Employer Liability for Workplace Incidents

By Karen Sutherland

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Many employers do not think about liability for workplace incidents because of the immunity provided under the Worker's Compensation statutes and the existence of insurance. There are, however, gaps in these protections that can expose restaurants and their managers to liability.

The following are some examples of situations where employers may be liable:

- Where there are physical or emotional injuries from discrimination or harassment based on race, sex, religion, national origin, disability, or other classes protected by law;
- Where the worker has been retaliated against for filing a Worker's Compensation claim;
- Where there was an injury from, or release of, hazardous substances. In a restaurant, such exposure could include cleaning chemicals, pesticides or gases used for cooking; and
- Where there was a "deliberate intention" to injure the employee.

Employers are not immune from suit for intentional acts under many Worker's Compensation statutes. "Intentional" is a broader term than most employers realize. For example, in a Washington case, employees claimed that their employer intended to injure them by exposing them to chemicals. One employee developed bronchitis and pneumonia. He was transferred, but his problems continued. He complained to management, but was told that the chemicals were not harming him. Other employees also complained that the chemicals were causing various symptoms. Several passed out and were treated at hospital emergency rooms.

Management denied that the health problems were caused by chemicals and blamed the flu or smoking or other bad habits. Managers testified that they had no intention of injuring the employees.

The court held that the employer was aware that the employees had chemical-related illnesses and that continuing injury was certain. Therefore, the employer was liable.
