

Workers' Comp & Safety News



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Workers' Comp

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9 Ways to Improve Your Workers' Comp Program and Save Money

The key is advance planning.

- 1 Make sure your employee classifications are correct.** There are 500 to 600 job classifications to choose from, and getting the best fit possible can mean getting the lowest rate possible. Sometimes employees whose duties are only clerical get included in much more costly job classifications when those are the business's primary classifications. For example, a bookkeeper/administrative assistant in an auto body shop should not be classified as a body shop worker.
- 2 Develop relationships with medical providers who specialize in occupational medicine.** Injured employees will often go to their personal doctor or use a walk-in facility when an injury occurs. When this happens, employees do not get optimal treat-



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Ergonomics Myth Buster

Do exercise balls and treadmill desks really improve posture and help people get the periodic physical exercise they need? Not according to experts quoted in a recent *Business Insurance* article.

"We'd love to believe that a \$30 (stability) ball will replace a \$750 task chair, but it doesn't," according to Tom Hilgen, Charlotte, North Carolina-based senior vice president and ergonomics practice leader at Willis North America Inc. To be ergonomic a chair needs to be adjustable, not just roll around on the floor.

Physical therapists and fit-

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ment and you incur higher costs. Your agent can help you identify physicians who have the right training and who will get to know your business, the type of work performed and the best treatments for your workers.

3 Have a system in place to make sure injured employees get immediate medical care. In many instances, injured employees are simply sent home or let go for the day so they can go to their own physician or go to an emergency room. Your goal should be to make sure injured employees get immediate medical attention so they can get the care they need and return to the job as soon as possible.

4 Use data to control losses. Review your workers' comp loss runs and OSHA logs regularly with your broker to assess ways to improve your systems, processes, training and other factors that can reduce future losses. Also, pay attention to data about the kinds of accidents that are typical for your type of business and develop ways to foresee and mitigate claims before they occur. Here are the 10 most common workers' compensation claims:

- ✱ Overexertion (results in pulled muscles or flagging attention)
- ✱ Slips, trips and falls
- ✱ Falls to lower level (such as falling off a ladder or a roof or down a flight of stairs)
- ✱ Bodily reaction (such as a fall avoided that causes injury as a result of the avoidance)
- ✱ Struck by object
- ✱ Struck against an object
- ✱ Highway incident

- ✱ Machinery accidents
- ✱ Repetitive motion (carpal tunnel syndrome or tendonitis, for example)
- ✱ Workplace violence

5 Be prepared for your annual workers' comp premium audit. To make things go as smooth as possible with your audit, have a list of all employees, their hours, duties, payroll classifications and payroll. You should also list all job descriptions and differentiate clearly between employees and independent contractors. Your agent can help you review and prepare for your audit.

6 Review your company's Annual Unit Statistical Report. The Unit Statistical Report is the evaluation of losses and other information your insurance company submits to its rating bureau each year. The report will include the premiums you've paid and the paid and reserved losses occurring during the reporting period. It's important to review this data carefully because if the insurance company sets a very high reserve on any of your claims or keeps open claims that should have been closed, your experience modification factor will go up, costing you more in premium.

7 Develop a "light duty" or "recovery at work" program for injured employees. If an employee returns to work before lost-time wages start, this can create a significant cost savings and reduce the impact on your experience factor. More importantly, injured workers recover faster if they remain working, even if they are

ness coaches often recommend these solutions but they can expose workers to musculoskeletal disorders, says Hilgen. To use your keyboard without stressing your back, either the desk or the chair has to be adjusted to the proper height. Getting a desk that can be raised or lowered can cost more than an ergonomically designed chair.

Another problem with exercise balls is that "most workers don't have the core strength to maintain the necessary balance and posture to use [it]," said Rachel Michael, Midway, Utah-based senior consultant at Aon Risk Solutions. Exercise balls were developed in "response to the obesity epidemic."

Experts like Ms. Michael say that exercise balls should be banned from the workplace altogether!

Ms. Michael doesn't recommend treadmill desks either, citing an instance where a woman filed a claim because she was injured on a treadmill while wearing high heels. Treadmill desks, she said, should be used only for short intervals of 15 to 30 minutes — while wearing "reasonable shoes."

doing work that is less critical or demanding than their regular job. The important thing is to keep them engaged in their work. By consulting your company physician, you can design work activities appropriate for the employee.

