

# Employers Beware!

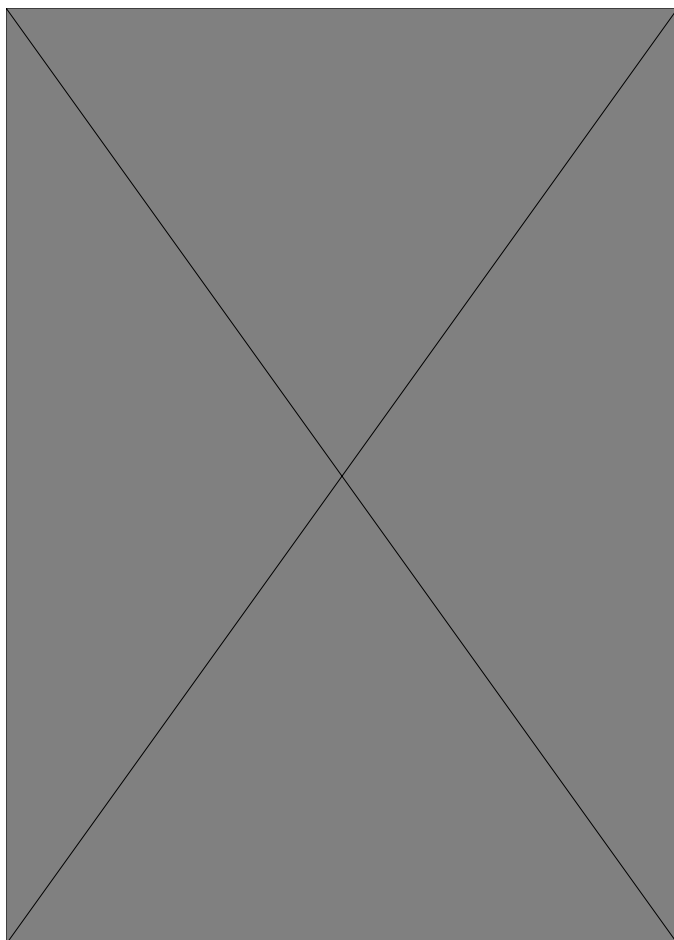
**Employment Practices Liability opens employers up to new vulnerabilities.**

by **KENNETH VONFORELL**

**"H**E did what?" "She wouldn't dare!" "How could they do this to me?" These words could be coming from your mouth if you are a business owner. A recent increase in Employment Practices Liability claims is causing new headaches for employers throughout the horticultural industry and is putting them to the test. Garden center retailers and growers with large and diverse groups of employees or high turnover rates could especially be at risk.

## The Termination Process

The most common risk involves the termination process. We all know how important it is to find motivated, loyal and capable employees. Despite the best efforts of employers to train, retrain, coach and counsel employees, the possibility always exists that an employee might have to be let go.



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The act of dismissing an employee can become the grounds for legal action against an employer. The action is termed "Wrongful Discharge," with allegations usually taking the form of some grievous-sounding act or omission by the employer. The allegations can and do take on many forms, such as discrimination, mistreatment, false accusations or verbal and mental abuse.

Allegations of this type are disturbing enough, but allegations of sexual harassment in particular have a way of eliciting the type of reactions mentioned at the beginning of this article. Sexual harassment may be fodder for late-night talk show hosts, but if you are accused of allowing it in your workplace, it is no laughing matter.

The type of actions that are considered to be sexual harassment might surprise you. One business owner received an off-color cartoon via e-mail from a friend whose daughter was employed by the owner. Nothing was ever said until the daughter and her friend were fired for poor performance. Sexual harassment was claimed as part of the wrongful discharge claim.

Not all allegations are quite so frivolous. Indeed, there is inappropriate behavior that goes on in the workplace, and it is the responsibility of the business owner or manager to see that allegations are quickly investigated and behavior is changed. It is common for owners and managers to dismiss complaints without any investigation, thinking things will correct themselves or just go away. Owners must make the atmosphere in the business such that people being harassed will feel free to talk to management about the problem without fear of reprisal.

## Avoiding A Hostile Environment

Management must be aware that some employees who are given supervisory positions over others might use that power or position to harass subordinates. Though a majority of harassment claims are made by female employees against male supervisors, the complaints can come from just about any situation. Male employees have complained that other male employees have harassed them, allegations by subordinate males against female supervisors have been made. Complaints can even come from groups or individuals who think that the atmosphere in the work place is a hostile environment with no specific incident.

Inappropriate photos, music, language (especially inappropriate jokes) and seemingly inoffensive bodily contact have also all been targets of harassment suits. Sometimes management will not hear of an allegation of sexual harassment until a person is terminated, with or without cause. Often, the wrongful discharge complaint is bolstered by

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### LIABILITY

harassment charges. In most instances, when a complaint is made, the worst thing an employer can do is ignore it.

#### The Hiring Process

Problems for employers can also arise from not hiring someone. Discrimination charges are some-

times alleged when a prospect doesn't receive an offer for employment. Employers must understand what information is legally obtainable in the interview process and ask appropriate questions. Though some employers are bad actors and equality in the workplace must be protected, many allegations are weak or baseless. Often, legal action is taken for revenge, to repair hurt feelings or to punish an employer.

