisual equipment, telephones and security systems. The purpose of this coverage is to consolidate all of an insured's office equipment service contracts into a single insurance contract. EMI not only simplifies the administration of service contracts, but can also save the policyholder money too.

When a business owner buys office equipment or a medical facility buys medical equipment, it is usually protected if it breaks down during the warranty period. The general warranty period, however, only lasts for 90 days. If the buyer wants added protection, it means having to buy an extended warranty contract or an equipment maintenance agreement. If an organization has multiple pieces of equipment, this kind of expenditure can rep-

resent a large cash outlay and juggling multiple contracts and vendors.

EMI is a viable remedy to this type of situation. The coverage is applicable to a range of industries that need an affordable alternative to traditional equipment maintenance agreements. Each EMI account is individually underwritten based on the type of equipment, its age, the preventive service it has received and service logs that document that maintenance. As the basic warranty on each piece of equipment expires, the insured can roll coverage for that item over into their EMI account. This eliminates keeping track of individual vendor maintenance contracts in order to ensure that coverage is current. Depending on the way in which the EMI contract is worded, it can cover not only the cost of equipment repairs but also the cost of renting a replacement unit, for a period of time, if the damaged equipment has to be sent out for servicing.

Equipment maintenance insurance provides broader coverage than most vendor maintenance agreements. It may reimburse for losses connected with power surges, human error or negligence, in-house repairs, preventive maintenance inspections and damages that result from environmental causes. Extending coverage in this way certainly makes EMI insurance a useful tool for organizations to more effectively manage their resources.



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