



# George Petersen Insurance Agency

## News You Can Use

### CONSTRUCTION LIABILITY

## Protect Against Liability from Contractor Labor

**A**S A BUSINESS owner, you could be held liable for the actions of other people's employees.

U.S. employment law has long recognized that workers may have an employment relationship with multiple entities at the same time. That means your company could get stung with OSHA fines, Title VII discrimination claims and other actions that arise from the actions of an employee that you thought was a subcontractor.

Here's why:

In *Secretary of Labor vs. Summit Contractors*, the 8th Circuit ruled that companies that exercise overall control of a job site can be held liable for workplace infractions — even when the individual or individuals directly responsible for the infraction were employees of another firm, and no employees of the controlling employer were directly involved.

Furthermore, even if your company doesn't exercise direct supervisory control of subcontractors, courts have held that a de facto employment situation exists if the controlling employer simply reserves the right to exercise control. ❖

### Ways to Safeguard against joint-employer liability

- Ensure that all subcontractors have employee liability insurance and general liability insurance of their own.
- Check the vendor's or subcontractor's track record on safety and OSHA-related claims.
- Research the subcontractor's bonding history.
- Ensure your employer's liability insurance covers claims that may arise from contractors and vendors working on your property or at worksites your company controls.
- Negotiate an indemnification clause in any vendor contracts or subcontracting agreements.
- Don't rely on verbal assurances: Put the subcontractor's responsibility for complying with OSHA standards and labor laws, rules and regulations in writing, as part of the contract.
- Hold regular safety meetings with representatives from the subcontractor's firm and document them.
- Don't sign a contract with a manpower or employee leasing firm unless you have looked through it for exposure to liability from their employees.
- Ensure the vendor or subcontractor is providing job site supervision. At a minimum, ensure their management is checking on the site regularly. If all supervision is left to you, federal regulators may deem these workers to be your employees.
- Don't discipline the subcontractor's workers directly. Work through the subcontracting entity if possible. If your supervisors discipline them or direct their work too closely, courts may find that a de facto employment relationship exists between your firm and the subcontractor. That exposes you to liabilities those employees may cause.
- Train your middle managers and foremen not to take on the role of supervisor to subcontractors' employees and onsite vendors.
- Don't lend heavy equipment, power tools or vehicles to subcontractors on the job site, unless you also send a designated operator. Contractors are expected to have and maintain their own equipment. Also, when you send your own operator with a forklift, for example, you can help ensure that the subcontractor doesn't expose you to liability because of an accident caused by an unqualified operator.



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### CONTACT US:

If you have a question about any article in this newsletter or coverage questions, contact your broker at one of our offices.

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## WORKPLACE POLICIES

# HDHP Enrollment Slipping: What It Means for Employers



**E**NROLLMENT IN high-deductible health plans has started to fall during the last two years, reversing a trend that saw them peak at 55.7% of group health plan enrollment in 2021.

Enrollment in these plans has now fallen for two consecutive years, dipping to 49.7% in 2023, according to the latest data from ValuePenguin. The drop in enrollment could reflect a turning point for employees who are increasingly concerned about rising out-of-pocket health care costs and the prospect of not being able to afford a medical emergency.

### How HDHPs work — and their drawbacks

An HDHP typically features lower monthly premiums in exchange for a higher annual deductible. These plans are often paired with HSAs, which let workers save pretax dollars to use for qualified medical expenses.

While appealing due to their low premiums, HDHPs can become a financial burden for employees who need more than routine care. A medical emergency, unexpected illness or ongoing treatment for chronic conditions can lead to steep out-of-pocket costs.

### Why enrollment is falling

Several factors are contributing to the recent decline in HDHP popularity, according to ValuePenguin:

- **Rising deductibles:** Even as premiums stay relatively low, the cost burden has shifted to higher deductibles. This trade-off is less tolerable for employees who feel they might need care.
- **More plan choices:** Around 61% of workers now have access to multiple health plan options. With more choices, many are opting for plans with lower out-of-pocket costs, like PPOs, HMOs or point-of-service plans.
- **Shift away from HDHP-only offerings:** The number of employers offering only HDHPs has dropped by 33% since its peak in 2020. That shift is reflected in the enrollment decline.

