

Supplier Default/Limiting Liability

Unfortunately, it appears the travel industry will continue to have issues with regard to supplier default and how to minimize liability. Some clients will lose deposits and/or payments and ultimately will try to recoup their losses from the travel agency. Therefore, we strongly recommend that our agency clients undertake an internal liability audit to evaluate and take steps to limit the agency's risk as much as possible.

This would include reviewing the agency's organizational structure, including whether it is a sole proprietorship, partnership, corporation, LLP or LLC. The agency needs to review its present corporate structure with its CPA and/or attorney to determine which form of ownership best suits its needs.

Agencies should also review their use of disclaimers in the sale of travel insurance. Enhanced training programs should be mandatory for employees and available to independent contractors to make certain disclaimers are routinely used and travel insurance offered on every sale.

We also recommend the travel agency include in its disclaimer a recommendation that the client use a credit card for payment. Generally, under federal law, if a credit card is used to pay for goods and services and not delivered, the card holder has certain rights to obtain a credit if payment has been made or, alternatively, have the charge removed from the card if payment has not been made. However, under no circumstances should travel agencies guarantee their client's funds will be protected if they charge the payment to a credit card. We recommend that agencies suggest to their clients that using a credit card to pay for travel arrangements might provide more protection than paying by cash or writing a check.

It is essential the agency have written authorization, such as a signature, an e-mail or fax, authorizing the charge to the credit card. If the sale involves airline tickets that are processed through ARC, the agency must follow the format of the Industry Agents' Handbook, which specifies what is accepted by each credit card company and airline for a credit card charge. If the travel agency follows these procedures, it will have no liability in the event of any chargebacks or disputes by the passenger.

It is important the agency routinely offer travel insurance to its clients and the clients either accept the coverage or sign a disclaimer indicating they decline the coverage. We are aware of circumstances in which travel agencies were sued by their clients because of an alleged failure to offer insurance that could have protected them. It is worth checking with your insurance company or the state insurance commissioner to determine whether the agency can add the cost of the insurance to the trip and have the client subtract the insurance premium if they do not want the coverage. This scenario provides the best possible disclaimer because it requires a client to take action if they do not want the insurance coverage.

Select the insurance company that offers the best protection, regardless of the commission

paid. Clients need to be aware of exactly what protection is provided by the insurance policy. This would include notification to the clients that in order to waive any preexisting conditions, they need to accept the policy within a certain number of days after the initial deposit is made.

Fortunately, the use of a disclaimer has become more prevalent throughout the agency community. Agencies should take precautions now to prevent avoidable future economic loss.

On the personal note, my new contact information is as follows:

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At-Home Employees

Over the last several years, there has been an increase in independent contractors and home-based employees. We regularly receive questions from our travel agency clients with regard to how at-home employees should be treated. It is very important that the agency understand the requirements with respect to at-home employees in order to avoid liability, particularly with regard to wage and hour statutes.

Many travel agencies have determined they can reduce the agency=s overhead by having some employees work from their residences. The reduced overhead includes less space, furniture and fixtures, and perhaps a reduction in telephone and utility bills.

It is extremely important that agency owners and managers understand that at-home employees are eligible for any and all of the benefits available to employees based in the office, subject to any pro rata share of those benefits if the employee works less than full-time. Under many health insurance policies and pension plans, employees need to work a minimum number of hours, 1,000 is typical, to be eligible for those benefits. However, the employee should receive a pro rata share of vacation, sick leave, and any other leave available to other employees.

The at-home employee is also subject to the withholding of taxes as well as FICA and Medicare, is covered by the agency=s workers= compensation policy, and is eligible to file an unemployment claim in the event he or she is laid off by the agency. We strongly recommend the agency have an agreement with home-based employees as to how many hours per day and per week they can work. It is essential that employees be required to submit a time card at the end of each week or pay period to reflect the hours they worked during that time period. It is extremely important because it will avoid any claim for overtime that can accrue if the home based employee works more than 40 hours per week or, in some states, more than 8 hours per day. If employees working in the office are required to have prior authorization for overtime, the same requirement should exist for at-home employees.

If employees are seeing agency clients in their residences, both the agency and the employee need insurance to protect them from liability. Further, any agency-owned equipment at the employee=s residence needs to be covered by insurance. Generally, the home-based employee can add occasional business use to his or her homeowner=s policy for a minimal sum. This would protect the employee in the event a client is injured on their premises.

The agency also needs to determine if a business license is required or if there are any zoning issues that should be addressed by the home-based agent. The trend over the last several decades has been for more home-based businesses, so the zoning issue should not be a major factor. Another issue the agency needs to address is what provision, if any, is going to be provided to the home-based employee on a regular or ad hoc basis. It is imperative to establish written procedure for handling funds collected from clients by the

home-based agent and how they will be remitted to the agency. A major advantage of a home-based employee is that the agency can control the work activities of the employee by providing instruction and directions as to how their work should be performed.

We believe that allowing employees to work at home, in certain circumstances, can be very beneficial for both the agency and the employee. However, it is essential the agency have procedures in place to protect itself with regard to liability and wage and hour issues.

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