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Workers' Compensation: Do-It-Yourself Strategies for Cutting Costs

By Anne DeAcetis
June 29, 2010

The law requires most companies to carry Workers' Compensation insurance, and the associated costs can be high. But by understanding how Workers' Compensation policies work, analyzing commonly made mistakes, and looking at the many calculations that make up a premium, HR departments with an eye for detail can help their companies find significant savings.

The costs of Workers' Compensation claims are many. Depending on the nature of an injury/illness, the company may need to pay workers for recuperative time off. The insurance company may have to pay out large sums, which usually leads to higher premiums. And there's lost or diminished productivity to deal with. You may even need to hire temporary workers.

Meg Errickson, Director of Claims with Marsh & McLennan Agency (specialists in insurance program management), visited TemPositions' HR Roundtable series on Thursday, May 26th, 2011 to share her insights on controlling costs. The first step is to audit your own policy and minimize risks, she explained. While it requires a little patience, it can be done.

"I sometimes call this presentation, 'The Money Saving Secrets,'" she began. "But everything I teach you today really shouldn't be a secret. This should all be common knowledge for the brokers and insurance companies you work with, and you can really use this information to save on your Workers' Compensation costs."

Workers' Compensation 101

Workers' Compensation insurance provides benefits to employees who are injured at work, covering medical expenses associated with the injury and guaranteeing some wage continuation during any related medical leave. It doesn't provide a financial windfall. But it enables workers to keep their jobs while they get better.

Workers' Compensation also provides a formal, structured system for companies to take care of their injured workers without having to fear liability. Employees can't sue their employers for work-related injuries, except in cases of "gross negligence" (and these are rare).

As Errickson explained, employees don't have to be standing or sitting at their workstation to be considered at work. "Coming and going" laws vary state by state, but in most cases, employees

are covered if their injury takes place in the building lobby, in the company parking lot, or even at an off-site company event at which attendance is required. Professionals who travel a great deal for business may be covered for extended hours between meetings on the road.

In most states, when an employee is injured due to a third party's negligence (e.g., if a building management company fails to maintain safe conditions in its lobby), the worker can sue that party. But if they win, the insurance company will recoup 2/3 of their benefits.

The law also defines "employee" generously, especially in New York, Errickson continued. Independent contractors (e.g., 1099 employees) who don't carry their own Workers' Compensation policies will be covered while conducting work for your company. So will volunteers, interns, and temporary workers who were not engaged through a staffing agency.

The law even protects employees who are no longer with the company. Section 32 of New York State's Workers' Compensation law affords benefits to workers who discover a work-related injury or illness after they've left (and can provide documentation from a doctor). In these cases, businesses settle (with no admission of liability) for small amounts, usually under \$10,000.

The federal government mandates Workers' Compensation coverage. But each individual state is responsible for enacting and enforcing its own Workers' Compensation law. This means that the very same claim might be handled very differently in two different states. For companies with employees in many states, Workers' Compensation can very quickly become complicated.

Components of a Workers' Compensation Premium

Premium costs are complex, Errickson explained. But by understanding what's fixed and what's not, companies can start looking for savings.

Fixed Costs

Your company's payroll, its "classification codes" and state surcharges result in a fixed part of the Workers' Compensation premium.

Classification codes categorize your workforce based on the type of work they do (e.g., clerical, warehouse, etc.). The National Council on Compensation Insurance, Inc. (NCCI) provides a class coding system to which many states, including New York, subscribe. Other states create their own coding.

Each code is assigned a different Classification Rate. This rate is charged per \$100 of payroll. And this total is added to fixed state surcharges. These formulas are simple and can't be changed.

You can, however, influence these costs by making sure your class codes are correct. Ensure they reflect reality. A warehouse manager who sits behind a desk, Errickson reasoned, should not share the same code as a worker who lifts crates on the warehouse floor. Most states employ very few auditors, so consider confirming the accuracy of class codes to be your responsibility.

