

M&G|exposure

MESSAGE FROM THE COO: ENGAGING REMOTE EMPLOYEES

Contributed by: Kerry Morris

Employee satisfaction and engagement is important to us at Morris & Garritano. We want our people to love what they do and find that when they feel satisfied in their position, the benefits cascade to our clients and ultimately improves the service that M&G is known for. According to a recent survey by Gallup, flexible scheduling and work-from home opportunities consistently play a major role in an employee's decision to take or leave a job. Further, employees who spent a 60 to 80 percent of their time working remotely had the highest rates of engagement and "are the most likely to strongly agree that someone at work cares about them as a person, encourages their development and has talked to them about their progress."¹



Our approach to flexible work arrangements includes the option for employees to work remotely. This might mean working from a home office in Atascadero a couple days a week, or living in Montana and still being a part of the M&G family. While the purpose of offering a remote working environment is to help retain talent, nurture employees, and build strong teams, there are some challenges to overcome as well and we are continually learning what works and what doesn't. Here are some challenges that we have experienced and the solutions we have implemented.

Challenge: Collaboration Amongst the Team

How often do you turn to your co-worker to ask a question? What happens when that co-worker is no longer in the office? The inability to just talk to the person next to you impacts the remote employee as well as the rest of their team. Communication and collaboration are essential in most businesses and it is difficult to do either properly when you aren't connecting with everyone.

Solution

Check-in Frequently and Consistently: As a manager, schedule daily or weekly check-ins. Even if it's a quick, "Hi, how are you today?" What is going on at the home office that they should know? It is important that you work hard to continue to build relationships. Encourage your team to touch base with their remote coworkers as well.

Utilize and Become Comfortable with Technology: Sharing screens, video conferencing, and instant messaging are all ways to minimize the "distance" between team members and allow for real-time communication on projects. If you are stuck with a challenge, before going to someone outside your door, consider calling, messaging, or emailing one of your remote staff.

Challenge: Keeping Remote Employees Engaged

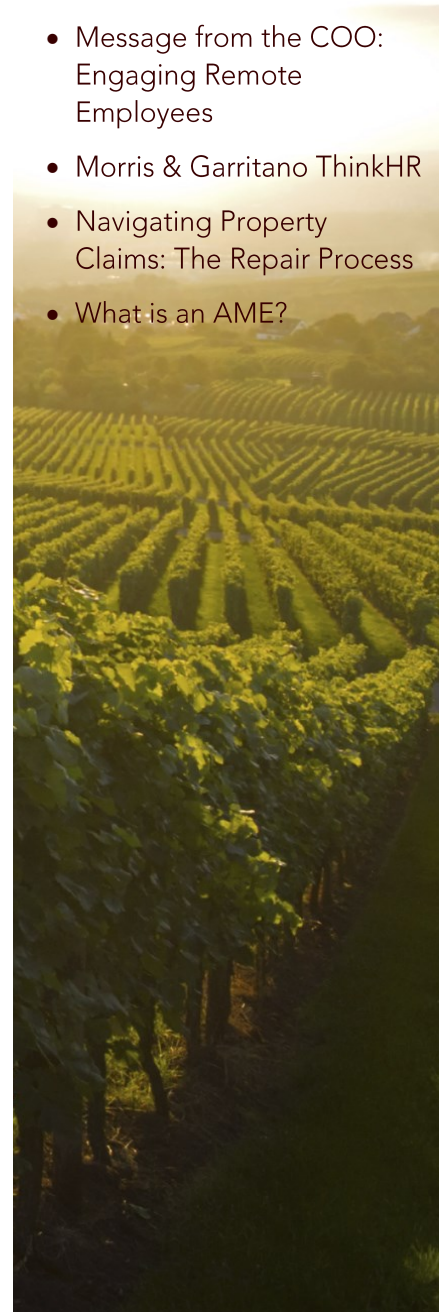
Unfortunately, the old saying "out of sight, out of mind" can be applied to remote employees. Missing out on a department lunch, not being included in a stand-up meeting, or being passed over for a project lead – these are all scenarios that a remote employee could go through. When an employee feels they are being overlooked or forgotten, it will affect their desire to remain engaged.

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ENGAGING REMOTE EMPLOYEES (CONT'D)

Solution

Provide Opportunities: In group meetings, have them start the discussion, or ask questions specifically to them. Give them opportunities to lead initiatives or projects. Note that if you have an entire team of remotes, you will need a strong meeting facilitator to keep things organized.