### The rise of POS plans

As HDHP enrollment falls, POS plans are quietly gaining ground — especially among small businesses. These plans combine elements of HMOs and PPOs, offering moderate flexibility at a midrange cost.

Employees typically choose a primary-care doctor and need referrals for specialists, similar to an HMO. However, they also retain some out-of-network coverage like a PPO, although at a higher cost.

For small employers, POS plans can be a strategic middle ground — less expensive than PPOs but more comprehensive than HDHPs. As more employees seek plans that reduce uncertainty without ballooning premiums, POS offerings may continue their steady rise.

### When HDHPs still make sense

Despite the downturn, HDHPs aren't vanishing, and they are still a good choice for certain groups:

- **Young and healthy workers:** People who rarely use medical services can benefit from the low premiums and use HSAs to build tax-free savings.
- **High earners with savings:** Employees who can pay upfront costs without financial strain may find HDHPs cost-effective, especially when negotiating reduced provider rates.
- **Those committed to using HSAs:** For individuals actively contributing to and spending from HSAs, HDHPs can offer both immediate tax benefits and long-term savings growth.

### Key takeaways

As the benefits landscape shifts, employers may want to consider:

- Offering more than just HDHPs, which helps meet a wider range of needs.
- Providing ongoing education to help workers make smarter decisions about coverage.
- Monitoring enrollment trends so you can tailor offerings to the specific needs of your workforce and location. ❖



## AVOIDING LITIGATION

# Mistakes to Avoid in the ADA Interactive Process

**T**HE AMERICANS with Disabilities Act requires employers to provide reasonable accommodations to qualified employees with disabilities.

While the law does not explicitly mandate an interactive process, courts and the Equal Employment Opportunity Commission strongly favor it. A failure to properly engage in this process can lead to legal exposure and claims of discrimination.

Your human resources office plays a critical role in ensuring the process is followed correctly and that they avoid these common mistakes.

### Failing to recognize when to start the process

Employees may not always use legal terminology when requesting an accommodation. It's rare that an employee knows about the ADA and asks for a reasonable adjustment to their work environment. HR should train managers to recognize informal requests and initiate the process even if a worker does not use precise language.

### Ignoring or resisting accommodation requests

Supervisors may fail to act on accommodation requests due to lack of knowledge or personal biases. Ensure they understand that all requests, regardless of the employee's performance or history, should be taken seriously and forwarded to HR for evaluation.

### Providing inadequate supervisor training

Frontline supervisors are often the first point of contact for accommodation requests, yet recognizing when someone has made a request is not always easy and many are not trained to handle them. Supervisors should be trained to escalate these discussions to HR rather than making determinations themselves.

### Overcomplicating the process

Look for simple, quick solutions whenever possible. For example, if an accommodation is straightforward — such as adjusting start times for medical appointments — consider documenting the request and approving it without unnecessary delays.

However, if the request requires further review, you must formally initiate the interactive process and involve legal counsel as needed.

### Mishandling medical information

Ensure that supervisors only share medical information on a need-to-know basis and employees' health details remain confidential. For example, if a worker needs a designated parking space, colleagues do not need to know the reason why they are given the space.

Also, avoid asking for excessive medical documentation. Employers only need enough information to confirm the employee has a disability and the requested accommodation is necessary. Routine medical updates should not be required if the condition is permanent.

### Poor documentation practices

Well-documented discussions about potential adjustments can protect your firm in case of legal disputes. Ensure that job descriptions accurately reflect essential functions, as these can be critical in determining the feasibility of approving those requests.

If you believe the accommodation would create an undue burden on your operation, you will need to articulate why and provide documentation supporting your decision.

