

RISKY BUSINESS

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FYI...Steps to a Successful Risk Management Program

By Tom Judy

The current edition of Public Risk magazine includes an article by Kenny Smith entitled "Getting Your Risk Management Program off the Ground: How to be Successful One Step at a Time." The article provides a five-step guide to formulating and maintaining a successful risk management program within your organization. MVRMA staff provides significant resources and assistance to our members with the first four steps; the fifth step requires an organizational commitment by the member. Below is a summary of that article and some thoughts on the roles of MVRMA and the members in this process.

Step 1: Identify and recognize all of the loss exposures in the organization's operations.

This step includes performing a risk assessment and reviewing losses to determine the strengths and weaknesses of the organization's risk management program. The assessment includes meetings with every department to determine what they do, how they do it and where they do it. MVRMA's Risk Management Best Practices Program and Law Enforcement Best Practices Program provide members with a framework to perform this assessment of all areas of operation.

Step 2: Evaluate the hazards and examine the various risk management control options.

The second step is to implement policies, practices and procedures to control the risks identified in the risk assessment process. Many such recommended policies and practices are incorporated into the MVRMA best practices programs, but MVRMA staff is available at any time to delve a little deeper into any area of concern.

Articles

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Step 3: Develop the most appropriate controls to balance the risk to an acceptable level.

Next, the article says it is time to implement controls “that reduce risk without being overcomplicated or overbearing on the employees or organization.” I would add that “overbearing” controls could make it difficult for the organization to effectively carry out its mission. The most reliable type of control is to avoid the risk by choosing to forego the activity entirely; however, this is not always practical. Organizations would never accomplish anything worthwhile if risk avoidance was their go-to strategy. Often, it is necessary to accept the risk but mitigate it by removing the hazards, replacing an existing risk with one less hazardous, incorporating engineering controls or safety devices, or applying administrative controls such as training and supervision. MVRMA staff can assist members with evaluating the level and type of controls appropriate for the circumstances.

Step 4: Implement the chosen controls and train.

Effective training is key to successful implementation of a risk management program. MVRMA offers training in loss control topics with an emphasis on high severity and high frequency claims areas such as employment practices, law enforcement and driving safety.

Step 5: Re-evaluate and follow-up to confirm an appropriate balance has been achieved with no unwanted side effects.

This final step is where the onus shifts to the member. Effective risk management requires an organizational commitment to make risk management the responsibility of persons at all levels of the organization. Here are some ways in which management can mitigate risks:

- *Provide support and direction.* Management should voice their support for a risk management/safety culture and demonstrate it by being actively involved in training and meetings when possible, providing time and resources for employees to participate in training, encouraging the creation and achievement of risk-management-related goals, giving risk management responsibility and authority to all department managers and assigning accountability at all levels for the identification of risks and the development of controls.
- *Enforce risk management/safety policies and procedures.* Ensure that risk management/safety policies and procedures are enforced in a firm, and consistent manner.
- *Ensure risk management activities are appropriately documented.* Effective risk management requires documentation of disciplinary discussions, performance appraisals, inspections, work orders, tests and safety site evaluations. When claims arise, good documentation is key to a strong defense.

MVRMA staff is ready to assist with your risk management programs. Please let us know how we can serve you.

Loss Control Lowdown...

Winter Driving Safety

Starr Markworth



Did you know that 30% of all workplace fatalities in government services are road related? Motor vehicle crashes are the leading cause of work-related death from injury in the United States, according to the National Institute for Occupational Safety and Health (NIOSH). Crashes accounted for about 23 percent of all on-the-job deaths.

According to the National Safety Council, 25 to 55 year-old workers are most likely to die on the road, making up nearly 70% of all roadway fatalities. Considering that those workers make up a large majority of

our city employees, driving safety is extremely important. Not surprisingly, death rates were highest for workers whose daily job activities included driving or riding in a motor vehicle.

With winter and severe weather arriving in a couple months, it's time for our city employees to buckle down and make driving safety a top priority.

Winter road maintenance and snow plowing create unique safety hazards inherent to public service employees, please keep that in mind along with the following:

- Motor vehicle accidents are the number 1 cause of death in winter storms
- The number one cause of winter driving accidents is driving too fast.

