

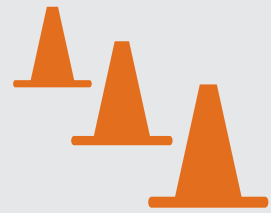
Workers' Comp & Safety News



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Workers' Compensation vs. Employer's Liability: Why You Need Both

All 50 states except New Jersey, Texas and South Dakota have compulsory workers' compensation laws, which require employers to provide injured workers the benefits specified by state law. In exchange, employees cannot sue their employers for work-related injuries or illness.

The so-called "exclusive remedy" makes workers' compensation one of the first types of no-fault insurance. However, workers' compensation laws don't apply to all employees, nor do they apply to the families of workers injured or killed on the job.

That's why most workers' compensation policies have two parts: Part 1, which provides workers' compensation, and Part 2, which provides employer's liability coverage.

Part 1 of your workers' compensation policy covers the benefits you are obligated to provide by state law. When you buy workers' compensation insurance, you transfer liability for all statutory workers' compensation costs to your insurance company. The insurer will pay whatever lost wages your company

is legally obligated to pay an injured worker. Perhaps more important, the insurer will pay his/her medical costs, no matter how much they amount to, for as long as necessary. This makes workers' compensation coverage very different from other types of insurance, which have annual and (sometimes) per-claim limits, leaving you to make up the difference once the policy pays the maximum amounts.

What happens if a workers' compensation benefit increase takes effect during your policy term? You do not have to change your policy to comply with the law. Because the policy obligates the insurance company to pay *all* legitimate workers' compensation claims filed by your covered employees in states covered by your policy, your policy automatically covers any benefit increases.

This Just In

Which states do the best job handling workers' compensation claims? Which do the worst? According to the 2009 State Report Cards for Workers Compensation, created by the Work Loss Data Institute (WLDI), Iowa handled claims best, while Illinois did worst.

For the report cards, the WLDI used seven years' worth of data, from 1999-2006, from OSHA Form 300s and 200s, which cover all OSHA recordable injuries and illnesses. The report compared states along five different measures: (1) incidence rates, (2) cases missing work, (3) median disability durations, (4) delayed recovery rate; and (5) key conditions: low back strain.

WLDI says, "Iowa performed the best of all the states for 2006 and Minnesota came in a close second. Both states received a grade of 'A+' based on an average of their 2006 scores in the five categories above. Illinois came in last, with Wyoming, Rhode Island and New York very close to the bottom. In total, nine of the 43 states received a grade of 'F' in 2006."

For a map showing the grade for each state, visit www.worklossdata.com/US%20Map%20by%20Grades.jpg.

Clearing the Air: How Indoor Air Quality Can Affect Health

More than half of the U.S. workforce now works in indoor nonindustrial environments. The typical worker spends up to 90 percent of his or her time indoors.

This means exposure to indoor pollutants is a growing problem. Unlike outdoor pollution, which has actually decreased in many urban areas since the 1950s and '60s, indoor air isn't getting any cleaner. In fact, the air inside your office might be more polluted than the air outside.

Awareness of the problem is growing. For example, in 1980, requests to evaluate office environments made up only 8 percent of the total requests for NIOSH (National Institute of Occupational Safety and Health) investigations. Since 1990, indoor environmental quality requests have made up 52 percent of all NIOSH research requests.

Why is indoor air pollution increasing? During the 1970s, ventilation requirements were changed to conserve fossil fuels, creating virtually air-tight buildings. The World Health Organization has estimated that as many as 30 percent of new and remodeled buildings worldwide contain enough pollutants to make workers ill.

Industrial hygienists have classified illnesses caused by indoor pollution into two types:

- 1. Nonspecific building-related illness (NBRI)**, otherwise known as "sick building syndrome." Sick building syndrome results in general health complaints, which may include headaches, fatigue, nausea, mucous membrane (eye, nose and throat) irritation, coughs and muscle pain. These conditions generally are not traceable to a specific substance, but result from exposure to a combination of substances or to individual susceptibility to lower concentrations of contaminants. NBRI symptoms typically lessen or disappear when affected individuals leave the building.
- 2. Building-related illness (BRI)** describes specific medical conditions of known cause, which exhibit physical signs that can be documented by laboratory findings. Such illnesses include respiratory allergies and Legionnaires' disease. Building-related illnesses are potentially severe. Unlike sick building syndrome, you can often trace BRI to a specific contaminant source.

What kinds of contaminants can you find indoors? Specific pollutants include:

- ✱ chemicals offgassed from materials in the office, such as new carpet, paint, toners and inks
- ✱ fumes from cleaning compounds
- ✱ excessive dust
- ✱ microbial contamination, such as molds and other microbes growing in the HVAC (heating, ventilation and air conditioning) systems
- ✱ radon gas
- ✱ carbon monoxide, caused by combustion in an area with insufficient ventilation.

