

Altshuler and Spiro

Bruce J. Altshuler*
Randy M. Spiro

*A PROFESSIONAL CORPORATION

Jamie K. Kleinman
Of Counsel

EST. 1959
9301 WILSHIRE BOULEVARD, SUITE 504
BEVERLY HILLS, CALIFORNIA 90210-5412
(310) 275-4475 - (323) 272-5339
FAX (310) 858-6763

Leo Altshuler
(1919-1999)
James J. Brown
(1918-1987)

To: Business Owner/Property Manager Clients of Altshuler and Spiro:

From: Bruce J. Altshuler

Re: Should You Obtain Insurance Coverage for Employment Claims?

Date: October 11, 2013

Dear Clients:

Some of my clients have had the misfortune of defending either wage claims, labor commissioner claims, wrongful termination or even sexual harassment claims by disgruntled employees. Others, either through being a good employer who maintains a good relationship with its personnel, strict compliance with all California labor laws, or through pure luck, have never encountered employment claims at all.

In the past, some of you have asked me to look into whether it would be beneficial to acquire insurance to indemnify and provide a defense for those claims. I looked into coverages a few times myself in the 1990's when California law was less favorable to employers than it is now on certain issues. I also looked into it about ten years ago, and five years ago. In each case, the premiums were prohibitively high, with huge deductibles ranging from \$25,000-\$50,000.

In the past few years, there has been an epidemic of 'wage and hour' claims related to rest breaks, meal breaks, overtime, and other issues. We even defended one claim involving the treatment of foreign interns, which was settled, but since then I have been advising clients to avoid hiring **unpaid** interns. Many of these cases are filed as class actions. A few of our clients have been hit with class actions and I have to turn them over to a class action specialist. It is very costly. If it is a class action, if you have inadvertently erred in handling an overtime or sick leave issue for example, or if you are misclassifying employees as "independent contractors", what might be a modest or small liability for one person, can turn into a gigantic liability for your entire work force in a class action suit.

I am of the view that almost every employer in California is in non-compliance with some major or lesser known wage and hour law in some respect. Even the failure to post required employee notice posters can result in criminal fines for non-compliance, the product of legislative overkill.

Because we are spending more of our time defending these employment actions, I decided to re-visit the state of coverage for employment claims. In doing so, I asked four insurance agents I have known and respect from either my own usage or from other clients and asked them to advise me of their company's current coverages and rates, so you can evaluate the coverage for employee claims.

I was hoping to provide the names of at least 3-4 agents so you could compare quotes to your own agent's quotes. The only agent who responded (and he responded in one day) was Mr. Don Catalina of State Farm Insurance. Attached is his summary to me. As a lawyer, I must tell you that the most important feature of this coverage is the payment of any viable claim; but almost as important is that these policies provide a defense to these claims which, in my experience, can equal or exceed any potential liability even if you successfully defend the case in court.

I am pleased to report that the cost of this coverage has declined dramatically in the past few years. According to Mr. Catalina, it is impossible to quote for this coverage as it depends on the number of employees you have and other factors and even your claims history for past or pending employee claims. However, this is what he said in an email to me recently.

“It's almost impossible to give a quote without the client completing the application. Different businesses are rated at differently so it's hard to say. I have written a few dental offices & the premium was just over \$1,000 a year. ”

It is obvious that the premiums (and deductibles) have come way down, but for a larger company, you will not get this coverage for \$1,000 a year. You have to provide Don or your agent your details.

Here is what I recommend. Most of you have your own insurance agents and I suggest that you obtain a quote from your own company. If the quote seems high, or coverage unavailable, you might wish to call Mr. Catalina or other agents for a comparison quotes. Make sure you find out what the deductible might be. Deductibles are way down also. Don's phone number is 310 672-1722. He is the owner of Don Catalina Insurance Agency in Inglewood, California.

For disclosure purposes, I have known Don for over 25 years as he has written my homeowners and writes my own office policy and workers compensation policies here, but I use other agents for medical, auto, and homeowners. Oddly, I have spoken to Don several times over many years, but have never met him. As I said, I intended to provide many leads, State Farm is never the cheapest policy, and he is the only one who responded, and that means he wants your business.

For my apartment owner clients and their property managers, lawyers are now soliciting resident property managers as plaintiffs in lawsuits and they are often winning their cases against landlords/property management companies because most resident managers are treated (erroneously) as independent contractors as I have been warning about for years. There are also wage and hour, time sheets, rent credit and overtime issues involving these resident managers all potentially real liabilities. To avoid these problems, you need to obtain this coverage and comply with California law. Do not rely on what other landlords are doing with their resident managers.

If any of you wish to have me evaluate your quotes, please call me. If you get coverage, make sure it is comparable to the attached summary provided by Mr. Catalina, so that the likely claims are covered.

Sincerely,

BRUCE J. ALTSHULER