

## LIABILITY LOSS CONTROL MANAGEMENT

### AVOIDING CLAIMS BASED ON NEGLIGENT HIRING / NEGLIGENT SUPERVISION

#### LEGAL THEORY

The employer, business owner or business management can be held liable under a theory of negligence if they knowingly place in a position of responsibility or supervision a person who is incompetent, irresponsible, a threat to the welfare of others or otherwise unqualified or incapable of performing their assigned duties without posing a threat to the businesses' customers, guests or visitors, and a claim occurs as a result.

The liability thus imposed is based on the management's negligent act in placing such a person in the position of responsibility. It must be established that the hiring management knew, or by the exercise of reasonable care should have known, of the employed person's background or the potential danger created by placing the employed person in a position of responsibility.

A ***position of responsibility*** is defined as one in which the employed person will have regular, frequent contact with members of the general public. There is a higher standard of care imposed in this regard if the position places the person in direct contact (or in a supervisory role) with minor children.

The business owner or management thus has a legal duty to investigate the backgrounds (in particular, the criminal backgrounds) and qualifications of all potential employees in such positions of responsibility, and take action to prevent such employees from coming in contact with the public in the course of company business.

#### WITH RESPECT TO "VOLUNTARY IGNORANCE":

***A cause of action against the employer exists where the employer remains in voluntary ignorance of facts concerning the danger in a particular act or instrumentality; such ignorance is the equivalent of negligence. It is not essential that the employer should have foreseen the precise injury that resulted from the act or omission of the employee.***

## HOW TO MINIMIZE YOUR EXPOSURE

- ✚ Perform background checks on all applicants. Special care should be taken in instances in which the nature of the job requires the employee to be entrusted with duties that require frequent direct contact with, or pose particular hazards to, the public – especially if minor children are involved.
- ✚ Applications and resumes should be checked carefully. They may reveal matters that a prudent employer should investigate prior to making a hiring decision. Obtain a written authorization/release to verify the representations made on an application or resume, and to otherwise investigate the applicant's background. When an application or resume reveals gaps or frequent changes in employment, investigate those circumstances closely. Make sure applicants completely fill out application forms.
- ✚ When possible, do not hire an individual until a pre-hire background check has been completed.
- ✚ Make certain that all employees, supervisors and management personnel are thoroughly trained with respect to their duties and responsibilities. This is especially important when an employee's duties or responsibilities involve special hazards or extensive involvement with the public, such as counselors, guides, coaches, instructors or group leaders.
- ✚ Document all training methods used. This documentation should include information concerning who was trained, when the training occurred, and the content of the training.
- ✚ Monitor and document the performance of every employee. An employer should take steps to ensure that every employee receives some sort of regular feedback with respect to performance.
- ✚ Put all work rules and policies into writing. These rules should be distributed to employees, who should sign a document indicating that they received, read and understand these policies.
- ✚ Take prompt remedial action in the event of any failure to comply with these work rules and policies.

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