Exposure to off-gassed chemicals and fumes can cause a variety of symptoms, depending on the type of chemical, concentration and duration of exposure. Exposure to

molds and other microbes can cause hypersensitivity pneumonitis, rhinitis, sinusitis, asthma and Legionnaire's disease. Radon gas, a substance that occurs naturally as uranium in rock and soil decays, can seep from the ground into buildings. Breathing radioactive isotopes could cause lung damage and cancer. Carbon monoxide poisoning can cause dizziness, fatigue, nausea, unconsciousness and even death.

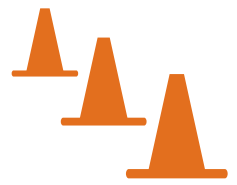
What you can do to improve indoor air quality?

Improving indoor air quality requires two steps: source reduction and improved ventilation.

Source reduction requires finding sources of indoor pollution and eliminating, reducing or containing them. Steps you can take include:

- ✱ banning smoking indoors (if your state or municipality doesn't already ban workplace smoking).
- ✱ disposing of trash and garbage promptly and properly.
- ✱ working with your building manager to reduce or eliminate applications of chemical pesticides and herbicides, both inside and outside the building.
- ✱ selecting furnishings and finishes with minimal or no offgassing. Common offgassing culprits include carpeting, furniture and other items made with particleboard or other composite materials, paints and varnishes.
- ✱ working with cleaning services to ensure cleaning supplies are nontoxic.
- ✱ reducing exposure to radon (which varies depending on soils and geography of your area) by installing vapor barriers.
- ✱ checking sources of combustion, such as furnaces, stoves, heaters, etc. for release of carbon monoxide. Many municipalities now require buildings to have carbon monoxide alarms in addition to smoke alarms. As CO is colorless and odorless, a monitor or alarm can save lives.
- ✱ checking office supplies for toxicity and fumes. Glues, solvents, toners and other common substances can release harmful fumes into the air. You can find substitutes, minimize their use or make sure workers using these substances do so in a well-ventilated area with eye and nose protection, if necessary.





YOU NEED BOTH—continued from Page 1

Improving ventilation. In modern office buildings with sealed windows, indoor air quality depends on your HVAC system. To provide optimum ventilation:

- ✦ Do not block air vents or grilles
- ✦ Have a professional HVAC service evaluate your system for airflow, filtration and dampness. Any dampness in the ducts can allow mold to grow, which can release spores into the air throughout the building.
- ✦ Pay attention if more than one worker complains of eye, nose or and throat irritation; coughs; headaches; fatigue; nausea or muscle pain, particularly if those symptoms disappear or improve when they leave the office. These symptoms could indicate an indoor air quality problem.

For more information on dealing with indoor air quality and other workplace environmental problems, please call us. ■



The key word here is “covered employees.” Occasionally, a situation arises where an employee is not covered by workers’ compensation. This can happen when employees reject the act to preserve their right to sue the employer under common law (allowable in some states). It could also apply if an injury occurs outside the policy’s coverage area, and you do not have “other states” coverage. It can apply when an employee does not fall under the workers’ compensation laws. And it can also cover the employer for suits filed by a third party relating to an employee’s injury—which could occur when a third party held liable for the injury sues the employer for recovery, or when a spouse sues the employer for loss of consortium or companionship.

Part 2 of your workers’ compensation policy,

the employer’s liability section, would cover you in these situations. Part 2 generally applies to all claims for bodily injury or illness to your employees that do not fall under workers’ compensation law. Part 2 differs from Part 1 in that it has a limit of liability, whereas Part 1 has no limit. Your limit will depend on the size of your payroll, and generally applies to all claims for bodily injury or illness arising out of one accident.

If a claim exceeds the limit of your employers’ liability coverage, your company’s umbrella or excess liability policy can pay once your employers’ liability coverage is exhausted. To avoid potentially costly coverage gaps, you will want to make sure your broker coordinates the limits of your employers’ liability with your umbrella coverage so the umbrella coverage can properly “step down” when needed.

For more information on employers’ liability coverage and other workers’ compensation topics, please contact us. ■

BULLYING—continued from Page 4



Unlike harassment based on protected characteristics, such as age, race and sex, no laws specifically prohibit bullying, unless the behavior becomes physical.

Therefore, only about 25 percent of workplace bullying incidents fall under existing discrimination protections. And bullying might not lead directly to workers’ compensation claims. Charles Tenser, an attorney specializing in workers’ compensation cases, said, “Whether workplace bullying could result in a successful workers’ compensation claim would depend upon several factors. If the workplace bullying were deemed to be so pervasive that it constituted a fact of employment, then injuries arising from workplace bullying could be deemed to arise out of and in the course of employment, and be compensable under workers’ compensation statutes.”

