Leaderschoice
INSURANCE SERVICES

Leaders News Alert

Sept. 2015, Volume 5, Issue 9

Workers' Compensation

How to Avoid Inheriting an Old Injury Claim

ONE OF an employer's biggest shocks is to find out that a workplace incident aggravated a pre-existing injury that was sustained at the worker's prior job.

Fortunately, there are steps you can take if you don't want to inherit a claim that someone incurred at another employer, or an injury that they may risk aggravating while working for you.

Here are five ways to reduce the chances of incurring such claims to begin with:

Pre-work screenings

Pre-work screenings can weed out applicants who physically cannot perform a job. You can subject them to a test to gauge their ability to perform specific physical demands of the job for which they are applying.

Screenings should especially be used for high-risk jobs, those which cost your business the most in workers' comp costs. There are two types of pre-employment screenings:

- **Pre-offer.** This screening identifies applicants who are physically able to safely complete the essential job functions of the position for which they are applying.
- **Post-offer.** This screening measures the same functions, but you can also require a medical examination at this stage. This can help you identify any disability, including if they are under orders from a doctor to limit certain types of physical activity.

Drug tests/background checks

Drug tests can determine if there is a history of drug use, and, if so, indicate the types of drugs in the system.

Background checks probe the criminal and financial records of an applicant.

If an applicant shows negative incidents on a drug or background check, he or she could be a candidate for future fraudulent activity.

On-site ergonomic solutions

Utilize physical therapists or ergonomists before injuries occur to work with employees, supervisors and management to understand workflow and all job task requirements.

Those specialists can recommend optimum positions, ergonomic strategies and proper physical movements required at workstations to reduce the chances of employees sustaining musculoskeletal injuries.

Employee education

Educate employees on how to use workers' comp legitimately and how it can be used illegitimately.

Explain the damage to the employer from malingering and fraud by illustrating how claims affect the premium employers pay.

Information also should be shared about penalties and fines that could be incurred with fraudulent claims.

Educating employees regularly can reduce the chances of fraud.

Prompt injury reporting

Train employees to report any health concerns as soon as they notice any discomfort.

Injuries can develop over time in many jobs when they are executed using improper or ergonomically incorrect motions.

If an employee raises concerns about discomfort to a supervisor, it should be given serious attention.

That way the supervisor, the worker and inside or outside specialists can address the issue.

This can be done through observations and evaluations of the work pattern of the worker, and in comparison to those of others in the department.

The worker should also be sent for medical diagnosis or medical care to treat the discomfort before it becomes a bigger problem. ❖

CONTACT US

Leaderschoice
INSURANCE SERVICES

2520 Venture Oaks Way, Suite 310
Sacramento, CA 95833

Phone: 866.211.2123
Fax: 866.913.7036
www.leaderschoiceins.com

License No. 0G80276

If you would like to receive this newsletter electronically, e-mail us at: info@leaderschoiceins.com.

Property Risk

Protecting Your Business from Threat of Wildfire

AS WILDFIRES RAGE in California and elsewhere in tinder-dry areas of the US, now more than ever you need to make sure that your business is protected from the threat.

Whether you own or operate an apartment complex, convenience store, office, restaurant or other retail establishment, the steps you take now will reduce the risk of costly repairs or rebuilding if a wildfire strikes.

If you are in one of the many tinder-dry areas this year, you need to be prepared to deal with a fire and keep your business operating.

Surroundings most important

The goal of an effective wildfire protection plan is to keep the fire from coming dangerously close to any structure on the property.

Inspect the premises around your building to see if there is anything around or attached to a structure that can be a potential wick that could allow the fire to come dangerously close to your premises.

Storage buildings, trash bins, equipment and other combustible items can allow fire to reach the building. If possible, relocate these at least 30 feet from the business and other structures on the property.

Relocate propane tanks at least 30 feet away from the building and other structures on the property. If relocation is not an option, create a 10-foot zone around a tank using low-combustible materials such as rock, gravel mulch or irrigated lawn.

Exterior structure

Choose noncombustible building materials when rebuilding or renovating, and particularly if you are choosing new siding for your structure. You should also consider these most important flashpoints and conduits for fires:

- **Roofing** – Choose a Class A fire-rated roof covering, and keep the roof and gutters clear of debris. Businesses that share a roof are particularly vulnerable if the entire building is not well maintained.
- **Vents** – Attic and crawl space vents are vulnerable entry points for wind-driven embers. Cover with 1/8-inch metal mesh screens.
- **Attachments** – Awnings, decks, patios and porches also can act as a wick, bringing flames to the building. Even if you have noncombustible siding like stucco, a burning deck or other ignited combustible items close to the wall will provide a direct flame exposure to the doors, windows or sliding glass doors.
- **Windows** – Radiant heat from a wildfire can break single-pane windows. You should install dual-pane windows with tempered glass for increased protection.

