

Client Advisory | November 2010

Don't Let the Bedbugs Bite: What Every Employer Should Know

“Good night, sleep tight, don't let the bedbugs bite.” In the past few years, this well-known nursery rhyme has taken on new meaning: as reports of bedbug sightings at the workplace rise, employers must be proactive in preventing office infestations and the legal and other problems associated with them.



Timothy P. Van Dyck
Partner



Alexandra B. Rubin
Associate

A Bug's Life

Once associated with bedrooms and hotels, bedbugs have been reported in retail stores, movie theaters, schools and hospitals across the country. As business becomes more globalized and employees travel more frequently, there has also been an uptick in bedbug infestations in the workplace setting. In July 2010, the National Pest Management Association, in conjunction with the University of Kentucky, reported that nearly 20% of surveyed exterminators found bedbugs in commercial office buildings.

These bloodsuckers are notoriously tricky to eradicate; the size of an apple seed, an adult bedbug can hide in small cracks and crevices that are difficult for exterminators to reach. Because they reproduce quickly, a sighting of one or two bedbugs can quickly turn into an infestation of hundreds within a few months. Although they are considered nocturnal, bedbugs hiding in offices often come out during the day for feedings. Additionally, because bedbugs are wingless and their most common method of transportation is “hitch hiking,” they can easily travel into an office via laptop bags, purses, suitcases, and even shoes. While they are not known to carry diseases, their bites can generate lesions, welts, and sometimes, anaphylactic reactions. Scratching the itchy bites can lead to secondary skin infections, and for some people, simply knowing that they have been exposed to these critters can cause anxiety, stress, and mental anguish.

Itching to Pursue Legal Action

There are a myriad of employment issues surrounding bedbug infestation in the workplace: loss of productivity among workers, anxiety and employee morale issues, as well as corporate stigma issues, just to name a few. Legal issues abound as well. The vast majority of lawsuits involving bedbugs are filed against landlords and hotels; however, one lawsuit filed in May 2008 in New York City may be the catalyst for more suits involving the workplace. Jane Clark claimed that bedbugs bit her three times over the course of several months while working at Fox News. She sued the building owner and management company for negligence, claiming that she suffered pain, shock, and mental anguish as a result of the infestation. Her lawsuit is still pending. Additionally, Clark receives worker's compensation benefits from her employer because of her psychological injuries. No doubt, Clark will not be the last employee to pursue legal action, which could include allegations of the following:

- **Worker's Compensation:** In most cases, the bites are merely an annoyance, but some employees may develop severe allergic reactions, skin infections, or anxiety-related illnesses. These medical problems may qualify the employee for worker's compensation benefits.
- **Discrimination/Harassment/Retaliation claims:** If a particular employee is suspected of introducing bedbugs into the office, the employer must be very careful about how it handles the situation. Don't

play the blame game. If an employer unnecessarily singles out an employee, or creates an environment where others are permitted to do so, the employer could be liable for harassment and invasion of privacy claims. Additionally, an employee may feel as if the reason for being singled out is due to his or her status in a protected class, making the situation ripe for a discrimination claim.

- **Negligence/Premises liability:** Employers must take care to maintain their workplace in a reasonably safe condition. If an employer knows about a bedbug infestation and does nothing to resolve it, then the employer may be liable for damages sustained from the infestation.
- **Third-party claims:** If an employee or customer is exposed to bedbugs at the office and then brings them back to his or her home, other parties (such as family members) could bring claims against the employer alleging negligence or loss of consortium.
- **Potential violations of federal and local regulations:** The Occupational Safety and Health Administration (OSHA) regulations mandate that an employer provide employees with a workplace free from hazards likely to cause serious physical harm. Additionally, federal regulations require that workplaces must be maintained to prevent the entrance or harboring of insects. Finally, some local regulations and municipal health codes may require commercial buildings to be free from insects.

Keep Employees from Bugging-out

There are a variety of practical steps employers should take to prevent bedbugs from becoming a significant issue in the workplace:

- **Educate employees:** Teach employees now about how to prevent bedbug infestations. Using emails, handouts, and seminars, instruct employees about checking for bedbugs in their homes and hotel rooms, whether they are travelling for business or pleasure. The Centers for Disease Control and the Environmental Protection Agency have issued a helpful joint statement located at: http://www.cdc.gov/nceh/ehs/publications/bed_bugs_cdc-epa_statement.htm with

tips. Educating employees about bedbugs not only reduces the associated stigma that an affected individual is unclean or dirty, but also encourages early reporting.