Written records of discussions, decisions and follow-ups demonstrate that you engaged in a good-faith interactive process.

### Failing to explore all options

Employers sometimes prematurely conclude that no reasonable accommodation is possible. If the employee's request is not feasible, documentation should reflect a thorough review of possible solutions.

If you can't think of reasonable accommodations, consider contacting the Job Accommodation Network, a non-profit that provides free advice on identifying accommodation options.

This is important because failing to explore available resources can hurt your legal defense in case you are sued.

### The takeaway

When ADA issues intersect with performance concerns, consider how the situation will appear to an outside party, including a jury. In all cases, you should evaluate whether you have made a genuine effort to explore accommodations before making employment decisions.

Training supervisors, streamlining the interactive process and thorough documentation can help you comply with the ADA. ❖

## Leap Solutions can cut through the ADA red tape

Leap Solutions: A Division of George Petersen Insurance Agency is committed to helping organizations navigate the complexities of ADA compliance and fostering an inclusive workplace.

By avoiding these common mistakes, employers can better support their employees and protect their operations from legal risks.

[Click here for more details](#)



  
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## HITTING THE ROAD

# Protecting Your Fifth-Wheel or Pop-up Camper

**A**S SUMMER approaches, many Americans start planning for camping excursions in the months ahead in motorhomes, fifth wheels, travel trailers and pop-up camper trailers.

And while motorhomes are vehicles that require their own insurance policy since you are driving them like a car, what about the aforementioned trailers? Since you don't actually drive them, states don't require that you carry insurance on them.

But just because insurance isn't required for trailers, doesn't mean it's not a good idea.

Here's what you need to know, including the most common camping trailers on the market, your insurance option and the factors affecting cost.

### Your auto insurance

If you have comprehensive coverage on your vehicle, it will not cover your fifth wheel or trailer if it is damaged or stolen.

However, if your vehicle is towing the unit and the trailer damages a third party's property or injures a third party, your auto liability insurance would cover the damage you caused.

If you're at fault for an accident that damages your unit, however, your towing vehicle's coverage won't pay to repair it.

### Insurance option

The only time your auto insurance would cover your trailer is if it damages a third party's property or injures a third party while being towed by a covered vehicle.

However, if you are at fault in an accident or if it suffers other damage like hail or fire, or if it's stolen, your policy would not cover it.

Fortunately there is RV or travel trailer insurance.

## What RV insurance may cover

**Collision coverage:** Covers damage to the trailer if it's involved in an accident with another vehicle or object, regardless of fault.

**Comprehensive coverage:** Covers damage to the trailer from non-collision events like theft, vandalism, fire, wind, hail or other natural disasters.

**Total loss replacement:** In some cases, if the trailer is a total loss within a certain timeframe, the insurance company may pay for a new trailer of the same kind and quality.

**Emergency expense coverage:** May cover lodging and other expenses if the trailer is damaged far from home.

### Cost

Many policies will reduce the premium if you store your trailer for part of the year.

The price of insurance will depend on factors like your age, location, driving history, coverage options and the year, make and model of your trailer.

If you are in the market for a fifth wheel, travel trailer or pop-up camper, give us a call ahead of time so we can help you secure proper coverage to protect your new investment that is bound to provide you with years of fun. ❖

### Fifth-wheel trailers

These are the largest types of trailers and are similar in size to a class A motorhome. They must be towed by a large pickup truck capable of handling their weight, using a special tow point in the bed of the truck known as a fifth-wheel coupling.



### Travel trailers

These are smaller in size and are towed behind a vehicle, typically with a ball hitch. You can use a smaller vehicle to tow one, like an SUV or light truck.



### Pop-up campers

These are a type of travel trailer but a smaller variety. These share the same bumper pull hitch and are collapsible to a certain degree. Some models "pop up" part of the interior while others can completely fold down the living space, so it looks more like you're towing a box on wheels.

