

rradar scenarios under the Management Liability Policy

rradar

About rradar

We are AXA's exclusive legal services partner under its Management Liability Policy (MLP) or an associated scheme and a specialist litigation and commercial law firm which uses digital tools and legal expertise to proactively manage, advise and deliver business solutions to reduce legal risk.

We combine professional legal representation and specialist advisory services to offer AXA MLP policyholders a unique service at **no extra cost**.

Our team will answer your questions, educate your business and assist with legal and regulatory issues you might face. The team at rradar are here to assist by offering support and guidance when handling difficult situations as they arise and to help stop an issue escalating into a complex legal dispute and insurance claim.

Policyholder benefits include:

- Legal advice over the phone and email: Monday – Friday between 8am – 6pm
- 24/7 out of hours crisis line
- Legally privileged advice, support and representation
- Downloadable legal and regulatory advice, support guides, letters and templates
- Access to rradarstation, rradargrace, rradarreport
- Advice on all regulators and authorising bodies such as Health and Safety Executive, local authorities, Environment Agency, HMRC, FCA, CQC, OFSTED, DVSA, Police and more
- Access to online tutorial videos, webinars, podcasts and digital newsletters

Not sure if you can access our services?

Check with your insurance advisor that they have registered your policy for rradar's advisory services or get in touch with us on 03300 414 996 or email contactus@rradar.com

About these scenarios

We have put together some scenarios based on a range of issues our advisory and legal teams typically address. These scenarios are for example purposes only and aim to provide general information on a relevant topic in a concise way.

The outcome of the situations within this document should not be taken as legal advice in relation to a similar circumstance nor the results.

Action should not be taken without first obtaining legal advice. Cover under the policy is always subject to the conditions and exclusions set out within your policy document.

If you are unsure of the exact version of the policy that applies or the amount of cover you have please speak to your insurance advisor.

Long Serving Employee - Long Term Sickness

Sector: Hospitality

Cover: MLP / EPL section

The Insured was a family owned business which had a long-serving employee with over 30 years' service and had been with the company since it was founded in the late 1980s. The employee was seen very much as part of 'the family'.

In 2017 she was diagnosed with cancer and received treatment. Her condition stabilised, but it was unlikely that she will make a full recovery and she had been off sick for over a year with no imminent likelihood of returning to work. She had exhausted Statutory Sick Pay and dismissal on grounds of medical capability was a possibility.

The employer could not keep the job open forever and they needed to recruit a replacement. There was also the ongoing cost of the employee accruing annual leave whilst they were off sick. Her line manager was anxious about dismissing this long-standing employee and needed guidance regarding the correct approach to be taken.

rradar's response: rradarstation advisors via telephone and email

Dismissing an employee on grounds of ill health (medical capability) is rarely easy. Invariably, the employee has done nothing wrong and ends up losing their job because they are ill. In this case, the emotional issues were heightened due to the length of service and the close relationship with the employee. The situation was sensitive and difficult conversations were going to have to take place. The stress and anxiety of both the employee and the line manager had to be considered as well as the reaction from other employees who might feel upset that their colleague and friend had been dismissed.

Legally the employee would be classed as having a disability under the Equality Act. However, with the employee being off sick for over a year with no sign of a return, assuming the appropriate process is followed, dismissal is likely to be considered fair. To avoid possible legal consequences of dismissing an employee, the company could put her on garden leave enabling her not to come to work during her notice period, provided contractual provisions are in place.

Garden leave means the employer continues to pay the employee up to the date of when the notice period ends but asks her to stay at home and not do any work. Not following a full process could lead to a claim for unfair dismissal and disability discrimination.

Utilising rradarstation's ongoing support, ineffective HR processes and gaps in policies were identified and rectified ensuring the insured could deal fairly and respectfully with the employee and avoid an employment tribunal and insurance claim.

Example of resources available through rradarstation web portal:

- Managing long term sickness – Proactive steps
- Garden leave - Guide
- Dismissal and long-term disability benefits – Case study
- The Bradford Factor
- Implementing a phased return to work

TUPE and Employee Transfers

Avoiding problems when a new employer takes on existing staff

Sector: Agriculture

Cover: MLP / EPL section

The insured, an agricultural machinery and maintenance company was looking to purchase another farming business. Employees of the target business were all to transfer over with the sale.

The insured needed guidance on the TUPE procedure, so they could handle the transfer legally and effectively without damaging confidence in the employee relationships or triggering grievance claims or associated legal costs and financial penalties.

rradar's response: rradarstation advisors and web portal templates – Providing detailed advice to help understand TUPE duties and obligations

rradarstation advisors can offer expert guidance on all the key TUPE obligations before a business transfer takes place that can help reduce the risk of multiple grievance claims when taking over an organisation or service provision transfer.

rradarstation advisors and web portal can fully explain the regulations, duties and the required information new owners should request from the seller.

Due to the expert advice and guidance provided by rradarstation, no claims or grievances were notified during the purchase of the business. The acquisition took place without additional or unforeseen costs for the insured.

Example of resources available through rradarstation web portal:

There are several sample letters and TUPE guides and templates that can be downloaded from rradarstation's web portal and used by policyholders if when involved in a TUPE situation.

- TUPE Consultation
- TUPE templates
- TUPE Short Guide
- TUPE requirement to take employees on – Video

EXAMPLE 3

Constructive Unfair Dismissal

Sector: Education

Cover: MLP / EPL section

A claim was triggered when a senior manager of an insured company within the education sector made allegations of serious bullying and harassment. The employee resigned and subsequently made a claim for holiday pay which had not been paid and compensation for unfair dismissal for over £300,000.

