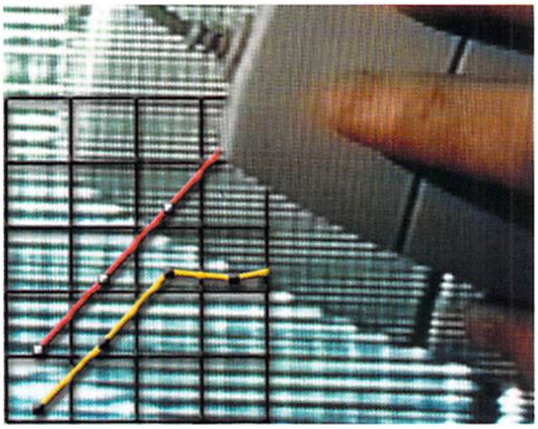
Protecting Your Firm Against Loss of Key Employees

By Paul Sullivan

There can be no doubt that emergency action plans at businesses nationwide have been reviewed carefully since September 11.

One of the necessary steps in setting up a plan is identifying exposure. Most of us consider the obvious – fire, flood, tornado, etc. But one "emergency" that is often overlooked, though it might be the most likely to occur, is the loss of a key employee.



As you do your disaster planning, don't neglect what might just be the biggest disaster of all – losing a key staffer or firm member.

In evaluating how vulnerable you are to losing a key person, ask yourself these questions: (1) Who are the most valuable employees in my office? (2) What would happen if – from this moment on – I never see them again? (3) What would I need to do to return to normal without them? Adequately answering these questions is the basis for developing a plan.

The answer to question one should be obvious, though it is unique to your circumstances. You know who these people are. Your list might include the staff person you leave the administrative details to so you can spend your time on higher-level tasks. It might include a paralegal or associate who can anticipate your every need. It might include the partner who brings in most of the clients or the one who has expertise in a specific area.

Question two has one answer, again an obvious one – you've just suffered a disaster. Question three is the heart of a disaster plan. How do you get back to normal quickly?

Assessing your risk

The first step in any planning is self-assessment. How vulnerable are you? Loss of key employees can occur in many ways. They can quit, they can retire, they can get sick, they can move out of town, they can die – the possibilities are endless. If employees quit often because they are unhappy with your organization, you need to find out why people are leaving and what you can do to make your firm a better place to work. If they quit or retire, you usually have the luxury of a transition period. The disaster usually occurs when death or sudden illness catches you unprepared.

Independent operators. Your vulnerability is based first on how independently this person operates. Independence in this context doesn't mean being a self-starter and otherwise doing what a good employee does. It means following procedures and performing tasks that are undocumented known only to one employee.

Here's an example. Let's assume this key employee performs all your billing functions and knows all of the billing requirements of your clients. Some clients require different formats for bills with specific information, while others don't care. Some will pay for copies, or for research, while others won't. Some require bills to be sent electronically, others want them sent to a third party. Your hourly rate may vary based on the function you perform, and your rates may vary from client to client.

You as attorney may only know that bills are sent and checks come back – and that's all you really care about. But unless these specific client requirements are documented somewhere other than in your employee's memory, you have a huge problem if he or she leaves in a rush. Sure, you can eventually reconstruct everything – but wouldn't it have been easier to have this information in the first place?

That's one instance where you could get burned; there are countless others. For example, what about passwords? Many computer programs can't be accessed without the proper passwords. That's what security is all about. If an employee is running software programs critical to your practice and is the only one who knows the passwords and how to get them, you're extremely vulnerable.

Solos beware. If you're a solo and have just one employee, you're vulnerable to true disaster. I recently spoke with a lawyer whose secretary left with no notice. She was the only person in the office, and the attorney had delegated so many tasks to her that he truly had no idea what she did. All he knew was that when he needed something done, she did it. The bills went out, the checks came in, and life was good until that fateful day. He asked me for training resources on his computer programs because he had no idea how to run them himself. Needless to say, he was frantic.

Reducing your risk

Once you've assessed your vulnerability, the next step is to do whatever it takes to reduce it.

Consider operations manuals. If you're in solo practice, the only foolproof way to protect yourself is to learn about the programs and how they're used in your practice. You don't need to know every function, but you need a good solid overview of how the software works. At least you'll be able to get a replacement up to speed quickly if you do. Another option is to have your secretary create a detailed operations manual. The problem is, most operations manuals are difficult to write, harder to understand, and rarely kept up to date. Again, it falls back on you and your need to keep yourself educated, at least about the big picture.

Write job descriptions. Whether you have one employee or several, you should have at least a good written job description. A good job description defines responsibilities and essential functions. As a bonus, a job description can become the basis for recruitment, selection, and hiring in the future. If you have more than 15 employees, you might even need the job description to identify essential and nonessential tasks to comply with the Americans with Disabilities Act. Job descriptions, although not operating manuals, can help you get your office back to normal. These can also be used for measuring and evaluating job performance.

Document extraordinary tasks. Extraordinary tasks and how they're performed should always be documented. Insist on complete up to date documentation on all those things. You're in trouble if your employees carry this information around in their memory and no place else.

Cross-train. If your office has more than one employee, cross-train them on work responsibilities. This helps not only when somebody leaves suddenly, but also during illnesses, vacations, and emergencies. If you trust just one employee with confidential information and don't wish to cross-train another, then your only choice is to make yourself the backup on those applications.

Key managers: the special issues. The loss of a key staff person can be very disruptive, but the loss of a key manager can sink the business. Maybe your firm was built from the ground up by one person, or maybe it's run by a small circle of highly skilled, invaluable lawyers. In any case, consider where you'd be without them. There are ways to financially mitigate this type of loss, including insuring these people and making the firm the beneficiary. But the development of a business continuation plan is essential. If you lose a principal of the business, then you as lawyers already know the potential consequences of not having written agreements in place.

Plan for the worst

Everyone is busy, and dealing with these issues will take you away from the daily tasks of serving your clients. Making the effort to document the necessary data in case this happens is tedious at best, and keeping it updated is a chore. That said, if you don't take time to plan for the loss of key employees and the worst happens, you'll suffer an even more painful ordeal. ■

Paul Sullivan is the office administrator of Quinn Johnston Henderson & Pretorius with offices in Peoria and Springfield. He a charter member of the Central Illinois Association of Legal Administrators and the ALA Cyber chapter and serves on the ISBA Law Office Economics Section Council. You can send comments, questions, or other correspondence about the column or any office management issues to him at <psullivan@qjhp.com> or 227 NE Jefferson, Peoria, IL 61602.