



## Workers' Comp

# Sifting through Fact and Fiction of Rates

**T**HERE ARE rumblings coming from California's worker's compensation rate-making body that costs are escalating at a rapid clip, but for the most part insurance companies have accounted for these changes in their rates.

The Worker's Compensation Insurance Rating Bureau's actuarial committee had originally recommended that benchmark rates, which are used by insurers as a guidepost to price their policies, be increased nearly 40% in July this year.

But the Rating Bureau's governing committee opted instead to submit a politically safer "informational filing," which spells out the reasons why the benchmark rate is so inadequate and the rate at which claims costs are increasing.

But don't let this figure scare you. Most insurers are already charging substantially more than the benchmark rate, and any rate increases you may experience going forward should not be drastic as long as you can manage to keep a lid on workplace injuries.

That's because insurers are not required to follow the benchmark.

The astounding figure is partly due to the fact that the former insurance commissioner, Steve Poizner, routinely rejected the bureau's rate hike recommendations despite evidence that costs are quickly climbing. As a result, the benchmark rates, which are supposed to accurately reflect the true cost of claims, are inadequate and no longer a useful tool. As much as 27.7 percentage points of the 39.8% rate inadequacy is actually carry-over from prior filings that were rejected by Poizner during his four years in office.

The informational filing was supported by employer representative Bruce Wick, who told the committee that such a filing would allow regulators to use the data to address the underlying cost drivers without scaring employers. There were also concerns that the request would be interpreted by employers that all workers' comp rates would jump 40%.

Fortunately, the rates insurers are charging now are close to adequate.

The average rate insurers charged in 2010 for workers' comp policies was \$2.39 per \$100 of payroll, compared to the advisory benchmark rate of \$1.74, according to Mark Priven of Bickmore Risk Services, an actuary for public members of the governing committee. He notes that rates insurers are currently charging employers are inadequate by about 3.5%. If the actuarial committee's 39.8% increase were to be fully implemented, the advisory pure premium rate would be \$2.43 – a tad more than rates being charged today.

There are a number of reasons that claims costs are increasing, including more medical

liens being filed, pharmaceutical dispensing practices, additional body parts being added to claims despite evidence to the contrary, claiming new disabilities once a claim has been accepted and higher costs of defending against employees who pursue litigation to press their injury claims. There have also been some court rulings adverse to employers which have changed the way claims awards are calculated.

In all, these developments have pushed workers' comp medical expenses to the levels they were at before reforms in 2003 and 2004 that cut overall workers' comp costs by nearly 60%. The reforms arrested workers' comp medical expenses for a time, but about three years ago they started climbing again.

As your brokers, Elkins Jones will continue to work to find the best workers' comp policy for your company at the lowest price possible. ❖

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## Human Resources

# Nine Tips for Reducing Workplace Stress

**A**NNUAL WORK-RELATED stress claims cost U.S. companies \$200 billion to \$300 billion a year, according to the American Institute of Stress.

Stress can result in a number of secondary mental and physical illnesses and direct physical injuries, which directly affect health care costs, worker productivity and can even result in workers' comp claims.

In fact, workers' comp claims resulting from job-related stress last about four times longer, at an average of 23 days, than the average days lost from all nonfatal occupational illnesses and injuries combined, according to the U.S. Bureau of Labor Statistics.

And a study published by *The Journal of Occupational and Environmental Medicine* suggested health care administering costs were twice as high for workers claiming job-related stress.

The National Institute for Occupational Health and Safety defines work-related stress as emotional and harmful responses occurring when job requirements don't match a worker's resources, needs or capabilities.

Some employers still don't take work-related stress very seriously, but based on the numbers, the consequences and the costs for ignoring the issue, you would be wise to do so.

To combat the effects of work-related stress, you need to know what causes it in the first place.

There are a number of factors that cause stress in the workplace, but the most common, according to the National Institute for Occupational Health and Safety, are:

- Poorly designed jobs and tasks from heavy workloads; shift work; long working hours; too few or too short rest and meal breaks; and tasks that don't have inherent meaning, that don't utilize the worker's skills or that don't give the employee a sense of control.
- Job roles, expectations and responsibilities that are too broadly defined, vague, conflicting or unclear.

- Insufficient interpersonal relationships from a lack of help or support from managers, supervisors, and/or coworkers or a poor social environment.

