

Are You A Negligent Employer?

The following is not intended to pass muster as legal advice so to avoid a law suit, I make no claim for accuracy or legality.

At a recent gathering I sat with an attorney that specializes in labor law and all manner of personnel/employer relations. Although there are many, many ways an employer can sink the ship by not diligently following the rules, he directed me toward a concern that many are not well versed in.

Employer negligence has always been more or less something I didn't want to know about due to its ominous concept. The discussion woke me up to the reality of how we can so easily become entangled in horrible outcomes.

This concern is one reason large companies have a Human Resource department. Most of us are smaller employers and can not justify such a position but can cover the bases with a labor law attorney on the sidelines.

There are several major employer negligence issues we should be concerned with. This list is not all inclusive. All of these concerns can cause liability for a company and its owners.



Negligent Hiring.

This basically revolves around due diligence related to background checks. Our problem is that public records are readily available to all, including those who may be victims, and we must do a search to look for a less than stellar background. If a staff member is wronged by another, he or she, or an attorney, can readily determine if an employer should have known about an individual's prior misconduct. We, or our insurance company, should check driving records if an employee will be expected to drive a vehicle while conducting company business. This matter includes driving a personal vehicle on company business as well as company owned or leased vehicles.

Sexual misconduct is another major concern. If an existing employee is violated, and you should have known the potential existed, you can be hauled into court by the violated employee and bear liability.

To avoid concerns in the hiring process, we must be very diligent in all matters such as thoroughly checking references, educational background, criminal background, etc.

Negligent Retention.

The high level concern here occurs when an employer becomes aware of an employee's shortcomings and fails to act on the facts. This can occur when the employee exceeds the position description authority as in bending rules related to company policy or exceeding authority when managing other staff along with an almost infinite list of other activities.

Negligent Supervision.

Negligent supervision is similar to negligent retention. If for example you discover one is addicted to prescription or illegal drugs and the addiction will impair the person, management can become liable for the actions of the addicted person. If the addicted person harms others or himself you could be financially and/or criminally liable. Hurting another is obvious. But if he hurts himself on the job, Workman's Compensation panels may require you to pay for costs normally incurred by insurance. The attorney told me that once you are aware of this issue and the employee admits to it or is discovered through drug testing, you can recommend a rehabilitation program. However, the employee will be off duty for 60 to 90 days and rehab often does not succeed. Prescription drug abuse authorized by doctors is becoming an increasingly serious problem. One would think we are immune to liability

due to the doctor's prescription but this is not the case. Most prescription pain medications come with specific restrictions regarding driving or operating equipment.

Negligent Training.

Negligent training would appear to be fairly obvious. If you fail to properly train a person to perform work found in a job description, you could be liable for costs related to another staff person's injuries or those of the improperly trained staff person. We can not assume that a prospective employee who had a previous job as a forklift operator, for example, was properly trained. If you thoroughly read the operator manual for a piece of equipment, you will be really surprised at the recommendations that the manufacturer provides. This can become the basis for liability if an operator is not aware of all the concerns.

Vicarious Liability.

This liability occurs when an employee acts as an agent of the company. For example, a staff person alters or extends a company's standard guarantee without the consent of management; a wronged customer would have a claim against the company if an unauthorized policy is given either verbally or in writing.

In summary, lawyers are waiting at their phone to hear about our negligence and will be very pleased to bring an action against us in court. Company handbooks can go a long way in avoiding these and many other employment related concerns. Handbooks are often written and then mostly forgotten except to provide a copy for new staff. Handbooks should be reviewed annually, preferably by an attorney, to consider revision in laws and case law changes. For most of us we will not sink our business over these matters. Yet, one serious incident such as your driver harming or killing others while on drugs when we knew about the circumstance could end very badly. 🍀



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