

## **Employee Lawsuits – How to Protect Yourself**

I have some bad news for club owners. The next claim or lawsuit you will experience will very likely come from your own employee. The new hot issue for attorneys this year is “employment” related litigation. Now for the really bad news; your workers compensation and liability policies won’t cover you for these type of claims.

If you have read any of my previous articles, you already know that I am not a big fan of the American Trial Lawyers Association. Litigation in this country is running rampant and too many people have adopted the battle cry, “It’s not my fault”. Whether it involves a member who falls on a treadmill, or an aerobics instructor who has been “released” because of frequent tardiness, we are forced to deal with the backlash of these individuals who refuse to admit accountability. Our liability insurance policy is designed to protect us from the member suing us, but we are wide open to litigation involving an employee. If you don’t think that it could ever happen to you, think again. All it takes is one disgruntled employee. Business owners have seen a dramatic increase in the number of lawsuits filed against employers for employment related grievances and there is nothing to suggest that the trend won’t continue.

Many of the claims brought against the club owner usually involve accusations of sexual harassment and/or discrimination. Club owners need to be reminded that they are responsible for the actions of their employees and independent contractors. In other words, if you have a manager or trainer who tends to be a little too “friendly” with certain aerobics instructors, you could easily be looking at a \$25,000 claim.

Wrongful termination, discrimination, invasion of privacy, and sexual harassment all fall under the category of Employment Practices Liability. Up until a few years ago, most business owners never worried about this exposure and even today, the vast majority of club owners don’t understand the ramifications of what an employment related lawsuit can do to their business. Frequently, these lawsuits are accompanied by a complaint filed with the Equal Employment Opportunity Commission (EEOC). The EEOC often takes the attitude that the club owner is guilty until proven innocent. Employment related litigation can be costly, time consuming, and emotionally draining.

There are two steps that we can take to address this issue. The first and most important step would be to develop or purchase an updated Employee Manual. The manual will outline what is expected of your employees, address anti-sexual harassment and anti-discrimination policies, and outline the grounds for dismissal. A club owner should not attempt to write this manual on their own. Unless you are an attorney who specializes in employment law, your homemade version of an employee manual could become more of a problem than not having one to begin with. One of the best employee manuals that I have come across in our industry is published by Thomas Plummer & Associates. You can call 1-800-726-3506 for more information. Once you have an employee manual, make certain that all employees have access to it and be prepared to enforce your rules and employment related procedures to the letter. The underlying theme of a good employee manual is simple; “All men (and women) are created equal.” Treat everyone the same and practice zero tolerance concerning any form of harassment. Don’t date your staff and don’t allow your managers to date the staff either. Common sense should dictate a professional atmosphere and a safe work environment.

The next step to consider is purchasing an Employment Practices Liability Insurance policy. An EPLI policy is designed to protect you from lawsuits brought against you by an employee as a result of sexual harassment, wrongful termination, or discrimination. The premium costs are a reflection of the number

of employees you have, your track record with employment related claims, and the area of the country you live in. Keep in mind that most EPLI policies have substantial deductibles ranging between \$2,500 and \$10,000 per claim. Due to the premium costs (\$1,500 - \$5,000) and the high deductibles, most club owners elect to self insure their employment practices exposure.

The health club industry needs to take this issue very seriously. Business is tough enough without the added distraction of dealing with the EEOC and your ex-employee's attorney. Take the time to re-evaluate your management procedures and have an attorney review your employee manual. If you would like a free sample of our Anti-Discrimination / Anti-Sexual Harassment forms, you can email me at [ken@clubinsurance.com](mailto:ken@clubinsurance.com).

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