



Post-Pandemic Workforce Trends Could Lead to Liability



Though retail and restaurants have been hit particularly hard by the lack of employees this year, technology, insurance, healthcare and other skilled-worker sectors are also struggling to find qualified employees. The result is twofold: Some employers are increasing their training programs to get workers the skills they need, while other employers are hiring any warm body who will show up and are getting them online without adequate instruction.

A survey by The Conference Board released in June 2021 indicates that 80% of small businesses in industry and manual services are having a difficult time finding qualified employees. Moreover, retaining workers in those sectors is hard or very hard for 49% of respondents.

Onboarding new people who don't have the requisite skills – or in some cases the motivation to perform well – represents a few liability problems for employers:

- Injuries to workers
- Harm to others
- Wage and hour disputes

- Workplace misconduct

Safety is an issue

A 2016 survey by the Golden Triangle Business Roundtable found that 43% of reported workplace injuries were filed by employees with less than five years of experience. That is consistent with statistics from previous years from the U.S. government. The U.S. Occupational Safety and Health Administration suggests that lack of safety training is a top reason for such injuries. For best results, OSHA recommends using vocabulary that workers understand and emphasizing that rules must be followed at all times – no exceptions. OSHA also stresses that supervision must be adequate.

That said, employers know well that worker shortages make sufficient training and attentive supervision almost impossible. The fact is that rapid onboarding is essential. The result could be a developing workers' compensation crisis.

To reduce your chances of employee injury, first establish order, then enforce compliance. Ask your insurance agent or broker for some basic safety-plan templates for your type of business. Your workers' compensation insurer may also be willing to help get you started on a successful risk-management program. These resources likely include a safety manual, an employee handbook, and checklists that supervisors can use as daily reminders for staff. Take advantage of these tools, and integrate safety into your culture to prevent worker injury, especially for your new hires.

Employee injury, however, is not your only concern. Inexperienced workers can harm customers, clients and patients, putting your business in jeopardy of a serious liability lawsuit.

Hospital infections, wrongly administered medications, accounting errors, burns and cuts from hairdressers, contaminated food – the list of customer and client personal injuries goes on and on. If you add vehicular accidents and damage to property, you could write a book. When a customer, client or patient is harmed by your employee (or even your subcontractor), you can expect a personal injury lawsuit.

Such claims against your business are typically handled under either your commercial general liability insurance policy or your professional liability policy (sometimes called errors and omissions or malpractice, depending on your business). While legal defense costs are of concern, a growing problem is the escalating cost of judgments where negligence is shown. Personal injury lawyers will look for evidence that your workers were untrained, careless or unsupervised.

Know that multiple such claims by injured parties can make you a high risk and drive up your costs of insurance. It's far better to invest in prevention through training and attentive supervision of inexperienced workers. Remember not to expose yourself to allegations of negligent hiring. For example, in the haste to onboard staff, don't skip the background check or a review of a motor vehicle report on your drivers.

Wage and hour disputes

With the employee shortage and lots of last-minute call-outs, workers are often asked to come in on short notice, stay longer than scheduled and work extra hours. In all these cases, keeping track of hours and pay can become a

challenge. If an employee is shorted on pay or assigned too many work hours (especially for teens), your company can face wage and hour complaints. While some of these grievances may come directly from employees and be remedied by you immediately, others may come from the government.

A wage and hour insurance policy can help protect your company from the costs of legal defense against these complaints. This coverage isn't offered by every insurer, but if you have many employees and decentralized management over scheduling, it may be a worthwhile policy to carry. Talk to your agent or broker about its applicability to your business.

Outside of wage and hour complaints, errors in employee benefits administration are a big risk, especially when there is a lot of employee turnover or when benefits administrators are inexperienced. Recordkeeping mistakes can nullify or diminish benefits. If this happens, an employee can sue your company for the ensuing financial losses. It is crucial that you have employee benefits liability insurance if you offer a retirement, health or disability plan to your workers. Such coverage sometimes can be added (endorsed) to your commercial general liability insurance. In other cases, you may purchase it separately. Your agent or broker can help you decide which is best.

Don't forget workplace misconduct

With the pressure to fill staff slots and get people trained on basic duties, instruction on workplace conduct may fall to the back burner. That can lead to complaints about inappropriate co-worker or supervisor behavior. Such violations typically center on discrimination and sexual misconduct, but your company can also be accused of wrongful hiring and firing.

All of these accusations are addressed by employment practices liability insurance. But don't rely on coverage alone. Make sure misconduct is addressed as part of new-hire training and is periodically refreshed for veteran employees.

A word about older workers

With the economic challenges the United States is facing, many employees are staying on the job into their 60s and even older. While we have addressed the liability issues employers confront with new hires, it is important that businesses also be sensitive to the needs of older employees. Balance, hearing, vision and reaction times may decline with age, and the demands of a new culture of interpersonal relations may be unwelcome or at least unfamiliar. Companies need to collaborate with all generations of employees to create a safe, hospitable workplace.

Employers are not alone

During this tight labor market and at all times, your agent or broker and your insurers want to help you keep employees safe and avoid claims. Avail yourself of the resources they have at hand – many of which are free or come as part of your policy benefits.

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