

## **If You Thought 2008 Was A Tough Year, 2009 Will Be Tougher**

### ***The Biggest Risk Management Issues Facing Employers in 2009***

2008 is now over and the forecast for 2009 is equally stormy. With a grim economy and the threat of increased lawsuits against corporations on a number of different fronts during the upcoming year, it is important to take a look at some of the risk management issues facing employers. According to both risk management and human resource professionals, age discrimination, workplace safety and the protection of corporate property are of highest importance in 2009.

#### **1. Age Discrimination-Considerations for dealing with older workers.**

The last reported set of statistics from the EEOC noted a 15% increase in national age discrimination charges from 2007 to 2008. Based upon these statistics, employers will most likely encounter an increase in such lawsuits in 2009. In response to economic instability, many corporations must downsize their workforce in order to survive. And, some difficult choices must be made. On one hand, employers are facing an aging marketplace where the growth of mature workers will continue to rise until 2014 according to the United States Bureau of Labor Statistics. On the other hand, employers need a labor pool to meet new demands. In many cases, the first employees to get the door are the older, more established employees who are now too expensive to retain in difficult economic times. Any employer looking to conduct a mass layoff should work with corporate counsel to determine whether and how to conduct a disparate impact analysis. Additionally, employers are advised to develop a formal plan for how the company will communicate information about the reduction in force to its employee base. Employers should provide an information sheet for managers covering the reasons for the reduction in force and generally describing the overall numbers of people and functional areas affected. Managers should also receive training about avoiding stray remarks that may be misconstrued and used as pretext evidence for claims of age discrimination.

#### **2. Workplace Violence – The corporate parking lot and common areas.**

Many risk managers and human resource directors are in agreement that disgruntled and terminated employees present significant safety and security issues for employers. Workplace violence, historically, increases dramatically when demotions and layoffs occur. With the employment outlook shaky at best in 2009, the threat from instances of domestic workplace violence far outweighs threats from outside terrorism.

Common areas such as parking lots and decks are prone to such incidents. Roughly 80% of crimes affecting shopping centers, strip malls and corporate campuses occur in and around these common areas. Failing to stop a preventable attack, in a corporate common area, can expose companies to big dollar judgments or settlements. We would urge our corporate clients to do undertake a risk assessment analysis of outside corporate common areas including, but not limited to, the following:

- Performance-Risk Assessment of corporate parking lot and exteriors to establish baseline security requirements
- Planning security detail to maximize coverage and visibility in parking lot and common areas

- Select and locate lighting, cameras and security call boxes- and utilizing crime prevention through environmental design
- Training your security team on car thieves and muggers latest tactics to prevent your employees and customers from being victimized.

In addition, we recommend that all employers adopt a zero tolerance anti-violence policy that is distributed to all employees. This policy should expressly prohibit firearms and weapons on the company premises, including parking lots or other common areas adjacent to corporate facilities. Ongoing training in the area of workplace violence should continue to be followed, especially to help supervisors and management identify the warning signs that often precede employee acts of violence.

### ***3. Employee Background Checks.***

Considering the state of the economy, the job market is destined to become even more competitive which, in turn, could lead some employees to stretch the truth in more ways than one. Now, more than ever, hiring professionals need to be sure their employment screening firms are conducting thorough, detailed background checks. One national employment screening firm found a 56% discrepancy rate between what is reported on a resume and what is found when conducting employment and education verification. The company also found a significant increase in criminal hit rates during 2008. The need for such verification extends to both outside contractors as well as existing employees. In the case of existing employees, such continuous background screening can help employers stay abreast of an individual's personal activities that might otherwise affect their particular employment standing. Ensuring accurate screening both through national and local data bases will ensure that a thorough exploration has been undertaken.

### ***4. Ensuring Return of Company Property and Protection of Company Trade Secrets/Intellectual Property.***

Additional security measures must be taken to safeguard company property and protect employees, as emotions may run high during a downsizing and where industrial espionage is an ever present danger. There may also be a heightened threat to the disclosure or unauthorized use of company trade secrets and intellectual property. Employers should be reminded of any applicable agreements or policies that govern any such disclosure or use even after termination. Provisions in separation agreements can also address the issue. The employer should consider whether to void passwords or other codes to company systems and deny access to archive or forward personal e-mail stored on the company system to employees who will be affected by the reduction in force. The protection of the company information system must remain a very high priority.

When all is said and done, the need for heightened systems evaluation and security must be foremost in the upcoming year. As the economy grows more unstable through 2009 and unemployment increases significantly, it is incumbent upon employers to raise their standard of protection against as many internal and external security threats as possible. For a list of outside security firms and consultants who specialize in the areas discussed, please contact us.