

7 Things You Must Know To Avoid Being Sued Successfully By Ex-Employees

By Robert J. Morrow, CLU, RHU, CEBS

This article is based on my presentation at the AOLS Annual General Meeting in February 2004.

My lawyers tell me I must start by explaining that I am a GROUP INSURANCE guy not a LAWYER. So this is business advice only, based on my 25+ years in the employee benefits field - it is not in any way to be considered legal advice - just good business practice.

Getting sued by ex-employees (or even employees) is not just a danger to surveyors, it is a common problem for all small business owners; "Small" meaning any company that doesn't have a lawyer on staff. Here is the bad news! There is no way to guarantee that you won't be sued. You don't have to be in the wrong to be sued. You don't even have to be in the wrong to be sued and lose! Let me repeat that. You can be totally in the right and still lose! Just being right isn't enough!!! You have to protect yourself.

The most expensive scenario is to be sued and lose!

The second most expensive is to settle after your lawyer says something like, "We're not doing too well here."

The third most expensive is to win after a long battle!

The best approach is to cut off the lawsuit "at the ankles."

How can you do this? By remembering the Boy Scouts' motto - "Be Prepared!"

Most small business owners wait until the writ arrives. TOO LATE!!! That's like waiting until the third period before you put your team on the ice! Your opponents have been on the ice for two full periods, by themselves! Under those circumstances even a team of "old farts" like me could beat the Leafs.

How do you get prepared? There's more bad news. It takes time, effort,

and paperwork. I know, I know, there are about 9000 things you'd rather do than paperwork. I know, because there are about 9000 things I'd rather do. So how do you do it? You start when you hire the employee.

(This seems like a good place to repeat that I'm an insurance guy, not a lawyer. This is NOT legal advice. It's just good business advice.)

Prepare an outline of the details of the job (not a job description). This should include things such as; how long the probationary period is, the starting pay level and when and how it is reviewed, how much vacation time they get and when that will change, if ever. Also include rules, such as use of company vehicles, etc.

If you have an employee benefits plan, have a thumbnail sketch of the coverage. Lay out the details of how it works; when coverage starts, who pays what, and when, if ever, that changes. Know when the coverage starts. It is not the same for all plans. For example, coverage starts after 90 days of continuous employment with some, while others start on the first of the month following 90 days of continuous employment, etc.

Explain that some benefits such as Life Insurance, Short Term Disability, or Long Term Disability (LTD) may require evidence of good health. For example, your LTD plan might have an overall maximum of \$5000 but only have a Non-Evidence Maximum (NEM) of \$2000.

Non-Evidence Maximum refers to the amount of coverage that an employee gets automatically without any health evidence being necessary. In English, this means that although the employee qualifies financially for \$3000 he or she would only get \$2000 automatically and would have to be medically approved for the remaining

\$1000. Make it clear that it is the employee's responsibility to supply medical information when asked. If the employee doesn't, he or she won't get the coverage. Emphasize that it is the employee's responsibility, not yours, to supply whatever information is requested. Then have him/her acknowledge, sign, and date the form. Then file it.

The next step is when the booklet, etc. arrives. If your plan has a pay-direct drug card, have the employee examine the card(s). Are the names all spelled correctly and are all dependents listed on the card? Once again, have the employee sign that he or she accepts the card(s) and everything is correct.

The best kind of booklet is personalized for each employee. (Ours are but not all booklets are.) Have him or her examine and check the booklet. If the employee has any questions, get them answered, in writing! Have the employee accept and acknowledge the booklet and that you have answered all the questions. Have a cover sheet that lists everything the employee has received. Repeat the rules re NEM and qualifying.

How important is this? After all, how costly could it be? Let's go back to the additional \$1000/mth we looked at earlier. Employee is 35 years of age. That's 30 years until he or she is 65. Do the math - \$1000/month X 12 months X 30 years works out to be \$360,000. For that much money, if you're lucky enough to die, they will probably dig up the corpse and sue it!

Let's look at another situation where the employee has opted out because of coverage under their spouse's employer's plan, and their situation changes, i.e. the spouse loses the coverage due to job change, etc. Emphasize that it is the employee's

responsibility to notify you. It is NOT your responsibility!!! If the employee doesn't let you know, they will not have the coverage when they need it.

How important could this be? After all, it looks like a minor problem - just a few drug charges. A lot of you know Barry Mount; he's the red head who shows up in most of our ads. He recently had a case where an insured ran up just over \$28,000 in hospital charges in less than year. (Fortunately this was not a survey firm!)

Another situation that will show up occasionally is where an employee wants to totally opt-out of your plan. This is a bad deal for all concerned. If you decide to allow it, be sure the employee acknowledges, in writing, that it's their choice. Also that he or she understands that if sometime in the future circumstances change, and they now want the coverage, it may not be available. If it is available, the insurance carrier may require evidence of good health and not just from the employee, but from the whole family.

Have the employee sign and date the acknowledgement.

If you make changes in your plan, communicate the changes to your staff. Document those changes. Once again have your employees acknowledge, sign, and date the documents. This is true, even if the changes are improvements. When you receive the writ, you have no idea what a nice warm feeling it will be to reach down into your file for the documents, knowing they are there!!!


At this point you are probably asking yourself, "Why bother with a group plan?" Group plans do serve a very valuable purpose. They make it easier to hire and keep good employees. That's why they are often referred to as "Golden Shackles."

Yes, there are other alternatives. They tend to be just as complicated and can be just as risky. If you want look at some alternatives, let me know.

If you would like sample templates for any of the forms that you should have employees complete and sign, call me.

The title of this article is: 7 Things You Must Know to Avoid Being Sued Successfully by Ex-employees.

Those 7 things are: communicate, document, communicate, document, communicate, document, and then document again.

(For those currently lucky enough to be on the Land Surveyors Plan - for your protection - all documents, cards, booklets, etc. associated with any changes in coverage now come from TPA with forms for the employee to complete and sign. You can then file these forms - just in case.) 

Bob Morrow is the owner of The Connectors Insurance Group Ltd. in Oshawa. He has been in the insurance business for over 30 years and is one of the leading authorities on employee benefits for small and medium-sized companies. Bob has been helping Ontario Land Surveyors with their benefits since 1979. He can be reached by phone: 905-721-7569 or toll free: 1-888-747-7707 or by email: bmorrow@theconnectors.com