

# Non-Profit News From The Desk of.... The Andersen Insurance Group



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A Publication of The Andersen Insurance Group

Volume 12, Issue 4

Special Quarterly Edition

4th Quarter 2017

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### ***Fast Facts***

- A recent report by The Equal Employment Opportunity Commission (EEOC) indicated that in 2016 there was a **12% increase in racial discrimination charges**, an **18% increase in retaliation related cases** and a **15% increase in discrimination filings based on age**.
- A recent report by Willis NA indicated that study participants identified **three significant cyber risks to their business; theft of confidential information (65%), loss of reputation (50%) and direct loss from malicious acts by hackers and viruses (48%)** yet **only 6% of companies purchased insurance** to protect their company from these risks.

### ***From the Desk of Frank Andersen...***

In addition to an impact on your profits economic uncertainty can also lead to lawsuits against you from parties close to you; your employees. Studies show that when workers feel their jobs are at risk incidences of lawsuits brought by employee's increases. Up until recently the number of employment related lawsuits appeared to be holding steady. Most of these claims stemmed from issues surrounding racial discrimination or retaliation. Unfortunately, new reasons to sue an employer have emerged and include the following:

- **Workers Needs Lawsuits**. The number of lawsuits brought by employees alleging they were discriminated against due to care giving responsibilities has increased 400%.
- **Age Discrimination Lawsuits**. As our population ages the number of such lawsuits is likely to only increase
- **Wage and Hour Lawsuits**. These are lawsuits that allege that an employee should have been paid overtime pay but was not. Typically, claims associated with these situations are not covered by insurance. The Supreme Court is currently hearing a case to determine if workers covered under employment contracts can file claims as a single class rather than accept arbitration.

In addition to purchasing employment practices liability coverage there are other measures you can take to prevent such lawsuits. These include offering employee assistance programs to help employee deal with the stress of caring for a loved one and consulting with your accountant and carefully reviewing the exempt vs. non-exempt status of your employees. If you have any questions about employment related claims please feel free to contact us.

### **Did You Know?**

While data breaches by hackers get all the headlines the reality is that small to medium size businesses are at the greatest risk for loss and 1/3 of all breaches are actually due to employee error.

### Should you be Concerned About your Website?

The internet has revolutionized the way we do business. Statistics show that **more than 95%** of businesses utilize the internet in the daily course of their business and **nearly every business is participating in some form of E-Commerce.** Cyberspace activities being performed on the internet are constantly evolving and many of these activities generate similar exposures to that of traditional media companies such as publishers, news organizations and advertising agencies.

As a result, the internet has created the potential for significant, uncovered loss exposures. An analysis of the personal injury and advertising injury provisions of the **Commercial General Liability** policy are critical for entities disseminating information or conducting E-Commerce on the internet. There is a great deal of uncertainty about how these provisions will be applied to claims arising out of electronic media content and many insurance companies have modified their policies to exclude claims arising from electronic content and social media platforms.

It is important for an organization to review the full nature and extent of internet related activities being conducted along with reviewing the provisions in your current **General Liability Policy** in order to determine the most appropriate way to cover these significant loss exposures. Please feel free to contact us if to you need assistance in evaluating your website related exposures.

### Importance of General Liability Coverage

***Do you read all the contracts that you enter into?*** An insurance policy is a legal contract and although it is lengthy, it is important to read and understand the terms and conditions in your policy. ***General Liability Coverage*** is an area of particular concern to life science and technology companies.

General Liability Coverage protects your organization from lawsuits filed by third parties alleging either bodily injury or property damage. Jill Wadlund in the Journal of BioLaw & Business points out that trial lawyers, drawing on their successes in asbestos and tobacco lawsuits are aggressively targeting other industries and businesses. There are class action lawsuits that have been filed on behalf of ***thousands of plaintiffs seeking billions of dollars in compensatory and punitive damages.*** There are several key provisions to consider including:

- Does your policy include Products and Completed Operations Coverage?
- How does your policy address Additional Insureds? How familiar are you with the concepts of risk transfer?
- What are the limits of insurance on your General Liability Policy? Are you familiar with Umbrella Liability Policies?

If you have any questions about General Liability Coverage please feel free to contact us.

### Employees vs. Independent Contractors

A question we are often asked is whether or not a worker is categorized as an employee or an independent contractor. While this is primarily a financial and/or tax concern misclassifying a worker can have other unanticipated risks. For example, if a worker is misclassified as an independent contractor and suffers an on-the-job injury a company could be held liable for the injury without the protection afforded by workers compensation coverage. Additionally, independent contractors can often be excluded from coverage under employment practices policies and errors & omissions policies.

Here are some suggestions to help minimize the risk of misclassifying an employee as an independent contractor:

- Whenever you contract work with an independent contractor **use a written contract** approved by your attorney.
- **Compensation for the independent contractor should not be on an hourly basis.** This is how you would typically pay an employee. Compensation should be tied to the performance of a job.
- **Independent contractors should not be afforded the same benefits you would provide your employees.**
- Unless it is unavoidable, **you should not determine the work hours for the independent contractor.**

One key factor in defining whether or not an individual is an independent contractor or an employee is the degree of control you have over how the individual performs the contracted job. The less control you have over the individual the less he/she will be likely to be found to be an employee. It is always important to seek legal advice from an attorney or CPA if you have questions or concerns about classifying an individual as an independent contractor or an employee.

### A Word about Drug Testing...

**Did you know that 8%-10% of employees in any organization are likely to abuse drugs yet only 4.5 percent are detected?** While **90 percent of drug testing is done only on a pre-employment basis,** most drugs are detectable for a maximum of 3-4 days and drug abusers simply stop taking drugs for a few days, gain employment, and resume their risky behaviors. Some organizations have adopted alternative approaches including

- On-site oral-based drug screening.
- Hair testing

The impact of drug abuse on an organization is often overlooked. Drug testing is relatively easy to implement and legal in most states. Programs are available which often can be tailored to your firm. If you have any questions about the potential benefits of a drug testing program to your organization please feel free to call us.