

Employee Benefits Report



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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 that 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 must clearly prove the job caused the stress. In

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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 technologies are helping

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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

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 us.

major personal problem that results in an average of three weeks of lost productivity.

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 and regular exercise, and offering 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 give us a call to discuss next steps.



Employers' Liability

Workers' comp policies usually include a special section for employers' liability. What additional coverage does it provide and why do you need it?



Your workers' compensation policy covers the costs associated with an employee's work-related injury or occupational disease. It pays for the worker's medical costs, rehabilitation costs, lost wages and any settlement for permanent disability.

The fundamental premise of workers' comp is that employers agree to take responsibility for work-related injuries whether or not the injury was the employer's fault. In return, employees give up their right to sue for damages. Workers' comp is designed to be "no-fault" and the "exclusive remedy" for work-related illness and injury. Nonetheless, some work-related claims fall outside of workers' comp coverage.

The employers' liability section of the workers' comp policy adds cover-

age for these types of claims. Without this coverage, employers would have a significant coverage gap, because commercial general liability policies specifically exclude coverage for work-related injury and disease.

Employers' liability is a common law or tort liability, and insurance companies handle those types of claims in the same way they adjust general liability claims, including managing and paying for defense.

Since states do not require employers' liability insurance, you do not have it unless your workers' compensation policy explicitly states it includes this coverage in a separate section. Unlike workers' comp, employers' liability has a defined limit of liability, starting at \$100,000 per injury.

When Coverage Applies

Insurance authority IRMI cites several examples of when employers' liability coverage applies:

Wrongful death: The family of a deceased worker may file a common-law claim seeking damages in addition to the death benefit paid by workers' comp.

Consequential bodily injury: A family member may file a lawsuit for his or her own injury (for instance, a heart attack) that was caused by learning about or dealing with the injured employee.

Loss of consortium: The spouse of an injured worker may sue for loss of consortium, which means the spouse has lost the services — such as sexual relations or the ability to do household chores — of his or her spouse. Damages can be awarded even if the spouse is

receiving disability payments.

Third-party liability: If an employee is injured while using equipment that malfunctioned, he or she may sue the manufacturer of the equipment for negligence. The manufacturer may in turn sue the employee's company to recover damages. Depending on the specifics of the claim, either the employers' liability or a general liability policy can provide coverage.

Employees excluded from workers' comp: In some states, seasonal and temporary workers can be excluded from workers' comp. In other states some small employers do not have to buy comp. In those situations, an employers' liability policy can provide protection from employee lawsuits for bodily injury and illness.

Monopolistic States

In states with monopolistic workers' comp funds (North Dakota, Ohio, Washington and Wyoming), employers need to purchase a separate employers' liability policy. Organizations headquartered in other states but that have offices in these states need to buy an endorsement to their employers' liability policy to avoid having a coverage gap for employees in those states.

Not Employment Practices Liability

Do not confuse employers' liability with employment practices liability (EPL) insurance, which protects employers from employee claims that their legal rights have been violated. EPL protects an organization when employees file claims for wrongful termination, sexual harassment and discrimination. It does not cover bodily injury.

Some employers that have not bought EPL insurance attempt to use their employers' liability to provide coverage for EPL claims. However, in most cases the insurance does not apply. Even when states define workers' comp "injury" to include mental injury, the broader, workers' compensation definition does not necessarily transfer to the employers' liability portion of the policy.

If you have any questions about your employers' liability coverage — and how it complements your workers' comp coverage — please give us a call. ■

Third-Party Administrators

Some insurers use a third-party administrator (TPA) to handle workers' comp claims. Why do they use TPAs? How do they work?

A third-party administrator (TPA) is a vendor hired to manage claims adjusting and other insurance-related services such as:

- ✓ Medical care management
- ✓ Litigation
- ✓ Loss control
- ✓ Safety programs
- ✓ Cash flow management.

The need for TPAs grew with the emergence of captive insurance companies. When a company or group of companies forms a captive, they usually need outside expertise to handle a range of administrative activities. TPAs handle that need.

Additionally, an insurance "program" may use a TPA for claims processing. In a pro-



gram, similar businesses join a group or association to receive custom coverages and loss control at attractive rates. If the program requires specialty insurance or if the program is handled through a managing general agent (MGA), it will often outsource functions to a TPA. Healthcare facilities, which have unique coverage needs and require specific expertise in claims-handling, often do this.

A TPA and an insurance company's claims department share a similar goal: to make the appropriate claims payment as efficiently as possible. However, a TPA's profitability links directly to its efficiency, while many factors affect an insurance company's overall profitability.

Specialization

According to insurance authority IRMI, TPAs specialize in various aspects of claims administration:

Traditional TPAs operate much like an insurance company's claims department, with the exception that they generally do not have adjusters who work in the field. Since managed care is an important component of workers' comp claims, some TPAs own or manage a managed care or case management service.

Adjuster TPAs focus on claims adjusting, using inside and field adjusters. Traditional TPAs sometimes contract with an adjuster TPA to handle field work. As competition has grown in the TPA market, adjuster firms have added more services, and the difference between adjuster and traditional firms has blurred.

Captive TPAs provide insurance to a specific company or group. A company that is self-insured or that has formed a captive insurance company may create and own a TPA that functions as a claims department. MGAs can also form a TPA to handle claims administration for specialty business.

Recovery TPAs specialize in recovering claims payments from other insurance entities. They generally receive a percentage of the money recovered.

TPA Advantages

TPAs generally have expertise in specific industries, so they are able to efficiently deliver claims and other administrative services. Most TPAs make good use of technology to drive down claim costs. Their goal is to deliver excellent claims resolution at a good price, which is why insurance companies and MGAs choose them for specific, targeted business.

From the insurance buyer's perspective, the use of a third party should not change the way a claim is handled. Your insurer will expect the TPA to meet required deadlines for handling various aspects of comp claims — such as medical care, claims payments and declinations. They must make accurate, timely filings, as required by state laws and regulations.

Evaluating TPAs

When we evaluate insurance options for our clients, one of the factors we look at is the insurance company's commitment and performance on claims-paying — regardless of whether they have an in-house claims department or use a TPA. This is especially critical for workers' comp, where claims are frequent and sometimes have long timeframes for settlement. We also look at how your insurer or its TPA handles medical bill review, a critical part of workers' comp claims administration. We want to know that fees are negotiated and that bills are scrutinized, properly coded and processed. We also consider managed care and return-to-work programs offered.

If we recommend an insurance package that includes the use of a TPA, you can rest assured you will get professional, timely claims service. ■

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 Administra-

tion (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, 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. ■

Workers' Comp & Safety News



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