However, Workplace Bullying Institute statistics point out bullying’s negative effect on workers’ mental health. Workers under stress are

more likely to experience claims and to stay out of work longer when out on claim. Further, bullying might contribute to workplace violence, if an unstable person “snaps” in response to bullying. “Employees that become aggressive see it as a way of getting even for something,” said Tom Tripp, a professor of management and operations at Washington State University in Vancouver and co-author of “Getting Even: The Truth About Workplace Revenge—And How to Stop It,” in an interview with *Business Insurance* magazine. “They [bullied employees] feel they’ve been unjustly treated by the organization and they want to find a way to make it right.”

For these reasons, all employers should take action against bullying. This includes adopting a no-tolerance policy toward bullying and addressing bullying behavior quickly and appropriately.

Steps include:

1. Notify employees and supervisors alike that the company will not tolerate bullying.
2. Encourage reporting of bullying or threatening behavior.
3. Encourage management to have an “open door” policy to stay involved with day-to-day

interactions.

4. Appoint someone (ideally, someone from human resources with experience in dealing with interpersonal conflicts) to immediately investigate all reports of bullying.
5. Take appropriate action, from soliciting apologies to reassigning positions to termination, if warranted.
6. Educate employees on what constitutes inappropriate or harassing behavior.
7. Ensure management takes a “top down” approach to modeling appropriate behavior.
8. If your company has an employee assistance program, utilize the expertise of your EAP provider in investigating, intervening and providing education on bullying.
9. Create a written no-bullying policy; include your policy in employee handbooks and post it in prominent locations throughout the workplace.
10. Make your workplace safer by taking all complaints of bullying seriously and taking appropriate steps to remedy it. ■





Bullying: Another Form of Workplace Violence

Some bullies never grow up. A bully in your workplace can affect morale, increasing stress levels for fellow employees—and possibly increasing your workers' compensation costs.

Bullying is a problem for many reasons. First, it is common. The Workplace Bullying Institute estimated that more than one-third (37 percent) of the U.S. workforce had been bullied at work. And second, it is damaging. In its 2007 scientific poll of bullying in the workplace, the Institute found that 45 percent of the targets of bullying suffered stress-related health problems—while 62 percent of employers ignored the problem.

The American Heritage Dictionary defines “to bully” as “To treat in an overbearing or intimidating manner.” Bullying differs from ordinary aggression in that aggression can be a one-time act, while bullying is ongoing. A bully attempts to intimidate a co-worker or subordinate through continual harassment.

The Washington State Department of Labor and Industries says that workplace bullying “... intimidates, degrades, offends, or humiliates a worker, often in front of others. Bullying behavior creates feelings of defenselessness in the target and undermines an individual’s right to dignity at work.”

Examples of bullying behavior include:

- Unwarranted or invalid criticism.
- Blame without factual justification.
- Being treated differently than the rest of your work group.
- Being sworn at.
- Exclusion or social isolation.
- Being shouted at or being humiliated.
- Being the target of practical jokes.
- Excessive monitoring.

Source: Washington State Department of Labor,

“Workplace Bullying: What Everyone Needs to Know”

Employers should be careful to distinguish a bully from a “tough boss.” A boss might act tough to bring out an employee’s best performance. As long as his/her behavior does not cross the line into harassment, toughness is not bullying.

Interestingly, a 2004 study by the National Institute for Occupational Safety and Health (NIOSH) found that most incidents of bullying in the workplace appear to be perpetuated by employees against one another, rather than by bosses against subordinates. The findings suggest that efforts to prevent bullying in the workplace should include steps to improve relationships among co-workers rather than focusing only on improving supervisor-employee and customer-employee relationships.

BULLYING—continued on Page 3

Sample Workplace Bullying Policy

Company X considers workplace bullying unacceptable and will not tolerate it under any circumstances.

Workplace bullying is behavior that harms, intimidates, offends, degrades or humiliates an employee, possibly in front of other employees, clients, or customers. Workplace bullying may cause the loss of trained and talented employees, reduce productivity and morale and create legal risks.

Company X believes all employees should be able to work in an environment free of bullying. Managers and supervisors must ensure employees are not bullied.

Company X has grievance and investigation procedures to deal with workplace bullying. Any reports of workplace bullying will be treated seriously and investigated promptly, confidentially and

impartially.

Company X encourages all employees to report workplace bullying. Managers and supervisors must ensure employees who make complaints, or witnesses, are not victimized.

Disciplinary action will be taken against anyone who bullies a co-employee. Discipline may involve a warning, transfer, counseling, demotion or dismissal, depending on the circumstances.

The contact person for bullying at this workplace is:

Name: _____

Phone Number: _____

From: *Workplace Bullying: What Everyone Needs to Know*, Washington State Department of Labor and Industries