



**CORCORAN & HAVLIN
INSURANCE GROUP**

RISK ADVISOR

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BIG NEWS!



Corcoran & Havlin has been awarded the 2015 Reader's Choice Award for the 12th year in a row! Not only did we win as a local favorite, but because of customers like you, we were also awarded the title of Regional Favorite!



CORCORAN & HAVLIN INSURANCE GROUP MANAGING YOUR RISK, PROTECTING YOUR INTERESTS



Third Party Employment Practices Liability – What is your True Exposure?

by Tom Storella, C&H Marketing Manager

Employment Practices Liability (EPL) policies are a must have for any size and type of business. In recent years, there has been an increase in the number of lawsuits filed by employees against their employer for harassment, discrimination and other wrongful acts. Wage and hour claims grew recently as a new hot topic. These claims can be expensive to defend, even if they are baseless. *Did you know that a third party can even bring suit against a company for the actions of their employees, and that an employee can sue their employer for actions of a third party?*



First Party vs. Third Party

The most common EPL claims are first party claims. These are claims made by an employee of the company against the actions of the employer (and other employees). Here are a couple of examples of first party claims:

- A cook at a restaurant makes sexually suggestive comments to a waitress. She tells the manager about the comments and informs him know that she is uncomfortable. The manager does not address this with the cook and the comments continue. The waitress then sues the restaurant for sexual harassment and for having a hostile work environment.
- An African-American mid-level manager at a manufacturing company applies for a senior level managerial position that opened up. He has been with the company for 10 years and has 15 years of experience. The job is given to a younger mid-level manager who is white, has been with the company for two years, and doesn't have the experience or qualifications to be a senior manager. The company is then sued by the African-American employee for race discrimination.

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Workers' Comp - The Dangers of Dealing with Uninsured Subcontractors

by Alan Heinlein

It is a commonplace and essential practice for business owners to utilize subcontractors for services to fulfill their needs. These specialized subcontracted services could include roofing, electrical, plumbing, carpentry, excavation, landscaping and many more. From a workers' compensation perspective, the hiring of uninsured subcontractors involves certain risks to the business owners' business. These risks may involve increased workers' comp premiums, less favorable underwriting discounts and possibly a damaged claim history. Therefore, a sound risk management practice that should be followed is to mandate that any hired subcontractor is in fact insured with workers' compensation coverage of their own.



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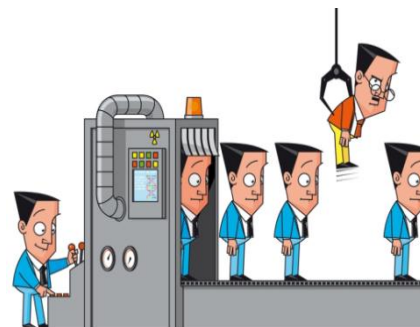
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Employment Claims (continued from page 1)

Now let's take a look at a few examples of third party claims:

- A man of Middle-Eastern descent attempts to rent an apartment. When he arrives at the premises, the property manager tells him the apartment has already been rented, even though a "For Rent" sign is still displayed. Suspecting that he is not being told the truth, the man has a Caucasian friend ask about the apartment. The property manager tells him it is available and also mentions that he wants to rent only to "our kind." Enraged by the property manager's comments, the man of Middle-Eastern descent sues him for violations of his civil rights and for discrimination on the basis of his national origin.



- A courier makes daily stops at a law firm. After a few weeks of deliveries, he starts making suggestive sexual remarks to the receptionist. She brings this to the attention of the office manager who does nothing other than tell her to tell the courier to stop. The next week the courier inappropriately touches the receptionist. She again complains to the manager who does not take any action. The receptionist quits and sues the firm for tolerating a hostile work environment, emotional distress, and failing to prevent an assault.

Who is at Risk for Third Party Claims?