Focus on Relationships: If you're having a company lunch meeting in the corporate office and they are involved, send them lunch from a nearby deli (or send them a gift card in advance). Set aside a few minutes at the start of each meeting for "water cooler" conversation – How's their family? Did they have a good weekend? The more you do to show your remote employees that they are full members of your team, the more they will feel like it.

Lastly, building the engagement skills of your managers is critical. Initially it can be challenging to incorporate these new habits, and so, we are now focusing on it as a team.

We consider ourselves a work in progress when it comes to learning and implementing employee engagement best practices. We are committed to keeping our employees effective and engaged so that both our clients and staff can continue to thrive.

¹ <https://www.nytimes.com/2017/02/15/us/remote-workers-work-from-home.html>



Morris & Garritano ThinkHR

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If you are interested in learning more about ThinkHR, please contact Louise Matheny at lmatheny@morrisgarritano.com.

JULY 1 BRINGS ABOUT NEW EMPLOYMENT LAWS

Contributed by: Louise Matheny, Human Resources Consultant

As of July 1, several legal changes have gone into effect that affect California businesses. While one change to the California Fair Employment and Housing Act (FEHA) applies to all employers across the state, others only pertain to certain local jurisdictions.

New National Origin Regulations for California

The new FEHA regulations expand on California's already strict rules prohibiting harassment, discrimination and retaliation based on protected classes. It also addresses specific acts that could be categorized as national origin discrimination. The definition of "national origin" includes "actual or perceived":

1. physical, cultural, or linguistic characteristics associated with a national origin group;
2. marriage to or association with persons of a national origin group;
3. tribal affiliation;
4. membership in or association with an organization identified with or seeking to promote the interests of a national origin group;
5. attendance or participation in schools, churches, temples, mosques, or other religious institutions generally used by persons of national origin group; and
6. name that is associated with a national origin group."

The regulations protect both applicants and employees and applies equally to undocumented workers. They also describe which types of practices or policies may constitute national origin discrimination. An example would be language restrictions, including English-Only policies. If an employer has a policy in place that limits or prohibits the use of a language, they must justify its necessity for business practices, meet certain notice requirements, and show that the restriction is "narrowly tailored." If you are interested in the full text of the regulations, you can find it [here](#).

What to Do As an Employer

Review Your Company's EEO Policies

Look over your equal employment opportunity (EEO) policies to ensure they expressly prohibit perception-based and associational discrimination and harassment based on national origin

Review Language Restrictions

If your company has language restrictions in place, ensure that the restrictions meet the new requirements. It is also best to remove any language restrictions during an employee's duty-free time, such as meal or rest breaks.

Employee and Supervisor Training

Ensure your harassment prevention training materials address perception-based and associational discrimination and harassment based on national origin. If necessary, you can update the materials with examples of unacceptable behaviors or questions in association with national origin. Review any updates with the necessary supervisors and employees.

Local Ordinances

Some of the July 1 changes only affect particular cities and counties within California. Such ordinances relate to minimum wage, criminal background checks, paid sick leave, or employee scheduling.

For example, the following cities and counties increased their local minimum wage, though eligibility rules vary by location: Emeryville, City of Los Angeles, County of Los Angeles (unincorporated), Malibu, Milpitas, Pasadena, San Francisco, San Leandro, and Santa Monica.

If you have offices or employ workers in these areas, make sure that your employment law posters are up-to-date with the new minimum wage increase.

PARTS OF CALIFORNIA'S NEW WORKPLACE LAWS PUT ON HOLD

Contributed by: Louise Matheny, Human Resources Consultant

California's Immigrant Worker Protection Act (AB450), that went into effect on January 1, 2018, established California workers with certain protections from immigration enforcement while on the job. However, on July 5, the federal Department of Justice granted a preliminary injunction that blocks the state from fining employers who voluntarily grant U.S. Immigration and Customs Enforcement (ICE) access to employee records or non-public worksites.

Consent to Workplace Access

Since AB450's enactment, employers have been unable to voluntarily allow immigration agents to

- enter nonpublic work areas without a warrant; or
- access, review, or obtain company records without a subpoena or judicial warrant.

Violation of these provisions could result in a fine of up to \$10,000 for the employer.

The Department of Justice is expected to succeed in its federal constitutional challenges to AB450:

"The Court finds that a law which imposes monetary penalties on an employer solely because that employer voluntarily consents to federal immigration enforcement's entry into nonpublic areas of their place of business or access to their employment records impermissibly discriminates against those who choose to deal with the Federal Government."

