

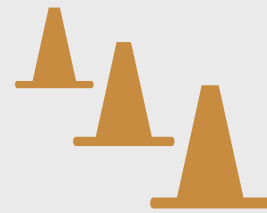
Workers' Comp & Safety News



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Workers' Compensation 101

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Insurance Options for Workers' Compensation

There are four basic ways employers can provide workers' compensation coverage.

In all but two states (New Jersey and Texas), employers must select some form of workers' compensation coverage. The premium is based on certain factors – the number of employees, the rated risk of the particular industry, the risk of the specific job and the compa-

ny's previous claims experience. The insurance company spreads the assessed costs and calculated risks for the workers' compensation policies among all its policyholders.

There are basically four ways to provide workers' compensation coverage:

- ✦ Buying insurance through private insurance carriers
- ✦ Buying insurance through the residual insurance market
- ✦ Self-insuring
- ✦ Buying state-funded insurance

All four methods are not available in all states.

Private insurance

Most workers' compensation in this country is provided through private insurance companies that are licensed by the state to write such coverage. Each state has its own system for setting rates that applies in setting premiums.

There are advantages to using a private insurance company to meet workers' compensation needs. Employers with private insurance carriers are, for the most part, relieved of administrative tasks — the routine paperwork of processing a claim, physician billing and treatment notes, and claims-handling procedures.

Many insurance companies also provide their clients additional services that help control costs. Some help employers establish safety programs and provide safety audits to reduce claims. Some also take an active role in case management, such as monitoring rehabilitation and return-to-work programs, which helps control costs once you in-

PDAs Pose Problems

PDAs pose repetitive motion injury risk: Employment lawyers warn employers could face workers' compensation claims for injuries from personal digital assistants (PDAs), according to a report published in November 2006 by *USA Today*. The American Physical Therapy Association and other occupational organizations are warning that improper use and overuse of PDAs can lead to hand throbbing, tendonitis and swelling, a condition known as BlackBerry Thumb. Alan Hedge, an ergonomics professor at Cornell University said full-blown symptoms can be severe. Employers can train people how to correctly hold and use the handheld devices and encourage employees to write brief e-mails, he noted.



When Laws Overlap: ADA and Workers' Comp

Many employers don't realize the Americans with Disabilities Act applies to employees who become injured on the job.



The Americans with Disabilities Act (ADA) prohibits employment discrimination against disabled individuals. Many employers don't realize that this includes existing employees who become disabled on the job. Penalties for violating the ADA can include back pay, promotion, reasonable accommodation, attorneys' fees, expert witness fees and court costs. Compensatory and punitive damages also may be available where the Equal Employment Opportunity Commission finds intentional discrimination.

How does ADA apply to workers' compensation claimants?

The ADA applies to any employer that has 15 or more employees for 20 weeks or more during the current or preceding year. When workers meet the ADA's definition of disability, regardless of the cause, employers must make "reasonable accommodations" to enable them to continue working. However, if an employee is unable to perform the "essential functions" of the job, even with "reasonable accommodations," the ADA does not apply.

Injured or disabled employees who need accommodations must notify their employer that they need an adjustment or change at work for a reason related to a medical condition. To request accommodation, an individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation."

What exactly are "reasonable accommodations"?

No hard-and-fast rules guide employers in this area. Instead, the ADA considers accommodations to be reasonable unless they impose an "undue hardship" on the employer. Undue hardship includes significant difficulty or expense, disruption or fundamental alteration of the business's nature.

ADA and leave

Before the enactment of the ADA, employers with maximum leave-of-absence policies would send a disabled employee a notice of termination when he or she had used all available leave. Under the ADA, the employer must send employees on leave a certified mail notice, at least 30 days before the end of the leave, that explains the reasonable accommodation requirement. A reasonable accommodation under the ADA may mean extending the leave period. However, an employer does not have

to provide more leave than it would provide to other employees in a similar situation.

Employers should allow an employee with a disability to exhaust accrued paid leave first and then provide unpaid leave. For example, if employees get 10 days of paid leave, and an employee with a disability needs 15 days of leave, the employer should allow the individual to use 10 days of paid leave and 5 days of unpaid leave.