- **Update the employee handbook:** Update employee handbooks to mandate reporting of bedbug sightings. Employees should be urged to report outbreaks immediately—whether the outbreak is at the office, the employee’s home, or a hotel where the employee recently stayed—so employers can be vigilant and contact professionals if necessary. Additionally, employers who send employees into customers’ homes—such as cable installers or plumbers—should create policies to help prevent employees from bringing bedbugs back into the office. For example, employees might be told not to sit on plush furniture and to check their equipment and clothing for bedbugs before they return to the company vehicle. Finally, employers should develop protocols for what will be done if bedbugs are discovered in the office. Measures should include calling professional exterminators, inspecting work areas, and moving employees to a “safe area” free from bedbugs.
- **Check and maintain the office:** Because of their size and shape, bedbugs can squeeze into unusual places. Inspect seams of furniture and chairs in offices and waiting rooms, check in and around computer keyboards and telephones, examine drapery, and search along cubicle dividers. Additionally, employers should maintain the office and encourage the reporting of maintenance issues. Be sure to seal cracks and crevices in the walls, remove or repair peeling wallpaper, and tighten electrical outlet plates.
- **Hire a professional exterminator:** Over-the-counter remedies are unlikely to work effectively, and depending on what chemicals are used, employers could face OSHA air quality standard violations. While it can cost thousands of dollars for a professional, without the proper help, the infestation will most likely only get worse. Employers should make sure that the exterminator is licensed, insured, and will return for follow-up visits. Additionally, the hiring

Update employee handbooks to mandate reporting of bedbug sightings. Employees should be urged to report outbreaks immediately—whether the outbreak is at the office, the employee’s home, or a hotel where the employee recently stayed—so employers can be vigilant and contact professionals if necessary.

of a professional will make employees feel more at ease, which will decrease anxiety and increase productivity during a stressful time.

- **Be sensitive about questioning employees:** Multiple persons could cause a bedbug infestation in the workplace; it will be virtually impossible to find the exact cause. Meanwhile, subjecting an employee to an embarrassing interrogation or inspection of property could violate the employee's expectation of privacy and place employers at risk for a lawsuit. It is critical that the situation be treated with sensitivity, both to the employee suspected of having brought in the bedbugs, as well as other employees who may be fearful of being exposed to them.
- **Be forthcoming:** If a problem is identified, employers should inform all employees in the affected building without "pointing fingers" at suspected carriers. While it may be tempting to share the information only with employees affected on a certain floor or work area, the disclosure of information will foster a

sense of inclusiveness and prevent employees from feeling as if they are in the dark. Additionally, employers should inform building owners and management companies about the infestation. Make eradication a team effort, requiring everyone's cooperation.

- **Offer support:** Employers may wish to allow employees who are dealing with infestations at home or suffering ill effects from infestations at home or in the workplace, to take time off using sick time or vacation time. Additionally, if employees are suffering from medical or psychological injuries because of the bites, employers should allow employees to take time off pursuant to the Family and Medical Leave Act. Finally, if finances allow, employers might want to consider assisting employees with the costs incurred for home inspections and exterminations.

By developing a proactive response to bedbug infestations and following the measures outlined above, employers and their employees should be able to "sleep tight."

... subjecting an employee to an embarrassing interrogation or inspection of property could violate the employee's expectation of privacy and place employers at risk for a lawsuit.

BOSTON MA | FT. LAUDERDALE FL | HARTFORD CT | MADISON NJ | NEW YORK NY | NEWPORT BEACH CA | PROVIDENCE RI
STAMFORD CT | WASHINGTON DC | WEST PALM BEACH FL | WILMINGTON DE | LONDON UK | HONG KONG (ASSOCIATED OFFICE)

This advisory is for guidance only and is not intended to be a substitute for specific legal advice. If you would like further information, please contact the Edwards Angell Palmer & Dodge LLP attorney responsible for your matters or one of the attorneys listed below:

Timothy P. Van Dyck, Partner
Alexandra Rubin, Associate

+1 617 951 2254
+1 617 239 0313

tvandyck@eapdlaw.com
arubin@eapdlaw.com

This advisory is published by Edwards Angell Palmer & Dodge for the benefit of clients, friends and fellow professionals on matters of interest. The information contained herein is not to be construed as legal advice or opinion. We provide such advice or opinion only after being engaged to do so with respect to particular facts and circumstances. The Firm is not authorized under the UK Financial Services and Markets Act 2000 to offer UK investment services to clients. In certain circumstances, as members of the Law Society of England and Wales, we are able to provide these investment services if they are an incidental part of the professional services we have been engaged to provide.

Please note that your contact details, which may have been used to provide this bulletin to you, will be used for communications with you only. If you would prefer to discontinue receiving information from the Firm, or wish that we not contact you for any purpose other than to receive future issues of this bulletin, please contact us at contactus@eapdlaw.com.

© 2010 Edwards Angell Palmer & Dodge LLP a Delaware limited liability partnership including professional corporations and Edwards Angell Palmer & Dodge UK LLP a limited liability partnership registered in England (registered number OC333092) and regulated by the Solicitors Regulation Authority.

Disclosure required under U.S. Circular 230: Edwards Angell Palmer & Dodge LLP informs you that any tax advice contained in this communication, including any attachments, was not intended or written to be used, and cannot be used, for the purpose of avoiding federal tax related penalties, or promoting, marketing or recommending to another party any transaction or matter addressed herein.

ATTORNEY ADVERTISING: This publication may be considered "advertising material" under the rules of professional conduct governing attorneys in some states. The hiring of an attorney is an important decision that should not be based solely on advertisements. Prior results do not guarantee similar outcomes.

EDWARDS
ANGELL
PALMER &
DODGE
eapdlaw.com