Also, open windows can be entry points for embers. Educate tenants and employees about the importance of closing all windows before evacuating if fires draw near.

Other considerations

- Have plenty of fire extinguishers on location, and get them inspected regularly.
- Back up important documents that could be destroyed.
- Have an evacuation plan in place to safely exit the building in case of a wildfire.
- Practice your evacuation plan, so each employee will know how to exit the building calmly and safely.
- Follow local smoke detector and sprinkler system ordinances.
- Have flashlights and extra batteries available in case your business loses electricity. ❖

YOUR BUSINESS'S DANGER ZONES

Tend to the surroundings of your premises by using the following three-zone approach:

Zone 1 (0-5 feet): Rock or gravel mulch and low-growing plants or lawns are good choices for this zone. Avoid combustible structures or materials in this area.

Zone 2 (5-30 feet): Vegetation island. Low tree branches should be pruned. Remove shrubs.

Zone 3 (30-100 feet): Keep tidy. Thin out vegetation between trees. Remove shrubs. Don't let tree canopies touch.

Risk Management

Compliance Can Avert ADA Lawsuits by Employees

DURING THE last eight years since the Americans with Disabilities Act Amendments Act (ADAAA) was enacted, the landscape for employers has changed dramatically.

The odds of being sued have increased significantly and the onus is now on employers to engage in an interactive process with an employee who claims to be disabled or one that you, as an employer, consider to be disabled.

The original Americans with Disabilities Act has been in effect for 25 years, but the ADAAA shifted the emphasis from whether an employee has a qualifying disability to the interactive process and the efforts employers take to explore reasonable accommodation with employees. That is where the focus remains today.

The employment law firm of Foley and Lardner LLP, in a recent blog post, recommends the following whenever an employee mentions a potential disability or the circumstances suggest a potential need for accommodation:

1. Majority of people have a 'disability'

The law firm recommends working from the position that if an employee begins talking about a mental health or physical condition affecting their ability to work, you should consider approaching the issue from the perspective that they potentially have a disability. Better that than to ignore what you're hearing.

Many recent precedent-setting lawsuits have hinged on employers starting the interactive process too late or ignoring employees' requests for accommodation. And some courts have ruled that even if the employer "perceives" that the employee is disabled, they may have an obligation to consider accommodation.

In other words, it's better to start interacting with the employee than shutting down the process before it has a chance to start.

2. Process matters as much as the result

Under the ADAAA, the focus is on the interactive process with the end goal of identifying how the employer can reasonably accommodate the employee or job applicant so that they can do their job.

The process must be conducted in good faith and thoroughly with the legitimate goal of identifying a reasonable accommodation. Courts have increasingly viewed this process as crucial, and almost as important as the end goal.

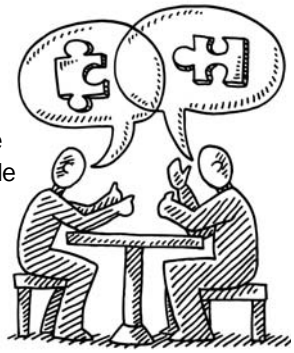
3. Truly engage in the process

You'll need to back up your interactive process with proof that you were engaged in it.

Even when it may be clear to you that you won't be able to accommodate someone, you should still show that you tried to find a solution that would work.

Foley and Lardner recommend that you at least:

- Communicate with the employee and show that you either reached agreement on the restrictions or obtained supporting medical documentation.
- Show that you explored with the employee and their supervisor the possible reassignment of non-essential tasks.
- Show you assessed the employee's qualifications and looked at every open job for which they qualified to assess a potential transfer.
- Show you had a final conference with the employee before concluding reasonable accommodation was not possible.



Make sure that you have a clear record of the interactive process. The more you can back up your efforts of trying to identify a reasonable accommodation, the more likely it will be that a court would view your efforts favorably and that you made good-faith steps in arriving at your conclusion.

"As we counselors love to say – document everything, including the thought process leading up to all conclusions reached, and the fact that you did not reach the final conclusion until after completing all steps in the process," the law firm wrote in its blog.

4. No cookie-cutter approach

While many employers want to consistently perform the same kinds of steps from situation to situation, it is equally important to take each accommodation inquiry and each employee's unique circumstances on their own merits.

It's unlikely that multiple employees will have the same limitations and medical diagnoses, restrictions and prognoses regarding the various essential functions of the job.

Because of this, there is no single approach to accommodation, and your approach to the interactive process should allow for flexibility.

5. Don't forget the FMLA and workers' comp

Often there is some overlap between the ADA and other legal frameworks like the Family Medical Leave Act and workers' compensation insurance.

