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# RISK ADVISOR

Fall 2008

## Corcoran & Havlin Insurance Group

- An insurance update for financial officers
- News, Views, & Current Events
- A publication of Corcoran & Havlin Insurance Group

### Five Mistakes to Avoid When Terminating Employees

Many employers become embroiled in convoluted and expensive litigation because they make simple but avoidable errors when terminating an employee. Even if you do terminate an employee correctly there is no guarantee you will avoid a lawsuit. However, if you've done everything properly during the termination process, your chances of winning the lawsuit are much greater.

#### Five Common Termination Mistakes

The most common errors made by employers are:

#### 1. Not Applying Human Resource Policies and Procedures

Proper termination policies and procedures should provide good directions for terminating an employee in accordance with applicable state and federal laws. Similarly, a well-written employee handbook, which spells out issues of misconduct and poor job performance, adds to an employer's credibility while negating claims to the contrary from a terminated employee.

#### 2. Lack of Documentation

Poor performance should be documented in detail along with a substantiating basis. Misconduct issues require a thorough, unbiased investigation in alleged incidents. Chronologically order the documentation to provide a solid foundation for the termination. Keep in mind that without adequate documentation, your basis for terminating an employee may appear to be groundless and lack substance.

If disciplinary actions have been taken, the manager, and always with a witness present, should ask the employee to sign a description of the incident and the employer's response. If the employee refuses to sign, this should also be documented.

#### 3. Failing to Give Employee Notice of a Termination

Although many states do not require you to give notice to an employee, many legal experts say doing so can prevent a negative decision. One very important

*continued on page 2*

• The Corcoran & Havlin Insurance Group has been awarded the 2008 Reader's Choice Award for Best Insurance Agency. This is the 5th time Corcoran & Havlin has been the recipient of this coveted award.



#### The C & H Production Team

*From Left Back row: Matthew Arnold, Megan MacBey, Steve Nadeau, Mark Sawyer*

*From Left Front row: Tim Gramh, George Doherty, Jack Keefe, Rick Weden & Ronald Long*

• C & H is pleased to announce our new partnership with the Commonwealth Purchasing Group. CPG is a buying group formed for the Mass League of Community Health Centers. Corcoran & Havlin has put together preferred Property/Casualty Insurance program specifically for CPG members. In addition, we're offering a discounted personal auto and homeowners program thru Metropolitan Insurance Co. to employees of member health centers.

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## Risk Tip: Watch Out When Employees Use Their Autos On Company Business

Employees frequently use their own vehicles on company business. This usage can vary from running errands, for example going to buy office supplies, to almost constant use, for example sales personnel traveling a territory. Such usage can subject the employer to potential liability. So employers should take several steps to assure that both they and their employees are properly protected.

Employers should clearly communicate to their employees that they are not covered as an insured under the employer's policy when they or anyone else in the organization uses their automobile on company business. They should understand that their own insurance covering the vehicle stands first in line to cover any loss.

It is important to stress to employees that they should be familiar with their automobile policy coverage if they use their own vehicle in the employer's business or borrow a vehicle for such use. Coverage provided by a personal automobile policy

can vary from one insurer to another so they should be encouraged to contact their personal lines agent for advice before using the vehicle on company business.

To protect their own insurance or self-insurance program from loss, employers should require minimum levels of liability insurance and proof of insurance from the employee. They also should develop and disseminate policies for automobile usage to all affected parties to provide guidance and help eliminate potential areas of confusion.

Finally, we recommend employers secure Non-Owned & Hired Automobile Liability coverage which will provide policyholders with protection if they are named in a lawsuit as a result of an accident involving an employee who was using their own personal vehicle while on company business. This liability protection is relatively inexpensive and can easily be endorsed onto an existing automobile or General Liability policy.

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reason is to prevent the employee from using an unrelated tactic such as discrimination to cloud the real issue behind the termination.

