

Leave 'paper trail,' lawyers warn superintendents

Good documentation can keep you out of court suit, experts say

By Mark Leslie

LAS VEGAS, Nev. — From chemical use to hiring and firing, superintendents today must "document, document, document," experts said at the International Golf Course Conference and Show.

"A superintendent should leave a paper trail to protect himself against the law," said Chuck Palmer of

Troutman, Sanders, Lockerman and Ashmore of Atlanta, Ga., in kicking off a series of talks on legal questions and concerns.

The importance of documentation was stressed by attorney Julie Gaston of the University of Las Vegas, who addressed avoiding a suit for wrongful termination, and Robert Ochs of Ochs, Kelley and Luttjoham in Topeka, Kan., who spoke on educating club officials on regulations and liabilities.

"Wrongful firing is a very hot topic legally," Gaston said. "I would

prefer that most people work under a contract... but not many people do."

Since laws differ from state to state, she recommended that superintendents contact their state attorney to discover laws affecting them.

She said there are "employment contracts" and "employment at will." Most states have "employment at will" under common law, in which an employer can fire an employee at any time for any or no reason, provided it's not discriminatory, she

said.

"Part of the problem with wrongful termination is that every employee feels they have been wrongfully terminated," she said.

She listed three grounds upon which a wrongful firing suit can be successful:

- If termination was for a reason that violates public policy.
- If termination breached an implied contract of employment.
- If "good faith and fair dealing" was broken.

These are exceptions to the "em-

ployment at will" law.

The public policy exception, she said, includes if the employee refused to participate in illegal behavior; exercised a legal right or privilege; performed an important public obligation like jury duty; or disclosed an employer's wrongdoing.

An "implied contract" suit is more difficult for the employer because "it can sneak up on you," Gaston said. Implied contracts may result from off-the-cuff comments, statements of job security, or progressive discipline programs (usually with handbooks) specifying reasons for discharge. If a handbook says an employee can be fired for X, Y or Z and does not mention X, then it infers the employee can do X, she said.

Gaston's "Prevention Plan" includes:

- Do not make it so rough on the employee that you force him to quit.
- Adopt a "just cause only" termination policy.
- Train management to make no promises.
- Make affirmative disclaimers in employee handbooks.
- "Document, document, document."

Without documentation, she said, the employer "runs the risk of going to court and you have no protection... Build information to combat a wrongful termination problem."

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Ochs also stressed that superintendents should document whatever they do in order to protect themselves if they or their golf course is sued.

He said they should "have a club policy and keep notes" regarding a range of concerns from chemical spraying to trespassing.

"The only thing you owe a trespasser is, don't intentionally hinder them," he said, adding that known defects must be corrected if business guests are present, and social guests must be told about known dangers.

He said courses in residential areas should put up signs saying "Absolutely No Trespassing," "No Swimming," etc.

Beyond that, the superintendent should take and keep notes on any incident and action he took regarding a trespass.

"It doesn't take much to have a blockbuster defense," he said. "But it doesn't take much to blow a blockbuster defense (by not having notes)."

Ochs added that, for their own protection, superintendents should make certain that club officials know the laws concerning course maintenance, and should document when they spoke to officials or boards regarding those laws.

This would be especially crucial if the superintendent recommended an action that the official or board denied, he said.

Documentation helps disprove culpability, he said.

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