For example, if an employee cannot return at the expiration of FMLA leave for his or her own serious health condition, the employer runs a serious risk of terminating the employee without first conducting an independent ADA analysis and assessing whether additional leave or moving them into a different position conforming with their restrictions is a reasonable accommodation.

The same applies after an employee receives a permanent and stationary workers' compensation diagnosis with restrictions that preclude maintaining him or her in the same position. State workers' compensation requirements may not require an employer to take further steps in such a circumstance, but the ADA does. ❖

Workers' Compensation

Bureau Recommends 12.2% Rate Cut for January

CALIFORNIA'S WORKERS' compensation statistical agency has recommended that benchmark rates be reduced by an average of 12.2% for policies incepting at the start of next year.

The rate filing is actually for a 0.8% reduction, but that comes after benchmark rates were cut 10.2% on July 1, so that's why the average rate reduction for January policies is higher.

The Workers' Compensation Insurance Rating Bureau will file the recommendation with the state insurance commissioner, who has the final word on rates in California. He can either choose to approve or reject the rate, and if he does the latter he can set the rate himself on the advice of Insurance Department actuaries.

The filing proposes average benchmark rates of $2.45 per $100 of payroll. That is an average across all industries and the rate change will vary from sector to sector depending on overall claims costs trends.

Also, whatever the benchmark rate is set at, insurers can still price their policies as they see fit. They use the benchmark rate as a guide for setting their own rates depending on their own experience.

The reason for the rate reduction is that the reforms that were ushered in by legislation in 2013 have proven to be more effective than originally anticipated, according to the Bureau's chief actuary, Dave Bellusci.

Bellusci identified some of the factors contributing to the reduced indicated pure premium rate:

- Medical costs for injured workers continue to fall.
- Costs for claims that involve payment of indemnity (wage replacement) benefits and medical treatment are not increasing as rapidly as expected.
- A move to a new pricing schedule (called the Resource Based Relative Value Scale) has resulted in higher than anticipated costs savings.
- Increases in projected wage growth in California due to economic expansion.

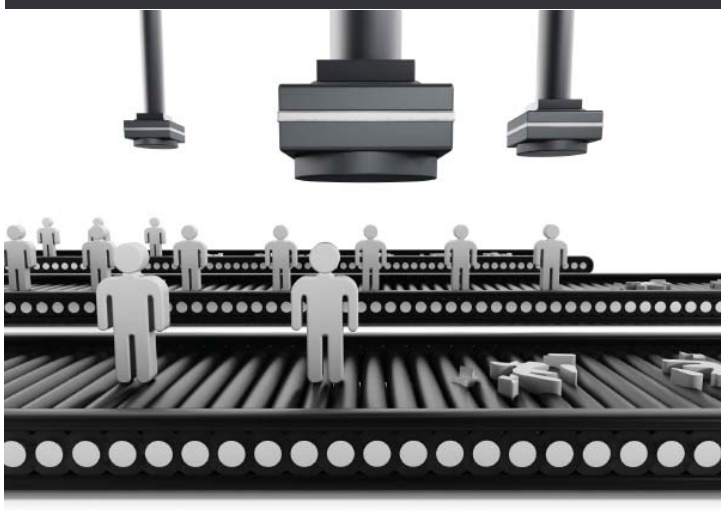
These positive developments, were somewhat offset by one trend in particular: insurers' costs of adjusting claims continue to rise due to increased compliance requirements.

The average charged rate for employers in California has slowly been edging upwards since hitting a low of $2.10 per $100 of payroll in 2009. The average rates employers are charged hit $3.07 in January.

Keep in mind that this is an average and insurers will include other factors in determining your final rate such as your industry and region. ❖

Insurer Filed Rates per $100 of Payroll

Transportation and utilities	$14.28
Construction	$12.95
Agriculture and mining	$10.96
Administrative and other services	$9.71
Wholesale and retail	$8.15
Hospitality and entertainment	$8.03
Manufacturing	$6.95
Education and health	$3.83
Finance and real estate	$2.53
Information and professional services	$0.99
Clerical and outside sales	$0.84



Check Subcontractors' Insurance Policies

DID YOU know you can be held liable under your own workers' comp policy should an employee of a subcontractors be injured? Courts have on numerous occasions said you are.

Many times an injured worker may even be a third of fourth level contractor, but if none of your subcontractors are carrying workers' comp, you may see the claim hit your own policy.

This scenario is even more likely if the main contractor has substantial control over the sub's employees. courts have ruled.

Courts generally start with the sub whose employee was injured and move up the chain until they find a valid workers' comp policy.

Protect yourself by requiring your subcontractors to have a certificate of insurance. But don't stop there; you should call the insurance carrier to see if the certificate is valid.

You can check also with the State Contractors Licensing Board to see if your subcontractor has workers' comp coverage. ❖