

MANAGING RISK



A Susquehanna Company

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Workers' Compensation

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Emotional Stress. Is it Covered?

With layoffs, hiring freezes and frozen wages, workers are under more stress these days. When does normal stress become mental injury? Does workers' comp cover stress and mental injury? How can you minimize the risk of a claim?

"My job is driving me crazy!" That's a phrase you're more likely to hear these days. Can your job really drive you crazy, and would it be covered by workers' comp? That depends.

Here's an example: Susan is an accountant in a company that is planning to go public on the New York Stock Exchange. This requires a lot of financial reporting, and Susan has been working 12-hour days, six days a week for several months. At the same time, she is going through a divorce and a custody battle for her two children. Susan's supervisor has not been sympathetic about her personal problems.

One day Susan finds herself unable to get out of bed. She is physically and emotionally exhausted and blames her intense work schedule.

Susan may or may not have a workers' comp mental injury claim, depending on where she lives. Each state has its own rules and regulations regarding emotional stress claims. In many states, such as Connecticut and Indiana, workers' comp regulations state that emotional stress must result from a physical injury. Susan would not have a legitimate claim there.

Other states, such as Oregon, take a middle ground — a job must be extremely stressful to be covered by workers' comp. In these states, the claimant



This Just In

OSHA cracks down on texting while driving. The Occupational Safety and Health Administration (OSHA) has announced that companies are violating the Occupational Safety and Health Act if they require employees to text while driving. Companies are also in violation if they use incentives that encourage employees to text while driving, or if they structure work so that texting is a practical necessity for workers to carry out their jobs.

"Year after year, the leading cause of worker fatalities is motor vehicle crashes," said Assistant Secretary of Labor for OSHA Dr. David Michaels.

"There's no question that new communications technol-

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must clearly prove the job caused the stress. In California, regulations dictate that the job must account for at least 51 percent of the stress in order to be covered. Susan's case would be open for debate.

At least one state, Montana, categorically excludes emotional or mental stress as a legitimate workers' comp claim. Some states, such as New York, exclude any stress claim that arises from lawful business pressure, i.e., long hours. However, court cases in New York, Pennsylvania and elsewhere have overruled the regulations and awarded damages for unusually stressful situations. Courts have tended to expand the definition of injury to the advantage of the employee.

Workplace Trauma

If a traumatic or violent event happens at work, employees who suffer immediate emotional stress may have claims that would be denied under normal work conditions. Some state regulations explicitly address violence, and in other states, court rulings have established precedents for dealing with violent acts.

Stress Causes Injuries

Whether an employee's stress is caused by workplace problems or personal ones, his or her performance at work may suffer. Stressed-out office employees lose effectiveness, and blue collar workers become more prone to injuries when they feel tired or stressed, leading to more bodily injury claims, lost time and higher comp rates.

Regardless of whether an employee can file a claim, employers should attempt to create a work environment that minimizes employees' stress. Senior managers should monitor their frontline managers to make sure they are not placing undue stress on their subordinates.

Employee Assistance

Many organizations have employee assistance programs (EAPs) that help workers deal with emotional and psychological problems that may or may not be work-related, but that affect work performance and increase the chances of accidents and injuries. According to one EAP provider, ESI, every year 20 percent of employees have a major personal problem that results in an average of three weeks of lost productivity.

ogies are helping businesses work smarter and faster. But getting work done faster does not justify the dramatically increased risk of injury and death that comes with texting while driving." "OSHA will investigate worker complaints, and employers who violate the law will be subject to citations and penalties," said Michaels.

In light of this, please examine your organization's driving policies and practices to ensure your employees are safe and that you are adhering to the law. For assistance, please contact your account representative at The Addis Group.

Companies usually hire an outside firm to handle their EAP. The EAP vendor has the specialization needed to efficiently provide counseling and referrals on a broad range of problems including substance abuse, financial problems, family conflicts, work/life balance and emotional stress.

