

Managing Risk



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Liability

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Protect Your Company from Auto Liability Claims



A 2008 Insurance Research Council study found that between 2002 and 2006, auto property damage claim severity increased 18 percent; bodily injury claim severity increased 22 percent; and personal injury claim severity rose 19 percent. This trend will likely continue. Protect your company from costly auto liability claims by ensuring you have the right insurance protection.

If your employee causes property damage, injury or death to another while driving on company business, your company could become liable. In addition to the human cost, involvement in an injury or fatal accident can create adverse publicity, cause lost time and potentially cost thousands of dollars in liability claims. You can reduce the like-

lihood of auto liability claims by taking these steps:

- 1 Define jobs that involve driving. Before making a job offer, obtain copies of applicants' motor vehicle records (MVRs) from the state department of motor vehicles. Obtain applicants' written permission to avoid violating privacy regulations. Use

MVRs to screen out any applicants whose records indicate unsafe driving behaviors.

- 2 Request MVRs on a regular basis — at least once a year — for all employees whose jobs involve driving and for those with company cars. If an employee only drives occasionally for business — for

LIABILITY—continued on Page 3

In July, a property management company sued a tenant for defamation, in what could possibly be the first defamation case over a single “tweet.”

In a May 12 Twitter post, Amanda Bonnen wrote: “Who said sleeping in a moldy apartment was bad for you? Horizon realty [sic] thinks it’s okay.” As a result, Horizon Group Management sued Bonnen for libel. Although Bonnen’s tweet only went to some dozen individuals, it was publicly available.

At press time, the suit was still pending. However, the case points out several facts: posts to social media are often available to the public (unless the user has taken steps to limit access to friends and acquaintances) and social media are potential minefields for defamation, libel, invasion of privacy and violations of intellectual property rights.

The Media Law Resource Center defines defamation as false statements, visual depictions or gestures that harm another’s reputation. To be defamatory, a statement must be false, it must be harmful to the reputation of the other party, and it must be published or communicated to at least one other person. Libel consists of written or broadcast defamation; slander is verbal.



The Seven Steps of Claims Filing

We hope it never happens, but when you suffer a loss, you'll have to file a claim to receive payment from your insurer. Here's how the process works, and how to handle it to your best advantage.

Step One: Notify Authorities

Your first responsibility is to protect life and health. If someone is injured, call an ambulance or perform first aid as needed. If your loss involved theft, robbery or an auto accident, notify the police — your insurer will want a copy of the police report. If a fire occurs, ask your local fire department to inspect it, even if you put it out yourself, to prevent smoldering embers from reigniting later.

Step Two: Document What Happened

As soon as possible after the accident or loss, make a written report. If you were involved or witnessed the incident, write down what you saw. If you were not present, find out if there were any witnesses and, as soon as possible, interview them. Make sure your report includes pertinent details, such as date, time of day, location, conditions that could have contributed to the accident or loss, involved persons and witnesses and contact information for them. If you don't have time to make a written report immediately, you can use a recorder to document the incident.

Photos also help document what happened. If the incident involved an injury, take photos of the surrounding area, including any conditions (wet floors, loose carpeting, missing safety equipment) that could have contributed to it. In the case of property



damage, photos can help establish the value of any damaged property.

Step Three: Prevent Further Damage

If a repairable condition contributed to an accident, fix it or prevent access to prevent future accidents. Likewise, your business property policy probably contains a provision that requires you to prevent further property damage after a loss — such as boarding up broken windows. However, don't make any permanent repairs until your adjuster says it's okay. He or she might need to see the location in its near-original condition to evaluate your claim.

Step Four: Report the Loss to the Insurance Company

The insured has duties under the insurance policy. Most liability policies include a reporting provision, which requires insureds to report a possible loss (property damage or injury to a third party) as soon as practically possible. Even if you think the loss won't be covered, report it to your insurer. You can call your agent or broker during business hours, or if the loss occurs after regular business hours, contact your insurer on its 24-hour telephone number. Have your policy number and your report ready when you call. If you speak with someone other than your insurance agent or broker, note

the name of the representative you spoke with, the time you reported the claim and the claim number assigned to the case.

