

RISK, LIABILITY AND EXPOSURE

As a business owner you are already probably aware of the inherent risks in your field of work. Risks in life cannot be avoided. If you take any type of action, there is always a risk attached. This can be seen in a simple example of getting into the shower to begin your day. There is always a risk, when you mix water, soap, and the skin on our feet that you may slip and fall causing injury to yourself. We don't stop living life because there is risk. We, whether you know it or not are constantly managing risk in your daily routine. When you get into your car to drive to the workplace, I may be dating myself. We all used to drive to our workplace pre-covid. Some of us still do. So, when/if you drive to work, there are risks on the roadway. Risks come in the form of traffic hazards, wildlife un-expectantly running onto the roadway, a child chasing a ball into the street, a vehicular accident with another vehicle, you get the point. And we mitigate those risks daily. Before we begin to drive, we take a driver's training class, log several hours before the state issues us a license to drive. We use hands free technology to keep our eyes and our hands free to see the risks on the roadway. These are all risk management techniques employed every day, by thousands of people daily. I would offer most of us are inherently aware of risks and what our tolerance is to said risks.

But what about our liability and exposure? Are we considering what our liability potential is as business owners? What about your exposure? Exposure refers to an individual's or business entity's susceptibility to various losses or risks they might encounter in life or in the ordinary course of business. Are we opening our exposure and do not realize we are doing so? Risk, liability, and exposure evolve from a legal term called vicarious liability or more officially respondent superior, which is Latin for "let the master answer." In very simple terms this means the employer is responsible for the actions of their employees. Any injurious or wrongful act of an employee within the course and scope of their employment creates liability for the employer. Just like risk we cannot remove all liabilities and exposures. But we can reduce and minimize it before it happens and mitigate it when it does happen. There are generally seven main areas of concern regarding vicarious liabilities. Those are, negligence in appointment, negligence in retention, negligence in training, negligence in entrustment, negligence in assignment, failure to direct, and failure to supervise. For the purpose of this article, I would like to focus on negligence in training and failure to direct.

Goal of any business owner is to make more profit than losses, correct? But we are all one big incident away from total loss if we are not properly protected. Therefore, we have insurances. Life insurance, auto insurance, business insurance et cetera. I recently met with a plant manager of a distribution center in a major metropolitan area. I had just completed workplace training with their organization. What was interesting was the fact that 75% of the employees who the training would directly impact were not present. The 25% of employees present were in an administrative capacity and would have very little impact on the day-to-day potential for injuries in the workplace and how to respond to mitigate that incident. We began to discuss the topic of risk, liability, and exposure.

Can we reduce our liabilities and exposure ahead of time before an incident occurs? Of course we can. With proper training, implementation of training through updated policies and procedures and documentation of said training. Gordon Graham, a risk management, guru has coined the phrase, "if it's predictable, it's preventable." Now the incident itself may not be preventable. Let's face it, stuff happens. But how we manage it before it happens through proper onboarding, training and continuing reinforcement dramatically reduces the incident itself from occurring, and if it does occur, reduces our liabilities and exposures. Let me share a quick story to put it all together. An injury occurs on the floor of

the warehouse for whatever reason. An artery is severed on the employee from the machine. Without getting into too much biology and human function, a person can bleed to death on 2-4 minutes with a severed artery. No one, or next no one is trained on the warehouse floor (where the most risk is present) in any type of first aid for said injured employee. By the time someone in administration is notified, responds, and begins to treat said employee, the employee succumbs to her wounds and dies.

There will be investigations. There will be a criminal, civil and administrative investigation at a minimum. Let's take away any criminal negligence for this scenario. No crime has occurred. There most certainly be a civil litigation. The limits of how much an employer will pay, aka liability in this tort will largely depend on their exposure. Did the employer train all their employees? Did the employer train those most "at risk" employees or did the employer train a minimum number of employees who may or may not even be able to impact the potential incident? If you are sitting on a jury in this case how would decide the case? How does the employer's exposure look if all the employees are trained? Or at minimum the employees most impacted by the potential injury? This is the crux of mitigating exposure ahead of time to reduce financial liability in tort claims.

Oh wait, we forgot the administrative investigation. The government has an interest in all of this as well to keep employees and the workplace safe. So, I can assure you one of those alphabet organizations like OSHA (Occupational Safety Health Administration) will come visit. Does this visit cause your organization to be shut down for one day pending the investigation? Or does it take two weeks? Does it take six months because OSHA finds that those who needed the training most were not trained and now, they are looking through every file of every employee and well you see where I am going. Can your business afford to shut down for two weeks or six months? How much does that cost your organization? Does it bankrupt and close the business and organization you worked so hard to create and develop?

Effective training and direction of employees now will save an organization hundreds of thousands of dollars later. Are there some up-front costs to training? Of course, there are training costs, lack of production costs while employees are at training, maybe some overtime costs. Effective training and development of employees will save an organization countless zeros in the long run. Training is similar to insurance. We pay for it ahead of time to reduce, mitigate or eliminate the liability in the future. Avoid vicarious liability by training and supervising employees in the workplace.

-Matthew Roth is the Chief Operating Officer at Liberty Tree Training & Development and the Director of Professional Development & Learning with ScaleocityWorks.