When Risk Reporter last tackled the issue of employment practices nearly five years ago, the Equal Employment Opportunity Commission had an annual case load of roughly 81,000 people. For fiscal year 2008, this number jumped to a record 95,402. This stat may not be especially surprising given the number of layoffs last year, but it’s a strong indicator that employers continue to grapple with issues related to hiring, discipline and termination.

Following best employment practices can help your facility avoid unnecessary litigation—and its negative impact on your finances and employee morale.

**Be consistent and respectful**

These are two of the most effective ways to avoid problems in employment practices liability.

“Establish and use procedural frameworks and review them periodically to ensure these tasks are handled with the utmost care and quality,” said Paul Snellenberger, senior human resource consultant with People Etc., an HR firm in Kankakee, Ill. “Never forget that ‘human capital’ is the most strategic factor in your organization’s success.”

Take employee complaints and concerns seriously and treat all staff equally.

“It’s no secret that unhappy employees are more likely to be litigious,” said Sara J. Ackermann, an attorney who practices employment law for Ruder Ware, L.L.S.C., in Wausau, Wis.

Be proactive in your interactions.

“Have a presence in the community—don’t just rule from a chair behind a desk,” said Jo Ellen Bleavins, senior vice president of management for BMA Management, Ltd., Bradley, Ill., a company that oversees 32 senior living facilities. “When you hear rumblings, see what’s going on firsthand. Let employees know they matter.”

**Create effective employment policies**

There are a variety of federal, state and local laws in place to protect employees from discrimination, harassment and wrongful termination. Create an employment handbook that covers your policies in these areas as well as topics such as medical leave and managing electronic data.

“You may be able to find sample policies online or from an HR organization but consult an attorney to guarantee legal compliance,” Ackermann said. “Have your policies reviewed by an expert at least every other year to ensure you comply with current employment requirements.”

(See employment practices, Page 2)
Employment issues require legal counsel, guidance

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One policy area to be especially aware of is employee protection against retaliatory discrimination.

“In many states, it’s unlawful to retaliate against any employee for reporting suspected abuse or neglect of an elderly person or for making a report concerning a residential care facility,” Ackermann said.

Hire effectively

Turnover—especially among personal care workers—has traditionally been quite high in the assisted living environment. That might not be as true in today’s economic climate, but you still need to have a consistent, well-planned process that helps you hire and retain employees that are a good fit for your facility and the position. Here are some things that can help:

Create accurate job descriptions

Before advertising for a position, review the existing description and ascertain that it’s consistent with the current reality of the tasks, requirements and core competencies required by the job.

Use an application and standardize the interview process

Have every candidate fill out an application.

“Make sure your questions focus on the ability of the candidate to do the job,” Ackermann said. “Don’t ask for more information than you need to know.”

A consistent set of interview questions is critical. “We’ve created an interview matrix with 10 basic questions and a rubric to evaluate and objectify the candidates’ responses,” Snellenberger said. “Overcome the tendency to ‘go with the gut.’”

Train your interview team

The application, pre- and post-interview discussions and the actual interview should all avoid questions about the following: age, sex, sexual orientation, marital status, children, family plans, home life, pregnancy, religion and disabilities.

“Interview with a panel of people from various positions throughout the company—not only superiors but also peers and subordinates,” Bleavins said. “It’s invaluable to get insights and feedback from people with various levels of experience and areas of expertise.”

Dig deep

“An applicant’s initial response to a question might be programmed and rehearsed,” Snellenberger said. “Taking the time to ask a follow-up question may unlock a deeper understanding of the candidate.”

Do a background check

The immediate past supervisor is one of the most important references.

“In addition to the usual questions, I ask, ‘If you could give advice to the candidate’s next supervisor, what would you tell them?’” Snellenberger said.

Use an outside company to conduct a background screen on every serious candidate at the national search level, rather than a state or county one. Never skip this step because the candidate was recommended by an employee or you have a “good feeling” about them. The cost can be as little as $25, and failure to investigate an employee’s past could lead to material loss, resident or employee injury or a negligent hiring lawsuit.

