

## Manager/Supervisor Risk Management

#66– 6/26/12

A twice weekly e-mail training for YCPARMIA members

### TOPIC: EMPLOYMENT LIABILITY

Let's start by acknowledging that since 2004, the State of California has required that all public entity supervisors receive two hours of interactive training on sexual harassment every other year (AB 1825). Most of the issues that are covered in that training pertain to the other areas of employment liability. Unfortunately, despite this reoccurring training, our members are continuing to be targeted by claims made by their employees.

Employment liability involves claims against an employer by employees, former employees, and potential employees. It deals with actions for discrimination (age, race, gender, disability, etc.), wrongful termination, sexual harassment, and other allegations related to the employment relationship. These are exposures that lay outside the exclusive remedy protection of workers' compensation.

Twenty years ago, the YCPARMIA members had no employment liability coverage; it was not seen as a significant risk because there were few claims being made. Today the picture is much different. The California Department of Fair Employment and Housing's statistics suggest that about 18,000 employment claims per year are being filed against California employers; included in those are the 3 or 4 claims per year reported by our members to YCPARMIA.

These actions are expensive, disruptive, and complex. The cost of defending the claims generally far outstrips the claims settlement value, but settlement, for a variety of reasons, is often all but impossible. Overlapping issues involving workers' compensation, retirement, disability, discipline, budget, staffing, training, restructuring, unions, non-work stressors, and who knows what else can all come into play. The elephant under the carpet in all discrimination cases is that if the employee is successful, the employer has to pay their attorney fees and costs; this makes defending the case an all or nothing proposition.

To underline the seriousness of these potential exposures, we can look at recent actions by our excess liability pool. Like all excess carriers, they have reporting requirements for certain claims based on the severity of injury or the amount of money put in reserve on the claim file. They now require that all employment suits be immediately reported to them regardless of merit or reserves so that they can conduct an immediate evaluation of the exposure.

As stated above, our supervisors are trained in this area, but still appear to have problems. Most claims, if they cannot be avoided, can at least be successfully defended if the supervisor/manager recognizes the potential exposure and takes immediate action. The problems arise when action is delayed, or the entity's policies and procedures are not followed. Business as usual is the worst of all approaches to take.

Next topic: DFEH/EEOC