8 Check whether a claim might be eligible for second injury funds. More

than 20 states have “second injury funds” that pay benefits to workers when an injury aggravates a pre-existing permanent health condition. Over half of all injured workers have a pre-existing condition, according to one expert. When you have an employee with a permanent impairment who suffers a second injury, you are responsible for compensating only the most recent injury. Many employers fail to realize this, often spending thousands of dollars more than they need to.

When a worker with a pre-existing injury or condition files a claim, the employer should make the claims adjuster aware of the pre-existing injury or condition. The adjuster will calculate the settlement value of the claim, and/or file the claim with the second injury fund. Submitting a claim to a second injury fund can help employers with experience-rated workers' compensation policies avoid a big premium increase. It can also make it more appealing to hire former military service persons, many of whom have service-related disabilities

9 Remember to ask your agent for help.

Your agent is your best asset for help implementing any of these loss control and premium saving ideas. Your agent can also help explain anything about your policy or the many intricacies of workers' comp insurance. Your agent is also your advocate and will help you get the best possible coverage and rates from your insurance company. ■

What Do Courts Say “Course of Employment” Means?

It's not always obvious if a workers' compensation claim is related to employment.



Workers' compensation insurance only covers injuries that occur “in the course of employment.” Sometimes it can be difficult to determine whether an injury really occurred during the course of employment. For example, workers' compensation will usually cover injury to traveling employ-

ees, even when the employees are not immediately attending to work duties, as long as they are “pursuing normal creature comforts and reasonably comprehended necessities,” according to a ruling in one case.

But there are many situations when it is not clear whether the injury was sustained in the course of employment. Here are five situ-

ations where the courts had to decide what “course of employment” means:

- 1 An 18-year-old employee broke his hip trying to shake loose a bag of chips from a lunch room vending machine. Apparently the chips had been purchased by a female employee and the young man was trying to help her out. The arbitrator ruled in the employee’s favor, saying he was “injured while coming to the aid of a co-worker seeking personal comfort.”

Circuit City Stores, Inc., v. Illinois Workers’ Compensation Commission No. 2-08-0722WC, Appeal from the Circuit Court of McHenry County, No. 07-MR—360

- 2 An employee of J.C. Penny tripped over her dog on the way to her garage and broke her wrist. The Workers Compensation Board of Oregon denied the claim because her injury did not arise out her employment.

But the garage was where she stored the fabric samples she used in her work as a decorator for J.C. Penny and, she said, she was on her way to fetch them. The Appeals Court of the state of Oregon reversed and ruled that her garage was part of her “work environment” and she was entitled to compensation.

Mary S. Sandberg v. JC Penney Co. Inc., in the Court of appeals of the State of Oregon, Workers’ Compensation Board, 0702441, A140276

- 3 A jealous husband took out a murder-for-hire contract on his wife’s manager, reasoning that she was having an affair

with the manager. The attempted murder failed but exacerbated the manager’s existing PTSD. He applied for workers’ comp benefits. His claim was denied because the New York Workers Compensation Board felt there was no nexus between the manager’s job and his attempted murder.

A New York appellate court disagreed. Among other events, the manager had called the wife from work to arrange a meeting about work-related matters. This meeting triggered the murder attempt and was a sufficient nexus, however slender, said the appellate court, to link the assault to the manager’s employment.

Mosley v. Hannaford Bros. Co., 119 A.D.3d 1017, 988 N.Y.S.2d 303

- 4 A claims adjuster assigned remote duties in connection with a hurricane was drinking heavily one evening after work and fell while “riding in the dunes” in a vehicle near Galveston, TX. While the court said that a traveling employee is generally covered for workers’ comp during the entire trip, the exception is when there has been “a distinct departure on a personal errand.” That seemed to fit the adjuster’s situation in this case and compensation for his injuries was denied.

Knight v. Department of Labor and Indus., 181 Wn. App. 788

- 5 In a similar, rather infamous, case in Australia, the court initially made a completely opposite finding for the claimant, which surprised a lot of people. A woman on a business trip was hit in the head during

sex with a colleague when a lamp fell on her. Her physical injuries resulted in depression and she was unable to continue working. She applied for workers’ comp benefits, but her employer rejected her claim because having sex was not “an ordinary incident of an overnight stay for business.” The workers’ comp tribunal agreed and rejected the claim. On appeal to the Full Bench of the Australian Federal Court, the decision was reversed. The court said her behavior should not have had any bearing on whether she was eligible for benefits. “No approval, express or implied, of the respondent’s conduct was required,” they said.