An EAP can provide a wall of confidentiality between the company's management and the employees, which is important because employees must be confident that their supervisors will not be privy to their personal problems.

Wellness programs can also help reduce workplace stress by encouraging healthy eating habits, regular exercise and programs to stop smoking.

Handling a Stress Claim

If an employee files a stress or mental injury workers' compensation claim, treat it with the same professionalism with which you handle any comp claim and follow your usual claims-reporting procedures. With a stress claim, the employee's overall mental health and his or her personal life may become relevant. This is a sensitive area that your workers' compensation insurer should handle. If you are faced with a stress claim, please contact your account manager at The Addis Group to discuss next steps. ■

Data Loss: A Business Nightmare

Many companies find that business stops when the computers go down. What happens when your data is lost or corrupted? Can insurance help get you back in business?

As computers, network systems and the Internet have become integral to business, the insurance industry has responded by excluding coverage for certain risks from standard policies, and then developing endorsements and separate policies to cover various threats to software, data and networks. This complicated, ever-changing picture makes it important to review your operations and your insurance annually to make sure your business is adequately protected.

Coverage for networks and data is sometimes called cyber insurance. It covers two broad areas: your own data and the data of customers, partners and clients that you interact with. In insurance terms — first-party and third-party coverages.

Protecting Your Data

Most property policies have coverage limits for computer hardware and exclude software and data. Insurance companies offer optional endorsements that increase hardware limits and add coverage — usually with small sub-limits for:

- ✦ Loss of software, programming and data caused by viruses.
- ✦ Loss of income and extra expenses due to damaged hardware or software caused by viruses.
- ✦ Loss of income due to viral attacks that overload computers and prevent normal business traffic.
- ✦ Electronic fraud — reimbursement for money stolen through the computer.

It is important to work with your IT executives to identify your company's specific cyber risks. The next step is to analyze your current insurance program to understand which risks are covered and which may need additional protection. We are here to help.

Data Backup

Can you place a price tag on your data? Perhaps it's priceless! After a major data loss, insurance may not be able to prevent you from losing customers and perhaps your good reputation. Insurance should not be your first line of defense. Every business needs an IT security program that backs up your data and protects your business.

Here are some basic requirements of an ongoing security plan:

- ✦ Off-site data backup.
- ✦ Fire walls, anti-spam and anti-virus software.
- ✦ Controlled access to data through user permissions and separation of duties.
- ✦ Documentation of each user's access to applications and files.
- ✦ Restricted access to data from outside the company's computer network.
- ✦ Encrypted proprietary and personal data.
- ✦ Controlled access to the physical building and hard-copy files.

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Third-Party Data

The standard general liability (GL) policy excludes coverage for property damage to electronic data. You can buy an endorsement that adds a separate sublimit of coverage for loss of electronic data resulting from damage to tangible property. Your errors and omissions policy will probably not cover electronic data loss either, unless it includes specific cyber liability language.

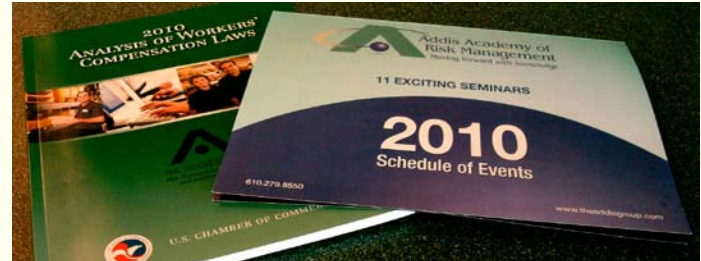
Cyber liability is a big issue in the insurance industry. As the Internet becomes a more important business channel, including social media and cloud computing (storing and using data on a vendor's Web site), companies need to review their liability insurance. For instance, any company that has a Web site or uses social media is, in fact, a publisher that may need the protection of a media liability policy.

