

Risk Management

Settling Claims on Your Own May Void Your Policy

WHILE YOUR insurer is responsible for investigating and paying claims made on your business's commercial general liability policy, you also have responsibilities when filing the claim.

Two of the key parts of your responsibilities are:

- Notifying your insurer of the claim as soon as possible.
- Not taking the claim into your own hands before notifying the insurer.

Commercial general liability (CGL) coverage is usually written on an occurrence basis, meaning that the policy will cover events that occur during the period the policy is in force. In other words, if an occurrence hits towards the end of

the policy and notification is made after the policy lapses, the insurer would still be required to cover it.

Let's look at your responsibilities under a CGL policy after occurrence that may lead to a claim.

The late claim

Under the standard CGL policy, you are required to notify the insurance company of an occurrence that may result in a claim being filed against the policy "as soon as practicable." Practicable, however, is not defined, but courts have generally ruled that it means "as soon as possible" or the time in which a reasonable person would have filed the claim.

The rule of thumb is to contact your insurer or us as soon as you think you may have suffered an event that will require a claim to be made.

If you file a claim so late that it compromises the insurance company's right to settle the issue, then this would be deemed a violation of the policy.

The provision spells out the specific items that should be sent to the insurance company. It requires that you authorize the insurance company to obtain additional records and information, and cooperate with them in the investigation of the claim.

HOW DAWDLING CAN COST YOU

A U.S. Circuit Court of Appeals in 2016 held that Dallas Plaza Hotel had waited too long to file a claim with its insurer after suffering hail damage in July 2009.

The court ruled that because the hotel had waited more than 19 months to file the claim, it was impossible for the insurer, American Insurance Co., to ascertain exactly when the damage had occurred.

The hotel's insurance policy required that it make "prompt notice" of any claims.

Don't settle matters yourself

The other way to get the claim voided is by doing the following without the insurance company's consent:

- Making any voluntary payments
- Assuming any obligations
- Incurring any expenses (other than first aid).

In short, the insurance policy bars you from settling the matter on behalf of the insurer and then seeking reimbursement from them. ❖

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Most Disaster-hit Firms Have Wrong Type of Insurance

A NEW REPORT by four Federal Reserve Banks found that small businesses affected by large disasters had failed to secure the right type of insurance, and that there was a mismatch between damages suffered and their insurance coverage.

While some businesses suffered actual property damage, the majority that were affected by hurricanes, other major storms, wildfires and flooding suffered uninsured economic damages as a result of having to close or limit operations following such events that struck in 2017.

The study by the Federal Reserve Banks of San Francisco, New York, Richmond and Dallas found that because insurance holdings appeared to be mismatched to the actual damage that occurred, many businesses suffered uncovered losses.

Additionally, affected firms applied for credit financing more than disaster relief, and most of them faced funding gaps.

The concern is that this phenomenon is widespread across the United States, which is experiencing an increasing frequency and severity of natural disasters. And the main area of an insurance mismatch seems to be not in property protection, but in business interruption coverage.

Here were some of the main findings of the report:

- For affected firms, foregone revenues – not assets – were the largest source of losses.
- Sixty-five percent of affected firms cited loss of power or utilities as the source of their losses. But, only 17% had business disruption insurance at the time of the disaster.
- Flood damage (38%) and wind damage (36%) were also common sources of losses, but only 16% of affected firms had specific flood insurance coverage and just 21% had wind insurance.
- Of the affected businesses, 36% did not lose any assets, 45% had asset losses ranging from \$1-\$25,000, and only 19% lost more than \$25,000.
- Of the affected firms, only 4% did not have any revenue losses, 61% had revenue losses ranging from \$1-\$25,000, and 35% lost more than \$25,000.
- Affected firms reported sizable revenue and employment gaps and elevated incidence of financial challenges compared to unaffected firms.
- Their insurance holdings appeared to be mismatched to the sources of their damages, leaving uncovered losses. For example, 65% of affected firms cited power or utilities issues as the source of their losses, but only 17% had business disruption insurance.
- After the catastrophes, 48% of affected businesses applied for credit financing and 27% filed for disaster relief (indicating they did not have the correct insurance).

Securing business interruption coverage

In light of the increasing severity and economic cost of natural disasters, it is critical that small businesses secure business interruption coverage to account for the lost revenue from the downtime they suffer post-incident.

Many business owners assume that the property insurance they already own will cover their lost revenue, but they're wrong. Business interruption insurance is designed to replace revenue losses a firm might suffer in the case of a disaster, be that an equipment breakdown, problems experienced by suppliers, strikes that affect distribution networks or a natural disaster, among others.

While property insurance covers the value of those physical assets, it does not cover the lost revenue potential. In some cases, this has led to businesses losing so much income that they have had to shut down.

Your business may need business interruption coverage if it:

- Relies heavily on physical assets
- Has smaller profit margins
- Operates in areas prone to natural disasters
- Deals with or handles volatile materials.

Call us for more details and to find out if your firm may need coverage. ❖



Workers' Comp

Keep Injured Staff in the Loop to Reduce Claims Costs

THE KEY to getting injured employees back on the job and reducing litigation is keeping them engaged and educating them, so they have a better understanding of the claims process and what they can expect from it.

