

Managing Risk



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www.zinn.com

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

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



Safety

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Driver Safety for Employees

The following suggestions can help you avoid costly auto accidents among your employees who drive for work.

Driving—something that most adults do every day—is one of the most dangerous tasks you can assign a worker. Consider the following facts:

✦ Roadway accidents accounted for nearly two

out of five (23.9 percent) of all fatal work injuries in 2012. Off-road vehicle accidents, such as a tractor overturn on a farm field, accounted for another 230, or 12 percent.

- ✦ The Bureau of Labor Statistics calculates that 4.7 out of 10,000 full-time workers in private industry suffered a nonfatal injury requiring days away from work due to a transportation incident in 2012.
- ✦ Motor vehicle crashes cost employers \$60 billion each year in medical care, legal expenses, property damage and lost productivity.
- ✦ The average employee auto crash costs an employer \$16,500, says OSHA.
- ✦ On-the-job crashes that result in injury cost employers an average of \$74,000. Costs can exceed \$500,000 when a fatality is involved.
- ✦ If an individual is injured in a non-occupational accident, a third party's insurance might pay

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Risk Tip

Some voluntary insurance programs could cut your workers' compensation claims. In a recent Aflac survey, 55 percent of large employers that provide access to voluntary accident insurance experienced declines in workers' compensation claims. Among medium-sized and small employers, 34 percent also experienced declines. Among all employers offering voluntary accident insurance, 14 percent reported workers' compensation claim declines of 50 percent or more, while 17 percent reported declines of 25 to 49 percent.

Among employers that offer voluntary disability insurance, 47 percent of large employers reported overall decreases in workers' compensation claims. Sizable percentages of medium and small

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the claim, but only if that party were at fault. In a work-related accident, the employer's workers' compensation must pay for any injuries and lost time...even if the worker is at fault in the accident.

What You Can Do to Improve Driver Safety

The best driver safety programs start at time of hire. Hiring safe, conscientious drivers can help employers avoid many work-related auto accidents. To start:

- 1 Define the jobs that involve driving. If a job requires driving, obtain copies of applicants' motor vehicle records (MVRs) from the state department of motor vehicles before making a job offer. Be sure to obtain applicants' written permission before doing this to avoid violating any privacy regulations. Use the MVRs to screen out any applicants whose records indicate unsafe driving behaviors, such as speeding tickets, at-fault accidents and multiple moving violations.
- 2 Ensure that no worker is assigned to drive on the job if he or she does not have a valid driver's license. The license should be appropriate for the type of vehicle to be driven.
- 3 Request MVRs on a regular basis—at least once a year—for all employees whose jobs involve driving or who are given company cars. If an employee needs to drive infrequently on business—for example, on a business trip—you might save time by requesting the employee to provide a copy of his or her own motor vehicle record abstract.
- 4 Develop a company driving policy. Your policy should require seat belt use for the driver and all occupants, prohibit driving while intoxicated (including while under the influence of legally prescribed drugs that can impair reflexes, judgment or vision), and require safe use of cell phones and other mobile devices while driving. Many companies (and states) allow only hands-free devices or ban the use of mobile devices altogether while the vehicle is moving.
- 5 Most accidents involve unsafe driving behavior. Let employees know what disciplinary actions the company will take for violations. This could include a point system, where drivers receive points for various moving violations, along with listing offenses that will result in termination of driving privileges or employment, such as driving while intoxicated, reckless driving charges or vehicular manslaughter.
- 6 Maintain complete and accurate records of workers' driving performance. In addition to checking driver's licenses for prospective employees, periodically recheck licensing status of current employees.
- 7 To minimize paperwork, have employees sign a consent form at time of hire, authorizing the company to review their MVRs on an annual or as-needed basis, and indicating that they have read and agree to abide by the company's driving policy.

companies (33 percent and 43 percent, respectively) also reported decreases. Of all the employers offering voluntary disability insurance, 15 percent reported claim declines of 50 percent or more, and 15 percent reported declines of 25 to 49 percent.

Offering voluntary accident and disability coverage probably lowers workers' compensation claim frequency by reducing employees' incentive to pass off non-occupational injuries as work-related to avoid having to pay for medical treatment and losing pay. For more information on voluntary benefits, or how your various benefit programs work together, please contact us.



- 8 Incorporate training on fatigue management and the dangers of distracted driving into safety programs.
- 9 Ensure that workers receive the training necessary to operate specialized motor vehicles.
- 10 Consider providing an emergency kit containing a flashlight, extra batteries, flares, a blanket and bottled water.

The “Coming and Going Rule”

For an auto accident claim to be compensable, the worker must prove that the injury occurred while working. State laws except coverage for injuries employees receive while commuting to and from work, considering that the employee’s personal time. However, exceptions exist to this “coming and going rule” where your workers’ compensation would apply.

