

# Managing Risk



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**Myerstown Office:**  
16 East Main Avenue  
Myerstown, PA 17067  
717-866-5717

**Lebanon Office:**  
761 Poplar Street  
Lebanon, PA 17042  
717-272-6693



Workers' Compensation

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## Could Your Company Outing Lead to Comp Claims?

Company picnics, outings and outdoor team-building exercises can help employers build camaraderie and cooperation among employees. But whenever you mix employees and recreation, injuries can occur. When are they compensable?

**W**orkers' compensation generally covers all employee injuries or illnesses that stem from work-related activities. OSHA guidelines consider an employee's injury or illness a recordable workplace incident if it results from an event or exposure in the "work environment." Naturally, the "work environment" includes employer's premises. OSHA also includes in its definition "other locations where one or more employees



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ZINN would like to recognize...



Jennifer Mathias and Corinne Bentz for their years of service with ZINN. Jennifer is celebrating her 10th year with ZINN and Corinne her fifth year.

Jennifer is the commercial lines team manager, agency marketing manager, account executive and a member of the agency's leadership team. A native of Schuylkill County, Jennifer resides in Berks County with her husband, Luke, and their three children, Anthony, Skylar and Silver. Jennifer volunteers her time for the

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are working or are present as a condition of their employment.”

OSHA lists several exceptions to the work-related injury rule, including injuries or illnesses that “...result solely from voluntary participation in a...recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball.”

Often, attendance and participation at company parties, outings and other events with a social aspect can fall into a gray area. Is participation truly voluntary, or is it expected—and therefore job-related? The answer could hinge on a few factors:

- ✱ Did the event occur during regular working hours?
- ✱ Did it occur on company premises?
- ✱ Is attendance expected or strongly encouraged?
- ✱ Does the employer pay the entire cost?
- ✱ Were clients or prospects present?
- ✱ Was any kind of training conducted at the event?

If you answered yes to any of these questions, your event may be considered work-related. Any employee illnesses or injuries caused by participating could fall under the workers' compensation bargain, unless states have specific rules otherwise.

Workers' compensation statutes of some states—including Connecticut, Illinois, Maine, Massachusetts, Montana, New Jersey, North Dakota and Virginia—specifically exclude coverage for injuries resulting from voluntary participation in a recreational activity. Even if the employer sponsors an activity, if participation is voluntary and not directly related to an employee's job, any resulting injuries will not be compensable.

Other states, including California, Colorado, Michigan, New York, Oregon and Texas, specify that injuries arising out of voluntary participation in recreational activities are not compensable, even if the employer pays some of the costs. However, if the employer directly or indirectly requires participation and gains substantially from the activity, then it could be considered work-related.

The following action steps can help you avoid workers' compensation liability for a company outing, picnic or party:

**National Fragile X Foundation and the FRAXA Research Foundation, organizing an annual walk-a-thon to raise awareness for Fragile X Syndrome.**

**Corinne is a valuable member of our personal insurance team and tech team at ZINN. From her friendly greetings and upbeat spirit to a willingness to serve others, Corinne is a great asset to our clients and staff. Corinne resides in Berks County with her husband, Justin, and their two sons, Alex and Owen. Corinne devotes her free time to be involved in her sons' sports and Scout activities, including acting as a den leader and committee member for their local Cub Scout Pack.**

- 1 Hold the event outside regular working hours.
- 2 If possible, hold the event off-premises.
- 3 Events should be infrequent—a Friday “happy hour” that becomes a regular, weekly event could be seen as obligatory or expected.
- 4 Look for volunteers to plan the event, rather than appointing someone.
- 5 If you will be serving alcohol, consider hiring a licensed caterer or bartender, and make sure he/she has liability coverage. Having a cash bar rather than an open bar could further minimize your exposure to claims if someone gets injured, or injures someone else, after drinking.
- 6 At the event, do not cajole employees into participating in any games or events. Participation should be completely voluntary.

If you plan a team-building event, off-site training session, party involving clients or other event that will benefit the organization, it will likely be considered work-related for the employees involved and your workers' compensation coverage will apply. Get your risk manager and/or workers' compensation insurance broker involved in planning them. He or she can point out potential safety and liability exposures and help you avoid them. For more information, please contact us. ■

# Are You Covered for Terrorism Risks?

The recent tragedy at the Boston Marathon reminds us that terrorism events can occur anywhere, at any time. Here's what you need to know about terrorism exposures.

