

# Employer Risk Management

by Michael Taylor

*"Those who trust to chance must abide by the results of chance."*  
—John Calvin Coolidge, (1872-1933) 30th U.S. President, 1923-1929

When a gymnastics coach hears the words "safety" and "risk management," they probably think about things like spotting, teaching progressions, safety certification and medical insurance. A gym owner may think about things like coach's certification, liability and worker compensation insurance and maybe equipment and facility inspections. One aspect of risk management that typically does not get enough attention by gym owners is managing the risk of being an employer.

Workplace risk includes safety and litigation risk. Though the actual responsibilities of being an employer vary by state and are governed by legislation and numerous agencies (including the Americans with Disabilities Act, Occupational Safety and Health Administration, Fair Labor Standards, Family and Medical Leave Act, Department of Labor, National Labor Relations Board, Equal Employment Opportunity Commission, etc.), there are some customary workplace wrongdoings that require our attention.

## Harassment

Harassment can include a hostile work environment or quid pro quo (exchange for privileged treatment) sexual harassment. Sexual, and other forms of harassment, are a common problem. Over 16,000 cases are brought each year against employers (US Department of Labor). Claims can be created by men, women, co-workers, managers, customers, parents, students, owners, vendors, contractors and others.

## Workplace Violence

Although gymnastics may not be considered at "high risk" for potential violence, the welfare of others and your own safety are at stake. Workplace violence accounts for 2 million physical attacks and 6 million threatened attacks each year in America. Thirty five percent of all violent crime occurs at the job site (The AGOS Group; 1999, 2000).

## Theft

Embezzlement includes taking money from the cash register, making personal copies without authorization, billing personal phone calls to the organization, running personal errands on organization time and other forms of fraud. Theft by employees costs the American economy an estimated \$30 billion each year.

## Discrimination

Are you an Equal Opportunity Employer? Federal law prohibits discrimination based on race, color, religion, gender, national origin, age or disability. Have you identified the essential functions of the jobs you hire for and what "reasonable accommodations" you could provide in order to be in compliance with the Americans with Disabilities Act? The Family and Medical Leave Act guarantees covered employees (of employers with 50 or more total employees) up to twelve weeks of unpaid leave for certain family and medical situations. The increasing number of claims being made under this law illustrates that not all employers appreciate the significance of this legislation.

## Unsafe work practices and workplace injuries

If a child gets a bloody rip on bars or one of your pre-school students has an "accident" on the floor exercise carpet, do you have established procedures (that are practiced and followed) for blood borne pathogens in your gym? Do you train your staff on proper lifting techniques and ergonomics? Do your coaches have the proper equipment to do their jobs safely? Regardless of the size of your organization or the number of staff, you have a duty to provide for the safety and welfare of all your employees.

There are even more issues; unfair labor practices, retaliation, workers' compensation fraud, to name only a few others. If you think that these problems could never affect you, you are wrong. Liability for workplace wrongdoing can arise from the behavior of employees, supervisors and managers. Risk is also realized by non-employees who interact with your organization; volunteers, vendors, clients, independent contractors, board members, visitors and more.

We live in a litigious society that allows anyone to bring a lawsuit against anyone else, at any time, for any reason. The only people that really enjoy lawsuits are lawyers. Remember that everyone has access to a lawyer and when a lawyer's telephone rings, it rings with a "cha-ching" rather than a "ring-ring." Lawyers are always looking for opportunities for work. Don't be a victim of an employee lawsuit that could ruin your business and your reputation. Most small organizations cannot bear the expense of a single successful claim against them. Even if you win the lawsuit, you lose; your valuable time is wasted, your attention to your business is disrupted, your credibility is impugned, staff morale is affected and your insurance premiums could be impacted.

Be prepared. In order to properly deal with these issues and avoid a lawsuit, there are some recommended guidelines for employers to follow. The first defensive measure an employer can take to avoid a legal action is to conduct thorough background checks of all applicants. Follow up on all references, watch for employment gaps and other "red flags." Negligent hiring or negligent retention places you at risk for a legal claim.

Gym owners should also offer and require ongoing training to his/her employees. A set of reporting standards should be established. A "zero-tolerance" policy for any violation of practices or procedures should also be enforced. Even though this no tolerance policy is imperative, an atmosphere of open communication and empathy should exist in the organization. Employees should be able to feel that their concerns are important to their employer and will be dealt with appropriately. The best defense against a lawsuit is a strong positive relationship with your employees so that they trust you and your responses to their issues.

## References:

The AGOS Group, LLC. - Tulsa, OK 74103  
US Department of Labor  
Civil Rights Act; 1964, 1991

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