Generally, these exceptions are for:

- 1** Employees who have no office or other fixed place of work, such as a traveling salesperson or traveling nurse, who report from home to their clients’ place of business;
- 2** Employees whose employment contract includes transportation to and from work;
- 3** Employees who are traveling away from home for an extended time; workers’ compensation may cover even injuries they receive while off duty;
- 4** Employees who are doing an errand on behalf of the employer during their commute.

Even outside the confines of the coming and going exception, some gray areas of coverage exist. For example, some employees have been awarded workers’ compensation benefits after punching out if they are injured while still on the employer’s premises.

If you’re uncertain whether an employee’s injury falls under your workers’ compensation policy, please contact us for advice. We can also provide more suggestions on improving worker safety. ■

Using “Defensive Architecture” Can Minimize Property Loss

Wind, hurricane, earthquake, fire, collapse, explosion—it’s impossible to build a structure that can withstand every degree of damage. But there are ways a property owner can aggressively minimize catastrophic damage.

Defensive architecture” uses design of workplace structures and environments to minimize potential damage caused by catastrophe. Whether yours is a retail, manufacturing or business office setting, you can use design and materials to reduce injuries and prevent the spread of damage caused by a catastrophe.

Begin a defensive architecture strategy by assessing the risks inherent in your particular business or environment. For example, if you have a large, open warehouse stocked with different types of materials, you have a higher risk of a fast-spreading fire fanned by flammable materials than if you operate in an office building with walls separating storerooms from work areas. Or, if your industry requires you to consider sabotage or major theft as risk factors, defensive architecture can help minimize these risks. For example, you can control pedestrian or vehicular access and enforce distance by placing concrete barriers or planters at property perimeters, or by maintaining separate, secured entrances for employees, deliveries and services and visitors.



Construction and Retrofitting

The following suggestions can help reduce the damage caused by wind, earthquake, explosions and other destructive forces:

- ✦ Use poured-in-place reinforced concrete for all framing, including slabs, walls, columns and roofs. Design wall thickness with security in mind.

- * Use steel rebar within columns and beams, making certain it is connected with rebar in slabs and walls to create a structurally integrated whole.
- * Reduce or eliminate building ornamentation and materials that can break easily, fall, burn or cause other damage after a catastrophic event. Make sure shingles, roofing and other exterior coverings are fire resistant and lightweight to prevent them from becoming dangerous flying objects during high winds.
- * Limit window spacing in walls to less than 15 percent of the space between support columns.
- * Tie roofs to buildings and join buildings, if possible. Explosions and hurricanes can generate tremendous upward thrust, peeling roofs off and sending them flying. Anchor external air conditioning and ventilation equipment.
- * Tie sprinkler systems to ceilings to keep them from breaking, and build in flexible connectors between pipes to protect them during movement of buildings.
- * Reinforce chimneys, develop wind barriers, and bolt buildings to foundations.
- * Use laminated glass to reduce shattering. Glass shards can fly as fast as 80 feet per second, and are most likely to cause multiple cuts, rather than one or two.
- * Consult with local building authorities or a structural engineer for recommended “best practices” for the particular hazards of your area or building site.

Fire Protection Inside Buildings

- * Compartmentalize buildings to keep fire from spreading. Erect barriers such as firewalls between rooms or sections of a warehouse. Widen corridors and pathways to prevent fire jumps. Install metal barriers or storage cabinets for flammable materials, especially if they are to be housed near people or other materials. Separate highly combustible and toxic material from other material when possible, using space and barriers to increase separation.
- * Install smoke exhaust systems that are triggered by smoke detectors. These can suck smoke out and pump fresh air into the area surrounding the smoky area, creating a pressure system that contains the spread of smoke.
- * Hang “draft curtains” from high ceilings and warehouses. These are suspended from the ceiling and help reduce the spread of smoke damage.
- * Use multi-tiered fire detection and control systems, including automatic shutoffs, security cameras, fire detection devices, alarms and ample fire-fighting equipment, such as hoses and extinguishers.
- * Protect your sprinkler system. Damaged sprinkler systems can cause tremendous water damage through leakage when pipes, sprinkler heads and fittings are cracked or damaged. Brace sprinklers properly, leaving enough room and using appropriate materials to provide flexibil-



ity between connector pipes to minimize cracking. Tie sprinklers to ceiling structures to ensure stability. Finally, have a qualified inspector inspect your sprinkler system every year and after any damage occurs.

* In addition to minimizing the potential for property damage and injury, using defensive architecture when building or remodeling can also reduce your insurance costs, as many insurers will give discounts for covering buildings designed for safety.

For more suggestions on protecting your facilities from fire and other disasters, please contact us. ■

How to Cover a Drone

The Federal Aviation Agency (FAA) expects that some 30,000 drones will be in use for business purposes in the U.S. by 2020. Some businesses are already using them. Do they have the proper insurance coverage?