## Terrorism Coverage

Before September 11, 2001, most commercial insurance policies included coverage for terrorism-related losses. That changed after 9/11. Insurers paid out more than \$32.5 billion (more than \$40 billion in today's dollars) in insured claims for events related to 9/11, making it the second most costly insured event in U.S. history. Insurers paid billions in property claims, along with disability and workers' compensation losses on a scale not seen before in the U.S. commercial insurance market. This made 9/11 a wake-up call to insurers and risk managers on the difficulty of insuring terrorism exposures.

To operate as an effective risk-transfer mechanism, insurers should be able to spread risk of loss over a large number of similar organizations or individuals. To allow proper pricing, these losses must be accidental, quantifiable and fairly predictable; they should not be geographically concentrated or catastrophic. On all these counts, terrorism events fail as "insurable events," and after 9/11, insurers began excluding coverage for terrorism, or priced it so high that policyholders opted to go without.

That prompted a lending crisis. Mortgage lenders require borrowers to carry insurance, including terrorism coverage, on mortgaged property. With no coverage, businesses were

unable to get loans and clamored for a solution. The lack of available coverage prompted Congress to write the Terrorism Risk Insurance Act of 2002 (TRIA).

TRIA provides the insurance industry with a federal financial backstop for claims from "certified" terrorist attacks. Although terrorism coverage remains insured by the private market, the federal government will subsidize claim payments when losses for a certified terrorism event exceed \$100 million.

To qualify for certification, the U.S. Secre-

tary of State and Attorney General must find a terrorist act to be:

- ✱ violent, or dangerous to life, property or infrastructure;
- ✱ resulting in damage within the U.S., or to a U.S. air carrier or U.S. flagged vessel, or on the premises of a U.S. mission; and
- ✱ committed by an individual or individuals as part of an effort to coerce the civilian population of the U.S. or to influence the policy or affect the conduct of the U.S. government. Before changes enacted in



2007, only “foreign” acts of terrorism (those committed by or on behalf of foreign interests) were eligible for certification.

In return for this financial protection, TRIA requires every U. S. property and casualty insurance company offer terrorism insurance to its commercial policyholders. TRIA specifically included excess insurance, workers’ compensation insurance and surety insurance in its definition of “property and casualty insurance.”

Thanks to TRIA, terrorism risk insurance capacity has increased. However, a 2010 report by the President’s Working Group on Financial Markets found restrained capacity in some markets (e.g., high-risk geographic locations and properties), and that some commercial insurance policyholders in high-risk urban areas had difficulty obtaining coverage with sufficient limits. For several years, the “take-up” rate for terrorism insurance has remained at about 60 percent, but events in Boston may make more organizations think twice about terrorism coverage.

Unless reauthorized, TRIA will sunset on December 31, 2014. Earlier this year, Rep. Michael Grimm (R-NY) and nine co-sponsors introduced H.R. 508, which would extend the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA) for five years. Some consumer organizations and politicians have spoken against reauthorization, saying TRIA forces taxpayers to subsidize businesses. However, most business and real estate groups support reauthorization.

How much danger does your organization face due to terrorism? As mentioned before, terrorism exposures are difficult to predict or quantify. However, you can take some practical action steps to minimize your exposures.

**1 Assess your risk.** Conventional wisdom says that businesses in certain locations (high-rise buildings, major metropolitan areas, in or near landmark properties) or in certain industries (utilities, high technology, chemicals) face a higher risk of terrorist attack than others. Also at risk are businesses located on or near major transportation corridors.

**2 Protect employees and visitors.** Workers’ compensation payments for deaths and injuries accounted for much of the loss at the World Trade Center in 2001. Having emergency evacuation plans, disaster preparedness supplies, survival supplies and first aid supplies readily available can minimize loss of life and injury. Review and update your plans as necessary, and rotate emergency supplies on a regular basis to keep them fresh. A good rule of thumb is to have three days’ worth of water and food available per person, in case a widespread disaster makes leaving the premises difficult.

**3 Assess building security.** Companies that manufacture, sell or store potentially hazardous substances should pay particular attention to sensitive areas. Is access to your premises controlled, or can anyone enter during business hours? Identification-based entry systems or security guards can help limit access to authorized persons.

**4 Protect information systems.** Reliable backup systems, cloud computing and a disaster continuity plan can minimize data losses and help your business recover processing capabilities quickly in the event of a disaster.

**5 Assess building design.** Companies renovating or building facilities might consider incorporating “defensive architecture” features into their buildings. Defensive architecture uses design features to minimize losses from terrorist attacks, as well as from disasters such as fire, smoke or chemical spill.