Step Five: Be Prepared to Work with a Variety of People

If you experienced a substantial property loss, the insurer might assign an adjuster to your case. An adjuster might be an employee of the insurer or an independent contractor.

Adjusters plan and schedule the work required to process a claim. They will look at your coverage: Was your policy in force when the claim occurred? Do any exclusions or limitations apply? What are your policy limits and deductibles?

The adjuster will also investigate your claim by interviewing the claimant and witnesses, consulting police and hospital records and inspecting property damage. Adjusters may consult with other professionals, such as accountants, architects, construction workers, engineers, lawyers and physicians, who can offer a more expert evaluation of a claim. With the information gathered — including photographs and statements, either written, audio or video — they make a report that is then used to evaluate the associated claim.

When the adjuster's report concludes a policyholder's claim is legitimate, the claim goes to the claims adjuster, who negotiates with the insured to settle the claim. When



Liability

LIABILITY—continued from Page 1

example, on a business trip — you might save time by requesting the employee to provide a copy of his or her own motor vehicle record abstract.

- 3 Develop a company driving policy. U. S. Department of Transportation statistics reveal that most accidents involve unsafe driving behavior. Your policy should require seat belt use for the driver and all occupants and prohibit driving while intoxicated (including while under the influence of legally prescribed drugs that can impair reflexes, judgment or vision).
- 4 Require safe use of cell phones and other mobile devices while driving. Many companies (and some states) allow only hands-free devices or ban the use of mobile devices altogether while the vehicle is moving.
- 5 Include a list of disciplinary actions the company will take for violations of your driving policy. This could include a point system, where drivers receive points for various moving violations, along with list-

ing offenses that will result in termination of driving privilege or employment, such as DUIs, reckless driving charges or vehicular manslaughter.

- 6 To minimize paperwork, have employees sign a consent form at time of hire, authorizing the company to review their MVRs on an annual or as-needed basis, and that they have read and agree to abide by the company's driving policy.
- 7 Provide written notification to employees who have company cars or who rent cars for business purposes that the company's insurance policy will not cover personal use of these cars, and that the employee should carry personal auto insurance.
- 8 Require employees who use their own cars for business to carry minimum liability limits on their personal auto policy. The Insurance Information Institute recommends that individuals buy a minimum of \$100,000 in bodily injury coverage per person and \$300,000 per accident; however, employees should consult their per-

sonal insurance advisor.

- 9 Since some accidents involving employees' personal vehicles will exceed the limits of their personal coverage, your company might want to buy additional protection for itself through a difference in conditions (DIC) policy. This nonstandard policy covers exposures not covered by other policies on either an excess or first-dollar basis. If you have large numbers of employees who use personal autos for business, you might also want to discuss arranging a group personal umbrella or excess insurance program for these employees, to supplement their coverage under their personal auto policies.
- 10 Check the limits of your company's business auto policy. Limits that were adequate several years ago might not provide enough protection for today's more expensive cars and higher medical costs.

For information, please call us. ■

CLAIMS—continued from Page 2

claims are contested, adjusters will work with attorneys and expert witnesses to defend the insurer's position.

Step Six: Be Satisfied Before Accepting a Claims Check

If your claims adjuster offers a settlement, don't sign a full release of all claims unless you're satisfied with the amount. If you're not satisfied with the amount of the settlement, be sure the claim remains open so you can possibly collect more payments.

Step Seven: Use Your Agent as a Resource

If you have questions at any point of the claims process, call your agent or broker. He or she will be able to provide you with claim forms and help guide you through the claims process. For more information, please call us. ■

OBESITY—continued from Page 4

Providing information on proper diet and exercise is easy to do, but by itself is probably not very effective in changing behavior. Information becomes more effective when coupled with environmental changes that encourage wellness. The changes can cost relatively little and are easy to implement. For instance:

- * Stock vending machines with healthy snacks.
- * Provide free fruit.
- * Encourage employees to take walks during breaks.
- * Provide a meeting room for a weight-loss program.