Variable Costs

Costs associated with litigation are highly variable. When carriers review their premiums, they look at these expenses as outlined in their “loss runs” (claim cost reports).

But the greatest variable cost within your company’s Workers’ Compensation premium is the Experience Modification Factor, commonly known as the Experience Mod. Based on anticipated future losses, the Experience Mod can significantly increase or decrease your premium.

To calculate the Experience Mod, state ratings bureaus analyze your Workers’ Compensation claims (losses) over the past three completed fiscal years. (Claims in the current year, called the “green year,” are not included.)

They consider what your carrier paid in benefits and what insurance adjusters “reserved” (set aside to pay over time) for claims. These costs are made up of medical expenses (e.g., visits with doctors, diagnostic tests, physical therapy, etc.), lost wages (paid time off) and “permanency” awards (dollar amounts calculated based on the percentage of permanent damage to injured body parts, all of which are assigned specific values on a chart maintained by the insurance carrier).

Attendees asked Errickson to explain permanency awards in detail, so she offered an example. An insurance carrier may have determined that an arm or leg is worth \$100,000. If a doctor certifies that the worker has lost 10% use of their limb as a result of their work-related injury, the insurance company will pay the worker a lump sum of \$7,500 as a permanency award.

Having calculated your company’s total Workers’ Compensation claim losses, the state bureaus then consider the average losses among companies in your state that share your classification code(s). They factor in your overall payroll. And finally, they assign your company an Experience Mod number that reflects your relative performance.

If your Experience Mod is a 1, Errickson explained, that means your company is experiencing average losses that are in line with industry/class norms. If your Experience Mod is 1.1, that means your company is experiencing losses that are 10% greater than other companies in your class (this is known as a Debit Mod). If it’s 0.9, your company is experiencing losses that are 10% less (this is known as a Credit Mod).

While it’s impossible to reduce an Experience Mod to zero, Errickson urged attendees to take on the challenge of achieving a Credit Mod. One of her clients currently has a 0.5 Experience Mod, and she believes they may reach their goal of 0.36.

The Experience Mod is multiplied by the fixed Workers’ Compensation premium for your class code(s). A company with an Experience Mod of 1 with an annual premium of \$100,000 would pay exactly that amount. A company with an Experience Mod of 1.1 would pay \$110,000, and a company with an Experience Mod of 0.9 would pay \$90,000.

It’s not impossible to roughly calculate your Experience Mod yourself, Errickson noted, or purchase a computer program that will generate a reasonable estimate. Financial officers within your company will certainly appreciate the advance warning if premiums are likely to rise—or the good news that next year’s premium will likely fall.

And don't assume you can't influence your Experience Mod significantly, she stressed. With costs mounting, it could be critical to the future success of your business.

Why Costs Continue to Rise

Companies are part of the American landscape, Errickson noted. Medical costs are increasing for everyone, rapidly. For companies, this translates into increased Workers' Compensation losses.

Increased litigation is also a factor. As Errickson explained, more and more workers are hiring attorneys when they suffer injuries. As noted, employees can't usually sue their employers. But their lawyers will haggle with insurance companies and steer workers toward sympathetic physicians, often resulting in more generous permanency awards.

Legislation is also driving up costs. In New York State, disability benefits are incrementally on the rise. While it's a tough development for business, this increase was long overdue, Errickson noted. 1992-2007, the weekly Workers' Compensation benefit was 66.66% of weekly wages to a maximum of \$400—a paltry sum in such an expensive city (even untaxed).

In 2007, the maximum weekly benefit was increased to \$500, and the legislation provided a timeline for further increases. Today, the maximum weekly benefit is \$739.38. It will increase to 66.66% of weekly wages—without any specified cap—in July, 2011. (Errickson expects follow-up legislation that sets a new, reasonable maximum. Even the most generous states cap weekly benefits at around \$1,200.)