Discipline consistently

Have a formal corrective action/performance improvement plan process that includes:

1. Documented oral warning
2. Written warning
3. Final warning and/or disciplinary suspension
4. Termination

“If there is an incident, investigate promptly and determine whether the employee did, in fact, violate a known policy or procedure,” Snellenberger said. “Make sure your discipline fits the violation.”

“Be consistent from one employee to another. Treat the 20-year-old employee the same way you treat the 50-year-old,” Ackermann said.

Always let employees tell their side of the story.

Managing layoffs and terminations

Even the best hiring practices can’t completely eliminate the need for employee layoffs and terminations, but “firing smart” can help minimize the possibility of litigation.

Build checks and balances into your termination process and follow all procedures outlined in your employment handbook.

“Require that the person who’s recommending termination obtain approval from his/her supervisors in consultation with the HR department,” Snellenberger said.

Involve members of the corporate management team throughout the investigative process.

“Someone who isn’t directly involved in the situation should review the data being used to make the disciplinary determination to reduce the likelihood of bias and ensure consistency,” said Bleavins.

Clearly document the reasons for dismissal, especially if it’s performance-based.

- For more information on employment practices, visit www.churchmutual.com, select Safety Resources and download or order the DVD “Wrongful Termination. Harassment. Discrimination. Avoiding Employment Law Pitfalls.”

New risk management tool

Few owners or operators of senior living communities object to taking steps to prevent a loss or reduce the chance of the loss occurring. However, what I hear most often is “Where should I start?”

The first and most important step to any risk management program is identification of hazards and risks. And the best way to spot problem areas is to conduct regular inspections of your buildings and grounds with that purpose in mind. You also need to review the routines of your employees.

To assist you in these areas, Church Mutual has created the Self-Inspection Safety Checklist for Senior Living Communities. The checklist outlines the elements of a risk management program and covers all aspects of a senior living operation. Chapters include Resident Care Systems, Employment Practices, Buildings and Grounds, Fire Protection, Security, Ergonomics and more.

Topics for this comprehensive checklist were created through analysis of the claims reported by our customers over the years along with input from our risk control representatives.

The identification phase of a risk management program is not quick nor easy. I recommend you form a team and divide the checklist up among the members. If you’re a smaller organization, utilize the checklist one chapter at a time, so the process is not overwhelming. The checklist will help you prioritize the work that needs to be done, so you can apply the time and resources appropriately.

To view, download, print or order the checklist, go to www.churchmutual.com, select Safety Resources, click on Self-Inspection Checklists and select Senior Living Communities.

Richard J. Schaber, CPCU, CRM
Risk Control Manager

Outdoor safety requires year-round commitment

In many parts of the country, snow and ice have a way of making outdoor safety a priority during the winter months, but facilities in every region should be concerned about exterior safety no matter what the season.

“Facilities might believe they’re doing a good job managing their building exterior and grounds, but the reality is often quite different,” said Steve Weideman, risk control representative at Church Mutual.

In his travels around the country, Weideman has discovered everything from open, leaking barrels of chemicals to broken glass in resident walkways at facilities that claimed to do routine inspections.

Use a checklist and have a regular inspection schedule

Work with your staff to develop a comprehensive list that addresses your facility’s specific needs. “Otherwise, it’s just too easy to miss things,” Weideman said.

Key items to include: tripping hazards, parking lot issues, walkway and landscape maintenance, lighting and hazardous material storage. Conduct regular inspections monthly and don’t let harsh weather deter you. (See Managing Your Risks at left.)

Educate staff and recognize that small changes can cause big problems.

“Say the maintenance crew moves some outdoor furniture and doesn’t put it back,” Weideman said. “An elderly resident might be used to relying on that furniture to get across the patio or fall because it’s in an unexpected location.”

