

WE'VE HEARD WE MAY BE SUED...

When a public employee is fired there is often concern that, although one relationship with the former employee has ended, another may now begin—a lawsuit alleging that some type of discrimination motivated the termination of employment. There's good reason for this concern, as employment-based litigation involving NDIRF members is more common than it used to be. Sound preparation before a termination, however, and knowledge of what will happen if or when a claim is made can help manage a public employer's anxiety over this issue. The following question and answer should assist in explaining the course of events.

Q: We have an employee whom we just discharged and we've heard through the grapevine that she is planning to sue us for discrimination. If she does, what can we expect? What can we do to get prepared?

A: If she does file a discrimination charge, it will likely be dually filed with the Equal Employment Opportunity Commission and the North Dakota Department of Labor and investigated by the Department of Labor. The department investigates almost all discrimination charges in North Dakota except for Equal Pay Act claims. Here's roughly what will happen and what you need to do:

- You will receive a copy of the charge and a letter from the department advising you that a charge has been filed. It will ask you to respond to the charges and supply it with certain documents, *e.g.*, policies, personnel files and documentation of discipline for the former employee and other employees if she alleges she was treated differently.
- When you begin to prepare the response, be certain that the department understands your business. Take the time to write out what you do, who your customers are and any particular difficulties or sensitive issues that exist in your business. If the department understands what you do and why, it's more likely to understand why you had to terminate an employee under the circumstances.
- Begin gathering documents that lead to the termination (you do have some, right?). You might consider having your lawyer get statements from employees if they were witnesses. Employees come and go, and they may not be there when you need them.
- Start gathering documents regarding other employees who were fired under the same or similar circumstances. The investigator is going to want to see how you handled those cases. (We know you would have considered that before you made the decision to terminate.) If this situation is different but that fact wouldn't be obvious to the investigator, make sure he will understand why.
- Be prepared to show the breakdown of your workforce in terms of minorities or other protected classes. If you affirmatively seek applicants from protected classes, say so and how you do it.

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- Err on the side of giving the investigator more rather than less information.
- Gather the information and organize it logically and clearly.
- Work closely with your attorney to prepare the response and have it reviewed by your attorney before the information is sent off. Providing a complete and accurate response to the Department of Labor in the early stages of an investigation is absolutely essential to ensuring that the department fully understands your position and all the factors that went into your decision to terminate the employee. Trying to explain your response later is far less effective than making sure you have provided all relevant information up front in a timely and cooperative manner. ■

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RISK SERVICES

PHOTO CELL PHONES IN YOUR FACILITY

When you look around you may come to the conclusion that everyone has a cellular telephone. Their use is so pervasive that they are hardly noticed and their technology has expanded to include personal assistant cell phones and cell phones that can take photos – all of which are virtually indistinguishable from a regular cell phone. The taking and sending of cell phone photos in their facilities poses a potential liability risk for many NDIRF members.

If you think a cell phone ringing during a meeting is annoying, consider the annoyance of finding your picture on the internet, especially a locker room photo. There are areas where a regular camera's use would not be allowed without approval, i.e. locker rooms, restrooms, court rooms, locations where confidential records are in use or on school grounds. Prohibiting cameras in locker rooms or restrooms is a “no brainer”. Keeping cameras out of courtrooms and areas where confidential records are in use can be understood. Not allowing individuals to photograph children in school without permission is reasonable.

What is the worst that could happen from inappropriate photo cell phone use? Everyone can understand the problem of a locker room photo showing up on the internet. In addition, consider:

- Unflattering photos of what would be considered a semi-private activity.
- Photos of jurors.
- Confidential files left open on a desk and photographed.
- Photos taken by one student of another student (in an unbecoming moment) and then used in a demeaning manner.

So, what should be done? We suggest adoption of a policy that addresses camera cell phone use, including identifying those portions of your premises where their use is restricted. In some areas, the policy may require checking a cell phone at the door. Specifics of a camera cell phone policy will differ by the activities in your facilities and appropriate signage needs to be placed where necessary, spelling out your cell phone policy. The following is a sample of concerns others have considered, proposed or included in their camera cell phone policy:

- A New Jersey county passed an ordinance that provides individuals who secretly take pictures of others in locker rooms or indoor pools will be fined or jailed. The law applies to “private areas” where individuals could be undressed or in compromising situations such as gyms, weight rooms, indoor hot tubs and locker rooms in fitness centers and schools.
- Some fitness clubs and the YMCA of Minneapolis have banned cell phone use in locker rooms.
- A number of corporations have put policies in place banning camera cell phones from their facilities.
- Syracuse University has created policies against cell phone use in locker rooms.

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- A number of schools ban camera cell phones during exams.
- A few states are proposing legislation to make it illegal to photograph someone in a locker room or other public place where people disrobe.
- At least one teachers' association has urged a total ban on camera cell phones in schools.

