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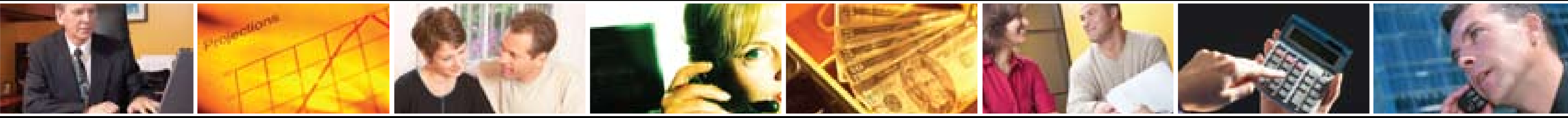
Risk Monitor



Employer Liability for Employee Cell Phone Use on the Rise

Employers are facing increasing liability as a direct result from their employees' cell phone use. So why is this the next legal frontier? The number of lawsuits involving employer liability for traffic accidents caused by employee cell phone usage is steadily growing, as well as lawsuits based on health problems associated with cell phone use.

The principal of vicarious liability states that an employer is responsible for the harm caused by its employees if the employees are acting within the scope of their employment at the time an accident happened. In this situation, a company can be held accountable by a third party for auto accidents caused by an employee's cell phone use if the company provided the phone or if the cell phone is an integral part of the employee's job. The company can even be held liable for incidents resulting from personal calls made by employees on company-issued cell phones, or phones inside company cars.

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There is also an emerging trend establishing that an employer can be found directly negligent if it allowed employees to use cell phones for business without proper training or in spite of safety issues, and an accident results.

Another exposure resulting from employee cell phone use is the rise in the number of claims brought by employees for health problems associated with their cell phones. Employees who consistently use cell phones as part of their job are filing workers' compensation claims and lawsuits alleging that radio frequency radiation from cell phones causes brain cancer.

The scientific evidence concerning whether or not cell phone use increases the risk of cancer is inconclusive. There are two studies that are most frequently quoted, and their results are contradictory. A study conducted at the Danish Institute of Cancer Epidemiology, whose results were released in December 2006, followed the health of over 420,000 cell phone users over the course of 21 years to determine if cell phone use causes cancer. The researchers concluded that the radio frequency energy produced by cell phones did not increase the risk of contracting brain cancer. However, a April 2006 study conducted by the Swedish National Institute for Working Life, examined the cell phone usage of 905 adults who developed malignant brain tumors. They found that people with more than 2,000 hours of total talk time had 3.7 times the risk of developing brain cancer as compared with non-users. The study also found an increase for tumors specifically on the side of the head where the cell phone was used.

While there is no way to alleviate all potential liability arising from cell phones in the workplace, companies can offer employees training on the safety issues and possible health risks associated with using cell phones. Promoting a safe workplace is a simple way to reduce the number of accidents and health risks associated with cell phones.

Welcome to the Elliot Whittier Insurance Newsletter!

It is with great satisfaction that we bring this newsletter to you. In this issue and in coming months, we will discuss pertinent risk management topics which may affect your organization. We sincerely hope that you will find this newsletter informative and please do not hesitate to contact us should you have any questions or needs.

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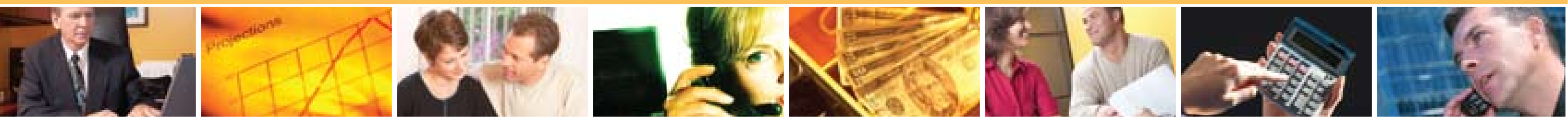

Insurance Mistakes That Will Cause You to Lose Money

Fear is an important motivator when it comes to buying insurance. We worry about what will happen to assets like cars or homes if they are involved in a disaster, so we buy insurance to help us maintain their financial integrity if something should happen.

