Aegis Risk Management Services

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Workers Compensation is generally a company's largest insurance premium, it is an extremely legislated and emotional insurance with different legislations, regulations and requirements in each states. Given this I am mystified by the ongoing reluctance of employers to engage a Specialist Insurance Broker to help them manage the complexities associated with Workers' Compensation.

Where most businesses engage an insurance broker to assist them with managing the risk of their general insurance program and to prevent things from going wrong, they often only seek advice from Workers' Compensation Specialists after something has already gone wrong. Given the size and volatility of premiums and penalties in Workers' Compensation this would appear to be a backward approach.

Here are ten of the more common mistakes I see employers make in the management of their Workers' Compensation, mistakes that if you can avoid will assist in mitigating penalties and increases in premium.

1. Failing to keep track of Legislative Changes

If the fact that there is a different legislation in every state doesn't make Workers' Compensation complicated enough, the fact that the legislations are in a state of flux with the introduction of new Acts and amendments to old Acts in attempts to keep pace with both the financial and political pressures makes it a minefield for employers to navigate.

In the last two years, one state has introduced a new Act, four states have amended their acts and four states (not the same four) have made changes to the way in which an employer's premium is calculated.

Not being abreast of the changes that occur in this space can leave an employer open to penalties and significantly increased premiums.

2. Not understanding what constitutes Remuneration

The various regulators and insurers conduct "Wage" Audits on an ongoing basis. Not understanding what constitutes remuneration and how this varies across the states in which you operate can lead to having to pay additional premiums for prior years along with penalties or late payment fees. NSW for example will charge you a late payment fee calculating the interest from the date that the original premium was due, not when you received the invoice for the additional premium.

3. Failing to review their Business Activity and Industry Classification

Having an incorrect industry classification can lead to paying too much in premium or substantial penalties if it is identified that you have not been paying enough.

In some states you have the right to have your classification corrected in prior years and receive the additional premium you have paid back. However, in these same states, the regulators conduct frequent audits and they have the right to demand additional premium and penalties for these same periods if your correct classification would have resulted in a higher premium.

4. Underestimating the benefits of Premium Funding

In Victoria, NSW and Queensland the regulator provides discounts for employers who pay their premiums upfront. Many employers do not have the cash flow to do this and opt to pay the full amount through instalments, paying your insurer in instalments negates any discounts that may have been achieved.

Premium funding can allow an employer to achieve a partial discount off the full premium whilst still paying in instalments and it may also be possible to tax deduct the interest paid on the funding.

5. Not understanding Contractor arrangements

Did you know that the contract and arrangements you have in place with your Contractors is irrelevant. A person cannot contract out of their obligations or entitlements under the legislation. It is the actuality of the relationship that will be taken into consideration, contracts that claim to define a relationship as independent contractor and principal cannot alter the true nature of the relationship.

Wanting someone to be a contractor does not assuage your obligations under the relevant Act if they are actually an employee. If you engage contractors you need to understand which of them may be deemed under the Act to be workers. You need to ensure that you are declaring appropriate remuneration for these contractors and paying the appropriate premium. Failure to do this may result in the payment of backdated premiums and associated penalties.

Where you do need to declare the remuneration relating to contractors it is important to understand what you need to declare. Depending on the state, there may be deductions that can be applied, lessening the premium impact. If you have been declaring the full remuneration you have paid to your contractors, you may be able to receive a refund on prior years.

6. Not understanding the appropriate use of surveillance

If you think that getting surveillance on an injured worker will result in them being convicted of fraud, think again. In Victoria in 2010/11 surveillance was used on over 6,500 claims and only 18 claimants were prosecuted for fraud. That is less than 1%.

Surveillance shouldn't be about trying to prove an injured worker is rorting the system, as identified above, the chances of them being convicted is extremely low, so let's leave it to the various Regulators to tilt at that windmill. Our focus should always remain on what can be done to mitigate the impact of the claim on premium.

Surveillance is about helping to move stuck claims through the presentation of consistent evidence identifying that the workers capacity is greater than what is currently determined by their medical practitioner. Ideally this results in a return to work, but if that fails we can seek a reduction or cessation of weekly benefits.

7. Hoping injuries will not be reported and claims will just go away

Control and Early Intervention have been proven over and over again to be the key to reduced Workers' Compensation premiums. How can you control the duties performed by an employee whose injury you don't know about? How can you implement an early intervention approach if no one is reporting injuries for days or weeks after they have occurred?

You want to know about every injury, near miss and potential claim immediately, because once you know about it, you can work to mitigate its impact on your business.

8. Leaving claims management to their insurer

Many employers are of the mistaken belief that they are paying their insurer to manage claims on their behalf. Leaving aside the fact that your insurer is in this to make money and that their objectives won't always be aligned, remember, like all insurances, you pay Workers' Compensation Insurance to protect you from a loss, this insurance just happens to be mandatory. Your insurance is there to cover the costs associated with claims that result from work place injuries and illness.

Payment of your Workers' Compensation insurance does not require your insurer to provide your injured workers with suitable duties, develop a return to work plan or in any other way act as your Nominated Return To Work Coordinator. Under the Acts and Regulations these remain your responsibility, and if you wait around for your insurer to manage these aspects on your behalf you will end up sorely disappointed and with an inflated premium.

Employers need to gain a strong understanding of what the insurer's role is and how they can use the insurer to get better results on their claims. As the adage goes, the squeaky wheel gets the oil. It is important to understand what your Insurer can and cannot do based on the legislation and legal precedent, and knowing how to make the right noise to get them to focus on your claims and individual strategies designed to mitigate the costs of each claim.

9. Terminating Injured Workers without considering the financial ramifications

Just Don't do it! Many employers see termination of an injured worker as an escape from the problem – out of sight out of mind. They fail to consider the financial ramifications of such a decision.

By terminating an injured worker an employer is significantly increasing the potential liability of the claim to the Insurer, who in turn significantly increases the estimate on the claim, which leads to significantly increased premium costs.

As much as managing Workers' Compensation claims can be highly frustrating, making decisions that result in drastic increases to your premium without first fully exploring all other options is not going to improve an employer's level of frustration, especially on the day they receive their new Workers' Compensation Insurance Invoice.

10. Not engaging a specialist Workers' Compensation Broker

Workers' Compensation is one of the more complex areas of insurance, the complexities across the various schemes combined with constantly changing Legislations and Premiums Orders provides an environment of significant risk for employers, a risk that if not managed effectively can lead to prohibitive premium rates and legislative penalties.

Things not to do yourself:

- Orthodontics
- Your Taxes
- Attempt to navigate the complexities of Workers' Compensation

Don't wait for the claims to be made, don't wait for the Audit to be conducted, engage a specialist broker today.

Get in touch….

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