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Categories:

Publications

ALP: My employee accidentally caused a serious injury to someone. What can I expect to happen and what effect will it have on my business?

An employer is legally liable for any damages caused by the negligence of an employee who is within the course and scope of employment when he or she causes injury to another person. Negligence in a personal injury context is simply the failure to exercise reasonable care to prevent injury to another. Because companies are perceived to have "deeper pockets" than individuals, an employer is an enticing target for a personal injury claim. When a potential claim occurs, it is essential to immediately notify your liability insurance carrier or claims administrator to mitigate the effects on your business.

A typical liability insurance policy entitles the insured to both a defense to the claim and indemnity for any judgment or settlement amounts. As long as there is coverage for the claim and the amount of the claim does not exceed the policy limits, the insured need not be concerned about the direct financial impact of the claim. However, indirect costs such as negative publicity, customer and vendor relations, personnel issues and increased insurance premiums must also be considered.

In addition to vicarious liability for the negligence of an employee, an employer can face direct liability for an accidental injury if a claim of negligent hiring, training or supervision is made. However, an employer is not ordinarily liable for an intentional injury inflicted by an employee, unless the employer knew or should have known about it and failed to take reasonable steps to prevent the injury.

It takes only a sheet of paper and a filing fee to file a personal injury lawsuit. Usually, the legal complaint will name the employer and the employee as defendants. In most states, any liability will be joint and several. This means that, if the Plaintiff ultimately obtains a legal

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judgment, he can collect it from either defendant. Regardless of the merits of the lawsuit, the defendants will have to defend it. The cost of defending a lawsuit cannot usually be recovered, even by the winner.

The types of damages claimed in personal injury lawsuits vary, but generally fall into two categories. Most lawsuits claim both "special damages," which are theoretically capable of being proved to be a specific dollar amount, and "general damages," which are amorphous amounts that are left up to the court to determine. Special damages in a personal injury claim include medical expenses, lost wages, permanent impairment and replacement services loss. General damages include "pain and suffering" and punitive damages.

The dollar amounts claimed in a lawsuit are determined by the attorney for the claimant, and may or may not have a basis in reality. To determine your degree of risk or exposure for a particular claim, an experienced claims professional should evaluate it. Information is the key to resolving a personal injury liability claim. If the claimant is represented by a lawyer, you may receive a "demand letter" describing the accident and injury in a manner intended to motivate you to pay a lot of money on the claim. The demand letter is a valuable resource, especially if it includes copies of medical records and bills and other information that will help you to evaluate the claim. If the claimant files a lawsuit before providing the information and documents needed to evaluate the claim, discovery should be conducted before trying to settle the claim. Discovery can take several months or even years. Personal injury claims are usually resolved within a year, but it is not unusual to litigate for two to four years before trial and another two to four years if an appeal is taken.

Most personal injury claims are resolved by negotiating a settlement without resorting to litigation. The vast majority of lawsuits that are filed are eventually settled as well. Many other lawsuits are dismissed as a matter of law or procedure. The remaining few are tried to a verdict. Cases that are tried to a verdict present the biggest risk to your business, primarily because the outcome can be unpredictable. Although extremely rare, a

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"runaway" verdict that exceeds the available insurance coverage can pose a financial burden on a business, even to the point of requiring protection from creditors. Of course, that unpredictability is strong motivation to keep the outcome within your control by negotiating a settlement.

If the injury resulted from gross negligence and the circumstances of the accident trigger an especially emotional response, punitive damages are a real possibility. Punitive damages (also known as "exemplary" damages) are not compensation for an injury. Instead, they are meant to punish the defendant for extremely careless behavior and deter others from acting similarly in the future. Imposed by a jury and capped only by constitutional or statutory requirements, punitive damages claims pose a threat to any employer forced to defend a personal injury claim. Fortunately, punitive damages claims are usually included for purposes of negotiation and are denied more often than awarded at trial.

It goes without saying that businesses of any size must plan ahead and make appropriate arrangements for liability insurance coverage. The best proactive defense to liability claims is to conduct your business as safely as reasonably possible and to document your safety efforts. This means hiring safe employees, providing safety training and supervising their work-related activities to ensure employees are abiding by the highest safety standards.

Your safety efforts can reduce the likelihood of an accident, but cannot completely eliminate the possibility. It happens. After an accident has occurred, make every effort to obtain as much information as possible about the circumstances and the injuries. With enough information, most personal injury claims can be effectively managed and brought to a reasonable conclusion that protects your business. If the circumstances indicate that the benefits of "rolling the dice" at trial outweigh the risks of an excessive verdict, you should not hesitate to defend the claim through trial.

With the proper handling, almost any claim can be resolved in a manner that leaves both sides uncomfortable, but glad it's over. A

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mutually agreed-upon settlement is the most likely outcome of a personal injury claim against your employee.

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