Consider the risks of outdoor amenities

Ponds, patios and gardens are aesthetically appealing, but they also can be hazardous.

“A resident can fall into the water unnoticed or trip on low planters or a rocky path,” Weideman said.

Add handrails to all ramps to prevent users from falling off of them and highlight graduated walkways in the parking lot with yellow paint to remind users of the rise.

Review building access

You might be good about managing access at your main building entrance, but what about doors in other areas? Many facilities make it a policy to leave kitchen and delivery area doors unlocked, so it’s easy for staff to go in and out without a key. This can be a recipe for disaster.

“These are an excellent way for a resident to slip out unnoticed,” Weideman said.

Involve vendors in the process

Your facility probably works with a wide variety of outside vendors for services like yard work, snow removal and food/supply delivery. But do you play a role in how they operate on your grounds?

“Most facilities don’t feel it’s their responsibility to interact with the vendor’s staff,” Weideman said. “Given the vulnerability of your population, it’s critical to do so.”
Imagine that half your staff is out, a third of your residents are sick and your linen vendor is on the telephone to let you know that today’s delivery isn’t going to happen because he’s missing too many employees to fill your order. It’s the stuff of administrator nightmares and a situation that’s entirely plausible whether you’re dealing with flu season or a natural disaster. If your contingency plan doesn’t include steps to ensure that your business is able to stay up and running in the face of problems like these, your facility runs the risk of an involuntary shutdown. We recently spoke with Rita Vann, vice president of skilled clinical services at Brookdale Senior Living in Brentwood, Tenn., about contingency planning. In addition to her extensive knowledge of the assisted living environment, Vann experienced her contingency plan in action in 2009 during Hurricane Ike.

**Risk Reporter:** What are some effective ways to guarantee adequate staffing?

**Rita Vann:** Maintain an up-to-date staff roster and make sure you know how to quickly get in touch with every employee. Clearly communicate to your team that if they’re called to come in, you expect them to show up. Cross-train your staff wherever practical—for instance, activity staff might be able to deliver trays or do some light housekeeping in an emergency. The biggest hurdle is skilled nursing because of the licensing required to handle so many procedures. Establish a formal relationship with an outside agency that can meet your specific needs with temporary employees.

**Risk Reporter:** How do you plan for the loss of electricity?

**Rita Vann:** Install backup generators to cover critical areas at your facility and make sure that all employees understand what equipment must be kept on. A red plug designates the plug is connected to generator power. If you’re dealing with a natural disaster, you might be without power for a long time so make sure you’ve planned in advance for ongoing fuel delivery. Contact the power company ahead of time and make sure you’re a priority on the power grid, so you’ll be one of the first places to have power restored.

**Risk Reporter:** What about issues with vendors not being able to meet your needs because they’re dealing with the same crises you’re facing?

**Rita Vann:** Keep backups of critical items on hand but be aware that some things, like diabetic test strips, expire. Ask your vendors about their contingency plans and be aware that you might have to find another source if your vendor can’t get to you.

**Risk Reporter:** What happens if you get to a point where it doesn’t make sense to keep your facility open?

**Rita Vann:** You can temporarily merge with another community and should make those plans in advance. If you don’t have a sister facility in your area, have a transfer agreement with a local hospital or another facility. If possible, pick a facility in another part of town. Then, if electricity is out in one area or you have flooding or similar, it’s possible that the partner facility won’t be dealing with those issues.

**Risk Reporter:** What’s the best way to move residents?

**Rita Vann:** Reliable transportation is critical. Establish a bus contract and put the company on retainer. Ask them how many companies they have this sort of arrangement with—don’t assume that they haven’t overcommitted themselves. Have your staff travel with the residents, so there’s a familiar face during transport and in the new location. Set up a triage area at the hosting facility. As people come in the door, have stations where the residents will get their vitals checked and a nursing assessment done.

For more information on emergency preparedness, visit the American Health Care Association’s Web site at www.ahca.org, select Long Term Care Providers and click on Disaster Planning.