



*Wooden surfaces are under closer scrutiny these days due to the potential to slip with non-metal spiked shoes.*

# What You Don't Know *Can* Hurt You: How to Use the Law to Protect Yourself

*A top trial lawyer discusses common legal issues facing course officials and superintendents.*

by J. MICHAEL VERON

**T**HERE ARE MANY who claim that America has become an overregulated society. If recent trends in the world of golf are any indication, it is difficult to argue with that assessment. In virtually every aspect of golf course operations, the law has become increasingly intrusive. And while ignorance may be bliss to some, it's downright dangerous if it means being unaware of legal requirements for hiring and firing employees, sexual harassment on the job, liability for injuries to golfers, and many other issues that are commanding our attention these days, whether we want them to or not.

It is impossible, of course, in the space of one article to discuss any of these issues in any meaningful detail. My goal is less ambitious. The intent here is to acquaint you with the law governing certain key areas of golf course management so that you will be sensitive to potentially troublesome issues if they arise. After all, identifying problems is the first step to solving them!

## **Hiring and Firing**

Unless an employee has a written contract, he or she is generally considered to be an "at will" employee. This means that the employee serves at

the will of the employer and can be terminated at any time.

You generally can hire and fire employees for whatever reason you wish — or for no reason at all. You just can't refuse to hire someone or fire him or her for the wrong reason. The "wrong" reasons can be summarized as follows:

- You cannot make an employment decision (hire, fire, promote, or demote) based on an individual's race, gender, religion, age, or national origin, unless that status is somehow related to a bona fide occupational qualification. Both federal and state laws prohibit that kind of discrimination.

- You cannot refuse to hire someone because of a disability unless it prevents the employee from performing an essential part of the work. This is prohibited by the Americans with Disabilities Act, which requires you to make reasonable accommodations for an employee's disability.

- You cannot fire someone in retaliation for filing a worker's compensation claim. This is usually prohibited by state law.

- You cannot fire someone for reporting an environmental violation to regulatory authorities. This is known as "whistleblower" protection and is a provision in many environmental laws.

When making any employment decision, it is very important to document why you acted as you did. If you are dismissing an employee for poor work performance, having a written record of specific instances in which the employee failed to report for work, failed to do assigned work, violated work rules or safe practices, or engaged in other unacceptable conduct will protect you against an unfounded claim that the termination was based on an illegal motive.

### How to Protect Yourself

You can negotiate your own arrangement with your employer in the form of an employment contract. Instead of being employed at the will of your employer, your contract can provide for a set term, such as one or two years. It also can provide for other terms of your employment, such as your compensation and the conditions under which you can be terminated (*i.e.*, for "cause"). If you are terminated before the end of the contract without cause,

you are usually entitled to be paid for the remainder of the term of your agreement.

The typical provisions in an employment contract include:

- **Compensation:** Salary, including bonus for exceptional performance.

- **Performance Standards:** The measure or criteria by which you will be evaluated.

- **Term:** Length of your employment.

- **Cause for Termination:** Conditions that would justify your dismissal before the end of your term of employment.

- **Fringe Benefits:** Health insurance, retirement benefits, work vehicle, continuing education opportunities, expense account, etc.

This list is by no means exhaustive. Your work contract can contain virtually anything to which you and your employer agree. You should, of course, retain an attorney to make sure everything in the agreement is worded properly so that it is enforceable in the state where you work.

### Sexual Harassment

Federal law (specifically Title VII of the Civil Rights Act of 1964) makes it "an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his . . . conditions . . . of employment because of [his] sex . . ." The Supreme Court of the United States has determined that this law is violated when the workplace is "permeated" with "discriminatory intimidation, ridicule, and insult" that is "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."



*Drainage projects should be clearly marked to alert golfers of a potentially hazardous area.*

The trick, of course, is to identify when that occurs. It is not a simple question. In fact, our courts have wrestled with a variety of situations in which an employee complained of sexual harassment, and the results were not always clear. Ultimately, the only generalization that can be made about this is that there is no distinct line separating right from wrong conduct.

According to the Supreme Court, the "mere utterance of an . . . epithet which engenders offensive feelings in an employee" does not violate the law. In the words of the Court: "Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment," or "an environment that a reasonable person would find hostile or abusive — is beyond [the law's] purview." Moreover, "if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no . . . violation."