But in spite of the fact that insurance is designed for this purpose, sometimes it can't give us the outcome we expect. That's not because of something inherently wrong with the policy, but rather it is the result of human failure. When you bought your policy, you failed to take into consideration the level of coverage you really needed, and what you have isn't sufficient to restore your assets to pre-disaster condition.

That's just one of the most common insurance mistakes that could end up costing you.

Here are some others:

- Thinking you're saving money because you bought the cheapest policy you could find – Initially those low premiums will seem like a savings; but if the cost of an accident ends up being more than your policy coverage limits, the rest of the expense will be out-of-pocket. In addition, the other parties involved could sue you, and if you don't have any coverage, you could end up losing a large part of your assets.
- Failing to pay your premiums on time, or not at all – There could be a legitimate instance in which you don't pay on time. However, when you don't pay, your insurance company isn't required to cover you. To avoid a disruption in coverage, set up automatic payments through your bank or insurer.
- Making assumptions about what is covered – There are limitations to the coverage a homeowner's or auto policy will provide for high-ticket items. You should never assume that all of your possessions are covered. What you can do is add extra coverage to your policy with an endorsement, which gives you higher limits on these types of items.
- Overlooking the importance of umbrella liability policies – These policies got their name because they protect you from a financial downpour. They can be purchased separately or you can obtain one from the same company that insures your car or home. Buying from the insurer you already have usually entitles you to a premium discount on the liability coverage. Umbrella policies are usually sold in increments of a million dollars. Generally you would pay between $100 to $300 a year for the first million dollars worth of coverage and another $50 to $100 for each additional million. Keep in mind that when determining your premium, your insurer may take into consideration such factors as the number of traffic tickets you've received over the past few years, and your credit report.
- Failing to inform your insurance agent about changes that could affect your coverage needs – If you've added on to your home, or purchased an expensive sound system, you need to contact your agent to see if the policy you have still meets your needs. Your agent can also find ways to help you save money on premiums that won't affect the quality of your coverage such as enrolling in a driver safety class, installing a home security system, increasing your deductible, or taking advantage of multi-policy or good student discounts.

Follow Section 101(j) to Exclude EOLI Death Benefits from Tax

The employer practice of purchasing insurance on the lives of employees, payable to itself—known as employer-owned or company-owned life insurance (EOLI or COLI)—was made subject to tight tax rules with passage of the Pension Protection Act of 2006 (PPA). The PPA added Section 101(j) to the Internal Revenue Code, applying to policies issued after August 17, 2006. While, generally, life insurance proceeds are not taxable to the beneficiary, for EOLI, unless the provisions of Section 101(j) are followed, death benefits will be subject to income tax, to the extent they exceed the investment on the contract (premiums and any other payments that have been made on the policy). Essentially, Section 101(j) limits the individuals upon whom a policy can be issued, requires that these employees know about the policy and consent to it, and requires the employer report information about its EOLI policies to the Internal Revenue Service.

Employers use EOLI for various reasons, including protecting the organization against the cost of losing a key employee, underwriting certain employee and retirement benefits and nonqualified and deferred compensation programs, and planning for various long-term liabilities. At the time Section 101(j) legislation was enacted, some major insurance industry organizations praised it as codifying some of the "best practices" on EOLI. That said, employers that use EOLI need to know these practices and adhere to them, or they can find themselves unwittingly facing significant tax liability.

Section 101(j) starts out with a general rule: In the case of an employer-owned life insurance contract, the death benefits excluded from gross income cannot exceed the premiums and other amounts paid on the policy. The statute then immediately carves out exceptions to this general rule, based on the insured's

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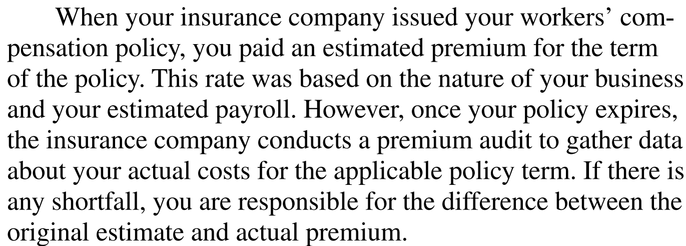

Preparing for Your Workers' Compensation Premium Audit Can Save You Money

When your insurance company issued your workers' compensation policy, you paid an estimated premium for the term of the policy. This rate was based on the nature of your business and your estimated payroll. However, once your policy expires, the insurance company conducts a premium audit to gather data about your actual costs for the applicable policy term. If there is any shortfall, you are responsible for the difference between the original estimate and actual premium.

