

TRANSNEWS

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Trans-News is a newsletter for our customers dedicated to bringing you useful and timely information about safety, loss control, insurance and industry issues.



Please contact us with any questions, comments and ideas!

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Here's what you'll find in this issue:

- Safety Tips
- The Driver's Seat
- Did you know? Who cares?



The Driver's Seat

Penny Wise & Pound Foolish

In the last two issues of Transnews, we have broadly discussed various insurance topics that go to the heart of protecting your assets. The most obvious and visible of course, is your automobile coverage. After all, you are in the public transportation business. But there are other more sinister types of protection we all need as businessmen that are sometimes overlooked. Some of the economic minefields we face as businessmen have been foisted upon us by regulation and law created in part by necessity and in part by politically correct do-gooders. They have made the normal operation of our businesses so complicated and confusing that it takes a full time position just to keep up with all the regulations, rules, mandates, filing requirements, etc. And not just on the federal level but state and local as well.

So what am I specifically referring to? Let me keep you in suspense awhile longer. Have you heard of the Civil Rights Act of 1991 or, the Americans with Disabilities Act or, Age Discrimination in Employment Act or, Equal Pay Act or, ... get the message? We are all subject to these laws whether or not we know of their existence or whether we feel they are applicable to our specific operation. These are the laws of the land that govern every aspect of our business lives. If you violate any of these statutes, knowingly or not, to the point where an employee or ex-employee can prove that they have been wrongfully and unfairly treated, you could be held liable. Legal challenges on behalf of plaintiff employees was the fastest growing area of the legal profession during the 1990's. So how do I protect my business from these suits you may ask? Well, you've come to the right place. However, this area is so broad and far-reaching we couldn't possibly do the topic justice in a newsletter format. Besides, I must confess, I am not an expert in the field. Although, I know enough to protect my ass(ets) by purchasing Employment Practices Liability Insurance.

It's Monday morning in the bus barn and cute driver Mary, who has had the attention of Joe the dispatcher for sometime, is looking particularly perky today. Joe, who in the past has made provocative comments, holds true to form and embarrasses Mary in front of several other drivers. When prior comments have been made, Mary told Joe to "knock it off. I don't appreciate your remarks." But Joe, using his authority as the dispatcher, disregarded Mary's pleas. Well, today was the last straw. Mary turns to Joe and her last words before leaving the bus barn were, "You will be hearing from my attorney." As the owner, you are totally unaware of any of this until the day you are served with a Summons and Complaint. Are you protected? Who will provide defense? And your brother-in-law or your best golfing buddy who is the local will drawer is ill prepared to provide a defense. You need counsel that specializes in these cases and typically, they aren't cheap. Is there a way to protect yourself from these situations? Of course there is.

Discrimination comes in many forms and they're all ugly. Discrimination can be racial, ethnic, gender or age. We can have discriminating tastes in wine or in objects of art or in animals. But we can not discriminate against a person. And yet as clear and simple as it sounds, it may be convoluted. For example, we can not discriminate for age but we know that a driver's ability to respond to driving situations decreases with age. Some of the worst school bus accidents in recent years have come at the hands of drivers aged 72 or older. And yet if you were to dismiss all your elder drivers without cause, wouldn't you be practicing age discrimination and possibly be subjecting yourself to a lawsuit? Is there a way to protect yourself from these situations? Of course there is.

"The Driver's Seat" cont'd...

liability. It is very important therefore, to select an adequate limit of liability at the outset. This should be predicated on your size, annual receipts, structure of your human resources department (if any), personnel controls, adherence to federal, state and local statutes, etc.

As I indicated early on, EPL liability is a field unto itself. It deserves a great deal of time which cannot be properly addressed in a newsletter format. But it is a critical area of protection that many public auto operators avoid because of ignorance of its availability or attempts to keep costs down. There is the old saying, "a penny wise and a pound foolish." EPL claims can come at any time from an employee or ex employee that you never suspected was compromised in any way. The accusations may be groundless and totally false. But the cost to defend yourself can be an extremely expensive process.

I hope I have given you things to consider and perhaps some of you can relate to incidents in your own company where you were concerned someone might drop the hammer on you. If you have further questions pertaining to any aspect of EPL, you know where to contact me. Don't put yourself in a position of losing a great deal of what you have worked for because someone else feels they have been unjustly treated.

"The Driver's Seat" cont'd...

Perky little Mary is back on the job and you have dispatched dispatcher Joe. Your new dispatcher, single, good-looking Frivolous Frank has a reputation of being quite the lady's man but has kept his escapades out of the work place. Perky Mary has eyes for Frank but is being rejected because Frank is a conscientious employee and all business. Mary is upset by Frank's inattentiveness and goes to the boss and fabricates a story that Frank has been hitting on her. Not wanting another lawsuit, you show innocent Frank the door. Uh-oh! Two weeks later you're served again. This time for wrongful termination. Is there a way to protect yourself from these situations? Of course there is.