Wellness programs can represent a serious commitment of time and money. Employers can structure programs to reward employees for attending health seminars or health

assessments, or for meeting targets such as a reduction in their body mass index (a measurement of body fat). Well-constructed programs can help reduce employee medical costs.

We advise employers to avoid developing any mandatory programs or company-sponsored contests that ask employees to reach specific health targets without first reviewing all the appropriate government rules and regulations. Mandatory programs fall under regulations from the Employee Benefits Security Administration. Human resources managers should understand the regulations and determine whether the company's plan is governed by the Health Insurance Portability and Accountability Act (HIPAA) and other anti-discrimination regulations. For more information on wellness programs and other means to control workers' compensation claims costs, please contact us. ■



How Obesity Affects Your Workers' Comp



Data from the U.S. Centers for Disease Control (CDC) show that 32 percent of Americans are obese and another 34 percent are overweight. A study by the American Medical Association indicates that obese workers with workers' comp claims have five times more lost days and their medical costs are more than twice as high as people of recommended weight.

How Weight Affects Injuries

Take a common workers' comp injury: Bill is a warehouse employee who tears the meniscus in his knee and requires surgery. If Bill is morbidly obese, the surgery is more difficult and wound complications are more likely to occur. But it's not the surgery itself that presents the most serious risk of complication. Because of his obesity, Bill probably has high blood pressure and he may even be diabetic. He faces a greater risk of blood clots and heart and lung complications, according to Dr. James O'Hara, an orthopedic surgeon who performs workers' comp medical evaluations.

Despite appropriate treatment, Bill has a knee that is more susceptible to osteoarthritis than a person of normal weight, and his recovery is more difficult because of the extra weight he places on his knee.

Additionally, O'Hara says research indi-

cates that fat cells in obese people can produce substances that are similar to ones that cause inflammatory joint disease. The extra collection of fat cells in itself may cause additional joint destruction, leading to additional treatment and costs — not because of gravity alone, but due to “cumulative hormonal effects.”

A Societal Issue

According to the CDC, obesity is a risk factor for chronic illnesses, including leading causes of death such as heart disease, stroke and diabetes. The obesity epidemic and growing healthcare costs are leading more businesses to implement wellness programs. The impetus has come from those who manage employee health benefits. Until recently, risk managers have not been interested in wellness plans, because workers' compensation has historically focused on specific, job-

related injuries. Now insurance buyers are recognizing the workers' comp costs associated with obesity, and they are teaming up with HR to develop wellness programs.

Before undertaking any program, the management team needs to consider the implications of appearing to intrude into employees' personal lives. They also need to consider whether overweight employees will feel discriminated against. Many companies have found that enlisting a task force of employees to help design a plan leads to better reception by other employees.

Companies can take any of three general approaches to wellness:

- 1 Informational programs
- 2 Environmental changes that encourage wellness
- 3 Mandatory programs.

OBEISITY—continued on Page 3

Sticks and Stones and Social Networking

Sticks and stones may break your bones... You know the rest of the saying. But when it comes to social networking, words can hurt you.

As use of social networking tools, such as blogs, Facebook and Twitter, increase, so do the chances that an employee will use them to say something harmful about your company or another employee. Misuse of social media can lead to lawsuits for libel, invasion of privacy and other violations of law.

Many companies have a written policy for dealing with traditional media, such as newspapers or television. If you haven't already, it's time to update your media policy to include social media.

The personal nature of Twitter, Facebook and blogs means you cannot prevent employees from using them. However, you can limit all “official” communications from or about the company and its products to designated representatives.

As far as personal use, the company should make it clear to employees that they have no reasonable expectation of privacy for any messages publicly available on any social medium, whether they are using it at the office or at home. Further, you should notify employees that the company reserves the right to monitor employee social media activity, along with mentions of its name.

Your media policy should also state that any rules that apply to communications in traditional media also apply to social media. That can include requirements that employees honor blackout periods that precede company earnings reports, prohibitions on harassing or defamatory posts, and prohibitions on sharing company trade secrets or private information on other employees or clients the employee might have access to through his/her job.

If you have found any potentially damaging communications, please contact an attorney experienced in media law. If you're interested in media liability insurance, please call us to discuss your needs. ■