

# Risk Monitor



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## Consider Safety a Top Priority when Planning Workplace Team-Building Activities

In recent years, team building has gained a foothold in corporate America as a fun and effective management tool. To be successful in the business world, employees must be able to effectively plan and execute programs as a team, communicate clearly, use resources efficiently, and be able to adapt to changing circumstances.

Team building is designed to do utilize these skills, in a fun environment. It can encourage out-of-the box thinking and enhance group dynamics, breaking down barriers that prevent employees from working together as a team. Activities foster decision-making, challenge resolution and leadership skills. Exercises can be designed to encourage individuals in a group to entrust their safety in one another or to experience the exhilaration of overcoming a physical challenge. Participants return to work infused with renewed vigor. The goal is to transfer the collaborative effort, positive energy and learning that take place during a team-building activity back into the workplace.

But team building can also be a risk manager's nightmare when activities include dangerous physical elements. Companies must consider the risks involved in such hazardous activities. They can lead to an increase in the frequency and severity of employee injuries, leaving the company vulnerable to higher workers' compensation costs - not to mention employee lawsuits.

If team-building activities are part of your company's management philosophy for bringing employees together to work cohesively as a group, make certain that safety is part of the equation. Consultants brought in to design such programs should know

your expectations and concerns and abide by them. A company in Miami that hired a consultant for team building found that a dozen or so of its 100 employees suffered 1st and 2nd degree burns when they were forced to engage in a firewalk. The consultant called the injury rate "acceptable."

Activities such as white water rafting, rock climbing, and paintball may not be suitable for all employees. Besides the physical hazards, planners need to consider whether or not an activity might be embarrassing for some employees. An activity that requires participants to wear a bathing suit, for example, may make some employees self-conscious and inhibit their ability to fully engage in the collaborative effort.

### To promote safe team building:

- Include team-building activities as part of any formal risk management program.
- Emphasize the need to exercise caution on the job and in any physical team-building exercise.
- Define your needs clearly to management consultants, hired to design a team-building program.
- Ensure team-building activities are properly supervised.
- Stop any activity if an unsafe situation is observed.

Team building has an important place in business. Activities should focus on bringing employees together. Make team building a safe experience that everyone can participate in and enjoy.



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# Absolute Exclusions Can Leave Your Business Unprotected

Liability insurance policies include provisions, known as “exclusions,” that limit or eliminate coverage. Insurance companies put exclusions in policies for various reasons: Because another type of policy covers that kind of loss, to limit the cost of the insurance, and because some types of losses are so severe that they are uninsurable (for example, losses resulting from a war.) Many exclusions eliminate coverage for some incidents or things but give it back for others. The commercial general liability policy does not cover losses for which the insured assumed liability under a contract, but it gives back coverage for liability assumed under “insured contracts,” as the policy defines that term. However, there are some exclusions, called “absolute exclusions,” that eliminate coverage entirely with no give-back. Left unaddressed, these exclusions can leave a business exposed to large uninsured losses.

Insurance companies did not create these exclusions to cheat their customers. Rather, over the years they found that courts were interpreting policies in ways that the companies had not intended. In the 1970’s and early 1980’s, companies used wording such as, “Coverage does not apply to,” or “to any claim based upon.” They thought this language clearly stated that they did not intend to cover certain losses. Some courts disagreed, found the wording to be ambiguous, and ordered the companies to pay the claims anyway. Because the companies had not expected to pay these claims, they had not charged premiums to cover them. Given the choice between increasing their premiums to cover the losses and tightening up the exclusions’ language to make them more effective, the companies changed the wording.

For example, during the 1970’s courts ruled that liability policies covered pollution incidents, much to the dismay of the insurance companies that issued them. Consequently, the standard CGL policy now states that it does not apply to injury or damage arising out of the “actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape” of pollutants at or from a premises, site or location that any entity insured under the policy ever owned, occupied, rented or borrowed. Further, it eliminates coverage for pollutants the insured transported, sites where it stored them, or brought to a job site by the insured or its contractor. The companies have attempted to make this exclusion

as precise and unambiguous as possible so that they will not receive future surprises in court.

Other types of liability insurance, such as employment practices liability and errors and omissions policies, now have exclusions that are similarly broad in scope. They may include wording that excludes coverage for losses “directly or indirectly “based on, attributable to, arising out of, resulting from, or in any manner relating” to a particular act or hazard. Again, the purpose of this language is to eliminate any possibility of unintended coverage.

**To reduce the chances of uninsured losses, managers should work closely with their insurance agents to identify potential coverage gaps and possible solutions...**



These exclusions can potentially leave an organization with no coverage at all for what may be a catastrophic event. If an employment practices liability policy excludes coverage for anything that the insurance company might construe as a bodily injury, then the organization will have no protection against a claim for emotional distress, which can be the most expensive part of an employment practices loss. The absolute pollution exclusion can eliminate coverage for incidents that occurred many years ago at a property the insured owned but never occupied.

To reduce the chances of uninsured losses, managers should work closely with their insurance agents to identify potential coverage gaps and possible solutions, such as a separate pollution liability policy. The additional cost of these policies is small compared to the financial damage an uninsured loss could inflict. With appropriate insurance in place to fill the gaps, an organization can survive a serious incident.



