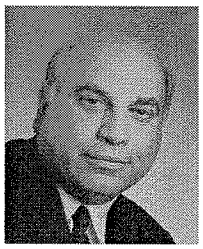
Lou DiLorenzo

A Well Drafted and Published Policy Can Save the Day

I have strongly suggested, in earlier issues of this column, that employers should have an employee handbook for several reasons. One reason is, in non-union settings, employers may write firm and fair employment policies that not only explain the expectations for the workforce but can help avoid liability for employer actions. A recent case in New York County Supreme Court is a good example.

In Scott v. Beth Israel Medical Center, a doctor-employee had a lawsuit against the hospital for severance. He regularly communicated with his attorneys about the lawsuit via the employer's e-mail system. There was an e-mail policy in place which stated the computer and other electronic systems were the employer's, and the employee had no personal privacy right in any material on the system. The employer also reserved the right to "access and disclose the material at any time, without notice." The doctor, chair of a department, claimed he never saw the policy, never received the handbook, and never signed an acknowledgment of receipt.

The Court relied on a three part test in determining that the attorney-client privilege was waived:

1. The employer has a policy which prohibits personal use;
2. The employer can monitor the employee's computer or e-mail; and
3. The employer notified the employee, or the employee was aware of the use and monitoring policy.

Here, the court found that since newly hired doctors under the employer's supervision must acknowledge the handbook in writing, he had sufficient knowledge.

Lessons learned:

1. Have a handbook.
2. Make sure policies are accurate, up-to-date and properly provide and protect management rights.
3. Employees, once litigation commences, regularly claim they have never received or seen a handbook or policies. Make sure you can prove employees have received a handbook, the policies it contains and any revisions. A written acknowledgment is best.

Be Careful Out There!

(Footnotes)

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