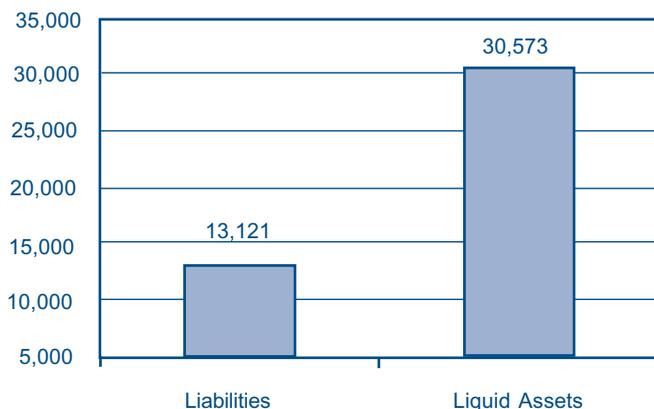
Developing a policy necessitates evaluation of activities that take place on your premises. The following are a few items to consider:

- Because it's hard to distinguish a camera cell phone from a standard cell phone, a policy banning only photo cell phones may be difficult to enforce.
- Prohibit the taking of photos (without consent) within facilities or specific areas of facilities by all picture taking and video recording equipment, of any type (including but not limited to, photo cell phones, digital or film cameras and video recording equipment).
- Exclude the above equipment from locker rooms, bathrooms or any other area where privacy is expected. A total ban may not be feasible but a requirement that such equipment must be turned off and put away may be reasonable.
- Require the above equipment be turned off and put away where confidential information is present.
- Institute penalties for violation of a camera cell phone policy.
- Lastly, and most importantly, work with your legal counsel when drafting a camera cell phone policy.

We hope this gets you thinking about your camera cell phone liability exposure. You might ask, why would we be liable for someone taking a photo on our premises? Our answer is that you may not be liable, but be aware camera cell phones could increase your exposure to liability. You can never be positive how a jury will decide a case! If you have any questions on this information call Doug Griffin, Mark Verke, or Ross Warner at 224-1988 or 1-800-421-1988. They can also be reached through the NDIRF Web Site, www.ndirf.com/staff.htm. ■

FINANCIAL INSIGHTS

**Liabilities to Liquid Assets Ratio (000 omitted)
As of June 30, 2004
Ratio= 43%**



This ratio is a measure of a company's ability to pay its financial obligations. The ratio is calculated by dividing liabilities by liquid assets (cash and marketable investments). A ratio less than 105% is desirable. As this graph indicates, NDIRF, with a 43% ratio, has liquid assets over twice as large as liabilities. ■

FROM THE CEO

Progressive Corporation, a popular national auto insurance carrier, recently conducted a survey among potential auto insurance buyers to determine how much incentive people need to motivate them to shop for quotes.

The Mayfield, Ohio-based insurer's survey found that, if offered \$500, 62% of respondents said they would abstain from going to the movies; 35% would switch political parties; and 21% said they would stop watching television. Only 20% indicated they'd shop for auto insurance. Apparently, most folks think hunting for bargains in insurance is just too hard in relation to the cost savings they feel might be found.

It shouldn't have to be that difficult and, for North Dakota's political subdivisions, it isn't. Most have long known that, with the NDIRF's broad coverage, reasonable cost, efficient service and conferment of benefits program they need look no further to provide the top solution for the coverage they need. For those few local governments who haven't yet decided to join the Fund, the best choice they could make is just one simple phone call away. ■

Meet Your Board



Steven J. Cichos joined the NDIRF Board of Directors in May, 2004, upon his election by the Fund's county members during the 2004 Annual Meeting.

Mr. Cichos is a lifelong Jamestown, North Dakota resident and is currently a

Stutsman County commissioner. He is a Jamestown College graduate, obtaining a degree in Business Administration and Political Science.

Steve has put his education to good use, having engaged in a banking career (currently Vice President of Commercial Lending and Business Development at Security State Bank of North Dakota, in Jamestown) and significant public service. Among many other activities, he has found time to serve as a Jamestown city councilman; president of the Jamestown/Stutsman County Jobs Development Corp.; Jamestown Area Chamber of Commerce board member; and United Way volunteer.

Steve, his wife Carolyn and their two children, Nicholas (20) and Ann (17), enjoy their family cabin on Jamestown Reservoir and he lists other favorite pastimes as hunting, fishing and boating.

Mr. Cichos believes the advantage NDIRF offers its members is excellent coverage, great response time to claims and reasonable prices. He describes his vision for the NDIRF as continuing with the excellent service and products we provide to members and positioning the organization for the future. ■

Mark Your CALENDAR

Sept

16: NDIRF Board of Directors Meeting
NDIRF offices, Bismarck

14-16: ND Recreation and Parks Association
Annual Conference,
Radisson Hotel, Downtown Fargo

23-25: ND League of Cities
Annual Conference,
Ramkota Inn, Bismarck

Oct

3-5: ND Association of Counties
Annual Training Conference
Ramkota Inn, Bismarck

29-30: ND School Board Association
Annual Convention,
Ramkota Inn, Bismarck

North Dakota Insurance Reserve Fund Board of Directors

Fred Bott, Devils Lake Steven Cichos, Jamestown Robert Frantsvog, Minot Burdell Johnson, Tuttle Mark A. Johnson, Bismarck
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