Remember that each loaded snowplow may weigh up to 50,000 pounds; thus, making stopping a difficult task. With a salt load that is continuously becoming lighter as you apply it to the road, knowing your vehicle's stopping capability is a key to safe driving. During rainy driving conditions the distance needed to stop safely is increased by 50% compared to driving on dry surfaces. Snowy surfaces require 2 times the normal stopping distance, while icy conditions require 3 times the normal stopping conditions.

Whether leaving home or the office, before you drive in severe winter weather, please elect to take the time for a few safety precautions:

- Let your vehicle warm up for a few minutes
- Clean the entire car before you begin to drive
- Make sure all lights work and are clear of ice and/or snow
- Clean ice and snow off of windshield wiper blades
- Check the horn, adjust mirrors and test brakes.

Do your part to make this winter the safest yet.



Broker's Beat

Insurance Market Update

The commercial insurance market has been generally very healthy as natural disaster losses had been below the average for the past decade. The 2017 hurricane season will bring significant insurable losses to the industry. "Hurricanes, earthquakes rack up huge bill for insurers" according to a recent Advisen headline.

Munich Re estimates insured losses from Hurricane Harvey will be \$30 billion; the Miami Herald estimates insured losses from Irma will be \$17.5 billion to \$27 billion; and AIR Worldwide estimates insured losses from Hurricane Maria will be \$45 billion to \$85 billion. The insured losses from these CAT storms could surpass \$100 billion. Lloyds of London expects they will pay \$4.5 billion in losses from Hurricanes Harvey and Irma following a 16% drop in profits in the first half of 2017.

Looking ahead, expectations are that property rates will be firm. It's too early to tell how the market will react to the recent natural disasters, but buyers of property insurance should budget conservatively. We could see rate increases in the 5%-10% range and bigger increases for insureds with losses.

The recent catastrophic losses are not expected to impact the casualty lines of coverage and expectations are that rates will be flat to slightly down into 2018 - barring an increase in claims severity and/or any industry changing events. Some casualty lines of coverage may see modest decreases, while others such as law enforcement liability, commercial automobile liability and employment practices liability (EPL) may see price increases.

Counselor's Comments

By *Dinsmore & Shohl*

NEW BILLS MODIFY OHIO WORKERS' COMPENSATION LANDSCAPE



Effective 4-14-17, Senate Bill 27 amended several sections of the Ohio Revised Code, making Ohio the 35th state in the nation to enact "cancer presumption" legislation for firefighters. In essence, a firefighter assigned to at least six years of hazardous duty who becomes disabled as a result of certain cancers is presumed to have incurred the cancer from performing the member's official duties. However, the presumption is rebuttable if there is evidence that: 1) the firefighter incurred the type of cancer being alleged before becoming a member of the department; 2) the firefighter's exposure to "cigarettes, tobacco products, or other conditions presenting an extremely high risk for the development of the cancer alleged, was probably a significant factor in the cause or progression of the cancer;" 3) the firefighter was not exposed to an agent classified as a group 1 or 2A carcinogen; or 4) the firefighter is 70 years of age or older. Moreover, the presumption does not apply if it has been more than 20 years since the firefighter was last assigned to hazardous duty as a firefighter.

Thereafter, on June 30, 2017, Governor Kasich signed the workers' compensation budget bill. House Bill 27, which funds the Bureau of Workers' Compensation, also made several important changes significant to Ohio employers. The most impactful portion of House Bill 27 involves a modification in the injury

statute of limitations for filing a claim, reducing the filing from two years of the date of injury to one year. Below is a summary of other changes that took effect September 29, 2017.

Extension of Time to File Ohio Industrial Commission Appeal

Previously, a party had only 60 days from their receipt of the final decision to appeal an Industrial Commission Order to the Court of Common Pleas. House Bill 27 extends that time limitation to 150 days if both parties agree and provide notice of their intent to attempt to settle the claim. As a significant number of appeals are filed solely to facilitate settlement, the purpose behind this change is to encourage resolution of the claim before the claim formally enters into an already overburdened Ohio court system.

Permanent Partial Disability Application Dismissal

House Bill 27 now allows the BWC to dismiss (rather than merely suspend) a claimant's permanent partial disability application if a claimant's failure to attend a required Bureau scheduled medical exam is without notice or proper explanation. The dismissal of the application doesn't prevent the claimant from re-filing. The purpose behind the change is two-fold. First, the dismissal of the application will allow the statute of continuing juris-

diction to run, preventing the claim from remaining open for an extended period. Second, the BWC has more than 20,000 applications in suspended status. This new statute will allow the BWC to deal with this backlog more efficiently.