Insurance companies are responding by developing new coverages and redefining existing ones. Here are some key coverages:

- ★ **Privacy Liability:** Covers losses from failing to protect personal information (i.e., Social Security numbers) and corporate information, as well as costs to repair identity theft and to respond to regulatory agencies.
- ★ **Network Security Liability:** Covers losses due to a failure in network security such as unauthorized access, virus transmission or destruction of software and data. May also cover business interruption for third parties impacted by the network security failure.
- ★ **Internet Media Liability:** Covers the company's Web content for infringement, defamation, plagiarism or negligence. May also include coverage for transmission of viruses to your Web visitors. Cyber liability can be bought as a freestanding policy or as part of a professional liability policy.

To learn more, please contact your account manager at The Addis Group. ■

Addis Academy of Risk Management



On November 12 The Addis Academy of Risk Management hosted a workshop entitled “Workers’ Comp Litigation: Fight or Flight.” Attorneys from the defense firm of Cipriani and Werner, led by Jack Hayes, discussed the elements needed to prevail in workers’ compensation litigation or at least minimize the financial damage associated with settling a case.

An interesting twist was added to this discussion, as claimants’ attorney Norman Weinstein added his perspective in the panel discussion. It was interesting to note that Mr. Weinstein felt that a lack of communication between the employer and employee is the primary reason injured employees seek out representation, rather than any wrongdoing by the insurance carrier or outside party. The lesson learned: it’s important to keep the lines of communication open once an employee suffers a work-related injury.

The ultimate cost of a case that goes to litigation is almost guaranteed to be higher. A study by the National Council on Compensation Insurance found that litigated claims cost 40 percent more to settle than non-litigated claims.

Our next workshop will be held on January 18 and will cover OSHA recordkeeping requirements. Please contact Jim Sheridan or Jamie Correale for details. ■

Winter Weather Safety

When the weather outside is dreadful, make sure your employees who work outdoors are protected against the elements.

Cold weather poses the direct risks of frostbite and hypothermia. Additionally, cold temperatures exacerbate existing physical conditions such as arthritis, respiratory problems and even hearing loss. Most people become aware of the symptoms of frostbite — tingling, stinging and numbness — before damage becomes severe. Hypothermia poses a more subtle, but serious, threat.

Hypothermia

When a person's body temperature drops, physical and mental functions become impaired. He loses the mental capacity to realize how cold he is. Not only is he physically at risk; he may also perform his job in a way that endangers himself and other employees.

Hypothermia doesn't require freezing cold to develop. It is usually caused by a combination of factors. On a cold, windy, rainy day, a worker with wet clothing is a prime candidate for hypothermia. Most wet clothes lose their ability to insulate, and a person's body loses heat rapidly. To protect themselves from hypothermia, employees working outside must remain dry or have dry clothing to change into.

Risk Factors

According to the Occupation Safety & Health Administration (OSHA), additional hypothermia risk factors include:

- ✦ Inadequate clothing
- ✦ Having a cold, diabetes or heart problems
- ✦ Age — older workers are at greater risk
- ✦ Being male.

Keeping Safe

OSHA suggests how to keep employees safe during cold, wet weather:

- ✦ Allow for an adjustment period before implementing a full-time outdoor schedule.
- ✦ Let employees set their own pace.
- ✦ Provide extra work breaks.
- ✦ Work outdoors during the warmest part of the day.
- ✦ Ensure employees drink lots of liquids.
- ✦ Establish a buddy system.
- ✦ Educate employees about the signs of frostbite and hypothermia.

Additionally, talk to employees about protecting their eyes. In dry, windy weather, eyes lose moisture. The glare from snow can also cause problems. Encourage employees to wear goggles or sunglasses and to avoid wearing contact lenses, which dry the eyes. Parkas can protect eyes from wind, but can create visibility problems in some jobs.

For additional safety suggestions, please contact your account manager at The Addis Group. ■

