

Design Firm Risk Management: Moonlighting

Moonlighting by design firm employees is a risk management issue that should not be overlooked. A/E firms should have clear policies, which address volunteer services and moonlighting. These policies should be included in a firm's employee manual and enforced. If the design firm allows moonlighting, or simply looks the other way, it may open the door to liability arising out of this activity. The majority of design firms do not allow moonlighting.

Employees that moonlight seldom carry professional liability insurance. The cost for professional liability insurance may be too cost prohibitive in comparison to revenues received by the employee for moonlighting, and they may not even be aware of the importance of carrying such insurance. Although not recommended, if a firm does allow moonlighting they will want to take the following precautions:

- Make sure the employee is aware that they must not perform any moonlighting work from your office, or even a virtual office of the firm. This means no design work, *no emails*, letters, or phone calls from your office at all. You will want to obtain an agreement in writing from your employee that they will adhere to this.
- Your employee must not provide any paperwork with your firm's name or logo on it to his/her client(s).
- A professional and general liability insurance policy should be purchased by the employee. You will want a certificate of insurance verifying this. Have your insurance agent review this certificate of insurance. If your employee does not have professional and general liability insurance, your firm is now the deep pocket. If a claim were to arise, your policy **may** end up kicking in, *which will affect your insurance rates and insurability*, or even worse, your insurance **might not** cover this as the employee was not performing professional services for the named insured.
- Obtain a hold harmless and indemnification agreement from the employee to protect your firm from claims arising out of his/her moonlighting activities.

Another item to consider is that an employee that moonlights may not be able to focus on his or her job as well as an employee that does not moonlight. This employee may not have the dedication to your firm that you may expect.

**This information is presented for professional liability risk management guidance. It is not legal advice nor should it be construed to be a determination on issues of coverage for specific claims. Competent local legal counsel should be consulted for legal guidance.*