- Poor management skills, including inadequate communications skills, lack of encouragement or incentives to participate in decision making.

- Career concerns, including few opportunities for advancement or a lack of job security.

- Poor workplace conditions, including inadequate ergonomics, air pollution, noise levels or even dangerous or unpleasant working environments.

If you are able to pinpoint the causes of stress in the workplace you can take steps to reduce those factors. Here are nine ways you can reduce stress among your staff:

**1. Improve communications.** Try to get your employees involved and let them know they are valued. Ask them for feedback and input on company plans, processes and management decisions.

**2. Give staff more sense of control.** Within responsible and reasonable limits, you should give employees independence in the day-to-day operations of their job. Let them think outside of the box and they may innovate and find a way to do their jobs better and more efficiently.

**3. Create an open forum.** Employees should be free to express their frustrations, concerns, and complaints without fear of retaliation from management or supervisory staff.

**4. Keep employees in the know.** Uncertainty can be eliminated by simply apprising employees about upcoming changes and what these changes will mean for them.

**5. Reduce any excessive workloads.** Don't overload your employees beyond their abilities. Try to spread out workloads and don't pile on too many projects at a time on one person. .

**6. Clearly define job descriptions.**

You should make sure that all employees have a thorough understanding of their roles in the company and the responsibilities of their position.

**7. Create realistic schedules.** Be as flexible and approachable as possible if a staff member needs to take time for a doctor's appointment or has a sick child. Remember that all of your employees have a life and demands outside of work.

**8. Play to your employees' skills.** A job should stimulate employees, challenge them and require as many of their skills as possible. Give your staff opportunities like advancement and cross-training if they show the desire to bring more value to their jobs and your organization.

**9. All work and no play...** Make sure you allow staff to let loose a bit by organizing company picnics, parties or team sports like a softball league. ❖



## Legal Issues

# Court Puts Kibosh on Secret Background Checks

**A** RECENT COURT decision and a rash of lawsuits targeting the use of criminal background and credit history checks should serve as a reminder that employers need to ensure that their pre-employment screening methods comply with federal and state laws.

A federal court in Ohio certified for class action a lawsuit (*Hall v. Vitran Express, Inc.*) in which the lead plaintiff alleged that the prospective employer failed to seek or receive approval from job applicants before obtaining criminal background reports.

He also said the employer's failure to provide a pre-adverse action notice to job applicants, including a copy of the applicant's criminal background report and a statement of the applicant's rights, constituted "willful, wanton and reckless" violation of the Fair Credit Reporting Act (FCRA).

The company settled the case for \$2.6 million.

The FCRA requires that an employer provide written notification to an applicant that a consumer credit report may be obtained and used in conjunction with one's application for employment, and that the applicant's written authorization must be obtained before requesting such a report.

Also, before a company relies on the information in a consumer credit report to deny someone work, it must give the applicant a pre-adverse action disclosure that includes copies of the person's consumer credit report and a document known as "A Summary of Your Rights under the Fair Credit Reporting Act," under rules of the Federal Trade Commission.

That document can be found here:

[www.ftc.gov/bcp/edu/pubs/consumer/credit/cre35.pdf](http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre35.pdf)

Furthermore, if you as the employer deny someone employment based on the report, you are required to give the applicant an adverse action notice that includes certain information.

If you fail to obtain permission before requesting a credit report or if you fail to provide pre-adverse or adverse action notices as required by law, you could be on the hook for damages ranging between \$100 and \$1,000, court costs and reasonable attorney fees if the plaintiff wins, and punitive damages "as the court may allow."

Besides the aforementioned case, there are a number of other class-action cases involving claims for violations of the FCRA pending around the country. As recently as March, a company in Illinois settled two similar cases on alleged FCRA violations for \$5.9 million.

To avoid being swept up in a similar lawsuit, you might consider auditing your hiring practices to make sure they comply with the FCRA and other applicable federal and state laws pertaining to the use of criminal background and consumer credit checks when examining someone's background and qualifications.

Currently a number states, as well as municipalities, have enacted or are mulling laws that can affect whether employers can

use an applicant's criminal record or credit history to disqualify them from work. In other words, you have to make sure to follow the letter of the law to avoid the potential for being sued.

