

Regulatory/Law

By Andrew McElwee

Employment practices risks also apply to homeowners who hire domestic help.

Opening the Door to a Lawsuit

Accusations of harassment and discrimination have worried office employees for years, but now employment practices risks have entered the home.

More homeowners today are exposed to wrongful employment allegations. Nannies, housekeepers, cooks and other domestic workers are filing lawsuits against their employers, claiming discrimination, sexual harassment and wrongful termination. Although allegations are surfacing all over the country, many cases don't make the headlines because they are settled privately.

Jury awards, defense fees, and settlement amounts are increasing. Jury Verdict Research reported that the 2003 national median compensatory jury award rose to \$250,000 from \$168,000 in 2001. This litigious environment gives insurance agents and brokers the opportunity to advise their clients about reducing their exposure.

Anyone who hires domestic help is at risk. In 2000, the U.S. Census Bureau reported that there were about 28.4 million two-income families. Many two-income families may not have the time to cook, clean, garden and watch their children. According to the U.S. Department of Labor, homeowners employed 896,000 maids and housekeepers in 2003. With the growing economy, both this and the number of employment practices lawsuits are expected to rise.

Agents and brokers can help their clients identify the risks surrounding domestic help. When a domestic employee walks through the door for the first time, the household becomes a place of employment, and the homeowner becomes an employer who can be held liable for obscene, discriminatory or offensive conduct. Homeowners can misunderstand their responsibilities as employers because the household is an informal space, and verbal contracts can often be vague.

Homeowners should realize that they cannot totally control the work environment. They can be held liable for children, friends, neighbors or guests that discriminate against or harass their employees. Over a period of time, a handful of seemingly innocent jokes can create a hostile working environment.

Agents also should be aware that affluent individuals have a greater risk of domestic employment litigation. Domestic workers may be more likely to sue affluent employers because they think their employers have deep pockets. If the case goes to court, juries can side with the underdog, instead of the wealthy employer.

Front-page domestic lawsuits can damage one's social standing and reputation within the community and the workplace. Even if accusations of wrongful employment acts are false, they can cause the accused to lose business clients, and there is no guarantee that he or she will fully recover.

Homeowners can reduce their exposure by adapting some corporate practices. First, homeowners can clarify the

terms of employment by writing an agreement that should specify work responsibilities, work hours, amount of pay and vacation time. They should also include the amount of notice each party must give before terminating the work relationship and the conditions under which the employee can be fired.

Agents need to advise their clients that homeowners and umbrella policies exclude employment-related exposures.

Due to changes in financial circumstances, homeowners occasionally have to make budget cuts. To help avoid a wrongful termination suit, the agreement should contain a clause that allows the employer to terminate the employee without cause or reason.

Second, employers should take steps to educate themselves and their families about their responsibilities toward domestic employees. Family members should understand which actions and kinds of speech are inappropriate in the presence of domestic employees. Racial and sexual jokes and slurs can create a hostile work environment.

Fortunately, insurance agents can provide their clients with employment practices liability coverage. Agents need to advise their clients that homeowners and umbrella policies exclude employment-related exposures. For the few companies that now offer domestic employment practices liability insurance, the policy is available either as an add-on to homeowners policies or as part of an excess liability policy.

Employment practices liability insurance provides coverage for settlements, legal fees and jury awards for insured employers accused or convicted of wrongful employment acts. In addition, this insurance can help pay public relations expenses to minimize the damage to the homeowner's reputation.

Homeowners should be aware of the many risks of employment practices litigation but should not be too fearful to open their doors to domestic help. Agents can help by encouraging their clients to draft contractual agreements and educate their families. Such tips can help create a respectful and comfortable working environment. This comfortable environment will enable homeowners to feel safe inviting domestic employees into their homes. **BR**

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