Much ado about nothing

By Luis Fragoso

One of our members received a $1 million claim from an attorney representing a former City employee. The former employee claimed he was discriminated and retaliated against due to his disability, that the City failed to offer him reasonable accommodations and that, after separation, the City gave a potential employer false information about him and, as a result, he was not hired by another City.

As soon as the claim was received, WCIA retained defense counsel to review the City’s records and evaluate the potential risk our member faced. The investigation revealed that the former employee had been medically separated from his employment after medical evaluations determined he was not fit for duty. He was kept on paid leave for over a year while he underwent additional evaluations to see if his condition improved or appeared likely to change. Unfortunately, it did not. The medical conclusions confirmed observations in the field by fellow employees of symptoms and behavior that was uniformly recognized to create serious safety concerns for the public, other employees and himself.

The former employee had a long and successful career and was well-liked by everyone. Sadly, he was no longer qualified to perform the essential duties of his position. Furthermore, there were no reasonable accommodations that would have enabled him to continue working due to the nature and extent of his impairment. When a lawsuit was eventually filed, there were additional claims of a “hate crime” and violations of civil rights listed in the Complaint.

Fortunately, a prompt and thorough investigation by our defense attorney followed by a strongly worded letter explaining the Complaint contained an egregious misrepresentation of the facts, along with a threat to seek sanctions for pursuing frivolous claims convinced opposing counsel to promptly dismiss the suit against the City.

While this was a wonderful result for our member, it was truly an unusual outcome as far as employment cases go. In most cases, our members have to dedicate a vast amount of resources, sometimes for years, to defend against an employment lawsuit. Fortunately, thanks to the efforts of our member’s Human Resources Department and defense counsel we were able to efficiently manage this matter.

WCIA offers a Pre-Defense Review program that works especially well for potential employment practices claims. The secret to the program’s success is to call WCIA as soon as possible. The process is very simple, the member delegate notifies WCIA of the request for assistance and, if our Risk Services Manager determines that the Pre-Defense Review program applies, WCIA will assign a defense attorney to work directly with our member until the situation is resolved.