It's difficult hiring qualified drivers these days so in your weakest moment you hire Demented Dan. Dan has had several run-ins with the law and he isn't the sharpest knife in the drawer but you feel sorry for him and you need a warm body to drive. Dan and Stupid Steve haven't hit it off from day one. They are in the midst of a heated argument when Dan introduces Steve's head to a lug wrench. Steve's head, being a bit more fragile than steel cracks open like a raw egg. Uh oh! Two weeks later you're served again. But this time you say, "hey, wait a minute. I've got Workers Compensation. Steve's injuries are covered." But your attorney reads the lawsuit a bit more carefully and you're not being sued for Steve's cracked head. You're being sued for failure to

provide a safe workplace. You're being sued for a related workplace tort. Is there a way to protect yourself from these situations? Of course there is.

These simple vignettes are examples of Employment Practices Liability insurance. Any one of these situations or similar occurrences could be extremely costly to a business and in reality, bankrupt a company. Protection against EPL lawsuits should be as commonplace as your auto insurance or worker's compensation. Let's take a quick look at what a typical EPL policy covers.

"IS THERE A WAY TO PROTECT YOURSELF FROM THESE SITUATIONS?"

There are three basic insuring agreements in an EPL policy. The first is the Indemnity Agreement. This is broad language that simply states that subject to the terms, limitations, conditions, definitions and other provisions contained in the policy, the company will pay all loss amounts the insured is legally obligated to pay as a result of an insured event.

The second is Defense. The company has the right and *duty* to defend any claim because of an insured event to which this insurance

insurance applies made against the insured. Note I italicized duty. This is because the company must provide defense which, as in many cases, winds up being the most expensive aspect of an EPL action. It should also be noted that defense costs, in most cases, is part of the limit of liability and not in addition thereto. Therefore, as defense cost mount in a legal proceeding, your limit of liability decreases proportionately.

The third is Other Benefits: These are not as broad as one would believe. They are commonly limited to Pre and Post Judgement Interest. Courts have typically determined that the meter on awards commences on the date the incident occurred and possibly earlier. Therefore, when calculating the judgement, interest on the money the employee receives might be subject to the court's tacking on interest. This would be covered but as we have seen with defense costs, these too are part of the limit of liability and not in addition thereto.

There are certain caveats to be aware of when selecting a limit of liability. As we have seen, all costs associated with the defense and judgements reduce the amount of liability available. The typical policy further qualifies the limit of liability by stating that the insured limit is the most the company will pay as a result of one event. Furthermore, the limit of liability is also an annual aggregate. Which means that regardless of the number of events or monies paid in settlement or defense, the maximum amount the company will pay in one policy period is the limit of



SAFETY TIPS

Pass With Caution

Have you ever been in the process of passing another vehicle and found yourself running out of room? Or maneuvering around a stopped vehicle and having a closer call with oncoming traffic than you thought you would? On-coming vehicles often approach faster than you would anticipate or fail to respond to your presence appropriately. If this happens while passing another vehicle, and you have not cleared that vehicle to move back over into your lane, you could be in for an accident - one that is your fault and preventable.

Passing can be a dangerous maneuver. All drivers, but especially those of us who consider ourselves Professional Drivers, should ask ourselves two

questions before attempting *any* pass, especially one on a two-lane roadway.

First, ask yourself, "is this pass necessary?" All too often, very little is gained by passing. You may find yourself behind another slow-moving vehicle. Or, after traveling a short distance, you have to turn off the roadway. This causes the vehicle you just passed to slow down or brake. A favorite of mine is seeing someone zip past only to be caught at a light or stop sign shortly ahead of me.

Second, ask yourself, "will this pass be safe?" There are several things to consider. For example, must I exceed the speed limit to make the pass?

Will the other vehicle speed up if I try to pass? Will he/she drift over the line and crowd me? Is the oncoming vehicle far enough away from me to safely complete the pass? Are there cross streets or intersections ahead? Is there a curve up ahead that limits my visibility?

If you decide to pass at 50 mph and the oncoming vehicle is also traveling at 50 mph, the closure speed is 100 mph, and the closure 'rate' is 150 feet *per second*. Closure rates of this magnitude are why head-on collisions rarely leave any survivors.

There are times when it may be necessary and advisable to pass. But, under no circumstances should a pass be considered unless it can be completed safely.

Preventing Slips, Trips & Falls

You often see it as a comedy bit: a slip and fall that is used at an unexpected moment for laughs. We've all slipped or tripped, sometimes fallen, and usually the first thing we do is look around and hope no one saw us. The truth of the matter is that slips, trips, and falls are not funny, and they usually hurt more than our pride.

We have heard about or seen (if not experienced) examples of the seriousness of slips and falls in our workplace. They are sudden and unexpected, and many times the result can be painful or even a permanent injury.

Basically, slips and falls can

happen almost anywhere and can be caused by a number of things. Most happen at floor level and are not falls from high places. About 75% of these slips and trips occur on walking surfaces, such as floors, stairs and sidewalks. Most are the result of unsure footing. They can occur on any surface, especially when that surface has mud, snow, water, oil, ice, grease, or any other slippery substance on it.