As for the employee's position, the ADA requires an employer to hold it open while the employee is on leave and to return the individual to the same position, unless doing so would cause undue hardship. If the employee can no longer perform the essential functions of the position, even with reasonable accommodations, the employer must reassign the employee to a vacant position for which he or she is qualified, barring any undue hardship.

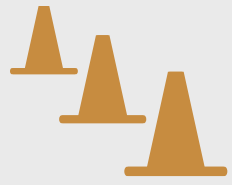
If you have questions on accommodating a disabled employee, the Job Accommodation Network, or JAN, may be able to help. Sponsored by the federal government, JAN provides information on how employers across the country have accommodated employees with disabilities. Their toll-free number is 1-800-526-7234, or visit their Web site at <http://janweb.icdi.wvu.edu>.

For more information on managing disability leave under workers' compensation, please contact us. ■

What types of disabilities does the ADA cover?

The ADA defines a disability as:

- ✓ a mental or physical impairment that "substantially limits one or more of the major life activities." These "major life activities" include the basic activities that the average person can perform with little or no difficulty, including caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- ✓ a record of a substantially limiting impairment.
- ✓ being regarded as having a substantially limiting impairment. ■



Claims Management

INSURANCE—continued from Page 1

cur a claim. Smaller companies, or those lacking safety/claims management expertise on staff, might want to look for an insurer that will provide these valuable services.

Residual insurance market

Employers in hazardous industries and employers with very few employees may have limited private insurance options. Insurers may see them as poor risks, so they may find themselves assigned to a “residual plan.” These plans operate much like an assigned risk pool for drivers who can’t get regular automobile insurance due to bad driving records.

When contracting for private insurance, be sure the carrier has an accurate picture of your company’s risk profile, because employee classifications dictate premium rates. For example, workers’ comp coverage for an interior trim carpenter costs a lot less than workers’ comp coverage for a roofer. Be willing to challenge the insurance carrier if you believe it has misclassified your company.

Self-insurance

In some states, employers can provide self-insure for workers’ compensation. Self-insurance may be a good choice for larger companies or for smaller companies that have grouped together. With self-insurance, the company pays for all workers’ compensation expenses from its own funds. Those expenses include the full cost of medical care for injured employees, all wage replacement costs, retraining and rehabilitation costs, and death benefits to surviving dependents. Obviously, this kind of plan is not for the faint of heart or companies with cash-flow concerns.

If your company self-insures, you’ll need to handle the entire responsibility of claims handling and tracking from start to finish. You may also need to contract with professionals such as doctors, attorneys, case managers and rehabilitation personnel.

Another option for employers is to self-insure on a limited basis by selecting a higher

DRUG COSTS—continued from Page 4

effectively, costs less than OxyContin, and doesn’t lead to addiction. And more expensive doesn’t always mean more effective when it comes to medication. For simple inflammation, ibuprofen can be as effective as prescription Celebrex.

- ✦ Encouraging the substitution of generic drugs for brand-name ones, when available.

Managing claims. Steps include:

- ✦ Using workers’ compensation or occupational health specialists to treat workers’ compensation claims whenever possible. Providers who understand work-related injuries can help workers recuperate faster and help employers control their costs.
- ✦ Reviewing claims to ensure that prescriptions have been properly prescribed and to avoid potentially dangerous drug interactions.

deductible or by opting to cover certain occurrences in-house with their own funds. This allows the employer to select the level or type of risk they want to retain. Another option is to purchase insurance for catastrophic injuries only. By assuming the risk for handling injury costs up to a predetermined amount, employers that select this option lower their workers’ compensation insurance costs.

Self-insurance options may be a good choice for employers with excellent safety records, a proactive safety culture and the administrative resources to devote to workers’ compensation claims handling.

State-funded insurance

In some states, employers can purchase workers’ compensation from a government agency. There are two types of state-run plans—monopoly plans and competitive plans.

