

WHO'S TO BLAME FOR HIGH INSURANCE PREMIUMS?

By Michael G. Kline, Esq.

Whether your business employs 50 clerical workers or 500 construction specialists, you are undoubtedly familiar with the budgetary constraints and administrative nightmares that go hand-in-hand with workers' compensation insurance. What many businesses fail to realize, however, is that their annual cost of doing business can be drastically reduced by shifting their focus to the conduct of their insurance carriers and, more specifically, the adjusters responsible for the day-to-day handling of their claims.

Generally speaking, the state requires all insurers to raise or lower the workers' compensation insurance premiums charged to California businesses based upon their history of safety. Every year, California's Workers' Compensation Insurance Rating Bureau (WCIRB) examines employer and insurer records to determine the amounts paid to employees, the amounts paid towards workers' compensation claims made by those employees, and the amounts held in reserve by the insurance carrier as an estimation of what will need to be paid on each claim in the future. A three-year history for each employer is then utilized by the WCIRB to generate their Experience Modification Factors (Ex Mods) in the form of a percentage. That percentage conveys how safe an employer has been when compared to the statewide workers' compensation claim average for those performing the same type of work - anything below 100% evidences a history of claim expense below average, and vice-versa. If an Ex Mod exceeds 120%, fines and penalties may be issued by the State, who considers the employer "unsafe."

Each insurance company must utilize their insured's Ex Mod when quoting annual insurance premiums by multiplying the final premium amount by the employer's Ex Mod for the year in question. As a result, any employer with an artificially inflated Ex Mod - even if it is below 100% - stands to lose thousands of dollars in wrongfully increased premium charges.

Most employers blame their own employees for a jump in premium from one year to the next. They cry fraud, cite eyewitness testimony of co-workers who confirm the claim is invalid, and turn to their insurance company for assistance. However, countless cases have been filed in California against insurance companies and third party adjusters of every shape and size in which employer/insureds allege that their premiums were inflated not by claimants, but by the overworked, underpaid and under-trained adjusters who were delegated responsibility to make sure their claims were being handled appropriately.

Even more troubling is the conduct of certain insurers who, when asked by their insureds for copies of workers' compensation claim files so that those employers can determine for themselves whether certain claims were overpaid or over-reserved, either refuse to grant access to those records at all, offer overly-redacted documents of little

import, or provide the adjuster's own self-serving "summary" of events, leaving the insured without recourse.

Fortunately, however, there are steps that can be taken by the employer who refuses to sit idly by as their insurance premiums continue to increase. Independent experts - many of whom are former claims adjusters themselves - may be hired to audit suspect claims or to oversee adjuster conduct on an ongoing basis. Of course, if the insurance company is unwilling to abide by laws mandating employer access to claim records or adjuster adherence to minimum industry guidelines, one may commence legal proceedings and, if successful, recover their attorneys' fees, in full. Attorneys at WCC&E have a wide range of experience in this area and may be contacted for more information on these solutions ... and others.

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