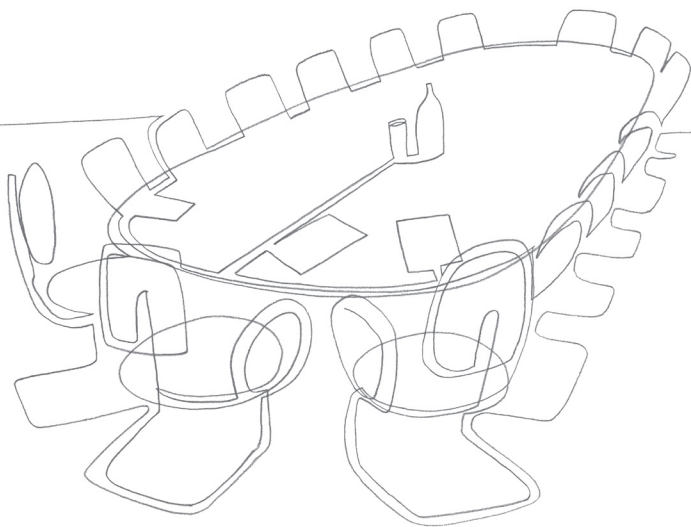


Beazley Insight

Why Restaurants Should Plan for Employee Lawsuits

by Carrie Brodzinski



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Restaurant owners and operators don't usually like to think too much about the potential for employee lawsuits. That is understandable. Who for example would rather read *Jury Verdict Research*®, which spells out in gruesome detail the costs of employment practices litigation, than focus on building their business?

The sad reality, however, is that if you don't focus on certain downside risks (and for restaurants, employment-related litigation is one of the biggest), you may not have a business to build.

Nationwide, employment litigation is booming.

Employers of all sizes can find themselves defending against allegations of discrimination, harassment or violations of wage and hour laws, and the costs can be astronomical. According to the 2006 edition of *Jury Verdict Research*® the average verdict in an employment suit is over \$600,000. The average verdict if discrimination is alleged is \$656,000, and this increases to over \$1,000,000 if the suit is brought in state court. These figures don't include defense expenses, which can run well into six figures. When you consider that an employer has a 63% chance of losing that suit, the possibility of facing the unexpected cost of an employment suit is sobering.

The restaurant industry is particularly vulnerable to certain types of employment litigation, particularly for discrimination and harassment. Restaurants tend to have fairly high employee turnover, and it is often difficult to ensure that company policies prohibiting discrimination and harassment are being adhered to by an ever-changing employee population. Many restaurants also have very young employees who may be entering the workforce for the first time and are less aware of, or sensitive to, prohibited behaviors. Because the interactions between employees form the basis for many of these claims, it is difficult for restaurants to manage their exposure.

Restaurants are also susceptible to claims alleging violation of wage and hour laws. The majority of restaurant employees are nonexempt workers who are subject to these laws. Wage and hour claims are extremely prevalent and can come in a variety of forms. One common scenario is a claim for miscalculation of wages or overtime. Another common scenario is a claim by employees that they have been misclassified as exempt workers, and therefore denied overtime payment to which they should be entitled. In the restaurant industry, such claims are frequently brought by managers or assistant managers. Many of these claims are brought as class actions, and the employees are often victorious. A class action wage and hour claim is extremely expensive to defend and can have a severe impact in terms of distraction and time lost for the restaurant's management as they try to reconstruct payment histories and detail job functions.

Third-party claims for discrimination have also hit the restaurant industry hard. These claims are brought by patrons of the restaurant rather than employees, but they are similar in that the basic allegation is discriminatory treatment; the patron wasn't served or was served a substandard product because of their minority status. Claims of this type have generated national headlines and had a devastating impact on the defendant companies' brands. What can restaurants do to protect themselves from these claims? If you haven't considered purchasing an employment practices liability (EPL) insurance policy, you should. If you have a policy already, you should thoroughly review it to be sure you are getting the most advantageous terms. Examine the policy to see whether there is coverage for third-party and wage and hour claims.

EPL policies offer restaurant employers the obvious advantage of transferring risk. They will pay defense and loss associated with covered employment claims, but they also offer other advantages that are often overlooked. Many of today's EPL policies offer free risk management support to insureds. These risk management programs range from printed resources like articles and reference guides to sophisticated online systems that employers use to train employees on topics such as preventing discrimination and harassment.

The EPL insurance market is extremely competitive, and there is often little difference in premium from one insurer to another, but the relative quality of different risk management services can be like night and day. If an individual restaurant were to try to purchase a high-quality online system for its own use, the cost would often be more than the cost of the EPL premium alone. Careful consideration of this feature of an EPL policy is essential for any restaurant that is serious about managing its exposure to employment claims.

The best way to protect against the unexpected cost of an employment claim is to take proactive steps to avoid behavior that can lead to claims. Transfer of risk through insurance is an important backstop once a claim arises, but the best outcome for an employer is to never have a claim at all. With the right EPL policy, restaurant owners transfer risk and have the tools to prevent claims as well.

Carrie Brodzinski manages Beazley's employment practices and private D&O coverage. Beazley specializes in insuring the hospitality industry and has developed an online risk management resource called BeazleySource to help employers avoid employee claims. This article was first published in the April 2007 issue of Restaurant Forum.



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