States with monopoly plans require all employers to purchase insurance from the state agency, with no private insurance op-

- ✦ Reviewing claims to ensure that any drugs paid for treat a work-related condition. Obvious red lights would include any drugs related to fertility, cholesterol, blood pressure or weight loss.

Reviewing utilization: This includes reviewing providers’ drug-dispensing histories and practices for the following:

- ✦ Frequent prescribing of addictive painkillers, particularly when others might be available.
- ✦ “Layering” drugs, or adding another drug on top of others already taken, rather than eliminating or tapering off use of drugs that might not be effective.

Many workers’ compensation insurers provide cost control services. If you self-insure, a prescription benefit manager (PBM) can help you control the costs of workers’ compensation prescription drugs. For more information, please call us. ■

tions available. Only a very few states operate monopoly plans. Employers doing business in the monopolistic states have limited ability to control medical costs. One thing you should do if you’re in a monopoly state is to stay informed and involved in the political process. Consider joining forces with trade associations or business groups that monitor legislation affecting workers’ compensation in your state.

Under a competitive plan, employers can purchase insurance from a government agency or private insurer. The employer must do the homework to determine which plan best meets the employer’s needs.

Initially, state-funded plans came about to provide an alternative to escalating workers’ compensation costs. Over time, however, many criticize their effectiveness and characterize them as typical bureaucratic, inefficient government agencies.

For assistance in selecting the type of plan that best meets your needs, please call us. ■



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Managing Workers' Comp Drug Costs

Drugs cost 75 percent more when paid by workers' compensation than by group health plans...even for the same drug.

Drugs cost 75 percent more when paid by workers' compensation than by group health plans...even for the same drug, according to a 2006 NCCI study. What factors account for this cost difference, and what can employers do about it?

The problem stems from differences in the workers' compensation and group health systems. First, workers' compensation laws require employers (or their insurers) to pay 100 percent of the costs of treating a work-

related injury or illness, including any drugs prescribed. Group health plans, on the other hand, are voluntary. Employers choose whether they want to provide benefits or not. Like it or not, some providers use this fact to their advantage and try to get the most out of workers' compensation claims.

In addition, the two systems have different goals. If an employee suffers an injury that isn't work related, a good health plan will attempt to cure or treat it, without regard to how long that treatment takes. But

workers' compensation has two goals: treating the injury and returning the employee to productive work as soon as possible. The need to return an injured employee to productive work as soon as possible might justify selecting a more costly treatment that could speed recovery.

Finally, when group health costs rise and employers will not or cannot increase their spending, they can pass more costs on to employees, select a group health plan that uses more cost controls, or a combination of both. Employers can't pass workers' compensation costs on to their employees, but they can adopt some of the cost control strategies used by group medical plans.

These strategies include:

Encouraging the use of lower-cost drugs.

Steps include:

- ✱ Developing formularies, or lists of preferred drugs. Even though workers' comp law in many states prohibits employers or insurers from limiting workers' compensation drug payments to certain formularies, these lists can serve as recommendations.
- ✱ Using evidence-based criteria to recommend drugs for specific conditions. For example, acetaminophen can relieve pain

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Vehicles Cause Most Work-Related Fatalities

Vehicle fatalities cause more work-related fatalities than any other cause. Of all fatal vehicle events, 28 percent were caused by failure to remain in the proper lane or running off the road.

Conducting driver background checks prior to hiring can eliminate candidates with poor driving records. Statistics prove those with prior driving offenses, even minor ones such as failing to stop at a stop sign, are more likely to be involved in an accident. Once you hire a driver, conduct periodic or annual motor vehicle record (MVR) checks. Conducting MVR checks is a simple way to see how your people are doing on the road, both at work and off the job.

Top Ten Occupations with the Largest Number of Injuries/Illnesses

- 1 Laborers (non-construction)
- 2 Truck Drivers (heavy)
- 3 Nursing Aides/Orderlies
- 4 Construction Laborers
- 5 Truck Drivers (light)
- 6 Retail Salespersons
- 7 Janitors and Cleaners
- 8 Carpenters
- 9 Maintenance/Repair Workers (general)
- 10 Stock Clerks/Order Fillers