In plain English, this much is clear from the Supreme Court's language: Isolated instances of offensive remarks or jokes in poor taste do not constitute unlawful conduct. At a minimum, the supposedly offensive conduct must occur frequently. Moreover, it must be something that the offended employee cannot reasonably avoid. In addition, it must be severe enough to offend a person of normal sensibilities to such a degree that he or she cannot perform work without unwarranted stress. The courts do not require that the employee prove psychological injury. In other words, they need not have a nervous breakdown in order to have a claim.

Just as an innocent remark is clearly not sufficient to create a hostile work



*Potential liability situations should be evaluated throughout the golf course. This situation, with golfers exiting the cart path to reach the tee, is an accident waiting to happen.*



*Fungal growth indicates structural decay in this tree. Regular inspection of golf course trees is important to identify potential hazards.*

environment under the laws prohibiting sexual harassment, there are certain kinds of conduct at the other extreme that clearly are not allowed. An employer who requires an employee to submit to sexual advances as a condition of employment clearly violates the law. On the other hand, it is obviously permissible for an employer to date an employee. Much depends on the nature of the relationship and the extent to which the employee consents to the arrangement. Each case is decided by its own facts.

This is, of course, different from sex, or gender, discrimination, which consists of making employment decisions based upon the sex or gender of the employee. That kind of problem is covered in the first section of this article.

### **Golf Course Liability for Injuries to Others**

Litigation involving golf courses is a growth industry. In this day of political correctness, golf courses are an inviting target to those who see golf as a game played only by the rich and privileged in our society. Leaving aside the factual inaccuracy of that view (the most crowded golf courses are daily-fee courses), the fact remains that we have become a litigious society. Prudent golf course managers must plan accordingly to minimize their liability.

Of course, the most common causes of injury or damage are from slips and falls on the premises, golf cart collisions, and errant golf shots. In each instance, the liability of the golf course

usually turns on whether it has caused an accident because it did something wrong. Put in more legal terms, a golf course will usually be held responsible for the damages arising from an accident if a court determines it has breached its duty of care to the injured party. That duty of care is usually described as the duty to act reasonably under the circumstances.

In the case of a slip and fall, the issue is whether the accident was caused by a defective condition, such as a slippery surface. If so, the next question is whether the golf course created the condition. In some jurisdictions, the course will still not be liable unless it had notice that the condition existed and failed within a reasonable time to correct it. If the condition could not be corrected, then the course ordinarily has a duty to warn those encountering the condition of the danger it poses.

Classic examples of potentially dangerous areas would be newly sodded areas, low-strung ropes, holes or construction areas that are not open and obvious, and any other condition where it is foreseeable that a person could be injured. Any such condition should be marked in a conspicuous manner until it can be eliminated or made safe.

Golf cart accidents are a growing source of litigation. Although the primary responsibility for collisions lies with the operator of the cart, some cases also have placed blame on the course for over-serving the cart driver with alcoholic beverages or for dangerous conditions on the course, usually the design or construction of cart paths. In that respect, the issue is whether an unusually sharp turn or steep cart path caused or contributed to the accident. As with other dangerous conditions, the first objective should be to identify and eliminate them. If a danger cannot be eliminated, cart operators should be warned about them and instructed with a conspicuous sign what to do to avoid the danger (e.g., "Caution: Steep grade — drive slowly").

Obviously, no golfer is perfect. Since even the world's greatest players hit errant shots on occasion despite their best efforts, doing so is not considered to be a negligent act. Accordingly, a golfer who accidentally injures another with a poorly struck shot is ordinarily not liable to the injured victim.

However, the courts have imposed liability if it is determined that the golfer — or the golf course — was guilty of some other negligent act that caused

or contributed to the injury. For instance, a golfer who injured a young boy while playing through was held liable for the boy's injuries because he failed to warn the boy he was in a zone of danger before he played his shot. For the same reason, it can be argued that a golf course that places people in a zone of danger because of poor course routing could share responsibility for resulting injuries.

These cases all come down to their own facts. A court faced with this kind of claim has to determine from the facts of the situation whether the course failed to act reasonably.

This is equally true where a course is sued because of injuries from lightning or other severe weather. Obviously, a golf course cannot eliminate the danger of lightning or other severe weather. The question is whether it has taken reasonable steps to protect golfers from the danger, such as by posters that educate them about the dangers, sirens and storm tracking equipment, and lightning shelters.

### **Conclusion**

Knowing the rules is like knowing the line of a putt: It doesn't guarantee success, but it certainly improves your chances. Understanding the way in which courts evaluate the kinds of claims that may arise from your golf course operations certainly improves your chances of eliminating problems before they occur.



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