

# Managing Risk



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## How Will Driverless Cars Affect Your Business?

It's predicted that driverless cars will account for 25 percent of global car sales by 2035. How will this affect your business and your employees?

Features such as adaptive cruise control, blind-spot monitoring, automated parking and lane departure and forward-collision warnings are already making the majority of new cars semi-autonomous. The next level of innovation, implementing automated acceleration, braking and steering, will make cars completely autonomous.



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## Risk Tip

A report by The Texas Public Policy Foundation, a research and advocacy group, says that based on its analysis, more states should try to emulate the opt-out model of workers' comp available in Texas.

Many Texas employers who opt out of the state's regulated workers' comp system, or "nonsubscribe," set up alternative injury benefit arrangements funded by their group health plans. This kind of arrangement creates more opportunity for cost containment, according to the report. In many states with mandatory workers' comp laws, employers and insurers have no input in deciding the choice of doctors. "The Texas Public Policy Foundation asserts that this has led to corruption, kick-

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## How Will Insurance Coverages and Premiums Be Affected?

Obtaining and reviewing driver profiles for insurance purposes could be irrelevant or at least less critical once cars are autonomous. The culprit in an accident will be the technology, with liability for injury or damage placed squarely with the car manufacturer. Insurers in the UK have already developed “dual insurance policies” for driverless cars, which look directly to manufacturers for reimbursement of collision claims paid.

When the car (not the driver) is the insured, underwriting is a lot easier. Companies like Tesla in Asia are already including insurance as part of the sales transaction.

Some types of loss, such as from theft, vandalism, wind and floods (the “comprehensive” perils), would probably still need to be underwritten in the traditional way, evaluating risks such as where a vehicle is garaged, miles driven and possibly the insured’s financial profile.

## Will Employee Driving Records Be Necessary Anymore?

Data from the Institute for Highway Safety and the Highway Loss Data Institute show that cars equipped with forward-collision warning and automatic braking have far fewer accidents. Safety experts believe removing human error from the equation entirely should be the goal. If this happens, then as long as employees are not able to override the autopilot features of the cars they’re in,

employers won’t need to worry about driving records anymore. It’s questionable whether that’s practical, though. Even though airline pilots seldom override autopilot controls, they need to be able to do so in emergencies. Employee driving records can also provide valuable information to employers for other reasons, particularly in making hiring decisions.

One of the major benefits of driverless cars is safety. With fewer accidents there should also be lower insurance costs, at least in the aggregate. However, with more technology comes new hazards. If faulty technology causes an accident, all vehicles with the same technology will need an upgrade. That could be very expensive. Also, it may be true that with both driver and driverless cars on the road, there will be fewer accidents. But if a driverless vehicle is involved in a crash, repair costs will likely be much higher than for traditional cars because of the complex and expensive parts and technology.

In 2013, the average bodily injury claim in a car accident was \$15,443, and \$3,231 for a property damage claim. Even if aggregate property damage costs from driverless cars do not go down (meaning fewer claims but much higher pay-outs per claim), total bodily injury claims and costs should decrease significantly, since bodily injury payouts are nearly five times greater than property damage payouts.

In addition to saving premium dollars on auto insurance, fewer bodily injury accidents

backs and an increasing problem with over-prescription of painkillers,” according to a story published in *Business Insurance*.

Oklahoma’s attempt to implement opt-out legislation in 2013 was struck down by its state Supreme Court in September 2016. The court said the law denied equal protection to injured workers and denied injured workers “the constitutionally protected right of access to courts.”

Unlike the Oklahoma law, injured workers in Texas are allowed to bring lawsuits against companies that nonsubscribe to the state’s regulated comp system.



would also mean lower workers’ comp costs.

By the way, if your business or a part of your business involves transportation, driverless cars and trucks could significantly affect your employee costs, since you may no longer require drivers!

## Cyber Risk

Maybe the most troubling aspect of driverless cars is the possibility of cyber risk. Vehicle technology could be hacked to create traffic problems and cause accidents and

even terrorist events. In July 2015, Fiat Chrysler had to recall 1.4 million Jeeps when security researchers discovered a way to hack into the Jeep's steering controls.

### Changing Car Ownership Patterns

In the past few years, automobile ownership has been declining, with more people using public transportation and ride sharing. There also seems to be less enthusiasm for cars, particularly among Millennials. Once self-driving cars become the norm, maybe only a few people will actually drive cars anymore, and maybe they will be able to do so only on designated roads.