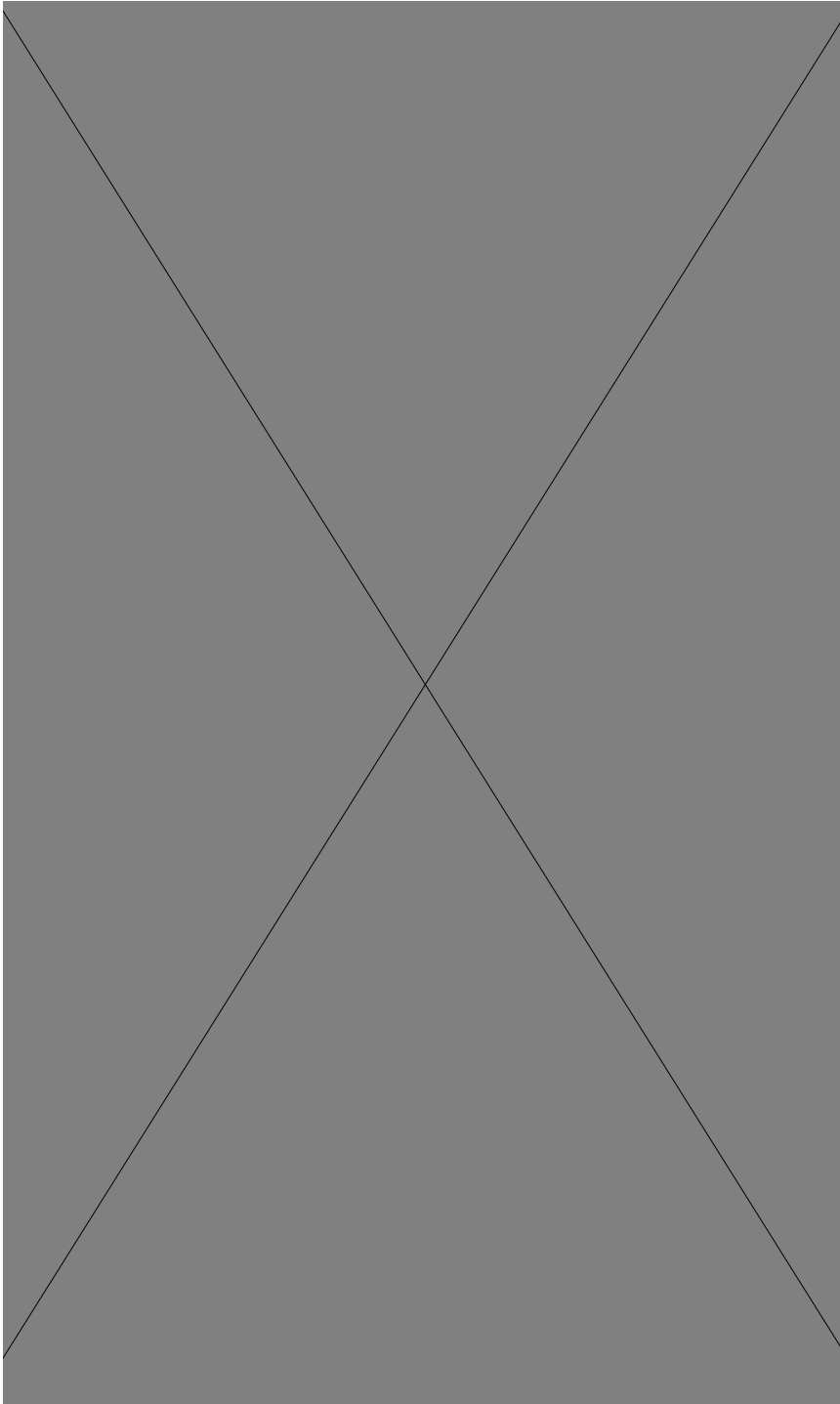
The standard business insurance liability contract specifically excludes protection for suits arising from employment issues such as wrongful discharge, sexual harassment and discrimination. To address this rapidly increasing legal risk to employers, the insurance industry has created a policy or coverage called Employment Practices Liability Insurance (ELPI).

Available as a separate policy or through some companies as an endorsement to the General Liability policy, this protection is now widely available to protect business assets. Limits of insurance from \$100,000 to \$1 million with various deductibles are available. Premiums are based on the number of employees, the history of claims and the quality of employment practices of the business. A review of the employee handbook might also be required.

Purchasing insurance is never a substitute for good business practices. Making the work environment free of offensive language and inappropriate behavior is the best defense against harassment type suits. A good employee handbook, with fairly administered hiring and firing practices, goes a long way toward eliminating or reducing discrimination and wrongful termination claims. Sensitivity training of supervisors and company personnel is also a good way to reduce these types of actions. Documentation of personnel files with any disciplinary action taken against an employee is critical.

A top-down commitment from all management and staff is necessary to create the corporate culture necessary to protect your business from unwarranted claims. When all else fails and frivolous claims are made against your organization, that is when Employment Practices Liability Insurance will protect your company assets. It is a wise protection in a world of ever increasing uncertainty. **GG**

**About the author:** Kenneth VonForell is national director of independent agents at Hortica Insurance & Employee Benefits, a mutual insurance company that specializes in insuring horticultural businesses. Hortica is a full-source provider offering business insurance, employee benefits and personal insurance. For more information, call Hortica at 800-851-7740 or visit [www.hortica-insurance.com](http://www.hortica-insurance.com).



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