Mats, rugs, and runners can also be hazardous if they slip or slide, or are torn or curled up at the edges. Uneven or defective surfaces, littered floors, telephone wires and electric

cords, open drawers, or anything else that projects from the walking surface may cause a fall.

Stairways present another tripping problem, whether they're a poorly lighted set inside a building, the outside steps to your building, or steps from the parking lot to the dock. Stairs should be kept clean and free of any materials. Cartons, boxes or other items should not be stored on stairs. Handrails are a must and should be used *every* time you go up or down the stairs.

Other invitations to a fall include climbing on shelves, chairs, boxes, or other makeshift ladders

(Continued on next page)

SAFETY TIPS

SLIPS, TRIPS, FALLS (Continued)

to reach higher. One of the most basic safety rules is to use the right tool for the job, and that includes ladders and stools.

In using ladders, there are quite a few items to be observed. Among them:

- Inspect ladders before use. Do not use defective or damaged ladders; remove them from service. Tag and repair them, or destroy them if they can't be properly repaired.
- Do not stand on the top step of a ladder. If you cannot reach your work tasks, get a different ladder.
- Make sure anti-slip safety feet are present on extension ladders.
- Always face the ladder when climbing or descending.
- Keep the body ("belt buckle") centered between the side rails. Don't overreach. Move the ladder instead.

One other item critical to preventing slips and falls is proper footwear for

the job. There are times when we have no control over the walking surface. These are times when it's really important to consider what type of shoes to wear. There are many types of slip-resistant footwear on the market, from shoes to "slip-on" attachments.

There is always a slip, trip, or fall waiting to happen. Even if you avoid the fall, just trying to regain your balance when you slip can pull muscles, tear ligaments, and cause damage to your back. Here are a few reminders so that slips, trips and falls don't get you down.

- Whenever you see spilled liquid on a floor, clean it up immediately.
- Report all hazardous conditions immediately, unless you can take care of them.
- Do not climb over cartons on boxes, or use them as a makeshift platform or ladder.
- Use the right ladder for the right job.
- Always use the handrails when going up or down the stairs.
- Carry only what you can reasonably handle while keeping your balance.

- Stay alert, and always expect the unexpected.

DID YOU KNOW?

MICRO-SLEEPS

Did you know that in 10 seconds, a truck, bus or passenger vehicle at highway speeds could travel 880 feet, nearly the length of three football fields? A micro-sleep is an involuntary reaction by the brain to lack of sleep. The eyes may be open, but the brain is not processing information. Micro-sleeps can last up to 10 seconds. **When they occur, no one is driving.**

Prevention: Sufficient, quality sleep.

Two to A Customer

When a baby is born it is gifted with five senses - Sight, Hearing, Taste, Touch and Smell. (Certain birth defects may deprive a child of one or more of these senses). We all take for granted our ability to use these senses from the time we wake up until we go to bed at night.

We wake up hearing the sound of the alarm clock and we look to see what time it is. We can smell the coffee brewing, feel the hot water while we shower and we certainly expect to taste our breakfast.

Just suppose you were required to progressively give up four of your five senses - which one would you

choose to keep? The first to go would probably be your sense of touch. While difficult to live without, you could handle it. The next would probably be smell and then taste. Loss of hearing is certainly less important than loss of sight. Now, no one wants to be deaf, but there is little question we would rather be deaf than blind. Sight is the one sense nobody would want to be without. Studies have determined that approximately 80% of what we know (our knowledge) comes to us through our eyes.

Sight is by far the most precious sense we have been given. If this is true, why then do we take so many chances when it comes to

protecting our eyes? Every day, people suffer serious eye injuries and many are blinded for life. They have one thing in common - they failed to wear appropriate eye/face protection. Most shop workers have at one time or another gotten debris of some nature in their eye when not wearing eyewear. For those who don't, it's a game of Russian roulette .

What about you? Are you taking chances with your most precious 'sense'? Common sense says you should protect them at all costs - they are the only two you will get.

Did you know?

Who cares?

- 1. Can you name the 10 parts of the human body that are 3 letter words?**
2. According to "Smurf" Legend, when can a "Smurf" be born?
- 3. What was Underdog's secret identity?**
4. What was the original title of the Beatles movie, "Help"?
- 5. What are the names of the Kings in a standard deck of playing cards?**
6. Before the American flag was officially limited to 13 stripes, how many stripes were there?
- 7. Which President initiated the Inaugural Ball and where was it held?**
8. What were the names of Howdy Doody's brother and sister?
- 9. What is the plastic strip on a shoelace called?**
10. Triskaidekaphobia is the fear of what?

- Answers:
1. Arm, ear, eye, gum, jaw, leg, hip, rib, hip and toe
 2. Once in a blue moon.
 3. Shoeshine boy
 4. "Fight arms to hold you"
 5. Alexander, Caesar, Charles & David
 6. 15 - After Kentucky and Vermont joined the Union, Congress felt it was wise to limit the stripes to represent the thirteen original colonies.
 7. George Washington; It was held in NY on May 7, 1789
 8. Double Doody and Heidi Doody
 9. Aglet
 10. The number 13