Some scholars wonder if people will even own cars in the future. Owned by private companies or municipalities, self-driving vehicles may be parked in various community centers and summoned by phone when people need them.

A University of Texas at Austin study showed that each shared autonomous vehicle (SAV) used in this way would replace about 11 conventional vehicles.

If that happens, many employers will no longer even require automobile fleets. That would be a significant cost reduction. ■

## How Does Marijuana Legalization Impact Your Drug-Free Work Environment?

Marijuana is now legal in some form in 28 states and the District of Columbia. What does this mean for your workers' compensation safety program?

As of January 2017, recreational marijuana use is legal to some extent in eight states: Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon, Washington and the District of Columbia — and more states are expected to follow. Will this send employers' zero-tolerance policies up in smoke? Jeff Burgess, Program Coordinator, Technical Assistance for Employers in Oregon's Bureau of Labor and Industries, says in a recent report, "The answer is no." State laws "generally provide immunity from state and local criminal prosecution under certain circumstances. They do not provide employment protection, however."

Generally, employers can prohibit on-duty employees from using marijuana medicinally. Refusing to hire or otherwise discriminating against those who use medical marijuana on their own time remains a gray area in most states. However, Connecticut and Arizona have passed laws specifically protecting medical marijuana users from employment discrimination.

### Should Your Safety Program Include Drug Testing?

In some states, workers' compensation insurers will discount an employer's premiums if it institutes a drug-free workplace policy and program. There's good reason for that. Studies show that



when compared with non-abusers, substance-abusing employees are more likely to:

- \* change jobs frequently
- \* be late to or absent from work
- \* be less productive than other employees
- \* be involved in a workplace accident
- \* file a workers' compensation claim.

Research also indicates that between 10 and 20 percent of the nation's workers who die on the job test positive for alcohol or other drugs.

Employers can test for drugs at different points in the employment process — during the application process, during employment at random or regular intervals, or after an accident. It can be done for some or all workers — for example, for safety-sensitive positions only, or for all workers. Because drug testing costs money, you may choose not to use this method for assessment. However, many workers' compensation experts recommend testing all employees after an accident or near-miss to rule out the use of drugs.

If you decide to implement a drug-testing program, remember that laws designed to protect workers' civil rights could affect your workplace drug policies. These laws include the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA) of 1990. These statutes limit how far an employer can go in investigating and disciplining employee drug use.

Federal law still classifies marijuana as a Schedule I illegal drug. In an informal opinion, the Equal Employment Opportunity Commission said "...the ADA does not protect individuals who are currently engaging in the illegal use of drugs..." However, the EEOC considers past drug addiction a protected disability, so employers should avoid questions about past addiction to illegal drugs or participation in a rehabilitation program.

Many states and U.S. territories have their own laws and regulations dictating when and how workplace drug testing should be carried out. Some also require state and local contractors to develop drug-free workplace policies similar to those under the federal Drug-

## How to Avoid Legal Problems with Drug Testing Policy

**E**mployers can take several simple steps to avoid legal problems with their drug testing policy:

- ✦ Consult an employment lawyer whenever you introduce a new drug-free workplace policy or change an existing policy.
- ✦ Make sure your drug-free workplace policy clearly stipulates penalties for violations. If your policy includes drug testing, spell out exactly who will be tested, when they will be tested, and what will happen to employees who test positive.
- ✦ Make sure every employee receives and signs a written copy of your drug-free workplace policy. Verbal agreements and unsigned agreements have little legal standing.
- ✦ Make sure that you, and all your supervisors, receive proper training in how to detect and respond to workplace drug and alcohol abuse.
- ✦ Maintain detailed and objective records documenting the performance problems of all your employees. Such records often provide a basis for referring workers to employee assistance programs.
- ✦ Never take disciplinary action against a worker or accuse a worker of a policy violation simply because

that employee is acting impaired. Instead, try to clarify the reasons for the employee's impairment. If drug testing is a part of your workplace policy, obtain a positive test result before taking any action.

- ✦ Never accuse or confront an employee in front of coworkers. Instead, try to stage all discussions someplace private, with another manager present to serve as a witness.
- ✦ Never single out an individual employee or particular group of employees for special treatment — whether it is rehabilitation or punishment. Inconsistencies in policy enforcement may lead to discrimination charges.
- ✦ Try to get to know your employees as much as possible. This may help you more quickly identify workers who are in trouble or developing substance abuse problems.
- ✦ Most important, try to involve workers at all levels of your organization in developing and implementing your drug-free workplace policy. This will reduce misunderstandings about the reasons for a drug-free workplace program and help ensure that policies and procedures are fair to everyone. ■

Free Workplace Act. No one set of rules and regulations applies throughout the country. Some states, such as Louisiana, allow drug testing in virtually every type of business and in both the public and private sectors. Others, such as Maine, restrict who can be tested, how they can be tested, and what kinds of rehabilitation and disciplinary options can result from a positive test.