# Improve Profits By Keeping New Workers Safe

As the economy begins to grow again, businesses will start to add workers to their payrolls. This is good news for those workers and for the economy, but statistics show that the first year on a new job is also very risky to the workers' health. The U.S. Bureau of Labor Statistics reported that 41 percent of work-related injuries occur each year to workers who have been on the job for less than a year. On top of that, younger employees get hurt on the job more often than do their older colleagues. A National Institute for Occupational Safety and Health study showed that workers under age 24 are twice as likely as older workers to have non-fatal workplace accidents. In addition to the pain and suffering these workers endure and the disruption to their lives, employers face increased workers' compensation costs. Therefore, preventing new employees' accidents should be a top priority for all employers. There are several things employers can do toward that end.

- Review and update job descriptions. If management has not recently compared job descriptions to the actual work being done, this is the time to do it. Work tasks are constantly changing as new tasks take priority, old tasks become less important, and technology changes how workers perform current tasks. Without a clear understanding of how employees are performing their work (or, more importantly, how they should be performing it,) managers will be unable to effectively train new employees or to determine why they are getting hurt.
- Conduct training programs that require the employee's active participation. When people learn how to drive, they do not just watch a video or listen to a lecture about which pedal is the brake and which is the accelerator. They get behind the

wheel and actually drive. Safe job performance works the same way. An employee will retain the knowledge far better if he watches a demonstration and then performs the tasks in a safe, controlled environment. He should practice the steps until he can perform them safely. Hands-on training will engage the employee's mind and take advantage of his natural desire to perform his job well and in a way that will protect him. This will result in better work performance and a lower likelihood of injuries.

- Closely supervise new employees. Interactive training alone will not guarantee safe work performance. Supervisors should pay close attention to new workers during their first days and weeks on the job to make sure that they are using the knowledge gained during training and not falling into bad habits. Pointing out unsafe practices and correcting them quickly should instill good habits and make working safely an automatic part of the employee's routine. Ideally, the employee should need less supervision the longer he is on the job without injuring himself or others.

Every day in business, competition becomes more fierce; only high-value, low-cost providers of products and services can thrive. A company gains an edge by attracting and retaining excellent workers and by holding down variable costs. Preventing workplace injuries does both. By making the effort to keep all employees, especially new employees, safe, the company will develop a reputation as a good place to work and reduce workers' compensation costs, adding dollars to the bottom line. Businesses should view workplace injuries as a preventable expense that they do not have to accept.

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2) Aside from believing that a business is immune from lawsuits, believing that they can absorb the costs of a lawsuit is the next most damning myth. Legal action is inevitably costly, and not just financially costly, either. Since in legal situations management staff and other professional members are asked to testify, gather evidence, and perform other actions for the court, the more time they spend on these non-core business activities, the less time they are focusing on the bottom line. Therefore, the more time it takes, the more lost money it costs that business. It is actually quite easy for a business to go bankrupt as the result of a lawsuit.

In addition to the non-calculable cost through lost earnings, an examination of the precise costs to businesses from discrimination lawsuits is very revealing. In two 2005 cases, Wachovia Corporation and Consolidated Freightways agreed to pay over five million and three million dollars to settle their respective lawsuits. In 2004, United Airlines was forced to pay over thirty-six million dollars to settle its own discrimination lawsuit case.

3) The final myth involves business owners failing to understand the full extent of their current coverage. Falsely, many think that general business insurance protects them from discrimination lawsuits, when in fact, it does not. Business owner policies, workers' compensation, general and professional liability policies actually sometimes specifically exclude liability from discrimination suits.

Despite all possible non-insurance precautions that businesses take, EPLI is still the only way to fully protect themselves from the costs of lawsuits based on discrimination. EPLI provides coverage from liabilities like sexual harassment, general discrimination, wrongful termination, breach of employment contract, negligent evaluation, failure to employ or promote, wrongful discipline, deprivation of career opportunity, wrongful infliction of emotional distress, and management of employee benefit plans. Clearly, EPLI provides comprehensive protection from every possible kind of discrimination-related liability.

# Common Misconceptions Causing Business Owners Not to Purchase EPLI

Some of the most common lawsuits heard in courtrooms are discrimination suits against businesses. This is confirmed by the fact that in 2009 over 130,000 complaints were filed with the Equal Employment Opportunity Commission alone. There is no officially estimated figure as to the total cost of discrimination lawsuits on businesses, but a reasonable estimate is around two billion dollars per year.

Fortunately for businesses, there is an insurance product designed to protect businesses from these kinds of lawsuits: employment practices liability insurance, or EPLI. Insurance companies offer EPLI as part of their business insurance product line. However, there is a disparity involved: a lot of eligible companies do not purchase EPLI. Despite the fact that the United States has become a litigious society, and despite the huge costs to businesses who do not have this kind of insurance, it seems odd that so many would resist protecting themselves from this incredible liability.

Regrettably, there are many myths about EPLI that have taken hold in the popular business consciousness. It is necessary to dispel these myths in order to drive home to businesses that they need to protect themselves from discrimination-related litigation.

- 1) Too many companies believe, whether due to the structure of their business or some other factor, that they are immune from

lawsuits. This is flat out false; no matter what kind of company it is or how it is structured, even if it is set up as a corporation, that legal protection can be stripped away instantly by a judge. Depending on the size of the business, it may not have the human resources practices and policies necessary to prevent a discrimination lawsuit. Therefore, if the business does not have that administrative structure in place, they are more exposed than they realize, and thus are a candidate for EPLI coverage.



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