

Minimizing Injury-Related Legal Risks During An Office Move

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In *Burke v. J.F. Allen Company*, the plaintiff who had been involved in a vehicle collision, brought suit against the motor carrier and the business that hired the motor carrier. Employees of the business overloaded the motor carrier's truck in excess of the legal limit. As a result of the actions of its employees, the business paid \$275,000 in settlement.[1]

In *Bressi v. Elenbaas Steel Supply Co.*, the plaintiff suffered physical injuries to both legs and feet, requiring the amputation of his left leg below the knee, as well as emotional distress. An employee of the defendant attempted to lift steel sheets with a forklift and the metal sheets fell off, severely injuring the plaintiff. The court found in favor of the plaintiff and awarded \$3,046,619, which was later reduced to \$2,073,803.[2]

The cases above show a violation of best practices, lack of ongoing training, and failure to comply with statutory mandates in the moving and transportation industry. Best practices to follow when moving furniture and heavy items include:

- **Ensuring worker safety and preventing injury to workers, observers and property:** Conduct a thorough review of the worksite, both at the origin location and destination location. The review of the work site should include addressing any safety issues, such as loose carpet or cracks in the sidewalks. Installation of wall and elevator protection, as well as use of Polynite or Masonite over carpet, is a best practice. These procedures should be covered both in training and during the pre-move communication when responsibilities are assigned.
- **Communicating between and among all parties:** At the beginning of any move, there should be a communication plan in the form of a meeting with all personnel, whether employed by the mover or the business, to review exactly what will happen, how it will happen, when it will happen, and assign responsibilities and roles to each person involved with the move.
- **Deploying proper equipment and knowing how to use it:** When forklifts will be used, checks and balances need to be in place to ensure the person operating the forklift is certified. If a move involves relocating a safe, heavy bookcase or other large item, all



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members of the team must know how to use the proper equipment. Each person must know what their role is and what to do if something goes wrong.

- **Protecting and fastening items prior to and during transport:** Property being moved must be protected from damage. Members of the team need to know the best protection to use for any particular move and for each item being moved. The use of pad wrapping, plastic wrap, bubble wrap or a combination of all three may be appropriate to protect against damage to the items being moved.

In Burke and Bressi, had they adhered to standard industry practices, complied with statutory requirements and implemented on-going training, the individuals, businesses and moving companies could have avoided injuries, lawsuits (including the accompanying legal fees), settlement costs and reputational damage.

In-House Staff as Informal Movers

Injuries in the course of a move may occur in situations that do not involve a professional moving company. Many businesses, universities and hospitals rely on their own employees, such as facility workers or maintenance staff, to provide internal moving services. Typically, in-house workers are not trained with the best practice methods for moving file cabinets, cartons, specialized equipment or general office furniture.

Even a small project, such as moving boxes of files for storage in another room, can prove problematic to an untrained employee. If a box is sufficiently weighty, someone who is not accustomed to such lifting, transporting and storing activities — or who performs them improperly — may experience back strain as a result.

In addition to the physical injury to the employee, the injured employee and his co-workers may feel resentful that they are performing onerous tasks without proper training. Thus, the injury may not only adversely affect the physical productivity and performance of the employee, but could lead to poor morale among the entire workforce.

To take this small-move scenario one step further, in the event of an accident or incident involving an in-house staff member, there is risk of litigation for workers' compensation, as well as third-party claims for personal injury and property damage.

Instituting a Training Program

The best way to minimize the risk of such litigation, financial exposure and reputational damage is to ensure that all employees working on any formal or informal move are trained in best practices for moving. By instituting a training program, employers ensure that everyone engaged in the provision of services knows what to do and how to do it correctly, as evidenced by a certificate upon completion of the training program. Through compliance with best industry practices and implementation of a training program, employers are able to offer and document affirmative defenses and plaintiffs are limited in their potential claims and recovery.

Moreover, such training must be repeated or available on demand for new hires, consistent with the high turnover in these positions. Among the options for ongoing training are:

- A commercially available video training course;
- Review of training manuals; and
- Hiring a certified instructor to conduct training.

In providing training, the employer will benefit by having its employees that are already certified, get recertified annually. It is easy to get comfortable with what is expected and take short cuts. Having a continual and easily available avenue for retraining is a sure way to reinforce standards the employer has in place for minimizing injuries and damages to employees, bystanders and property.

For larger scale moves when an employer brings in outside professionals to help with the move, there will be an immeasurable benefit, both from a safety and efficiency perspective, if the employees and the outside movers are trained to the same standards. The ease of communication, the ability to expeditiously provide the services seamlessly between the two teams, and proficiency within which the services will be provided will result in cost savings to the employer.