Laws have also increased the variety of “occupational injuries.” In the past, stress-related illnesses, repetitive stress injuries (i.e., carpal tunnel syndrome) and ailments caused by workplace noise or pollutants weren't covered by Workers' Compensation coverage.

Today, Errickson explained, a nurse who develops a back problem after years of lifting patients can bring Workers' Compensation claims against every past employer that required her to do that work. She may continue to file claims for many years for aggravations of the same injury.

Such scenarios will only grow more common as the American workforce ages. The general population is living longer—and working longer. Older employees are more fragile. Chronic illnesses become more common, which contribute to slower healing times. Physicians may be challenged to distinguish work-related illnesses from ailments related to chronic conditions.

This same workforce is also getting smaller, Errickson noted, and more injury-prone. Companies today demand greater productivity from fewer workers, and haste and fatigue set the stage for workplace accidents.

If increased claims weren't bad enough, high losses alongside a shrinking payroll may increase your company's Experience Mod. And this will increase your premium.

The High Cost of Errors

There's another important reason why your Experience Mod—and your insurance premium—might be higher than they should be. Based on 30 years of data analysis, Errickson explained, we now know that “overages occur nearly 70% of the time within all Workers' Compensation premiums.”

The reason? A cascade of human errors. More than 60% of claims documentation includes “some element of impropriety,” she explained.

Routinely, losses are incorrectly reported or set. Claims set for ultimate settlement are over-reserved, meaning the adjuster has set aside more money than the claim will actually cost. When the disparity between the reserve and the loss is never corrected, it can lead to an Experience Mod that is up to 30% too high.

Why does this happen? Because insurance adjusters, in general, are overburdened. Officially, each adjuster is supposed to handle 125-175 Workers' Compensation claims. But most adjusters are actually responsible for 225-250 claims. “That's a huge case load,” Errickson noted.

These harried adjusters are responsible for setting a reserve within the first 30 days of the claim. Meeting this important expectation keeps their claims “current.” But in their haste, they can easily over-reserve.

Claims must also be closed correctly. Even claims with accurate reserves may increase the Experience Mod if they aren't properly and promptly reported to the state. Making corrections later, while possible under specific circumstances, is still an administrative hassle. (See [Adjusting Your Experience Mod](#), below.)

Partnering to Reduce Costs

Knowledge is power. So HR should begin by learning as much as possible about Workers' Compensation independently. New York State, Errickson noted, offers a particularly useful resource: www.wcb.state.ny.us. On this site, employers can learn about best practices and even download handbooks on how to handle absences and get employees back to work efficiently.

It's also critical to partner with your insurance carrier and/or your broker. Most offer a wide range of resources—from white papers to loss control email blasts—to help clients reduce their claims and costs. Ask about these tools, and use them.

And, as Errickson put it, “There are many standard services you should expect.” Insurance carriers and brokers can (and should) help you educate leadership about minimizing costs and risks, help you train your employees to promote “a culture of safety,” and handle every claim properly.

Risk Management/Loss Control

Your carrier/broker can help you analyze your claims to reveal safety problems. Most Loss Control Representatives can offer webinars on improving safety in your workspace—so make

sure they're addressing the right topics. "If all your injuries are from 'slip and falls,'" Errickson explained, "you can skip the training on how to lift heavy items without hurting your back."

Some companies may also want to initiate baseline medical testing for new workers, as permitted by law. A loud factory may cause hearing loss in a worker, she noted. But if that worker came in with a pre-existing 20% hearing loss, they should only be covered for losses suffered during their time with the company. (Absent such testing, Workers' Compensation law will require the employer to provide benefits for the full percentage of hearing loss documented by a physician.)

Safety Training

From warehouses to corporate offices, every workspace has its risks. Common-sense safety training can go far in reducing the number of employee injuries—and claims.

"Safety starts from the top," Errickson stressed, so make sure leadership is on board. Then work with your broker/carrier to evaluate your workspace. Set up a safety committee. Organize safety workshops. Offer safety incentives. Establish clear rules that make sense for your business, and put them in writing.