That decision has now been reversed. The High Court of Australia ruled that the boundaries of entitlement had been stretched too far in this case and it accepted the insurer’s position that it was not liable for the woman’s injuries because, to say it politely, “the incident happened after hours.” Federal Employment Minister Senator Eric Abetz said the ruling was a “victory for common sense.” <http://www.abc.net.au/news/2013-10-30/sex-compensation-high-court/5057348>

Most workers’ compensation claims are more clear-cut than these. However, if you have a situation where you are not sure whether workers’ compensation would apply, make sure the injured employee has received medical attention and please contact us. ■

What's the Difference between Workers' Comp Insurance and Employers' Liability?

A standard workers' comp policy can leave employers vulnerable to lawsuits in certain cases.

The standard workers' comp policy covers almost all liability of an employer for its employees. It covers the costs associated with an employee's work-related injury or occupational disease. It pays for the worker's medical costs, rehabilitation costs, lost wages and any settlement for permanent disability.

The fundamental premise of workers' comp is that employers agree to take responsibility for work-related injuries whether or not the injury was the employer's fault. In return, the employee gives up his or her right to sue for damages. Workers' comp is designed to be "no-fault" and the "exclusive remedy" for work-related illness and injury.

But we say the standard workers' comp policy covers "almost all" employer liability because an employer can still be sued for damages that fall outside of workers' comp coverage.

The employers' liability section of the workers' comp policy adds coverage for these types of claims. Without this coverage, employers would have a significant coverage gap, because commercial general liability policies specifically exclude coverage for work-related injury and disease.

Employers' liability is a common law or tort liability, and insurance companies handle



those types of claims in the same way they adjust general liability claims, including managing and paying for defense.

Since states do not require employers' liability insurance, you do not have it unless your workers' compensation policy explicitly states it includes this coverage in a separate section. Unlike workers' comp, employers' liability has a defined limit of liability, starting at \$100,000 per injury.

Monopolistic States

In states that have monopolistic state workers' comp funds (North Dakota, Ohio, Washington and Wyoming), employers need to purchase a separate employers' liability policy. Organizations headquartered in other states but that have offices in these states need to buy an endorsement to their employers' liability policy to avoid having a coverage gap for employees in those states.

Not Employment Practices Liability

Employers' liability should not be confused with employment practices liability (EPL) insurance, which protects companies from employee claims that their legal rights have been violated. EPL protects an organization when employees file claims for wrongful termination, sexual harassment and discrimination. It does not cover bodily injury.

Some employers that have not bought EPL insurance attempt to use their employers' liability to provide coverage for EPL claims. According to IRMI, they have not been successful in most cases. Even when states define workers' comp "injury" to include mental injury, the broader workers' compensation definition does not necessarily transfer to the employers' liability portion of the policy.

If you have any questions about your employers' liability coverage — and how it complements your workers' comp coverage — please give us a call. ■

When Do You Need Employers' Liability Coverage?

Insurance authority IRMI cites several examples of when employers' liability coverage applies:

- ✦ **Wrongful death:** The family of a deceased worker may file a common-law claim seeking damages in addition to the death benefit paid by workers' comp.
- ✦ **Consequential bodily injury:** A family member may file a lawsuit for his or her own injury (for instance, a heart attack) that was caused by learning about or dealing with the injured employee.
- ✦ **Loss of consortium:** The spouse of an injured worker may sue for loss of consortium, which means the spouse has lost the services — such as sexual relations or the ability to do household chores — of his or her spouse. Damages can be awarded even if the spouse is receiving disability payments.
- ✦ **Third-party liability:** If an employee is injured while using equipment that malfunctioned, he or she may sue the manufacturer of the equipment for negligence. The manufacturer may in turn sue the employee's company to recover damages. Depending on the specifics of the claim, either the employers' liability or a general liability policy can provide coverage.



- ✦ **Employees excluded from workers' comp:** In some states, seasonal and temporary workers can be excluded from workers' comp. In other states some small employers do not have to buy comp. In those situations, an employers' liability policy can provide protection from employee lawsuits for bodily injury and illness. ■

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