Incarcerated Dependents' Ability to Receive Compensation

Ohio Revised Code Section 4123.54 has long stated injured workers cannot receive workers' compensation benefits while imprisoned in a federal or state correctional institution. House Bill 27 modifies this statute to also preclude dependents of injured workers from receipt of benefits if the dependent is incarcerated. The dependent's benefits will be suspended during the period of confinement and may resume upon their release.

Drug Testing

Ohio Revised Code Section 4123.54 has been modified to include all controlled substances. The threshold limits have also been changed. These changes were made to comply with the Code of Federal Regulations. The rules and procedures that set forth the rebuttable presumption that an injured worker was under the influence at the time of her injury were not altered. The change merely affects the types and amounts of controlled substances.

Counselor's Comments (cont.)

Calculation of Full Weekly Wage

House Bill 27 states an injured worker who is awarded temporary total disability before his full weekly wage (FWW) is determined will be paid at 33 1/3 % of the statewide average weekly wage. When the FWW is eventually calculated, Ohio Revised Code 4123.56(E) allows for the amount to be adjusted.

BWC Can Waive the 90-Day Examination

Ohio Revised Code Section 4123.53 has been revised to allow the BWC to waive the scheduling of a 90-day examination for good cause. If the employer objects to the waiver, however, the exam must be scheduled. Employers should be aware of when the BWC issues such a waiver and be prepared to object if there is an indication the claimant has reached maximum medical improvement.

Handicap Charge-offs

Ohio Revised Code Section 4123.343 was altered to permit settlements to likewise receive the benefit of any handicap charge-offs awarded in the claim.

The above changes should allow the state to more efficiently process and settle claims, and should likewise assist employers in the defense and administration of Ohio Workers' Compensation claims.

The Claims File...

Craig Blair

MVRMA manages on behalf of its member cities all the members' "routine" accidents or incidents. Also, MVRMA handles the lawsuits filed against our members that trigger coverage or defense under the MVRMA Coverage Document. Per MVRMA Policy all lawsuits shall be reported to the Association within forty-eight (48) hours of receipt. If coverage applies, MVRMA is responsible for assigning defense counsel to defend the city and employee(s) in these lawsuits. We currently retain 3 law firms: Dinsmore & Shohl; Surdyk, Dowd & Turner; and Subashi & Wildermuth, to do our defense work. These firms have extensive experience as trial attorneys defending municipalities in state and federal courts.

Lawsuits may arise as result of an injury or property damage from auto accidents, slips and falls on city property, police actions, various other municipal exposures, or employment practice liability (EPL). EPL lawsuits can involve complaints such as job or application discrimination, harassment, wrongful termination, retaliation/whistler blowing claims, or ADA disability. Historically, EPL suits account for a small percentage of our total lawsuits but these cases are much less likely to be dismissed by the courts. Further, due to the numerous motions and depositions taken in these type of cases, the average defense costs are about 50% higher than for all other lawsuits.

The courts tend to lean toward letting EPL cases go to a jury trial so a successful motion to dismiss must be accompanied by detailed documentation. The city must thoroughly investigate, review, and follow their policies before any decision is made. Documentation should include the employees' regular performance evaluations and disciplinary actions taken by the city to resolve any issues prior to termination. Failure to do these steps could lead to "a question of fact" ruling by the courts that leads to the case going to a trial.

Damages can range from front and back pay or lost benefits (damages not covered by the MVRMA Coverage Document), compensatory damages for discrimination, emotional distress, defamation or slander. Also, such damages could include the plaintiff's attorney fees.

Please contact me if you have questions about anything in this article.

Calendar of Events



Upcoming Training Events

Please continue to check our website, mvrma.com for upcoming training dates:

-Supervisor Training for an Alcohol & Drug-Free Workplace

November 7th - West Carrollton Fire Station

November 9th - Mason Fire Station

- Workplace Harassment and Discrimination

November 16th - Tipp City

November 28th - Wilmington

Upcoming Board Events

Committee Meetings

Risk Management - December 5th 10:00 AM

Finance - December 5th 1:30 PM

Board Meeting

December 18th, 9:30 AM

From The Board Room

Actions taken at the September 18th 2017 Board meeting included approval of:

- ⇒ Acceptance of the Financial Audit and CAFR for year ending 12/31/16
- ⇒ Acceptance of the 2018 Loss Funding Study
- ⇒ Acceptance of the 2018 Preliminary Budget