

# THE RISK OBSERVER

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## SUBSTITUTES

### SELECTION, ORIENTATION AND SUPERVISION

The use of substitute personnel on a day-to-day basis to maintain the effectiveness of your programs is, in most circumstances, both necessary and desirable. This memo will examine the elements of liability for negligence associated with the use of substitutes and the ways that this exposure to loss can be reduced.

#### Long Term Substitutes

First, let us dispose of those arrangements that are less likely to be a matter of concern. In some instances, persons are employed for relatively long term substitute service to replace a regular number of the staff on leave. In this case, it is assumed that the selection process will be the same as that of a regular staff member and that appropriate reference and background checks have been made and appointment is followed by the close supervision normally accorded a new employee.

In a similar vein, you may have day-to-day substitutes who because of their personal needs, do not want regular employment but have satisfactorily demonstrated the competence and responsibility required of full time staff. In both instances, however, it is important that these people be fully licensed or certified and qualified for the task they assume.

It is also important that the supervisor or administrator be aware of any changes that may between assignments that may significantly alter the person's suitability for the task including health related matters.

#### Day-to-Day Substitutes

Shown below are some of the important points to be considered when employing day-to-day substitutes.

##### 1. Selection

All employees, regular and substitute should be selected with great care. Background and reference checks should always be made regardless of the type of employment contemplated.

Health screening is as important here as it is for any employee and should occur before the person is assigned to a task. Background and health screening become important if there is evidence of a communicable disease that might be spread to others or the health history and examination reveal a condition that might lead to an aggravation of a past illness or injury resulting from the work to be performed. This latter case frequently leads to a workers' compensation claim.

If a substitute employee exhibits behavior that can rise to a criminal charge such as a sexual offense, the district will almost always face the charge of liability for negligent hiring. You should be able to document that you conducted as thorough a review of the person's background as possible under the law.



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When possible, even if not required, the person should be as fully qualified and certified or licensed as possible. There is a difference intended here between qualified and certified and licensed. A substitute physical education teacher may be fully certified but may not be qualified, for example, to

Teach gymnastics since his or her last exposure to this may have been in college some time ago. Or a bus driver may have the appropriate license, but past experience was driving vans and not 60 passenger buses. Plaintiff attorneys will always closely examine the credentials of a substitute involved in alleged negligence with the express purpose of finding a lack of qualification upon which to base a successful cause of action.

## 2. Orientation

All substitutes need to know certain things to do the job properly. You cannot assume they will informally acquire this information on the job. Many districts have a special session for all new substitutes once or twice a year. These meetings cover all the necessary, basic information and provide an opportunity to ask questions and become familiar with the administrative routines to be followed. Certain jobs may require specific pre-task or on the job training especially if there are hazardous conditions to which they or their pupils may be exposed when they are at work. If, for example, playground supervision is part of the elementary substitute teachers' assignment, the substitute should be informed explicitly how they are to be followed by the pupils and how the rules are to be enforced. The documentation of such direction is as important as providing it. The use of a checklist with room for acknowledging signatures at the bottom might be a useful device to be sure everything is covered and understood. Such a document can also be a valuable part of a defense of a claim for a pupil injury.

## 3. Supervision and Evaluation

Substitutes, if they are to be successful, require the investment of supervision time by a program administrator. Only by observation will any weaknesses of the substitute be corrected and performance strengthened. This is extremely important in terms of pupil control, and effective supervision of the substitute may well turn out to be a strong defense against a claim of negligence if a pupil should be injured while in a situation controlled by a substitute. Again, documentation is extremely valuable as evidence of proper procedures. Direct observation is the only sure way to know if substitutes understand the directions they have been given and if they perform in accordance with those directions. This is, of course, an excellent way to find out if the direction is adequate and appropriate.

If a substitute who has been employed previously at one task or grade level or even a particular unit of a given program moves to another task, grade level or unit with an activity that presents more than the normal exposure to hazard then additional supervision will be required.

In general, the greater the possibility for accidental pupil injury, the greater the responsibility for adequate supervision and direction of the substitute. The level of concern for the activities of a third or fourth year Latin class is negligible compared with a bus route or the introduction to the use of a table saw or an arc welder.



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## 4. Alternative Plans for Substitutes

While there is no alternative way a busload of children can be driven from home to school, there are possibilities for reducing the exposure to loss in situations where a fully qualified and completely adequate substitute cannot be found in other areas.

A special plan rearranging the way a building is cleaned can be created when one or more substitute custodians or cleaners must be used who have not demonstrated the ability to do the job in the normal manner. This can consist of breaking down the tasks so that experienced staff do those things which require certain skills and knowledge and inexperienced staff do tasks that are relatively simple and easily understood.

Likewise, a "safe" lesson plan can be created for the substitute teacher who is assigned to classes where the exposure to hazard is greater than normal, such as physical education, technology education, laboratory exercises and similar situations. These lesson plans should maintain learning, but avoid hands-on activities. In the event of a pupil injury, you will be able to demonstrate that you were aware of the possible weaknesses of the substitute and arranged to avoid them as much as possible.

## Summary

Substitute employees are often the weak link in the defense against claims of negligence when pupils or others are injured in school or as the result of a school activity. They must be selected and placed with the same care and rigor as a regular continuing employee.

The supervision and appraisal of the work of substitutes on the job should be carried out with particular emphasis on the understanding of what their tasks are and how they are to be done. The plaintiff's attorney will try to establish that you knew or should have known the inherent weaknesses of substitute employees and you did nothing to compensate or strengthen their performance.

Where a substitute cannot be expected to perform in the same manner and with the same competence as a regular employee, he or she should not be used for a critical task such as driving a bus. In other circumstances, he or she should be provided with a work plan well within his or her competence, which avoids the risk of accidental injury to pupils or others.

The documentation of activities designed to help a substitute do a better job and reduce the possibility of accidental injury are an essential ingredient in any successful management of the risk of employing substitutes.



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