Safety Manuals

Establish adherence to safety guidelines as a clear, non-negotiable expectation for employees—and publish a policy that directly addresses safety violations. Those who indulge in unsafe practices on a regular basis are Workers' Compensation claims waiting to happen. But an informed, engaged workforce that understands the need for safety can be a bulwark against costs.

For dealing with unsafe behavior, Errickson recommended a standard disciplinary chain of events. A first offense should probably be met with a warning. A second offense may result in harsher consequences—a temporary change in responsibilities, or even suspension. And companies must reserve the right to discipline unsafe workers up to and including termination.

Pay especially close attention to workers who have been injured in the past, Errickson noted. It may sound like punishing the victim. But experience shows that workers who suffer many small injuries eventually suffer a large one. If a worker has a history of carelessness, address it.

Your published policy should also address what happens when accidents occur—because they will. The company should have a plan for investigating the incident, discovering the root cause, and establishing new guidelines that will keep it from happening again. "Most accidents are avoidable," Errickson stressed.

Does your company offer optional on-site exercise classes? Work with your carrier/broker and legal counsel to compose a waiver that protects the company against liability. Does the company host many special events? Try to be clear about what types of company events are mandatory (covered) or voluntary (potentially not covered).

Some accidents will fall into gray areas, Errickson noted. A worker on their lunch break may be covered or may not be, depending on circumstances. As a rule, submit all claims if there is any

chance a worker is entitled to Workers' Compensation benefits. The insurance company may reject the claim, but the worker will know the company did all it could to help.

Employment Strategies

Before and after the hire, there's plenty that companies can do to minimize claims. Consider more rigorous pre-employment screening, and enforce all the policies in your employee handbook (whether or not they relate to safety).

For positions that require physical strength or endurance, Errickson advised, require applicants to undergo "functional capacity exams." Partner with doctors who know your company's business and requirements, or give candidates a copy of the job description to take to their own doctor. Get the applicant's fitness for the position confirmed in writing.

And don't tolerate sub-standard work, unexcused absences, drug abuse or other disciplinary problems, Errickson warned. All too often, companies find themselves stuck with the inconvenience and costs of a huge Workers' Compensation claim—for an employee they wish they had terminated long before the injury.

Return-to-Work Programs (Modified/Light Duty)

Your carrier/broker can offer guidance on safe, lawful ways to get employees back into the workplace on modified or light duty. With a physician's approval (including a clear explanation of the worker's physical limitations), companies can require workers to return to work while they recuperate—contributing in whatever ways they can, even outside their areas of expertise.

There are many advantages to light duty. Productivity won't dip as sharply, even if the worker can't perform all of their usual tasks. They'll be available to answer questions for the worker(s) who are covering their duties, and they can pitch in wherever extra hands are needed. Light duty is also good for employees, though they don't always agree. They won't sit at home dwelling on their pain or losing their skills. "It keeps them in a working frame of mind," Errickson explained.

If a doctor says a worker must remain out, press the adjuster for a return date (or, at least, a firm date for establishing one). Ask about specific physical limitations, and look for company tasks that are a good fit. Laws vary state-by-state, but in some cases, you may be able to cut benefits to workers who reject light duty assignments.

Claims Reporting and Related Procedures

Your carrier/broker should serve as a resource as you process claims—letting you know when and how you can influence financial outcomes. But as an informed HR partner, it may fall to you to ensure the claim is handled with an eye toward cutting costs.

For the first 30 days after a claim is filed, the company can direct the worker's medical treatment. Take advantage of this right. Enter into partnerships with medical practices, and direct employees to use in-network doctors or emergency care centers. The cost benefits to managing treatment this closely can be enormous, Errickson stressed.

A doctor who isn't familiar with your business is more likely to be cautious about sending an employee back to work too quickly. By contrast, a physician who has a firm grasp of day-to-day performance expectations in your workspace may be more comfortable sending an employee back to work on light duty. They may even more accurately assess which aspects of an employee's complaint are work-related, and which aren't.