For the time being, private sector employers **cannot be fined** for voluntarily allowing ICE to access nonpublic work areas or employee records.

Reverification of Employment Eligibility

Another section of AB450 being blocked by the court is that which limits an employer's ability to reverify the employment eligibility of a current employee in a time or manner not allowed by federal law. However, federal law does place limits on reverification of employment eligibility which still must be upheld.

Notice Obligations Upheld

While parts of AB450 have been challenged, it is important to note that the notice obligations found in AB450 still must be upheld by the employer:

- Must give notice to employees of any inspection of Forms I-9 or other employer records within 72 hours of receiving a Notice of Inspection.
- Provide notice obligations once the inspection is over. Within 72 hours of receiving the inspection results, employers must give each "affected employee" a copy of the results and a written notice of the employer's and employee's obligations arising from the inspection.

Moving Forward

While this is only a preliminary injunction, the battle over sanctuary state laws is likely far from over and future appeals are likely. In the meantime, California employers should continue to comply with the notice requirements of AB450 and consult legal counsel with questions concerning ICE visits or request for documents.



6 KEYS TO ACA COMPLIANCE

Contributed by: Keith Dunlop, Director of Compliance & HR

It has been over 8 years since the Patient Protection and Affordable Care Act, commonly called the “ACA”, was passed and signed by President Barack Obama. And despite some of the recent attempts to repeal the measure under the Trump administration, the reality is that the law is here to stay for the foreseeable future. The IRS has stepped up audit and enforcement actions, including substantial assessments against large employers, so now is the time to review your overall compliance program and implement the 6 keys to maintaining a compliant healthcare program.



1. Are you an Applicable Large Employer (ALE)?

ALE's must fully adhere to all aspects of the ACA, and can be held liable for substantial fines for failure to maintain full compliance. An ALE is an entity with 50 or more full time and full time equivalent employees in the prior calendar year. This “FTE” count should be performed on an annual basis, and the results must be aggregated amongst related entities with common ownership under IRS control group rules.

2. Correct Classification of Employees

The law requires that employers with 50 or more full time and full time equivalent employees offer healthcare coverage to no less than 95% of employees who work 30 or more hours per week. The penalty on employers who fail to meet this mandate is \$2,320 times the total number of all full time employees on staff. It is important for employers to correctly identify and classify employees as full time, part time, and variable-hour in order to ensure compliant offers of coverage.

3. Review Plan Documents and Required Filings

The Employee Retirement Income Security Act (ERISA) requires covered plan administrators to provide participants with certain notices, including but not limited to, a Summary Plan Description (SPD) and other ERISA-required notices. Certain plans are also required to file Form 5500 and Form 720 with the Department of Labor and Internal Revenue Service respectively.

4. Address Assessment Notices Timely

Many employers across the country are receiving ACA penalty assessment notices from the IRS, known as Letter 226J – the notice that an employer has failed to comply with the Employer Shared Responsibility provision of the law. Failing to address these notices timely and take all available appeal remedies can hold serious financial consequences.

5. Details Matter

The completion of Forms 1095-C and 1094-C must be performed with accuracy and precision. Double-check HRIS records to ensure that employee names are spelled correctly, surnames and name suffixes are accurate. Employers also need to ensure that SSN's are accurate and that EIN numbers are associated with the correct business entity. Employers should maintain several years of data for audit purposes and responses to notices.

6. Have a Plan in Place

A solid compliance plan is critical to withstanding the ever-changing ACA landscape. Employers need to commit to educating themselves on the mandates enforced by the government and have a well thought-out compliance program in place to mitigate liabilities. Be highly organized in onboarding and benefit administration, make use of technology to automate processes and data retention, and be audit-ready with a well-organized insurance fiduciary file.

OFF-ROAD DRIVING WITH ASSOCIATION PLANS

Contributed by: Dave Morgan, Senior Employee Benefits Advisor

California small group health insurance plans have become fairly predictable: four metallic levels and a limited number of carriers. Their disappointments have been predictable as well: shrinking lists of covered prescriptions and shrunken ambulance coverage. Nothing apocalyptic, though - no insolvencies and, thanks to ACA's ten essential benefits counting toward the out-of-pocket maximum, no uncovered major expenses. For groups with under one hundred employees, that is the highway commonly travelled.

