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WORKERS' COMP

Surprised Your X-Mod Changed? Here's Why

IF YOU are an experience-rated employer and your policy renewed on Jan. 1, you may have noticed changes to your X-Mod that may or may not have been welcome news.

Changes made to the California Workers' Compensation Experience Rating Plan that took effect Jan. 1 were aimed at making X-Mods more accurately reflect employers' claims histories. But the changes resulted in some employers seeing major swings in their X-Mods, increasing them up to 15%, sometimes even more.

The result for some employers was a double-whammy price hike from not only increasing rates filed by insurers, but also premium increases based on higher X-Mods.

The Bureau calculates X-Mods by comparing an employer's actual claim costs to the average claims costs expected of all employers of similar size and industry classification.

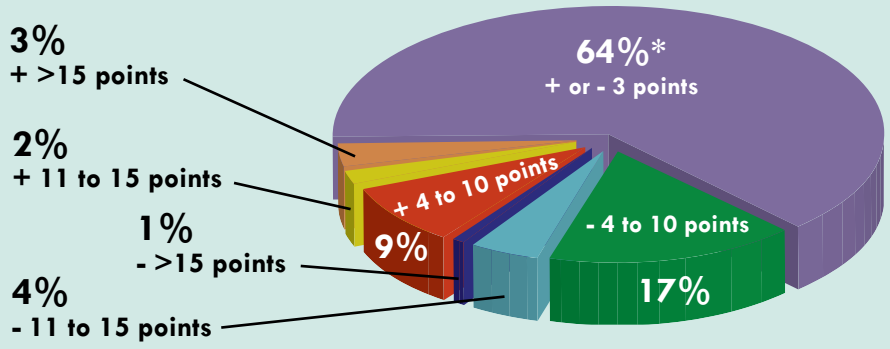
The formula takes into account how much credibility to assign to the experience of an individual employer.

For large employers, actual claims experience is considered a good indicator of future claims experience. In other words, larger employers have higher credibility values.

But small employers' claims experience can be volatile and more a function of chance. As a result, small firms have been assigned lower credibility values in the experience rating formula. That's changed under the new Experience Rating Plan. On Jan. 1, the Bureau started assigning more credibility to most employers' actual claim history.

Large Swings for Few Firms

Experience Rating Plan changes resulted in these swings in X-Mods for employers.



Source: Workers' Compensation Insurance Rating Bureau * Percent of experience-rated employers

Because of the Bureau's prior practice, that's why smaller employers are likely to see the biggest swings in their X-Mods as a result of the change.

"In other words, for most employers, all else being equal, somewhat greater weight is being given to their own claim experience," the Rating Bureau said. "Employers that have better than average experience will generally receive a lower credit experience modification in 2013 than they would have received in 2012. Conversely, employers that have poor experience will generally receive a higher experience modification."

The Rating Bureau has regularly been updating the Experience Rating Plan ever since the insurance commissioner's 2008 Experience Rating Task Force recommended that it do so.

"As the payroll and claims experience of California experience-rated employers evolves, so too must the credibility values in order to maintain the Experience Rating Plan's actuarial balance," the Rating Bureau wrote.

The last change to credibility values was in 2010. ❖

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RISK MANAGEMENT

Top 10 Lessons for Avoiding Employee Lawsuits

AS THE NUMBER of statutes regulating how you treat your employees continues to grow, it's getting harder to comply with the law and avoid being sued.

Consider that you have to deal with the Americans with Disabilities Act (ADA), the Family Medical Leave Act (FMLA), the National Labor Relations Act, workplace safety laws, and more.

That's a lot to keep track of, but there are some rules that you can abide by even if you are not familiar with all of the workplace laws.

The labor law firm of Fisher and Phillips has issued a supervisor survival guide with the following rules for your managers and supervisory staff:

1. Speak the truth – Make sure that employees understand how you assess their job performance. This means telling employees what they are doing well as well how they are not meeting expectations.

Evaluations that overrate employees' job performance can be devastating during litigation. Judges and juries are generally unsympathetic toward supervisors who suggest that they did not really mean what they wrote on a performance evaluation.

2. Communicate clearly and directly – Supervisors should expect employees to do their jobs and cannot let niceties obscure their message.

For example, instead of telling an employee that they have an opportunity to improve, identify what specific aspect of performance is below expectations and what must be done to improve. Offer to assist, but make it clear to the employee that you expect improvement. Document these communications succinctly and explicitly.