**6 Evaluate your insurance coverage needs.** Mortgage lenders typically require commercial property owners to carry terrorism coverage. Insurers make coverage available as add-ons to property and liability policies, and as stand-alone policies. Note that although TRIA and its successor acts require insurers to cover attacks involving conventional weapons, they can exclude property coverage for attacks with nuclear, biological, chemical or radiological (NBCR) weapons.

We can help you evaluate your coverage needs and solutions available. For more information, please contact us. ■

# Five Tips for Buying Business Insurance

Use these tips to assess what types of insurance are best for your business and how to get the best combination of protection and price.

**1 Assess Your Risks and Costs.** Insurance companies determine the level of risk they'll accept when issuing policies. Through a process called underwriting, the insurance company reviews your application and determines whether it will provide all or a portion of the coverage you request. Underwriters also determine what premium you will pay.

Premiums vary widely among insurance companies, and depend on a number of risk factors, including your business location, building type, local fire protection services, the deductible amount you select and the amount of insurance you purchase. A deductible is the amount of money you agree to pay when making a claim. Generally, the higher the deductible, the lower your premium. However, when you agree to take on a high deductible, you are taking some financial risk. It's important to evaluate your risk tolerance and cash flow before buying coverage.

**2 Shop Around.** The extent and costs of coverage vary from company to company. Further, some carriers specialize in certain types of risk exposures, offering coverages you might not find elsewhere. An independent broker represents many insurance carriers and can shop around for the best combination of coverage, service and price for you.

**3 Consider a Business Owner's Policy.** Business owners can buy the insurance coverages they need separately or in a package called a business owner's policy (BOP). Purchasing separate policies from different insurers can result in higher total premiums. A BOP combines typical coverage options into a standard package, which the insurer offers at a lower premium than you can find if buying each type of coverage separately. Typically, BOPs cover property, general liability, business interruption and other types of risk exposures common to most types of businesses.

BOPs simplify the insurance-buying process and save you money. They can also help eliminate any coverage gaps that might ex-



ist when you have separate policies renewing at different times. However, make sure you understand the extent of coverage in any BOP you are considering. Not every type of insurance is included in a BOP. If your business has unique risks, you may require additional coverage.

**4 Find an Experienced Agent.** Commercial insurance brokers can help you find policies that match your business needs. Make sure your broker understands all the risks associated with your business.

Finding a good insurance agent is as important as finding a good lawyer or accountant. State governments regulate the insurance industry and license insurance brokers. Many states provide a directory of licensed agents.

**5 Review Your Insurance Coverage on an Annual Basis.** As your business grows, so do your liabilities. You don't want to be caught underinsured should disaster strike. If you have purchased or replaced equipment or expanded operations, you should contact your insurance broker to discuss changes in your business and how they affect your coverage. ■

*Adapted from an article from the U.S. Small Business Administration, [www.sba.gov](http://www.sba.gov).*

## Preventing Privacy Breaches

**T**hink about all the information you store on employees alone: Social Security numbers, addresses, names of spouses and dependents, and possibly even medical information. Then there are customers—do you have names, addresses, credit card numbers and expiration dates? Medical or other personal information? If any of this information falls into the wrong hands, whether through error or theft, you have a liability exposure.

The following quiz can help you identify security gaps. Correct answers are in parentheses.

- \* If you keep paper files, are they in locked cabinets? Are cabinets in an office with a locking door, inaccessible to unauthorized persons? (yes)
- \* Do you keep the file cabinet key in the top desk drawer? (no)
- \* Do you shred documents containing personal information before discarding? (yes)
- \* Do you use Social Security numbers as employee ID numbers? Do you print Social Security numbers on paychecks? (no)
- \* Do you train human resource, payroll and benefits staff not to disclose personal information about other employees? Do you include this requirement in job descriptions for employees who handle personal information? (yes)
- \* Do you train customer service, IT and other staff who have access to customers' personal information not to disclose this information? Do you make this a condition of employment? (yes)
- \* Do you do background checks on any employee who will have access to others' personal information? (yes)
- \* Do you have appropriate firewalls, antivirus and malware detection software installed on your servers and networked computers? (yes)
- \* Do you regularly scan your computers and networks, and keep your protection services updated? (yes)
- \* Is your network password-protected? (yes) Do you require employees to change their passwords regularly? (yes)
- \* Do you encrypt sensitive data? (yes)
- \* Do you require employees to report the theft or loss of any mobile device that might contain sensitive files immediately? (yes)
- \* Does your insurance cover your organization for security breach liability? (yes) If you are not sure, please contact us for a policy review. ■

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