Employers that advocate for the injured worker, instead of just giving them the standard booklets on what to expect, can help them heal up enough to integrate back into work. Also, by keeping injured workers in the loop, you reduce the chances that they will seek out legal counsel for their claim, at which point it can spiral out of control for the employer.

The trend among forward-thinking employers is to use a few techniques for improving satisfaction among their injured workers, which in turn leads to lower claims costs.

Early treatment

Getting an early and accurate diagnosis and putting the injured worker on a treatment plan greatly helps them recover faster – and it prevents the misuse of medicines.

This fast-track – or sports medicine – approach has the added effect of letting the employee know they are valued and that the employer cares about their swift recovery.

Speak openly

Once an employee is off work for a workers' comp claim, they can easily start feeling disaffected and lost, particularly if they are left out of the loop about their claim.

If you at any point plan to discuss the claim, the injured worker should be included. This is important because some injured workers mistakenly believe their job is at risk after filing a claim.

Unfortunately, their treating physician and the claims adjusters will often not have the time to talk to the injured worker. Your H.R. manager can keep them engaged through education and explaining the processes.

Advocacy

Some employers have also taken steps to advocate for their

injured employees through the workers' comp process and representing their interests before the claims adjuster.

Employers who have had the best success sit down with the injured worker as early as possible to lay out the entire process for them, from the first doctor's visit to what to expect when dealing with the claims adjuster.

The main reason injured workers hire attorneys is that they don't understand what's going to happen and they don't understand the workers' compensation process. Acting as an advocate for the injured worker, and holding their hand through the process, will go a long way to easing their fears.

Monitor and explain treatment

The proactive employer will stay in touch during treatment and help the worker monitor their process. If the employer is engaged, the injured worker is more likely to stay on track with the treatment regimens prescribed by the doctor.

This may involve coordination with the treating physician so that any physical rehabilitation is done with their job responsibilities in mind. A good therapist can also explain why certain exercises are necessary for the injured worker.

Also, urge the rehab center and the claims adjuster to ensure that the injured worker sees the same therapist every time.

Stay engaged

Some employers communicate with the treating physician, claims adjuster and injured worker about the possibility of the individual coming back to limited or restricted duty.

Just remember, your engagement with the injured worker must be done in a way that best meets the person's needs.

Also, if there is friction between the worker and a superior, make sure it's not their superior that's engaging with them during this process. You don't want any undue stress on the injured employee during this sensitive and critical period.

Knowing the employer is concerned about their well-being, and is looking forward to their return, can aid recovery. ❖



When a Customer Harasses One of Your Employees

SOCIETY HAS become increasingly aware of the problem of sexual harassment in the workplace. Several high-profile offenders have seen their careers harmed or ended.

Employers are beginning to realize the harm this behavior among employees can cause. However, the problem might not be the business's workers; in many cases, it is the customers.

Harassment by customers may occur in any business, but it is especially prevalent in the hospitality sector. That's especially true if customers have been drinking and behave inappropriately toward waitresses, bartenders, casino dealers or housekeeping staff.

Sales representatives may be subjected to unwanted attention and language, particularly during client dinners where most of the diners are men. And nurses are regularly subjected to patients exposing themselves or touching them improperly.

Employers who do learn of these problems have at least a legal responsibility to address them.

Some employers, such as restaurants, have a no-questions-asked procedure whereby a server can report to a supervisor that a customer is making them feel uncomfortable and the supervisor will immediately assign someone else to that table. This policy tells employees their complaints will be taken seriously.



The legal implications

Employers cannot afford to ignore these problems. Equal Employment Opportunity Commission regulations hold an employer liable for harassment by non-employees over whom it has control, such as customers on the premises, if it knew, or should have known about the harassment and failed to take prompt and appropriate corrective action.

The EEOC levies penalties of up to six figures for sexual harassment.

In addition, victimized employees may sue their employers for tolerating hostile work environments. Settling these lawsuits can be costly.

If the employers do not carry employment practices liability insurance, settlement costs and attorney and court fees will be paid for out of pocket.

Lastly, the failure to protect employees from harassment can lower workplace morale. This will inevitably lead to increased staff turnover. The employer will lose valuable employees and be faced with the cost of hiring replacements.

Federal law gives employees the right to feel safe at work, free from mistreatment by co-workers, supervisors and non-employees. It is also good business practice to provide a place where people want to work.

Employers must be vigilant about possible mistreatment of staff by customers and vendors. Tolerating this behavior may save a customer in the short run, but it will cost the business dearly in the longer term.

A final thought: Sexual harassment is not the sole preserve of men harassing women. It is also an issue of women harassing men, men harassing men, or one female harassing another. ❖

If an employee complains...

- Listen to them and take them seriously.
- Thank them for coming forward.
- Let them know that the issue will be addressed with the customer.
- Ask them to report any further incidents that may occur.
- Do nothing to imply that they will be retaliated against.

What to do next

- Investigate the incident, including discussions with any witnesses.
- If the customer is from another business, refer the matter to an appropriate person at that company. This should be someone with the authority to take any necessary action.
- If the customer is an individual, separate the employee and the customer.
- If the customer persists, issue a warning.
- As a last resort, ask the customer to leave the premises.