The first 30 days are also important because reserves must be set during this period. Communicate with your broker/carrier and make sure they're appropriate. A reserve shouldn't reflect a worst-case-scenario, Erickson explained. So ask questions about the rationale behind every reserve, and urge moderation.

And, to an extent, urge patience. Adjusters with too many claims to process may rush to establish a reserve. But they must methodically consider wages, medical costs, permanency, etc. and make a reasonable calculation based on doctors' input. A real timetable for returning to work, for example, may only be determinable after weeks of treatment. For the sake of accuracy (and keeping your Experience Mod down), ensure the adjuster integrates all 30 days' worth of data.

Similarly, discuss potential settlements carefully. "If you're self-insured, you have control," Erickson noted. Discuss all the circumstances with your carrier/broker, and resist the urge to settle and be finished with the claim. After all, she stressed, every time you settle, you set a precedent that future injured workers (and their litigation attorneys) will consider.

As claims are closed, review loss runs with your carrier/broker. They can help you identify the areas in which you must improve safety. You can discover which employees are most accident prone and in need of more training. And you can potentially detect fraud.

Managed Care Credit and Direct Care

The types of coverage you carry, and the physician networks you use, affect your costs. Talk to your insurance carrier about their third party network providers (e.g., Concentra, QualCare, First Health, etc.). Especially when working with a broker, you can make side-by-side comparisons of these providers, potentially bringing down your premium.

For some companies, it even makes financial sense to opt for high-deductible insurance plans. At the very least, ask for quotes. Absorbing some of the costs of your own claims makes the company eligible for credits, and your premiums may be substantially lower.

Adjusting Your Experience Mod

Once you've taken action to reduce risks and claims and to ensure accurate claims processing, you can start anticipating a positive change in your Experience Mod.

Your renewal date represents the date your coverage rolls over. But your Experience Mod is calculated six months prior, on the company's "unit stat filing date." So to reap the benefits of the improvements you've made, you'll need to prepare for renewal seven months in advance.

For the month leading up to your unit stat filing date, Errickson urged, reduce claim files “to their lowest possible potential number.” Talk about all reserves with your carrier/broker. Are they reasonable? Do any need to be adjusted? This is the time to do it.

After the unit stat filing date has passed, making changes to your Experience Mod becomes more complicated, Errickson warned. The law only permits you to have your Experience Mod recalculated for four reasons:

1. There was an error in your reported payroll or incurred losses
2. A claim is proven to be fraudulent
3. A second injury fund accepts the claim (meaning the worker had an underlying condition that contributed to their inability to work, and benefits were paid by the state after five weeks of absence; this is no longer relevant in New York, which abolished this fund)
4. Subrogation was received on the claim (meaning the worker sued a third party successfully and 2/3 of Workers’ Compensation benefits were recovered by the insurance company)

So while it’s not impossible to retroactively change your Experience Mod, Errickson noted, there are limitations. Most notably, you cannot ask for a recalculation based on inflated reserves that were not corrected before the unit stat filing date. And New York State enforces a statute of limitations of two years. All errors, fraud and/or subrogation may not be discovered in time.

Look Back to Look Forward

Errickson concluded by urging attendees to take more control and plan for a safer, less costly future. Even fixed costs can be influenced, she reminded them, and there’s much the company can do to lower its Experience Mod, the largest single factor in the calculation of a premium.

“The key is vigilance and good practices,” she stressed. HR must analyze the company’s past performance relative to safety and the performance of the company’s broker/carrier in handling claims. They must look for ways to immediately minimize costs. And they must persuade company leadership to help them plan for the future, prioritizing safety from the top down.

“It’s impossible to eliminate Workers’ Compensation claims,” she said in closing, “but there really is plenty you can do to minimize the real and anticipated losses associated with them.”

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