Any business that has a significant amount of direct contact with the public is at a higher risk of third party claims – the hospitality sector, restaurants, schools, medical facilities, country clubs, and examples. However, all types of business business have a sublimit of first party EPL anywhere from \$10k - \$25k on their not have any third party coverage. So, a at risk for not having coverage for a separate policy for EPL, most carriers do are a few that do not, but the industry as a whole has seen the need to address this issue to protect their policyholders. Even though a baseless lawsuit can be filed, the defense costs can be significant. If there is not third party coverage, you may have to foot the bill yourself.



Preventative Measures:

With more third party EPL claims being filed every day, education is becoming increasingly important. Employers should implement policies and procedures addressing EPL exposures arising from the actions of employees as well as third parties. EPL underwriters are requesting such measures in a documented employee handbook.



Orientations for new employees should address EPL and third party exposures. Periodic updates should be provided to those already employed, especially supervisors. Training should include how to report and handle a third party claim. Since it is difficult to influence customers and other third parties with whom a business interacts, it is crucial for employees and management to be cognizant of the perils and to know how to respond to them. As time goes on, we will see if third party EPL coverage moves further in the spotlight.

Please feel free to contact us with any questions in regards to this article. Corcoran & Havlin can review your current employment policy and make comments and recommendations if needed. We have employee handbook templates which can act as a guide in your development of a formal customized Employment Handbook (the template should be reviewed by a lawyer before it is implemented).



The Dangers of Dealing with Uninsured Subcontractors (continued from page 1)

In reality, **there are NO uninsured subcontractors.** If the subcontractor does not have workers' compensation coverage the general contractor is statutorily assigned the responsibility of providing workers' compensation benefits to the subcontractor's employee, regardless of the number of employees working for the subcontractor. You, as the business owner, are carrying these employees on your workers' compensation policy whether you want to or not, whether you even realize it or not. These uninsured subs will, at audit, be picked up and included on your workers' compensation policy. The amount you pay to an uninsured subcontractor will be treated as your payroll and you will receive a bill for the additional premium. Your insurance company is in fact providing coverage therefore they are entitled to this premium whether or not there is an injury.



If a subcontractor, that you hire, has their own workers' compensation policy and they provide you with a valid certificate of insurance that covers the period of time they worked for you and were paid then there should be no additional charge to you on your workers' comp policy at audit.

From an insurance company's underwriting perspective, the practice of hiring uninsured subcontractors is not viewed favorably. In many of these cases you have less control over the subcontractors than you do over your own employees. As a result the underwriter may view your use of uninsured subcontractors as a potential increased liability that makes you a less attractive risk to the insurance company and therefore may be less generous with discounts at renewal time.



Lastly, there's yet another risk to using uninsured subs and that is the claim exposure. As a business owner you make certain efforts to make sure that your direct employees don't take unnecessary risks, do not work with dangerous or broken tools and are protected from unsafe conditions. But how do you ensure that your subcontractors do the same? If a sub's carelessness leads to their own injury or an injury to one of your employees, your claims history will be damaged and your premiums will be negatively affected. Not to mention the financial damages that may occur in the case of an excessive claim that exceeds your coverage limits.



A few simple recommendations will help you to avoid the risks of dealing with uninsured subcontractors include:

- Avoid using any uninsured subs, especially high-hazard occupations such as roofers, carpenters and painters.
- Obtain current certificates of workers compensation and general liability coverages from the subcontractor's. Insurance agent or carrier. Do not accept photocopied or even original-looking certificates directly from the sub. There are too many cases of forged certificates being presented. It is routine business for agents to receive requests for and issue these certificates, you should accept no excuses.
- If your business routinely uses numerous subcontractors, you should consider using payroll and accounting software that automatically tracks the expiration dates of subcontractor's' workers' compensation certificates to avoid missing coverage verification the following policy year.

Guess what?



An injured employee overseas can have a severe impact on your business. Did you know that the cost to evacuate an individual from a foreign country due to a medical emergency can potentially exceed \$100,000? Limitations to domestic coverage can often leave unexpected and costly gaps in coverage. If your employees travel overseas on business, you may want to consider purchasing an International Liability Policy. In addition to evacuation coverage, these policies also provide around the clock assistance for your employees when traveling or working outside of their home country. An International liability policy can provide protection and peace of mind while conducting business overseas. Ask your Account Manager for more information.

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