On June 21st, the Department of Labor (DOL) released the final regulations on Association Health Plans (AHP). Over the course of the next year, groups as small as a sole proprietor can choose to go off-road with their health insurance. The surviving current "bona fide" association plans can continue under the old regulations (please see my article in the January Morris & Garritano newsletter), or make alterations under the new ones. However, the proliferation of AHPs will not be seen until 2019. They will be organized by industry or region, and will be self- or fully insured.

Will the rates be better than the current small group marketplace? It depends on who and where you are and what you do. The rates can vary based on geography, which can be more granular than it is now, e.g. San Luis Obispo rates versus our current tri-county rating region. They can vary based on age and gender. The average cost for claims for a woman in her twenties is greater than for a man, and rates may now reflect that. The rates can vary by industry as well.

There will be significant state influence on AHPs. For instance, New Jersey has a 2019 replacement for ACA's individual mandate penalty, and AHP coverage "generally will not qualify . . . for purposes of the law," according to attorney Stacy Barrow in a presentation to members of the Benefit Advisors Network (BAN). And California has yet to show its regulatory cards on AHPs.

The fine print and financials, though, may be a more important focus than the big picture. What is predictable in current plans would need to be analyzed in new ones; otherwise, an employee might have a large expense that slips the plan's out-of-pocket maximum. Moreover, due diligence on an AHP's finances and compliance will be crucial.

Some AHP's will be pleasant drives to new beaches, and some will be different types of off-road experiences. Morris & Garritano advisors will be curating some AHPs and helping clients get under the hood and into the navigation of many more.

WHAT IS AN AME?

Contributed by: Mary Jean Collins, Workers' Compensation Claims Analyst

An Agreed Medical Evaluation (AME) is a medical evaluation that results in a medical-legal report to help resolve a dispute. The evaluation is conducted by a provider who is selected by agreement between an injured workers' attorney and the claims administrator. The process of finding a mutually agreed upon provider is the same as a Panel Qualified Medical Exam:

- A request is made to the Department of Insurance for a list of three doctors in the appropriate field of medicine.
- Both the applicant attorney and the insurance carrier examiner are allowed one strike.
- The remaining doctor on the panel list will be the AME for the claim.

Once the AME report is received, both parties will negotiate settlement to bring the claim to final resolution.



Navigating Property Claims

A series by Heather Ross, Claims Advocate

THE REPAIR PROCESS

Last month, we talked about the steps needed to protect your property in the event of a water-related claim. For the final installment in our series on property claims, we'll take a look at the repair process, including how to avoid certain pitfalls that can increase your out-of-pocket costs.

After you've taken steps to prevent further damage, it's time to start planning the repairs. The size and complexity of your claim will affect what happens next.

If the damage is relatively minor, the adjuster may ask you to send pictures of the damage, and then write a repair estimate based on those. In some cases, the damage restoration contractor who performed the initial mitigation work might be retained to write the estimate. For more serious claims, the company can elect to send out a field adjuster to inspect the damage and write an estimate for the repair.

In the meantime, it's a good idea to start looking for a contractor, if you haven't done so already. While many repairs can be performed by reputable damage restoration contractors, other types of licensed contractors might be better suited for your situation. Be sure to pick your contractor wisely; the company might not continue to pay for business income loss (or loss of use) if there are delays in the completion of repairs.

After the estimate is complete, you'll be paid for the actual cash value of the repairs, which may be less than replacement cost due to depreciation. In many cases, however, that first check won't necessarily be the final payment. For example, if your contractor finds additional damages while performing the repairs, he/she can file a request for a supplemental payment. And, of course, if you've purchased replacement cost coverage, the company will issue payment for the recoverable depreciation once you submit final invoices to prove the repairs were completed.

If you have a loan on the property, the mortgagee/lender may be listed as a payee on the insurance check. Sometimes, for larger claims, the mortgagee will hold your claims payment in escrow and release the funds to you in installments as you're able to demonstrate the progress of repairs.

It's important to remember that your claims payment is only intended to bring your property back to pre-loss condition; in other words, your policy isn't going to pay for any upgrades or remodeling that you decide to undertake along with the repairs. Also, if your claim triggers requirements that you update your building to comply with current building codes or ordinances, those updates won't be covered unless your policy includes that optional coverage.

Perhaps most importantly, even though it's been said before: document, document, document! Keep all your receipts for consideration under the policy, even if you're not sure the expense will be covered – after all, it never hurts to ask!

