Can Fitness Professionals be Civilly Liable for the Criminal Actions of Employees?

written by David Herbert | May 1, 2017

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Like any professional sector in this county, the fitness industry, at least occasionally, has to deal with criminal acts committed by some of its fitness professionals. Recently, for example, a personal trainer in Florida was convicted of two first-degree murder convictions of his personal training clients.[1] In another recent case from Michigan, a personal trainer was charged and convicted with the delivery of heroin which, as to at least one delivery though another person, he claimed was a delivery of "protein powder."[2] Most recently another trainer in Florida allegedly shot two employees at a health club facility after he was terminated by the club. Both employees later died. The trainer also shot and killed himself.[3] Other fitness personnel have been involved in thefts, assaults and batteries and a wide range of other crimes. Some of these activities have been carried out at various facilities where fitness services are provided or at least with fitness clients no matter the particular venue. As a consequence, the question arises as to whether or not employers may be found to be civilly liable for the criminal acts of their fitness employees. In addition, fitness professionals need to know what can be done to avoid potential liability under particular circumstances.

While employers are not generally liable for the criminal acts of their employees since such acts usually would be beyond the course and scope of the employment relationship, liability may arise under some circumstances. If criminal acts are performed by an employee within the scope of the employee's employment and in furtherance of the employer's interest, liability may well arise. Employer ratification or approval of an employee's criminal acts can also lead to potential civil liability of the employer for such acts.

A number of hypothetical situations may arise with fitness employees which could result in civil suits against their employers for the employee's criminal acts. These situations may include the following:

- Thefts from fitness client lockers;
- Illicit drug sales to fitness clients;
- Criminal sexual activity by fitness professionals with members or others on employer premises;
- Assaults and batteries of clients by fitness professionals; and,
- Invasions of privacy by fitness professionals with clients.

To the extent that these or similar acts occur during the employment relationship which employers allow, ignore or ratify, civil liability may result to the employer. As the very least, employers may have to defend against claims related to the criminal acts of their employees. Such suits needlessly require

employer and other employee time, disruption to normal facility business, “bad press”, lost revenue, unnecessary costs and expenses and potential adverse judgments, appeals, etc. Even if employer insurance covers such civil suits many of the other adverse consequences will still impact the employer.

The foregoing adverse events may well be avoided through comprehensive risk management steps, including the following:

- The creation of clear employee job descriptions defining what is to be done and when necessary, what is not to be done;
- The adoption of clear employer policies as to the conduct expected of all employees;
- The development of statements on prohibited employee actions;
- The use of background checks, including criminal background checks for all applicants for employment, including periodic checks on all employees;[4]
- The development of employer policies established to thoroughly investigate client, customer or employee complaints and related incidents;
- The installation of facility monitoring devices to deter, prevent or at least record instances of criminal conduct;
- The purchase of liability insurance where available to protect against claims and suits related to employees’ criminal acts.

The institution of these techniques as part of an overall risk management plan will assist fitness employers in avoiding or at least managing the risks arising out of the criminal actions of employees.

[1] Robards v State, 040617 FLSC, SC15-1364, Supreme Court of Florida, April 6, 2017.

[2] People v Norfleet, 110816 MICA, 328968, Michigan Court of Appeals, November 8, 2016.

[3] Kufahl, P., “Fired Equinox Trainer Kills General Manager, Injures Another Employee,”

http://beta.clubindustry.com/commercial-clubs/fired-equinox-trainer-kills-general-manager-injures-another-

employee?utm_test=redirect&utm_referrer=https%3A%2F%2Fsearch.yahoo.com%2F, April 9, 2017.

[4] Compliance with particular federal and state laws will be required.

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