Naturally, you want to keep the difference between the estimated and actual rate as low as possible. Consider the following list of tips:

- Have all necessary records available for the auditor.
- Break down your payroll by classification code so that the auditor doesn't have to classify any unexplained payroll. Leaving the decision up to the auditor could result in having the payroll placed in the highest classification.
- Separate overtime wages from regular wages. This allows the auditor to discount the overtime wages back to regular wages.
- Exclude tips, severance pay, meal and travel advances and bonuses paid for inventions, because none of these are included in workers' compensation premium calculations.
- Divide uninsured subcontractor billings into material and labor costs since you are only required to pay premiums for labor. If you don't have an actual split, figure on 50 percent for each. One important exception to this is for heavy equipment operators who are employed as subcontractors. In this case, use a third of their total billings as reportable labor costs.
- Don't include short- or long-term disability payments in the data given to the auditor because these are excluded from premium calculations.
- Be sure to cap all covered officers' payroll at the maximum for your state.
- Exclude wages paid to employees who are on active military duty because their wages aren't included in premium calculations.
- Present the auditor with all Certificates of Insurance for covered subcontractors so you aren't charged for them.
- Classify all employees in the lower-rated payroll classifications if you aren't sure about where they should be classified. However, you should never deliberately misclassify an employee.
- Be sure you make the auditor aware of all employees who do only clerical work and are physically located away from the shop floor. These employees qualify to be classified in the lower rated clerical codes. If your clerical staff aren't physically separate from the shop, you should consider changing their work location.

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status. For the exception to apply, the insured must be among the highest paid 35% of employees, a director, an individual with at least a 5% ownership stake in the business purchasing the policy, or an individual who was an employee at any time during the 12-month period before the individual's death. (The statute also includes exceptions for amounts paid to family members, a designated beneficiary other than the business, or certain trusts, and amounts used by these individuals/trust to purchase an equity interest in the business holding the policy.)

The above exceptions will only apply if the covered employee is notified in writing, before the policy is taken out, that the business intends to insure the employee's life. This notice must include the maximum face amount for which the employee could be insured, and the fact that the business is the policyholder. After such notification, the employee must consent to being insured under the contract and to coverage continuing after employment termination.

Finally, Section 101(j) requires annual recordkeeping and reporting for businesses owning EOLI policies. Reporting is done via IRS Form 8925. Reportable information includes the number of company employees at the end of the year; the number of employees insured under EOLI at the end of the year; the total amount of insurance in force at the end of the year under EOLI contracts; the name, address and EIN of the business holding the policy, and the type of business in which it is engaged; and a statement that the business has valid consents for each policy and, if not, the number of employees insured under EOLI for whom consents were not obtained.

Given the tax repercussions of not following Section 101(j) requirements, employers holding life insurance policies on employees taken out after August 17, 2006, should check to make sure they are in compliance. If, for example, there are no notices or consents on file, or if they are dated after policy issuance, a business will need to consider how to rectify this, and perhaps have new policies issued, after following the notice and consent requirements and documenting that this has been done. Otherwise, any death benefits paid on noncompliant policies will be included in the company's gross income, to the extent they exceed the investment on the contract.

New Elliot Whittier Website!

Elliot Whittier Insurance Services, LLC is excited to announce the launch of our updated website at www.ElliotWhittier.com. The address of the site remains unchanged but the new design offers a fresh look and feel that is more focused on the needs of our clients.

The updated site offers five main areas: About us, Products & Services, News, Careers, and an Existing Customer area to file a claim, request a Certificate of Insurance or update personal information.

The new site will also offer useful links such as our Newsletter, a free, downloadable Home Inventory Taker, The Registry of Motor Vehicles, Occupational Safety and Health Administration, links to our Carriers, and more!

Elliot Whittier Insurance is a local Trusted Choice® agency that represents multiple insurance companies, so it offers you a variety of personal and business coverage choices and can customize an insurance plan to meet your specialized needs. For more information, visit us at www.ElliotWhittier.com or call Chris Millerick at: (617) 846-5000 X 135

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