Professional Insurance
volume 24 • issue 3

Screen Existing Staff Cautiously

Screening potential hires is commonplace. In addition to screening job prospects, more employers have started continuous screening programs to help confirm current staff's legal standing.

Employers considering the continuous screening measure must proceed with caution. First, employers must communicate with a reputable screening company on proper implementation of a program for existing workers. Second, employers must be sure that the program is consistent with workers at all levels–exceptions significantly enhance potential discrimination claims. Finally, employers must inform staff about the details of the program as well as what information is being collected during the screening and how often it will take place.

Employers should also consider communicating to staff in writing the details of the decision to begin the screening, information on the program itself and data on the company that will be providing the service. All such communications should be reviewed by legal counsel prior to release.

Measures such as these can be effective in ensuring that only the best workers represent your firm. Unfortunately, they can also open doors to claims of discrimination, harassment and wrongful termination.

Call us for ideas on how to insure wisely against claims of wrongful employment practices. ■

Cover Your Fiduciaries

Fiduciary relationships have been broadly interpreted by many different sources, including ERISA and other statutes, to include employees who have discretionary authority over, or who assist in, the administration of an employee benefits plan. These individuals include plan administrators, human resources employees or anyone else that helps with the plan's administration.

Why is this definition important to you? Under ERISA and other statutes, fiduciaries may be held personally liable for breach of responsibility in the handling or administration of a firm's employee benefits plan. Any time personal assets may be at risk, adequate insurance coverage is extremely important.

While there is no requirement to purchase fiduciary liability insurance under ERISA, it is strongly recommended. Failure to obtain this insurance leaves personal assets exposed. Many fiduciaries believe they have automatic coverage under a firm's directors and officers (D&O) insurance. Unfortunately, most D&O policies exclude fiduciary liability exposures as well as exposures created by ERISA.

For more information on safeguarding the personal assets of those considered fiduciaries under your firm's benefits plan, call our service team today. ■

Despite Best Practices, Harassment Claims Occur

According to the most recent data available from the Equal Employment Opportunity Commission (EEOC), 2007 saw a sharp increase in workplace harassment claims—27,112 total claims costing U.S. employers $65.6 million.

Adequate training and communication of company rules is imperative in reducing your risk of this type of litigation. Additionally, immediate and summary action must be taken against violators, and all concerns voiced by employees must be investigated with respect to all parties' privacy.

Strictly enforce anti-harassment policies, such as prohibitions against displays or sharing of sexually explicit material at the workplace and the making of suggestive or degrading remarks to, about or in front of anyone. Remember that harassment can be sexual, religious, racial or other.

Unfortunately, sometimes claims happen despite a firm's best efforts. In these cases, an employment practices liability policy may cover claims of discrimination and harassment and provide valuable dollars to help with costly defense, settlements and judgments. For more information on a policy designed for your firm, give our service team a call. ■

Satisfying ERISA Requirements

The Employee Retirement Income Securities Act (ERISA) of 1974, Section 412, requires that anyone handling funds of employee benefits plans carry a bond or appropriate insurance of a specified amount. This amount, as dictated by the Department of Labor and ERISA, is the lesser of 10% of the value of the plan's assets or $500,000 per plan.

Typically, companies meet this requirement in one of two ways. First, many satisfy the requirement by adding as a "Named Insured" the benefits plans subject to ERISA and sponsored by the company onto its fidelity or employee dishonesty insurance policy (some insurance companies may include this type of insurance on a "crime" insurance policy). The limits of the policy must reflect the requirements of the law, and no deductible may apply to that part of the coverage provided for ERISA compliance.

The other method commonly used to meet ERISA requirements is the purchase of an ERISA bond in an amount reflective of the limits specified by law. Many insurance companies that specialize in bonds and/or professional liability insurance also sell ERISA bonds.

Do you have questions about steps to ensure that your firm's benefits plan satisfies ERISA requirements? We can help. Call our service team today. ■

Document Disciplinary Actions

Disciplinary actions that are not properly documented remain one of the most common legal problems faced by employers.

Contrary to popular belief, it is not unreasonable to discipline one employee differently from another. However, if this is the course of action, employers must carefully document the details of each exception. Factors such as time in service and differing records of previous infractions can be considered. Employers should let violators know in writing the reasons any exception was made and keep the rationale as part of the permanent employee record.