This rule applies to policy violations, poor attendance and simple coaching or reminder sessions.

3. Avoid surprises – Many lawsuits result from an employee being surprised by disciplinary action or a firing. If communication is consistent, clear and direct, employees should never be surprised by disciplinary action. They may not agree with the decision, but they should never be able to say truthfully that they did not see it coming.

4. Always get both sides of the story – Always give accused employees a chance to tell their side of the story. Also, do not document conclusions or prepare termination papers until the probe is finished.

5. Keep your promises – Supervisors who promise to meet regularly with staff, or to provide periodic feedback, must do so.

Again, jurors are unlikely to forgive supervisors who criticize an employee's job performance, but fail to abide by their own follow-up schedule.

6. Don't ignore protected status in making employment decisions – If an employee in a protected classification (race, sex, religion, age, disability, etc.) is treated differently under the same circumstances from someone who is not in the protected class, supervisors and human resources must be able to justify the reasons clearly.

When considering which employees fall in a protected classification, don't overlook those who recently took FMLA leave, sought an accommodation under the ADA, or provided information in response to an investigation of alleged workplace discrimination.

7. E-mail with care – Quick, off-hand messages have the potential to be extremely embarrassing if presented, out of context, to a jury. Therefore, it is never a good idea to fire off quick responses, especially when emotions are running high. Wait a few moments before hitting "send" – and be especially carefully about using the "reply to all" button.

8. Document the important facts immediately – With lots on your plate, important details can easily become fuzzy memories. When jotting down key facts, ensure that the documentation is dated, legible and understandable. Always include objective language describing "who, what, when, where and why" and identify any witnesses.

9. Send it to HR – When supervisors keep files containing notes or information that have not been forwarded to human resources, it almost always creates problems if the company is sued. This can force the employer to change a representation it has already made to the Equal Employment Opportunity Commission or plaintiff's counsel. More importantly, it can support a plaintiff's contention the supervisor cannot be trusted or is hiding something.

10. Don't forget you are the boss at all times – During breaks, after hours, on weekends or away from work, supervisors carry the mantle of authority.

Inappropriate comments or "jokes" can come back to haunt you later. ❖

HEALTH STUDY

Consumer-driven Plan Enrollees More Cost-conscious

WITH CONSUMER-driven health plans gaining more traction among employers looking to save money and put more health care decisions in the hands of their employees, a new study shows that these plans have an added benefit: greater cost-conscious behavior by covered individuals.

CDHPs, which trade lower premiums for higher out-of-pocket costs for covered individuals, require employees and beneficiaries to be more involved in health care issues.

These health plans allow enrollees to use health savings accounts and health reimbursement accounts, or similar medical payment products, to pay for routine health care expenses directly.

Individuals in a CDHP are more likely than those in a traditional plan to exhibit a number of cost-conscious behaviors, according to new research from the Employee Benefit Research Institute (EBRI).

CDHP, high-deductible health plan (HDHP) and traditional-plan enrollees were about equally likely to report that they made use of quality information provided by their health plan.

But CDHP enrollees were more likely to use cost information and to try to find information about their doctors' costs and quality from sources other than the health plan, according to the report.

That is likely because these enrollees are paying for more of the cost out of pocket.

The study also found that CDHP enrollees were more likely than traditional-plan enrollees to take advantage of a wellness program when such a program was offered. The top reasons they gave for participating were that they were offered incentive prizes and reduced premiums.

Adults in CDHPs were significantly more likely to report being in excellent or very good health. Adults in a CDHP were significantly less likely to smoke than were adults in a traditional plan, and they were significantly more likely to exercise. CDHP and HDHP enrollees were also more likely than traditional-plan enrollees to be highly educated.

Specifically, those in a CDHP and those in an HDHP were more likely than those with traditional coverage to say that they had:

- Checked whether the plan would cover care (56% CDHP vs. 45% traditional);
- Asked for a generic drug instead of a brand name (53% vs. 41%);
- Talked to their doctors about prescription options and costs (38% vs. 30%);
- Talked to their doctors about other treatment options and costs (35% vs. 28%);
- Developed a budget to manage health care expenses (26% vs. 16%);
- Checked the price of a service before getting care (32% vs. 23%); and
- Used an online cost-tracking tool provided by the health plan (23% vs. 11%).

