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## Welcome!

I hope that you find these articles of interest. If you have a topic for future discussion, please let me know.

Please call anytime we can answer questions or be of help with your business insurance needs.

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## What's New This Month

**Save on Workers' Compensation Costs By Keeping Losses Low**

**When Does Your Insurance Company Have to Defend You in Court?**

**Plan Now for the Disaster That Will Hit Your Business**

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## Save on Workers' Compensation Costs By Keeping Losses Low

In 2008, U.S. employers reported 3.7 million nonfatal occupational injuries and illnesses, according to the U.S. Bureau of Labor Statistics. While this number was down from the prior year, it still shows that workplace safety must be a priority for employers. When workers get hurt or sick on the job, productivity suffers, the employer becomes less attractive to the other employees, and managers' attention shifts away from growing the business. Preventable accidents also hurt the bottom line in another way -- they eventually raise workers' compensation costs by increasing the employer's experience modification factor.

The experience mod is a number calculated by the workers' compensation rating bureau in the employer's state. It's a reflection of how the employer's loss history for the prior three years (not including the current year) compares to that of an average employer in the same industry. It takes into account the size of the employer's payroll for those years, and the number and severity of its losses. The formula penalizes an employer more so for frequent losses than for expensive ones. For example, an employer with 10 losses of \$3,000 each will have a higher experience mod than will a similar employer with one loss of \$30,000. The insurance company must, by law, multiply the employer's workers' compensation insurance premium by the experience mod factor; a factor of less than 1.0 reduces the premium, while a factor greater than 1.0 increases it. Therefore, it makes financial sense for employers to take steps to prevent frequent on- the- job accidents.

There are several things employers can do to improve their accident records and save on their workers' compensation premiums.

- \* Management should make workplace safety a top priority. The things that are important to managers become important to workers. Provide continuing training to workers on job site safety and enforce safety requirements.
- \* Obtain and review publications about the industry from the U.S. Occupational Safety and Health Administration. These publications provide practical recommendations for preventing injuries. For example, the "Construction - Hand and Power Tools" category has a document titled, Safeguarding Equipment and Protecting Employees from Amputations.
- \* Keep the work environment clean. This reduces the risk of employees contracting airborne illnesses; eliminating clutter makes trip- and- fall accidents less likely.
- \* Maintain machinery and equipment in good working order. Check it regularly for safe operation.
- \* Institute programs to keep the workplace drug and alcohol free. Within legal parameters, test employees for drug and alcohol use.
- \* Review loss information from insurance companies. Look for trends in the types of losses that occur. They could indicate dangerous work procedures, incentives that cause employees to rush, defective tools, or another factor in need of correction.
- \* Take advantage of the expertise in the insurance company's loss control department, particularly if the company specializes in insuring businesses in that particular industry. They can recommend measures that have proven to work for similar businesses.
- \* Monitor employee morale. Unhappy workers can become careless or slipshod in their work. Take steps to improve morale and to deal with employees who may be causing problems.
- \* Review the experience mod worksheet with the firm's insurance agent. Ensure that the insurance companies have accurately reported all losses to the rating bureau. Ask to have errors corrected, and follow up with the agent until it happens.
- \* Require employees to report all injuries, no matter how minor they appear. Make sure that injured employees receive prompt medical attention.

No one benefits when employees get hurt on the job. With focus and effort, employers can make workplace injuries less frequent and less severe. That will make their businesses better places to work and add hard- earned dollars to the bottom line.

## When Does Your Insurance Company Have to Defend You in Court?

Commercial general liability insurance pays for lawsuit settlements or court judgments that an organization would otherwise have to pay for certain types of harm others suffer. These include bodily injuries, property damage, advertising injuries, and personal injuries such as violations of privacy. Another benefit of this insurance, however, can be just as valuable or even more so: coverage for the cost of legal defense.

The standard CGL insurance policy gives the insurance company "the right and duty to defend the insured" against any suit seeking damages. Conversely, the company has no duty to defend the insured against a suit seeking damages for an incident the policy does not cover. The company's duty to defend ends when it has paid out the policy's maximum limit of insurance for settlements or judgments. Most policies provide coverage for defense costs in addition to the amounts available for payment of damages.

Because the company does not have to defend a claim it believes the policy does not cover, disputes about whether a duty exists can arise between the company and the insured organization. Courts in most states have given the policy a broad interpretation and favored the insured. For example, New York's highest court has said that "an insurer will be called upon to provide a defense whenever the allegations of the complaint suggest ... a reasonable possibility of coverage." However, courts have put limits on the duty. A Texas court in 1997 ruled that a court may not "read facts into the pleadings, look outside the pleadings, or imagine factual scenarios that might trigger coverage." Also, an insurance company's defense of a claim does not necessarily mean that the policy covers the claim. Another Texas decision in the same year held that the company's duty to pay for the damages is governed by the facts of the case, not just the possibility of coverage.

