

THE REPORT

February 2017
Volume 5
Issue 1

WORKERS' COMPENSATION

Non-compliance with Exclusion Rules May Cost You

IN THE last quarter of 2016 you should have received correspondence both from us and your insurance carrier if you have claimed any owners or officers as exempt from workers' compensation coverage on your policy.

The notification was in response to Assembly Bill 2883, which amended rules related to the exclusion of officers and members of boards of directors of private or quasi-public corporations, general partners of a partnership and managing members of a limited liability company under a workers' compensation policy.

Starting Jan. 1, 2017 only officers or directors who own 15% or more of the stock of the corporation may be excluded from coverage.

Based on this wording, only six individuals can be excluded on any one policy.

Also, AB 2883 changes the method by which individuals may be excluded.

Individuals eligible for exclusion were required to have submitted no later than Dec. 31, 2016 a written waiver of workers' compensation benefits under

penalty of perjury certifying that they are a qualifying officer, director, general partner or managing member of an LLC.

If you claimed an exclusion, you would have received correspondence asking that you submit the required documentation by Jan. 1.

If you failed to comply, you will have rendered your exclusions invalid under the law and your policy will be subject to additional premium.

This rule applies to all in-force policies, even those that do not incept on Jan. 1.

Insurance companies are still working on how and when they will charge the premium for individuals who no longer qualify to be excluded (those who own less than 15% of the organization).

They will use the typical factors in determining the premium, like job duties, class code and salary.

Inclusion will be effective from Jan. 1, 2017 until the expiration of your policy.

If you have questions or concerns about these changes, do not hesitate to call us. We are always here to help. ❖

WHO CAN AND CAN'T CLAIM EXEMPTION FROM COVERAGE



Eligible individuals

Corporations – Officers, directors (i.e. members of board of directors) must own 15% or more of the stock of the corporation.

Partnerships – Only general partners.

LLCs – Only managing members.

Ineligible individuals

Any individuals in the organization that are not included in the above requirements.

Individuals will be endorsed to the policy as of Jan. 1, 2017 and subject to officer minimum/maximum payrolls.

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EEOC LAWSUITS

Employers Sued for Actions vs. Prescription Drug Users

BY NOW YOU will be aware of the scourge of opioid abuse that's swept the country over the past decade and the damage it is doing to individuals and families.

Overdoses from legal prescription drugs – mostly opioids and other strong pain relievers – last year surpassed overdoses from street drugs like heroin for the first time.

However, some employers are going too far in trying to prevent employees from taking certain medications while on the job and have as a result run afoul of the Equal Employment Opportunity Commission.

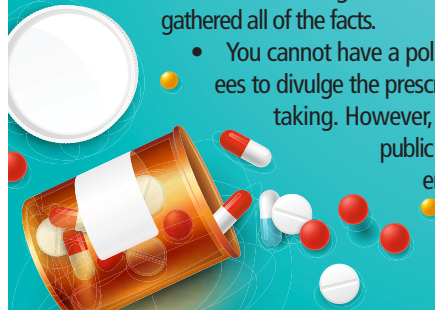
As you would enter an interactive process when trying to make accommodations for an employee's disability, you must do the same if you have concerns about a worker taking prescription drugs for a medical condition.

Two recent lawsuits illustrate the issues that could spark action by the EEOC.



WHAT YOU CAN DO

- If you suspect someone is taking prescription narcotics that are affecting their performance, you can have a talk with them. If they have a prescription, you may need to enter into an interactive process with them to try to find ways to accommodate them under the ADA.
- If they are taking pharmaceuticals for which they do not have a prescription, that is illegal drug use and you can impose discipline for violating your policy against illegal drug use.
- You can still conduct pre-employment drug tests legally and regulate abuse of drugs in the workplace. But make sure that you account for the need to engage in an interactive process with individuals taking prescription medications and, if necessary, provide reasonable accommodations.
 - Avoid taking adverse actions when you have not gathered all of the facts.
 - You cannot have a policy that requires all employees to divulge the prescription medications they are taking. However, there are exceptions when public safety and the safety of other employees is concerned.



SOURCE: Littler Mendelson

Refusing to hire after drug test

One case, filed in September 2016, concerns a woman who had her job offer by a casino rescinded after she had failed a pre-employment drug test.

But the applicant was taking prescription medication for a back and neck impairment, which caused her to fail the test, the EEOC alleges.

Despite the applicant's explanations and even offering to provide documentation, the casino still refused to hire her, according to the agency.

The EEOC alleges that the company violated the Americans with Disabilities Act (ADA) when refusing to hire the applicant, because she was taking lawful prescription drugs due to a disability.

The lawsuit also challenges the casino's blanket policy requiring all employees, regardless of whether they work in safety-sensitive positions, to disclose their prescription or non-prescription drug use.

