

Employees' actions on-and-off the job could involve employer liability

Historically, corporations and firms have chosen to provide benefits to employees because it was to their advantage to do so. In order to attract the right talent or to fill jobs, they had to provide more than just wages.

In the 19th century, household servants and many types of apprentices would be provided room and board. Seafaring sailors, laborers excavating the Erie Canal, and other workers would receive allotments of alcohol in addition to their wages as a type of hazard pay.

Into the 20th century, mining laborers would be incentivized for that incredibly dangerous work, and to move their families to remote locations, not only for the wages but also to be taken care of in all aspects of life in a company town. Housing, medical care, schools, stores, restaurants and bars — everything in a company mining town was built, owned or subsidized by the employer. This still occurs in other countries, especially in Asia. Corporations take care of most of the needs of their employees not just on the job, but away from the workplace as well. Employers have become ersatz “parents,” taking care of all the needs of their employee “offspring.”

Although we don't often create company towns any longer, U.S. employers are certainly becoming more and more responsible for all aspects of employee life. We're familiar with many of these responsibilities because they are either mandated by governmental regulations and laws, or they are entrenched into our expectations of the businesses we work for.

With very few exceptions, corporations are statutorily required to provide workers' compensation coverage to provide medical and wage benefits when employees are injured on the job. They have to provide disability coverage for employee health conditions outside of the job that prevent them from continuing to work. Depending on the size of the employer, health insurance options are prescribed, providing payment of medical expenses. Free coffee or tea assures alert workers — OK, so this one isn't mandated, but I think it



VIEWPOINT
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should be! Most recently, paid time off for qualifying familial or health reasons has also been enacted. With the exception of free caffeine drinks, these all create responsibility on be-

parking lot or work sponsored sport teams, and discounts or passes to entertainment and cultural or community events. I've even heard of designated “gaming” time on company computers, nap pods, and open beer taps after 3 p.m. Seriously!

However, when an employer willingly takes on responsibility for improving their employees' quality of life, they also bear the costs of the risks involved in doing so.

When an employer provides something as simple as parking to their employees, they are often unwit-

nessly taking on responsibility for the operation of the vehicle, including property damage and bodily injury. Coverage follows the vehicle, not the driver. An employer is responsible for the actions and driving habits of their employee using a company owned vehicle to run out to the store for milk and eggs, even if they are off-the-clock at the time.

Even tacitly allowing employees to conduct personal business on company computers can be a tremendous exposure. Very few employees with work computer access haven't checked their personal e-mail, paid a bill, or looked at a social media feed at some point. Employers are responsible not only for the protection of their own assets and data, as well as that of clients and customers, but they may also be obligated to secure the personal information of employees as well. Employers devote expensive IT resources to maintaining a firewall to a Pandora's Box of cyberthreats not just in the normal course of business, but also because an employee searches the start time of a movie, the best macaroni and cheese recipe ever, or the possible causes of a private rash. Employees who use company servers or equipment, including laptops, tablets and smartphones, to access adult pages, gambling or sports betting, or sites that promote hate, violence, or illegal activities also expose their employers to responsibility for their personal actions.

Employers are becoming responsible not only for the wages, financial security and quality of life for their employees, but also increasingly for their habits, attitudes and behavior. Navigating exposures and costs, while establishing a comprehensive mitigation plan is vital and requires employers to engage with a skilled and knowledgeable benefits and risk management partner.

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half of employers to assure a financial safety net for their workers.

There are also benefits that employers choose to provide for the good of the community and society, or because the competitive marketplace for workers demands them. Access to EAP services, term life insurance, paid vacations and holidays, investment options such as a 401(k) or other plan — none of these are mandated, but they are expected by employees across a wide variety of industries as the anticipated minimum standard. With these, employers are still responsible for making sure the safety net remains in place.

More progressive employers not only provide a safety net but will expand their responsibility to help their employees maintain a certain quality of life, both professionally and personally. Many do this because they have embraced the concept that a happy employee is a much more productive one. This is the realm of flexible work schedules, tuition reimbursement, paid parking, personal use of business vehicles, adoption and fertility assistance, subsidized or free meals or snacks, on-site gyms or memberships and wellness programs, break room activities such as pool or foosball tables, basketball nets in the

tending to expand their responsibility from when the employee arrives at work to when they set foot out of their vehicle. If this is in a public lot several blocks away, the employer becomes responsible for conditions they have no control over. When an employee with paid parking is injured due to poor conditions such as icing or disrepair, in most cases the claim will be paid for by the employer's workers' compensation coverage. In most states, workers' compensation is always primary, meaning the coverage pays while the determination of other responsible parties and the extent of their liability is sorted out. Recovery from the lot owner may be possible but it could take years to get any money back. An employer can insulate themselves from this risk exposure simply by converting from direct paid parking to a parking allowance or an increase in pay equivalent to the cost of parking.

Allowing employee personal use of company vehicles not only potentially expands an employer's workers' compensation risk to when they arrive at or depart from their home, but also exposes the employer to additional liability for any accident caused by their worker in the