The U.S. Department of Labor's (DOL)

Working Partners for an Alcohol and Drug-Free Workplace Web site provides employers with free resources and tools to help establish and maintain drug-free workplace policies. And we recommend having a local employment attorney review your policy before implementation. For more suggestions on improving workplace safety, please contact us. ■

# Do You Need Property Insurance Even If You're Just Renting?

You buy property insurance to cover damage or loss to property. But what if you don't own the property or you rent it? Your liability policy might provide some coverage...but probably not enough.

**I**n the world of residential real estate, landlords buy property insurance to cover damage to buildings they own. If you rent a home or apartment, your renter's policy will cover your contents and other personal belongings. If the loss or damage isn't your fault, the landlord's policy will cover it. But let's say you accidentally cause a fire by leaving a pot unattended on a stove. The liability portion of your renter's policy would cover your liability for this negligent act.

It works the same way in commercial real estate. If you rent your business premises, you'll buy property insurance to cover your business personal property and inventory, if applicable. Your policy doesn't cover your premises, since you don't own them. But if you accidentally cause fire damage to your landlord's premises, your liability coverage would apply.

Businesses obtain liability coverage either through a commercial general liability (CGL) policy or through a business owner's policy, which combines property and liability coverages. The CGL includes coverage for "damage to premises rented to you." Although this coverage is automatically included in the Coverage A section of your policy, it provides

only limited coverage. "Damage to premises rented to you" protects you only from damage due to fire, and a separate, lower limit might apply. If your business premises are damaged by any other cause, the policy would not cover you.

Damage must also be caused by your negligence, otherwise the contractual liability exclusion would apply. For example, let's say your lease requires you to pay for any fire damage to your leased premises, even if you are not at fault. You have accepted contractual liability for fire damage. The policy's contractual liability exclusion states it won't pay for any loss you become obligated to pay by contract. Therefore, the "damage to premises rented to you" coverage would not apply.

Buying tenant coverage will insure your on-premises property, but it won't cover the building itself. Check your policy to see whether it provides "building occupied by the insured" coverage. This section covers a building you regularly use but do not own—for example, a building you lease, rent or borrow.

You'll also want to check what "perils," or causes of loss, your policy covers.



- ✳ Basic form policies cover losses due to common perils, such as fire, lightning, explosion, windstorm or hail, smoke, "physical contact" of an aircraft or vehicle, riot or civil commotion, vandalism, sinkhole collapse or volcanic action.
- ✳ Broad form policies cover the basic perils, plus water damage, structural collapse, sprinkler leakage, and damage caused by ice, sleet or weight of snow.
- ✳ Special form policies, formerly called "all risk" policies, cover all perils except those specifically excluded by the policy. Typical exclusions include damage due to flood, earth movement, war and terrorism, nuclear disaster and wear and tear.

Policies can vary from insurer to insurer. To make sure you have the coverage you need for your rented premises, please contact us for a policy review. ■

# Commercial Drone Insurance is Here

As drones become more useful in commerce, commercial drone insurance is becoming increasingly popular.

**D**oes your business operate a drone? Accidents happen when drones run out of power or when the operator loses control. What if a drone suddenly loses power and hits a building or a car? What if a drone hits some electrical lines causing a blackout, resulting in expensive repair costs? A drone may go out of control and hit a person. Most businesses now require firms doing drone work on their behalf to obtain and provide proof of drone insurance.

Some of the many types of commercial drone applications include:

- \* Law Enforcement
- \* Power Line or Pipeline Patrol
- \* Agriculture and Crop Spraying
- \* Surveillance
- \* Security
- \* Construction
- \* Predator Control
- \* News Gathering
- \* Real Estate
- \* Search and Rescue
- \* Emergency Response
- \* Fire and Rescue
- \* Traffic Patrol



A basic drone policy protects unmanned aerial vehicle (UAV) operators against bodily injury claims if you hurt someone with your drone. Property damage coverage is also provided in case your drone causes damage to property not owned by you. You can also purchase physical damage insurance for the drone, which will cover repairs or replacement of the drone and its cameras or equipment, minus any deductibles.

For more information about drone insurance, including how to obtain certificates of drone insurance for your clients, please contact us. ■