With so many details to keep in mind, even small claims can be challenging. No matter the size of your claim, remember we're here to help. Please give our office a call if you ever need assistance.

SAFE DRIVING ON THE BRAIN

Contributed by: Michael Schedler, Loss Control Consultant



According to the National Safety Council, one-third of all on-the-job fatalities in the U.S. involve a motor vehicle. Adding that to the multitude of driving deaths that occur outside of work results in nearly 40,000 people dying each year because of motor vehicle accidents. How do we keep this number from climbing? One possible solution, as proposed by neuroscience, is our brain. When understood, five brain-centered hazards can be avoided, thus making for safer driving habits on and off the clock.

The Expectation Bias

Driving requires you to make multiple decisions at any given moment – some studies estimate up to 130 decisions are made each mile. In order for our brain to work that quickly, it has to set expectations for what we should be seeing on a normal drive. It then tells our eyes to keep a look out for those items. The problem is that our brain cannot prepare our eyes for the unexpected – an animal in the road, the car in front of you slamming on their breaks, etc. To overcome this expectation bias, we must be proactive with our observations to perceive new hazards.

Seeing Is Suspect

Our eyes function much like a flashlight beam – illuminating a relatively small field of vision, while leaving the outer areas in the dark. Being aware that there is more to be seen in the area beyond your line of sight, can help you to scan your field of vision more completely and routinely.

“Autopilot” in Action

Have you ever arrived home only to realize that you don’t remember anything from your drive? We do a lot of our driving on “autopilot”, particularly routine routes like a commute to and from work. Make sure to put conscious attention into your driving to prevent any avoidable accidents.

Distractions and Divided Attention

There are three forms of driving distractions:

Visual – taking your eyes off the road to do *something else*

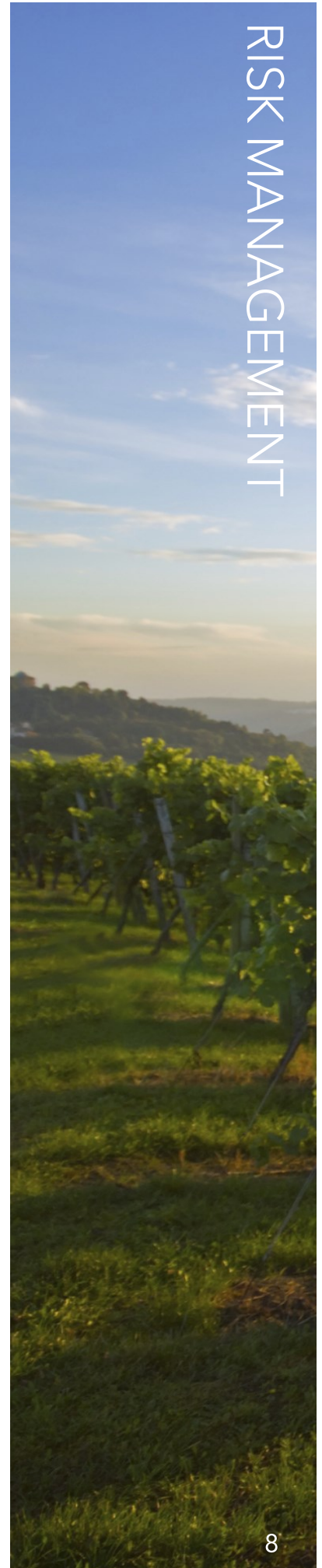
Manual – taking your hands off the wheel to do *something else*

Mental – daydreaming or having distracting thoughts about *something else*

The common thread here – they all take our focus off driving, and put it on *something else*. Our brains cannot simultaneously perform two cognitive-heavy tasks. When you are behind the wheel, driving safely should be your primary task.

Micro-sleep

Our brains need deep sleep to recharge and be able to fully function. If we aren’t getting enough sleep, our brain goes searching for it through a series of micro-sleeps – where your eyes are open, but your brain is asleep. If these micro-sleeps happen while driving, you are setting yourself up for all kinds of dangers. Ensure you are getting enough rest, and don’t drive if overly tired.



D&O LIABILITY: EXPOSURES FOR NONPROFITS

Contributed by: Weston DeFrisco, Commercial Lines Account Executive

In the world of D&O Insurance, Directors and Officers of Nonprofit Organizations often wonder what duties are owed to their organization. These duties include the duties of care, loyalty, and obedience. In addition, duties are also owed to members, employees, and the general public. A breach of those duties can give rise to claims against the nonprofit.