Drones, or unmanned aircraft, have moved beyond the world of espionage into the world of commerce. Real estate brokers are using them to videotape properties from the air; farmers use them to monitor their crops; insurance claims adjusters use them to view damaged property; the Forest Service is using them to monitor fires; and movie companies are using them in film production. Some businesses, such as Amazon, are even experimenting with using drones for package delivery.

How would you insure a drone? We discussed this topic with risk management expert and RiskEpedia author Dick Rupp. He told us, “My instincts tell me that this is an aviation risk, which most standard commercial insurance policies exclude. I contacted several broker friends and, from some of the couched responses received, I suspect that there are already some reported claims involving drones that have either been denied or are being handled under a reservation of rights basis because of coverage questions.”

These questions concern the regulation and legality of flying drones for commercial purposes in the United States. Civil and public users can only fly drones if they have FAA approval. The FAA approval process includes certification of the aircraft and requires the use of a licensed pilot and approval of the purpose and location where the drone is to be operated. Hobbyists can only fly drones below 400 feet, away from airports and air traffic. In 2007, the FAA clarified the hobbyist rule to specifically exclude individuals or companies flying drones for business purposes.

The FAA’s jurisdiction and rules have recently come into question. After the FAA fined an individual \$10,000 for using a drone for commercial photography purposes, the National Transportation Safety Board dismissed the fine. The NTSB judge said that “the FAA has no



authority over small unmanned aircraft.” The FAA has appealed the judge’s ruling that the agency does not have the authority to regulate commercial drones. It is scheduled to issue a proposal on the operation of drones weighing less than 55 pounds later this year.

Until the regulatory situation becomes clearer, businesses operating drones could run into insurance policy exclusions that bar coverage for “illegal” activities. Businesses should also be aware of the limitations of basic business coverages when it comes to operating a drone. The commercial general liability insurance policy excludes bodily injury or property damage resulting from the ownership, maintenance or use of aircraft. Commercial property and inland marine insurance policies also have various forms of aircraft exclusions. Some of these policies extend to cover physical damage to the aircraft while on the insured’s premises or on the ground, but specifically exclude coverage while it is in the air.

Businesses operating larger commercial drones, which can range in cost from \$250,000 to several million dollars, can buy special inland marine/aviation policies for the property exposure. Unless you have a specific aviation liability policy, however, you would lack coverage for liability exposures.

Commercial drones have been used in Europe and other countries for several years. Regulations and specific insurance coverages have been developed overseas to spell out liability resulting from damage

by drones. Overseas insurers have developed specific insurance language for their use. At least one specialty firm in the U.S. is providing drone insurance using aviation insurance forms. This insurance covers drones only for “approved coverage uses” (law enforcement, agriculture, land management, videography, etc.) spelled out in the policy declarations. The forms do not contain FAA Regulations violation exclusions, and claims have been paid under these policy forms.

However, risk managers see potential red flags, since aviation coverage forms do not provide coverage for personal injury or invasion of privacy, which could result from inadvertent videography of individuals on their private property.

If you need coverage for drones or other specialized situations, please contact us for more information. And if your coverage needs run to the more mundane, we can also help with those. ■

Is it Time to “Ban the Box” in Your Hiring Practices?

Two-thirds of employers include a question on criminal history on their job application forms, reported EmployeeScreen, a company that conducts background checks for employers. The EEOC recommends against this practice, however. Should you “ban the box” on your job application forms?

Approximately 70 million Americans have criminal records, many for non-violent offenses or offenses committed while they were young. Proponents of “ban the box” laws say that checking “yes” on a job application’s criminal conviction box can reduce a qualified applicant’s chances of a callback by 50 percent.

The EEOC does not regulate employer communications, so it does not prohibit employers from asking questions about an applicant’s arrest/conviction history on job applications. However, it notes that an employer’s use of information requested before employment may have a disparate impact on minorities that amounts to unlawful discrimination under Title VII. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex and national origin.

Currently, 11 states plus 60 cities and counties prohibit their

own agencies from asking about criminal convictions on job application forms. Four states—Hawaii, Massachusetts, Minnesota and Rhode Island—also prohibit private employers from asking about criminal convictions on application forms.

To find the best possible job candidates and avoid claims of discrimination, employers might consider eliminating questions about criminal records from application forms. If a criminal record comes up during a background check or interview, the employer can discuss it with the applicant in person to better determine its relevance to the position. If it is relevant, you can eliminate the candidate from consideration. The EEOC says, “...the legal standard is that the criminal conduct is recent enough and sufficiently job related to be predictive of performance in the position sought, given its duties and responsibilities.”

Hiring and firing employees has become more complicated. Employment practices liability coverage can protect your organization from the high costs of employment discrimination and other employment-related lawsuits. Please contact us for more information. ■

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