



# Moonlighting: What's the Harm?

Consider this scenario: An architect in your firm wants to design a home addition plan for a family member. Or this one: an engineer wants to take on a parking-lot project for a local non-profit organization she volunteers for. They may want the additional experience, income and/or recognition such moonlighting projects may bring.

You may think, *As long as they do it on their own time, it's no big deal, right?* Not necessarily.

It's not just the designer's time that's at issue. There's a very real potential that your firm could be held liable in the event of a claim related to the moonlighting work.

## moon·light

/mōn, līt/

verb

Take on paid work in addition to one's normal job, especially without telling one's employer

## Professional Liability Insurance

Your next question may be, *But wouldn't my firm's professional liability insurance policy cover it anyway?* Again, not necessarily. Typically, such policies specify that employees are covered—but only for those services performed on behalf of the firm.

Even if your PL insurance policy responds to such a claim, keep in mind that your firm would be responsible for any deductible. In either event, you need to ask yourself this: Do I want to be on the line for paying the cost of a claim on a project for which my firm received no income?

## What Puts Your Firm at Risk

If a claim arises out of a moonlighting project, anything that implicates your firm's involvement can result in imputed liability against your firm. Any of the following situations might imply that your firm was knowledgeable about and/or sanctioned such work:

- Employee's performance of moonlighting services during the firm's normal work day or on the firm's premises
- Moonlighting employee's use of your firm's:
  - Equipment (computers, printers, scanners, plotters)
  - Software (design technology, other)
  - Email account domain
  - Telephone system or company-issued mobile device
  - Letterhead, logo or other standard documentation

What's more, those who engage in moonlighting tend to be less seasoned employees. This lack of experience, when coupled with the lack of your firm's normal QA/QC process, creates an environment that is ripe for a claim.

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### Protecting Your Firm

Many A/E firms affirmatively prohibit moonlighting activities by addressing it in the firm's employee handbook and requiring employees to sign a form to indicate that they have read and understood its contents. You may also want to include a disclaimer of liability and, perhaps, an indemnity in the event an employee violates the policy. Be sure to enforce the moonlighting restriction, however, as inconsistency can lead to exposure.

In addition to putting your policy in writing and getting it formally acknowledged by your staff, include an actual dialogue about moonlighting during the onboarding and training of new employees. Also consider discussing the topic at an all-employee meeting. Such interactive conversations can help your staff more fully understand the risks of moonlighting—to themselves and to the firm—and help you dispel the myth that there's no harm in moonlighting.

### Final Words of Advice

A design professional cannot be an effective firm leader and, at the same time, engage in moonlighting activities. Leaders, in particular, need to devote 100% of their professional energy to the firm.

Lastly, if you choose to allow non-leadership staff to moonlight, you should place key restrictions on such activities:

- Cannot be performed on the firm's premises
- Cannot be performed on the firm time
- Cannot make use of any of the firm's equipment, software or material

# About Berkley Design Professional

**Berkley Design Professional** was started in 2013 by a team of people with deep roots in underwriting, loss prevention and claims handling for the Design Professional community. The genesis of Berkley DP was the combination of our team's passion for bringing fresh ideas to the products and services Design Professionals need together with W. R. Berkley Corporation's desire to commit its superior financial strength and A+ rated paper to this industry segment. Berkley DP's motto is: "Better by Design." By this we mean that our policyholders are better businesses because we've designed comprehensive coverage and current risk management solutions that make their practice less susceptible to loss.

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