Fired for prescription drug use

The EEOC sued a medical center in Georgia for firing one of its doctors after learning that he was taking prescription narcotics to treat chronic pain for which he was undergoing treatment.

He was terminated despite offering to provide a letter from his own doctor explaining why he was taking the medication and receiving spinal injections. The medical center said he would be unable to perform his duties while taking the medications.

The EEOC alleges that the physician could have performed his job safely and competently, and that the medical center failed to enter into a dialogue with him, in violation of the ADA. ❖

WORKERS' COMPENSATION

Pre-existing Conditions Weigh Heavily on Claims



YOUR WORKERS' underlying health can greatly affect the amount of time they are off the job recovering from a workplace injury. A new study has found that workers with pre-existing issues like hypertension, obesity and mental health spend 60% more time recovering from workplace injuries than healthy workers.

As those injured workers collect indemnity benefits during that extra time, the cost of a claim often increases substantially.

The findings in the study of more than 7,000 workers' comp claims by Harbor Health Systems should be a wake-up call for employers to try to help workers address their health problems, if possible. These types of claims also had higher rates of litigation and surgery.

Seven 'comorbidities' studied

- Obesity
- Diabetes
- Mental health
- Multiple comorbidities (one or more of the above)
- Hypertension
- Addiction
- Tobacco use

The takeaway

The results of the study were a confirmation that underlying health problems will worsen outcomes. Only tobacco use seemed to have no discernable difference on claims outcomes.

Employers can encourage their employees to improve their health through company wellness plans and ensure that they have access to health insurance to treat their medical issues.

Claims management experts say that insurance company adjusters need to intervene early in cases where injured workers are saddled with these comorbidities. ❖

DURATION AND COST INCREASE



- For claims involving multiple comorbidities, claim duration increased by 76%.
- For claims involving addiction, duration increased 67%.
- For claims involving obese individuals, duration rose 55%.
- For claims with multiple comorbidities, total incurred costs increased 341%.
- Claims in all the comorbidity groups had significantly higher temporary total disability days than the control group.
- TTD days increased by 285% for multiple comorbidities claims and 274% for addiction-related claims.

LITIGATION SPIKES

- Litigation rates for claims with multiple comorbidities increased 147%.
- Litigation rates for addiction-related claims increased 224%.
- Litigation rates for mental health-related claims rose 248%.

BUSINESS CONTINUITY

A Strong Crisis Management Plan Can Save Your Firm

YOU SHOULD hope it never happens to your organization, but unfortunately, a crisis can strike any company at any time. If your business suddenly became embroiled in a crisis, would you be prepared to handle it? If you were putting out fires, or a major conflagration, and you didn't have a crisis management plan in place, how would you respond?

Crises can take many forms, like the death of an owner, one of your products causing death or injury, or if historic flooding suddenly inundates your town, forcing you to cease operations.

To prepare and ensure resiliency, you should think about how a disaster would affect your operations, clients, suppliers, employees and the value and goodwill you've built up over the years. And you need to put together a plan for communications during this time.

Do it now

You should create your crisis management plan when your business is running smoothly and you have time to devote to thinking out a successful strategy.

This also gives you a chance to involve key employees in the process and open it up for brainstorming on how you would handle different crises.

You may want to include in this process advice and input from:

- Members of your leadership team
- Employees
- Customers
- Communications experts
- Lawyers ❖

CRUCIAL STEPS

1. **Have a plan** – Put in place clear objectives that you would want to pursue during a crisis. Objectives should include protecting human life, ensuring that the organization survives and that your stakeholders (clients, suppliers, employees, the public) are kept informed. Include specific actions that you would take in a crisis.
2. **Different responses to different crises** – Have plans in place for various crises that could strike your organization. If it's the sudden loss of a key employee or owner, you should prearrange a succession plan and transfers of responsibility. If it's a natural disaster that disrupts operations, have plans in place to ensure that you can continue operating, such as arranging for alternate suppliers, or for an alternative location if you are unable to function in your current facilities.
3. **Be transparent** – Being as open and transparent as possible can help stop rumors and head off any negative fallout among the public and media. You can do this by reaching out to the media with press releases and interviews, as well as on social media.
4. **Keep employees informed** – It's extremely important that you keep your employees informed, to keep morale up and so that they can help you keep your operations afloat. This also stops the rumor mill from circulating out of control.
5. **Reach out to clients and suppliers** – Head off any misunderstandings by communicating with your customers and suppliers before they learn it from another source. Keep them informed of what's happened, how it has affected your operations and how it might affect them during this period.
6. **Update early and often** – Thanks to smartphones and the Internet, we now live in a 24-hour news cycle. That means you should make updates regularly and as needed, in order to keep all stakeholders informed.