Finally, if you are conducting these background checks above board and in compliance with the law, you have to make sure that you are consistent in your hiring decisions and that you avoid any inferences of discrimination against racial or ethnic groups.

You should also have documentation to show that any decisions to disqualify an applicant from employment based on adverse criminal background or credit history are justified based on job-related requirements.

This is important because the Equal Employment Opportunity Commission and plaintiff lawyers are increasingly scrutinizing and legally challenging such decisions, depending on the circumstances. ❖



**A-HA MOMENT: Don't go overboard when you are conducting background checks on prospective employees.**

## Doing Repairs?

# Contractor's Liability Can Become Yours

**T**HERE ALWAYS comes a time when you will consider remodeling, expanding or repairing your workplace. In most cases your staff probably won't be doing the work, and you'll rely on a vendor or a contractor instead.

But if you plan to have such a company doing this kind of work, you'd best make sure to protect your business from any liabilities that you could inadvertently assume from them. You don't want a company that isn't covered with the proper insurance policies. If an outfit doesn't have workers' comp coverage and their worker is injured at your workplace, guess what? You could be on the hook for that injury.

There are a number of steps you can take to make sure your vendor or contractor is legitimate and has all of the proper insurance coverage.

Finding out if a contractor is licensed isn't hard. Licensed contractors must display their state licensing number on all marketing and advertising materials, including phone book, billboard and newspaper ads. It must also be displayed in their logo and any building signs or company vehicles, and in any brochures or similar promotional materials.

But it's not as easy to find out whether a company is insured. You will want to make sure that your contractor or vendor is covered with commercial general liability insurance and workers' compensation policies. At a minimum, the commercial general liability policy should cover advertising injuries, personal injuries, bodily injuries and property damages.

You should always ask them to show you the certificates of insurance before they are hired. Always check that the policy has not lapsed, and that it won't do so before the end of their work assignment with you.

To further cover your firm when using contractors or vendors for work on your premises, you may want to consider:

- Making a list of approved companies that are both licensed and have shown proof of insurance.
- Asking the contractor's insurance broker to mail you the certificate of insurance.
- Asking that the company you engage add your business to its general liability policy as an additional insured until the project is completed. This usually requires little more than a phone call to their insurance agent.
- Hiring a contractor that has insurance limits equal to your own.
- Asking the contractor to sign a written legal contract indemnifying your company from a liability claim.
- Avoiding companies that need to use your tools or equipment. You may be sued if one of their workers is injured using your tools. ❖



## No Company Car? You May Still Need Auto Coverage

**EVEN IF** your company doesn't own a vehicle, you may still face auto liability exposure.

Take the instance of an employee driving their personal vehicle to run a work-related errand. It is not a stretch to imagine that your company may be named in an ensuing lawsuit, especially if the worker's personal automobile policy's limits are insufficient.

Or what if the owner of a company that has no automobiles is involved in a serious accident in his personal vehicle and the claimant

realizes the owner has most of his personal wealth in his firm?

The claimant could sue the owner and the company.

Without specific coverage for non-owned auto liability, the insurance program

would not protect the insured in these instances.

Meanwhile, a company can expect at some point that an executive or an employee is traveling and will need to rent a car to get around. A company executive may assume that if it's in the course of business, that liability is covered by the company's insurance.

Rented auto physical-damage exposure occurs here as well, but again, without specific coverage in place prior to an accident, a company may be looking at an uninsured claim.

The typical commercial auto policy covers the usual for company-owned vehicles: bodily injury to others, personal injury, collision, medical payments, comprehensive, property damage, bodily injury caused by uninsured motorist, and more.

It also includes rental and non-owned auto liability, and frequently rented-car physical damage. It's the same for companies that own or don't own their own vehicles.

If you don't have a company car, you may still need the following coverages, which can be found in the business auto policy:

- **Non-owned auto coverage**, which provides your firm and you (as business owner) with liability protection for injuries or damages if your employee is involved in an accident and found responsible while using their own vehicle to perform company business.
- **Hired-auto liability coverage**, which provides your business, your employees and you (as business owner) with liability protection when you temporarily rent, lease, hire or borrow vehicles for business use.
- **Hired-auto physical damage coverage**, which provides your business, your employees and you (as business owner) with physical damage protection when you temporarily rent, lease, hire or borrow vehicles for business use. ❖