As awards for unfair dismissal are capped in the Employment Tribunal, the claim had a potential value of c.£70,000 taking into consideration the employee's length of service.

rradar's role: rradarstation advisors and Employment team

The insured had sought rradarstation advice through a long grievance process, mediation between the parties was unsuccessful, and the case details were passed from the rradarstation team to rradar's Employment Team.

They were able to skilfully negotiate and defend the allegations resulting in a modest settlement of only £600 plus holiday pay owed to the employee.

In this instance, following rradar's assessment of the documents provided by the insured and of the information gathered by rradarstation, rradar's legal team recommended that the EPL section of the policy could respond.

As rradarstation advice was sought and followed before the claim was triggered, the insured did not have to pay the policy excess.

Example of resources available through rradarstation web portal:

- Instant dismissals
- Unfair dismissals
- Wrongful dismissals
- Disciplinary outcomes
- Redundancy, resignation and dismissal templates

Fatal Accident

Defence in the event of an employee's death at work

Sector: Construction

Cover: MLP / CLL section

The insured is a haulage company, operating a large fleet of lorries and earth movers. During a routine excavation project, one of their drivers was crushed and killed when the truck that was shifting earth fell on him.

Immediately following the accident, the company contacted the emergency services, rradar's crisis line and the Health and Safety Executive. A full investigation into the incident was launched and was followed by a subsequent fatal accident inquiry. The site was closed and remained so until the investigation was completed.

rradar's response: 24/7 Crisis line and Business Crime and Regulation team (BCR)

rradar's experienced BCR team provided legal representation during the investigation, interviews and the inquiry. Through a robust defence strategy and by presenting evidence that the company's health and safety policy and procedures were compliant with the regulations, it was accepted that the insured was not to blame for the accident as the driver had acted outside the company's instructions and procedures.

rradar's involvement with the case meant that there were ultimately no criminal proceedings and the company was able to continue operating their business.

In addition to the legal expertise offered by rradar's legal teams and inclusive under the AXA MLP is the digital incident recording platform: **rradarreport** for recording of near miss, minor and major incidents in the workplace. It is designed by rradar specifically to help businesses easily document manage and respond to health and safety risks across their organisations and linked to rradar legal assistance for RIDDOR reportable incidents.

Example of resources available through rradarstation web portal:

- Accident investigation
- Incident analysis
- Health and Safety Penalties for non-compliance
- Interviews conducted under PACE (Police and Criminal Evidence Act 1984)
- The work-related death protocols
- Traffic – Careless and inconsiderate driving obligations and offences

EXAMPLE 5

Potential Manslaughter Incident

Expert guidance and representation can help you survive a crisis.

Sector: Manufacturing

Cover: MLP / D&O section

The insured is a manufacturer of display signs. Two employees had climbed onto a roof to cover skylights so that the temperature in the workshop could be reduced. One of the employees slipped and fell through a skylight to his death.

The Police launched an investigation that focused upon the Production Manager and Fabrication Department Manager. It was alleged that they were aware the two men were going onto the roof.

Evidence provided by the two managers conflicted with the position of the company, which was being separately represented.

rradar's response: Crisis line and Business Crime and Regulation Team (BCR)

Following a call to rradar's crisis line, our BCR team represented both men and with less than one day's notice, were required to represent them at Police interviews on suspicion of gross negligence manslaughter.

Following a subsequent investigation, rradar was notified that there was insufficient evidence against either individual to bring charges. The matter was passed to the HSE for further investigation.

rradar assisted the individuals throughout this investigation and through a Coroner's Inquest and ultimately, the company was prosecuted for breach of its duties under the Health and Safety at Work Act 1974. No prosecution was brought against either individual.

In addition to the legal expertise offered by rradar and inclusive under the AXA MLP is the latest digital incident recording platform: **rradarreport** for recording near miss, minor and major incidents in the workplace. It is designed specifically to help businesses easily document manage and respond to health and safety risks across their organisations and is linked to rradar's legal assistance for RIDDOR reportable incidents. Contact us to get access to rradarreport for no extra cost.

Example of resources available through rradarstation web portal:

- Corporate manslaughter and Corporate Homicide Act 2007 – Powers of regulators
- Supporting employees – Death in workplace
- Gross negligence manslaughter – case study
- Accident recording and reporting
- Inquests – Preventing further death reports

Recruitment Agent Invoice Dispute

Advice, investigation, representation – legal muscle to protect your business

Sector: Service sector

Cover: MLP/ CLL section

The insured operates in the service sector. They were approached with a CV from a recruitment agency introducing a potential employee for a vacancy within the organisation. The insured did not interview the candidate. Months later, the same individual applied directly to the insured. An interview resulted, and the individual was offered the position.

The individual notified the agency that they had now found a job which resulted in the recruitment agency sending an invoice to the insured for an introduction fee. The agent claimed that under their terms and conditions, they had sent a CV within the preceding 12 months of the company hiring the candidate which satisfied the criteria of an 'introduction', and they were due the fee. The insured contacted rradar for advice on how to proceed.

rradar's response: Commercial dispute legal advice and representation

rradar's commercial disputes team acted swiftly to investigate the claim. Liaising with the insured they were able to locate evidence and information needed on how the hire of the individual took place and created a strong defense against the claim.

The legal team contacted the agent citing details of emails and attachments, the timeline of events relating to the candidate's introduction, interview process, salary negotiation, offer and acceptance.

Through the involvement of rradar's legal team the agent's claim was subsequently withdrawn and no legal proceedings were started.

Example of resources available through rradarstation web portal:

- Civil disputes - the letter before claim
- Alternative dispute resolution clauses in contracts
- Civil disputes – counterclaims
- Recruitment and selection templates
- The recruitment interview process

Contact Us

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