The study found a continuing migration to CDHPs. Last year, 12% of the population was enrolled in a CDHP, up 3 percentage points from 2011, according to the EBRI, while enrollment in HDHP s was unchanged, at 16%. HDHPs have lower premiums but higher deductibles (at least $1,000 for employee-only coverage) than traditional plans.

Overall, 18.6 million adults aged 21–64 with private insurance, representing 15.4% of that market, were either in a CDHP or a HDHP that was eligible for a health savings account.

When their children were counted, about 25 million individuals with private insurance, representing about 14.6% of the market, were either in a CDHP or a health savings account-eligible plan.

The theory behind account-based plans and plans with higher deductibles is that the cost-sharing structure will be more likely to engage individuals in their health care, compared with people enrolled in more traditional coverage.

Your broker at Heffernan Insurance Brokers can help you decide which plan is best for your company.❖

OFFICE ROMANCE?

Consider a 'Love Contract' to Reduce Liability

SPRING IS almost in the air and that means romance and sometimes Cupid's arrows penetrate the walls of a workplace.

It's easy to see why it happens. After all, some people spend more time at work with their colleagues than they do with their families, and the bonds that grow from working together can be strong.

While romance can be good for the couple, it can also lead to disruption at a company, particularly if the relationship goes south and the two still have to work together.

Of course, it's awkward for an employer when you suspect an office romance, you notice from their behavior that something is going on, or you hear talk of a new relationship. While you don't want to pour cold water on the romance, you for sure also don't want the relationship to affect your company's ongoing interests.

The labor law firm of Fisher & Phillips LLP recommends that employers don't sit on the sidelines and watch an intra-office romance blossom and later implode, while affecting their operations.

Most companies have written policies that discourage managers from dating peers. They often have stronger rules forbidding managers and subordinate employees from fraternizing in ways that could lead to romance. The largest concern for employers is that the relationship could lead to sexual harassment claims and conflicts of interest.

Still, a worker-worker relationship can cloud your employees' judgment, but so can a break-up. In either case, it could mean your business suffers as a result.

To fend off any fallout, particularly of the legal variety, Fisher & Phillips recommends the novel approach of a "love contract."

A love contract is a written document that confirms that two employees' romantic relationship is completely voluntary. When used correctly, it can help reduce the possible ramifications of romantic entanglements – such as future litigation. After all, you don't want to be held liable if a romance fails and one party claims he or she was unable to end the relationship without fear of on-the-job retaliation, including harassment and job threats.

While love contracts are not agreements in the legal sense, they require the involved employees to acknowledge that the relationship is consensual and that they entered into it voluntarily and without coercion. And while a love contract will not prevent litigation, it could be useful in crafting your defense in case a lawsuit is filed.

Hence, love contracts should be used sparingly and only in appropriate situations. This dispels the notion that such relationships are always company-approved.

Having a policy that governs romance in the workplace, if implemented properly and enforced consistently, has significant benefits. If not, your company could find itself fighting a costly legal battle. ❖

What Is 'Affordable Coverage' under Affordable Care Act?

IN A BIT of good news from the IRS, the agency's final rules on what constitutes "affordable coverage" under the Patient Protection and Affordable Care Act will only apply to employee-only coverage, and not insurance for the family.

Previously proposed regulations said the requirement only applied to self-only coverage, with coverage considered unaffordable if employees' premium contribution exceeded 9.5% of W-2 wages for the prior calendar year (as reported in Box 1 on IRS Form W-2).

Regulators at the time said they would research whether the penalty should apply if the premium they charged enrollees for family coverage exceeded the 9.5%.

But in the end, the IRS decided to just apply the 9.5% to the premium an employee pays for their own coverage.

That means employees will be eligible for premium subsidies only if self-only premium exceeds 9.5% of their W-2 wages. It also means an employer won't be faced with a penalty unless the coverage it offers costs the employee more than that 9.5%.

To qualify for the safe harbor of the employer not being penalized, the employee's required contribution must remain a consistent amount or percentage of W-2 wages during the year.

The monthly wage is determined on a per-employee basis. For hourly-paid employees, the computed monthly wage is arrived at by multiplying the employee's hourly rate of pay at the beginning of the year by 130 hours per month.

For salaried employees, the computed monthly wage is the employee's monthly salary as of the beginning of the year. Because the rate of pay is determined at the beginning of the year, if an employee's wages are increased during the year, the 9.5% cap must still be based on the lower rate of pay.

Special rules apply to employees who were not employed for the entire calendar year. ❖