Duties Owed to the Nonprofit Organization

Duty of Care

In most states, the directors and officers of nonprofits are now subject to the same standards of care as directors and officers of for-profits, which is the duty of each to exercise his or her judgment as a reasonably prudent person in similar circumstances.

Duty of Loyalty

The duty of loyalty owed by directors and officers of nonprofit corporations includes the duty to avoid conflicts of interest, to avoid interference with corporate opportunity, and to keep the confidence of the corporation.

Breaches of duty can include disclosure to third persons of information the director or officer has gained as a consequence of his or her position, commingling funds, purchase by a corporate trustee of its own or an affiliated company's stock, and loans of organization funds to a director or officer.

Duty of Obedience

Directors and officers are required to perform their duties in accordance with applicable statutes and within the terms of the organization's charter. In addition to observing the formalities and separate existence of the organization, directors and officers must also obey a variety of laws that may impose direct liability on them for wrongful conduct. Examples of suits from statutorily imposed liability on nonprofit directors and officers can include Employment Practices Liability suits, antitrust suits, copyright/patent suits, ERISA suits, pollution suits and securities lawsuits.

Duties Owed to Members

Nonprofit corporations do not have a class of persons who have an equity interest in the corporation. While some nonprofit corporations may have members with voting privileges affecting the operation of the corporation, many nonprofit corporations do not even have members. Thus, nonprofit corporations generally do not have a class of persons with a sufficiently significant financial interest in the operation of the corporation to bring a derivative or class action suit.

However, where a nonprofit corporation has members, the directors and officers do have duties to the members and may be liable for breaches of those duties. The duties of a director or officer to the membership of a nonprofit corporation are, for the most part, encompassed within the general duty of loyalty and due care owed to the corporation itself.

Duties Owed to Employees

The hiring, promotion, and termination of employees make up one of several areas of potentially significant exposure for directors and officers of for-profit corporations. For directors and officers of nonprofit corporations, employee-related claims are the single most serious area of exposure and, depending on the type of nonprofit, constitute roughly 80 percent of all claims made against the directors and officers of nonprofit organizations.

Duties to the General Public

Besides owing a duty of care and loyalty to the nonprofit corporation itself and duties to its members and to its employees, directors and officers of all corporations also owe duties to the general public. Thus, nonprofit organizations, like all for-profit entities, must abide by the criminal and civil laws of the federal and state government. The types of civil liability potentially faced by a nonprofit corporation and its directors and officers are numerous. The civil actions often directed against the nonprofit corporation and its directors and officers include common law fraud, breach of contract, and all varieties of torts, including wrongful death or other personal injury, negligent hiring and supervision, and interference with contract or prospective advantage of third parties.

Contact Morris & Garritano with any questions or for a quote!

PREPARING YOUR HOME FOR VACATION

Contributed by: Marie Bloomstine, Personal Lines Department Manager

Vacation is for fun and relaxation. Help save yourself some worry about what could be happening at home by protecting it from theft and damage while you are away. Here is a checklist we have developed to help you have a relaxing and peaceful vacation.



- Make sure all electrical appliances are turned off.
- Clean the refrigerator of all perishable foods, and take out the garbage.
- Lock all windows and doors.
- Arrange to have the newspaper and mail held until your return, or have them picked up by a trusted neighbor.
- Arrange to have your lawn mowed (or snow shoveled) while you are away. Ask a neighbor to set out your trash on collection day and retrieve empty cans that same day.
- Let a trusted neighbor know you will be away and have them keep an eye on your home. It is a good idea to leave your vacation address and telephone number with a neighbor so you can be reached in case of an emergency.
- Never leave your house key hidden outside your home.
- Set timers on interior lights.
- Make sure to unplug televisions, computers and appliances susceptible to lightning and power surges.
- Advise your alarm company and local police if you will be gone for an extended period.
- Store jewelry and valuable items in a safe-deposit box.
- Arrange for the care of pets.
- Set the heating system to provide minimum heat of 55 degrees.
- Avoid posting your vacation plans or travel dates on social media

Source: www.travelers.com/resources/home/safety/preparing-your-home-for-vacation

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Our monthly newsletter is where you can find informative articles relating to the Commercial Lines and Employee Benefits industries.

For day-to-day updates and more information about our community and our company, follow us on Facebook, Twitter, Instagram, or LinkedIn. Visit our website, or check us out on Yelp!

Please contact us for more information or questions on anything mentioned in this newsletter.



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