Suppose the insured is a construction firm. An employee, frustrated by a particular task, throws a wrench, striking and injuring another contractor's employee on the job site. The injured employee sues the contractor and the worker. The CGL policy does not cover injuries expected or intended by the insured. If a court decides the employee expected the wrench to injure someone else, the policy will not cover the settlement. However, it is possible that the employee expected or intended no such thing. Because the possibility of coverage exists, the insurance company will have to defend the firm and the employee against the lawsuit.

Now assume the insured is a restaurant. A group has dinner after spending the afternoon tailgating at a football game. One person, already intoxicated from the tailgating, has six beers with dinner and leaves the restaurant very

intoxicated. He makes a wrong turn, walks into busy traffic, and suffers serious injuries when a car strikes him. He sues the restaurant for his injuries. The CGL policy does not cover injuries for which the insured is liable by reason of contributing to a person's intoxication if the insured is in the business of selling alcoholic beverages. Because there appears to be no possibility that the restaurant's policy will cover this claim, the insurance company has no duty to provide defense.

The cost of defending a lawsuit can often exceed the cost of the settlement. All businesses should discuss their liability coverage with their insurance agents to ensure that they have the protection they need if they get sued. The agent can identify coverage gaps and recommend solutions. They may involve additional premiums; better that a business pays more for insurance than endure bankruptcy due to uncovered legal costs.

## **Plan Now for the Disaster That Will Hit Your Business**

Disaster can strike a business in a multitude of ways. Businesses located near the coast from Texas to Maine are highly susceptible to hurricane damage. Fires and explosions can devastate buildings regardless of where they're located. A building need not be the target of a terrorist attack to feel its effects, as many business owners discovered after the September 11 attacks. After a catastrophic event, evaluating the damage to the facilities quickly and accurately is essential for both insurance recovery purposes and for getting back into operation as soon as possible.

The business must do much of the important work before the disaster occurs. Identifying the facilities and equipment at risk is the first step. For a small business with one or two locations, this may be obvious; for a larger business with operations in many states and localities, the question may be more complex. Some locations may be in earthquake-prone areas, while others may be relatively safe from natural disasters. Such businesses must evaluate the worst-case scenario for any one event and plan around that.

Businesses must also address the question of who will do the evaluating. After a disaster, some members of the group may be injured or otherwise unable to reach the scene because of the severity of the damage or law enforcement restrictions. Therefore, the list should include several names with multiple people able to fill each role. The business should also have a written communications plan for reaching members of the group, including all of their phone numbers (both land lines and cellular), e-mail addresses, and each person's emergency contact information.

The more information a business has about its property after a loss, the better. Therefore, it should assemble multiple copies of documents such as architectural drawings, appraisals, inspection reports, maintenance records, and others. The business should store documents in several locations and media so that backups exist should one set be destroyed. Members of the disaster recovery team should survey each location, identifying special features, key processes, characteristics that increase the building's vulnerability to a particular threat, and equipment that will be difficult to replace.

It is often helpful to have members of the local police and fire departments tour the building and meet with personnel to discuss disaster planning. They may identify weaknesses in the plan or deficiencies in the building that the disaster recovery group missed. Also, the more familiar they are with the building before a loss, the better able they will be to respond after it.

After a disaster occurs, the disaster team coordinator should take steps to contact each member of the group and arrange for inspection of the facility at the soonest possible moment. The group may not be able to enter the building immediately due to safety concerns or orders from law enforcement. As soon as the group can inspect, they should identify emergency measures necessary to protect the facility from further damage, assess the extent of the damage, identify areas that are unsafe to enter, and evaluate the condition of the areas where critical processes occur. They should use the information developed before the loss to assist in their evaluation.

After the inspection, the group should prepare reports on each damaged facility. Local authorities may require the business to file these; in addition, government bodies that assist with disaster recovery and insurance companies may need the information.

Business owners should ask their insurance agents for resources to help with disaster preparation. Many insurance companies have loss control departments that can offer valuable assistance, as well. Government agencies such as the federal Small Business Administration, the Federal Emergency Management Agency, and Web sites such as Business.gov have plenty of information on this topic. To a large extent, a business owner has control over whether the business will survive a disaster. With some careful planning, the business will survive it and thrive.

## **Feedback**

We always appreciate your valuable feedback!

We value our relationships and would like your opinion about our agency. Any suggestions? improvements? compliments? We would appreciate hearing from you.

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