All verbal warnings must be accompanied by a written record. If there is nothing in writing at the time of the incident but the manager later remembers the discussion, put details of the incident in a memo. Don't predate the record; just make a current note of the discussion.

Minimizing risk does not always prevent employees from filing discrimination, harassment, and other employment-related claims, but documentation will help in the defense. An employment practices liability policy can also help with the cost of such claims.

For more information about an employment practices liability policy for your firm, call our service team today. ■

Avoid Wrongful Termination Claims

Delivering a "final warning" to employees is a delicate process and, if not performed properly, can significantly increase the likelihood of a wrongful termination claim. To mitigate the risk of such a claim, firms should follow a clear, consistent pattern.

First, clarify to the employee that suggested changes must be made immediately. This helps prevent the employee from making the accusation that not enough time was given between the final warning and resulting termination.

Second, define the level of improvement expected. This helps preclude employee claims that minimal or insufficient improvements were thought to satisfy the employer's warning.

Finally, emphasize in your counsel to the employee that improvements must be sustained indefinitely, not just for the first few days after the warning is issued.

Wrongful termination cases can drag on for months and cost an employer tens of thousands in defense and settlements.

After verbally warning an employee and setting the standards for improvement, document the meeting for the employee and for the record. Some experts suggest including the words "This is your final warning" in the meeting and documentation.

Obtaining an employee's signature on a warning memo is also highly valuable.

Wrongful termination cases can drag on for months and cost an employer tens of thousands in defense and potential judgments or settlements. Such costs are not covered by general liability insurance; they can only be covered by a specific form of liability coverage called employment practices liability insurance. For more information on this valuable coverage, consult our service team. ■

Dual Risk at Professional Firms

The operations of many firms pose risks that are not covered by traditional general liability insurance. Two common risks are "errors and omissions" and "directors and officers" liability. Either exposure can lead to crippling claims if not managed and insured properly.

Where is your business vulnerable? Errors and omissions (E&O) typically involve a performance failure and/or negligence in the provision of products or services. A common E&O claim occurs when a representative of the company, such as a customer service employee or salesperson, provides faulty advice or representation to a customer that causes the customer to suffer financial detriment. Other common E&O claims arise from mistakes issuing paperwork, miscommunication, and errors in recording customer information. Critical to avoiding such errors and omissions is a standardized method of handling information, communicating with clients and reviewing work. Following established, documented procedures can greatly reduce E&O exposure.

When are your people at risk? Directors and officers of your firm are responsible for the overall well-being of the firm and its finances. Poor performance or failure in the execution of duties by your business's leaders can lead to claims against your firm and your directors or officers personally. Claims can be made by stockholders, employees, clients, and in some cases the government. Some of the more common claims include discrimination, harassment, conflicts of interest, mismanagement of company assets, breach of fiduciary duties, and acts that violate company by-laws. In general, directors and officers need good legal advice and solid communication with your firm's management throughout their decision-making processes.

In addition to following risk management procedures, professional firms can benefit greatly from carrying appropriate insurance. Some E&O insurance will pay for defense costs as well as judgments against your firm, but policies vary. Directors and officers insurance can protect the personal assets of individual directors from claims from a number of different areas, and it varies on levels of coverage and deductibles.

Our agents can assist you in comparing your options. Give us a call to review E&O or D&O coverage for your firm. ■

Thank you for your referrals.

If you're pleased with us, spread the word! We'll be happy to give the same great service to all of your friends and business associates.

Technology E&O–Does Your Firm Need It?

The standard commercial general liability policy doesn't cover many information technology (IT) risks, such as faulty software performance, programming errors, and disputes in the performance of a contract. A separate policy, often called "Technology Errors and Omissions (E&O) Insurance," is generally required to address the costs associated with these claims. Any firm providing IT services should consider this important insurance since defense and resulting judgments can be substantial.

When considering this coverage, IT firms should address the exposure for W2 employees as well as 1099 subcontractors. Firms should also consider requiring any 1099 subcontractor to furnish evidence of a technology E&O insurance policy, as this will provide additional protection if the actions of the subcontractor cause damage to your firm's client.

For more information on protecting your firm's bottom line from these common and expensive claims, call our service team today. ■