Closer examination of such specialized occupational training reveals it can occur at three key moments:

- Preparing to deal with situations in advance;
- Managing them as they arise; and
- After the event (used as a corrective measure and after the injury and harm have already occurred).

The Occupational Safety and Health Administration advocates the use of current literature and training programs in a proactive approach to ensure employee safety[3]. Training programs serve to prevent accidents by promoting safe behavior prior to performing the required tasks and mandating the use of appropriate equipment in all circumstances. To a lesser degree, the agency recommends reviewing problems that arise on an ongoing basis. Training in advance and training as problems arise become contrasting examples of what to do, which situations to avoid, and how to minimize potential accidents. Finally, post-incident training may be conducted in a reactive mode to prevent recurrence of the incident.

Example of Training and Best Practices

As an example of best practices and to underscore the importance of training in advance, consider the dynamics of a frequently occurring situation: transporting a vertical file cabinet. Proper performance of this task affects the safety of movers, bystanders and property.

Most movers handle vertical file cabinets right side up, with the contents remaining inside. All too often a drawer or two may open and hit a mover or bystander in the face or fall on a mover when the cabinet is tipped onto a four-wheel dolly.

In addition, if a cabinet is facing the wrong direction while being pushed on a dolly, and if one of its casters hits a crack or stone on the pavement, the dolly might suddenly stop. The resulting jolt could

cause the top drawer of the file cabinet to fly open, thereby causing the top-heavy cabinet to fall forward. This trajectory may cause the file cabinet to land nearby, on another person or on other items being moved. The force of the file cabinet's fall and its heavy weight may severely injure an unwitting person. And, it might hit a desk or other furniture, or hit an elevator, window, door or wall, causing substantial damage.

Best practices to move a file cabinet require a two part-solution. First, an inexpensive, easy-to-build elongated fulcrum uses leverage to lift the file cabinet. Second, individuals should be trained to push the cabinet with the drawers facing towards the individual who is pushing it on a level surface or down an incline, and the drawers of the file cabinet should face away from the individual when going up an incline or ramp.

Finally, to prevent the drawers from opening and injuring an individual while unloading a truck, the file cabinet should be positioned and loaded with the drawers facing forward, towards the front of the truck.

The high frequency of moving file cabinets throughout the workplace mandates the need for pre-move training in best practices. Dealing with the situation on the spot can serve as reinforcement of the pre-move training. After a mishap, post-move training would invoke the need to implement corrective practices, which may include future pre-move and on-site reinforcement of best practices.

As OSHA recognizes, training conducted in advance is more likely to be comprehensive, as it considers a broader scope of potential situations than those encountered through ordinary operations or as a result of unique circumstances. Anticipatory training forms a shared base of knowledge among employees that can be tapped when new situations arise, whereas the learning gleaned from the other ad hoc approaches may be more limited.

Teaming With an Outside Company

In the case of a large-scale move involving file cabinets, desks and other cumbersome pieces of furniture and equipment, most companies and nonprofit organizations use the services of professional movers. The scope of the move, the value of the furniture and equipment, and the potential to damage the premises are all factors to consider when evaluating whether a professional mover should manage the job.

Once internal staff are properly trained, executives contemplating use of external, professional movers may well expect, and should require, that movers have completed similar training in best practices. Indeed, professional moving companies often find a competitive advantage by promoting the training and certification of their staff. Certainly, they stand on firmer legal ground, as noted earlier, with affirmative defenses, which greatly mitigate the potential exposure and liability faced by the mover.

When a business, hospital or university contracts with an outside party to partner with its workforce, all individuals should be trained to the same standards. Said differently, both the company employees and the mover's staff need to be certified to the same standards. If the company employee and the mover's staff are certified to different standards, substantial liability risks arise as a result of conflicting standards and practices in performance of the services.

Professional movers must be able to communicate clearly with the customer and with any customer's staff who may be providing auxiliary services. Recalling the reference to best practices in communication

cited earlier, the moving company and the customer who experienced the same training and certification processes and mastered the same terminology will likely share the most consistent understanding regarding procedures, equipment and schedules during the course of a complex move.

Training is the Best Course of Action

Training in best practices — whether by video course, review of training manuals or workshops, preferably in advance of a move — will avert a company’s exposure to personal injury claims by its own staff and by the mover and its staff. Training will also serve to limit the company’s exposure for damage to assets and property, decrease downtime and increase productivity.

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[1] *Burke v. J.F. Allen Co.*, 182 F.3d 907 (4th Cir. 1999)

[2] *Bressi v. Elenbaas Steel Supply Co.*, No. 1:12-CV-736, 2013 WL 6147386, at *1 (W.D. Mich. Nov. 22, 2013)

[3] Office of Safety & Health Administration. Preamble. Training.
https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=PREAMBLES&p_id=1080

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