



# Undercover

Jerry Beere advises on the vital need for good legal expenses insurance to protect against costly employment disputes and other potential claims

**A** crucial but little understood aspect of a nursery's insurance policy is the legal expenses section. This is a very specialized area of insurance, requiring particular legal knowledge and skills and, consequently, the underwriters of this section of the policy are very often different from the main underwriters of the rest of the policy.

Legal Expenses insurance, at its simplest, covers your legal costs in defending a claim. Legal costs, as we all know, can be horrendous and the insurance would cover such things as solicitors, barristers and expert witnesses' costs.

Broadly speaking there are three main areas – employment disputes, legal defence and Inland Revenue investigations.

Current employees, ex-employees, potential employees – all are possible sources of claims under Employment legislation. New rights have been added on inexorably over the last few years, with the Working Time Directive, minimum wage, Employment Act 2000 on top of the already extensive sexual and racial discrimination legislation of earlier years and there is consequently plenty of territory for employment lawyers to fight over.

In 2004/2005, 86,000 employees made employment tribunal applications against their employers and the costs of defending these cases continue to rise. As some nursery owners may already know to their cost, even if employers win at tribunal the costs are very rarely recoverable. Legal expenses insurance covers your legal defence costs in the event of court or tribunal

proceedings. Some policies will also cover any resulting compensation awards in the event that you lose at tribunal.

As is inevitable with insurance policies, there is a procedure to be followed and nursery owners would be well advised to familiarise themselves with this procedure since failure to follow it could prove costly. Essentially, the nursery owner should contact the legal expenses insurer (their phone number will be prominently displayed in the policy document) immediately they are considering disciplinary action against an employee; or as soon as they are aware that a claim is likely to be made against them. You should not appoint your own solicitors to handle this matter for you, at least until you have discussed the matter with your legal expenses insurer. If you do so and have not obtained the insurer's permission, then you may well find that the policy will not cover the costs and you could be considerably out of pocket as a result. Once you have contacted them, the insurers will either advise you of the steps you need to take in dealing with an employee to stay within the law; or, if matters are progressing towards a tribunal, they will appoint solicitors to deal with the matter on your behalf.

Legal defence cover is another important area. If you are taken to court by the Health and Safety Executive, a legal expenses policy should pick up the legal costs involved (though not penalties and

finest that may be imposed). This section will cover you in the event that you are prosecuted in a criminal court. Therefore, if you are brought to trial accused of a criminal offence, the legal expenses section of the policy will provide cover for your legal costs (up to the policy limit). At a more basic level, this section should cover any legal costs you incur in dealing with the police where it is alleged you have committed an offence – i.e. before you have even been charged.

A third area of increasing importance for small business owners is the tax protection provided by the legal expenses insurers. If you submit an incorrect return to the Inland Revenue, there is a chance that it could trigger a full inquiry. For any full inquiry or aspect inquiry, you would be well advised to have accountants at the ready and they, of course, don't come cheap. Legal expenses insurance should cover the accountant's costs and should also give you access to accountants skilled in dealing with such matters with the Inland Revenue.

There are many others – statutory licence protection, debt recovery, contract disputes, property protection and bodily injury. But the most important thing to remember, when dealing with legal expenses, is to contact the insurers at the earliest possible point in the process. Any costs incurred before the legal expenses insurers has accepted the case, will not be recoverable and it could be a very costly mistake. ■

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