Should an employer terminate an employee without a prior warning, the onus is on the employer to prove that the employee should have known they would be terminated based on their actions. Avoid this situation by giving the employee notice that if they commit the same or related infraction again, they will be terminated.

### 4. Failing to Provide a Just Cause for Termination

In many states, workers are employed 'at-will,' which means that employers can terminate an employee at any time. Consequently, many employers feel they can terminate an employee for practically any reason and are immune from negative consequences. This is simply not true.

Most employees fall in some protected class such as age, gender, race,

religion or disability. Many lawsuits can be avoided or won by employers who base their termination decision on a 'just cause' or who provide a legitimate reason for the employee's termination. A 'just cause' reason must have its foundations based on facts or proof.

### 5. Not Providing Accurate Performance Evaluations

The lack of documented performance evaluations is commonly used as the basis behind many wrongful dismissal actions. Often, managers seek to avoid confrontations with employees at appraisal time by giving the employee a positive evaluation and indicating the employee met performance expectations. Supervisors must be taught to be honest when completing appraisals. An employee may entertain thoughts of litigation when their performance appraisal states their performance met expectations, but the employer terminates them for alleged poor performance.

## U R @ RISK for Employee's Online Activities

Did you know your business is liable for how your employees use the internet while they're on the job? Many business owners protect themselves by monitoring their employees' email and internet usage, including instant messaging.

Some employers are reluctant to implement an email and internet oversight policy. But monitoring email communication and web surfing has become an important part of protecting your business.

Suppose an employee at your business has been emailing inappropriate images or messages around the office, and these images make their way to a co-worker who finds them offensive. If that co-worker chooses to sue for harassment, your company could easily be held liable. Why? Because businesses can be held responsible for their employees' activities while using company computers.

If your business had a monitoring policy in place that enabled you to review the emails going around the office (as well as your employees' web surfing), you would have been able to take measures to stop the offensive email before it was sent.

### Creating a monitoring program

Here are some useful tips to consider as you formulate your internet monitoring and usage policy:

- Implement policies about what employees are allowed to send: Tell your employees never to write — or even forward — any material that could be considered obscene, hateful, defamatory, offensive, harassing or otherwise inappropriate. This includes racist or sexist language and/or jokes.
- Gain control over what can be accessed at your business: You have a right to ban questionable websites at your business. Forbid employees from viewing any sites containing sexually explicit messages or imagery, sites that are violent, or sites containing other content that may be considered inappropriate. Consider installing blocking software to stop access to these sites in the first place.
- Disallow non-work-related web use while employees are on the job: It's becoming increasingly common for employees to use the internet at work for non work-related purposes. This trend is only getting worse with the rise of social-networking sites like Facebook. Therefore, unless employees are on a break, it's a good idea to insist that emails are being sent and web pages are being viewed for business purposes only.
- Provide separate computers for off-the-clock purposes: Consider setting a few computers aside

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specifically for employee non-business use. Put them in a common area and allow employees to surf while on their lunch hour. Coupled with an internet monitoring program, this is an effective practice for many companies. (Just remind employees that your monitoring policy also applies to this non-business use.)

- Communicate your monitoring policy to employees: A common pitfall of implementing an internet and email usage program is that many companies don't tell employees about their policy. By not telling your employees, you're actually increasing your exposure to employee lawsuits. Telling them you'll monitor their email and internet use will help deter improper use.
- Keep reminding your people about your internet policies: Once your policy has been communicated to employees, remind them about it regularly. It should be included in your company's employee handbook. You might also want to consider having a reminder on your employees' log in screen.

When you put effective internet and email policies in place, you're taking a positive step toward protecting your company. It takes some time and effort, and communication must be ongoing, but it's worth it to reduce liability exposure for your business.



## Thank You!

C&H would like to thank it's commercial lines employees for reaching a milestone with their years of service and hard work. Congratulations and Happy Anniversary!

**5 Years:**

Sandra Pachomski, Ron Long.

**10 Years:**

Jane Loomis, Debi Drury, Mike Curtis

**35 Years:**

Mary Mullin



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