

Managing Risk



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Risk Management

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2017: The Year of the Cyber Attack

Cyber security problems will increase in 2017, warns Experian Data Breach Resolution, a branch of the credit reporting giant.

In its 2017 Data Breach Industry Report, Experian noted it expects to see several new—and frightening—trends:

- ✦ “Aftershock” password breaches becoming more common
- ✦ Nation-state cyber-attacks moving from espionage to war
- ✦ Healthcare organizations becoming the most frequently targeted sector
- ✦ Criminals focusing on payment-based attacks
- ✦ International data breaches causing “big headaches” for multinational companies.

“Aftershock password breaches” can affect organizations that have not experienced a breach of their own data. They occur when



Risk Tip

Medical experts don't often agree when assessing a claimant for disability benefits, according to a study published recently in the British Medical Journal. In the study, a group of European and Canadian researchers reviewed 23 studies to determine how often medical experts agreed on evaluations of a claimant's disability. In 63 percent, medical experts “reached only low to moderate agreement in their judgement of the same claimant for disability benefits.” A high level of variability indicates disagreement on the degree of a claimant's disability.

The study examined 23 studies conducted between 1992-2016 from 12 countries. Studies reviewed included those carried out in an insurance setting, with medi-

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a data breach and passwords from first-hand data breaches become available to criminals and hackers. Organizations that see repeated unauthorized log-ins need to notify their customers that their data might have been misused.

Action step: Strengthen data protection and make unauthorized log-ins more difficult by using two-part or multi-part authentication protocols. As the name implies, two-part authentication requires more than a password. The user must provide something additional, such as a physical object like a bank card or USB stick with a code; provide secret information, such as a PIN or code from a text message; or match a biometric marker on file, such as a fingerprint, voice, eye iris, etc. Of course, these actions should be part of your comprehensive cyber security plan.

What Is Cyber Security?

Cyber security involves protecting your organization's digital information by preventing, detecting, and responding to cyber attacks. Cyber attack dangers include viruses erasing your entire system, someone breaking into your system and altering files or someone using your computers to attack others. However, the biggest cyber security problem that businesses and nonprofits face is protecting personal identifying information, or PII, of their clients and prospects.

Many organizations today use or store PII. PII is information that can be used to uniquely identify, contact or locate a single person. PII includes but is not limited to:

- * Full name
- * Social Security number
- * Address
- * Date of birth
- * Place of birth
- * Driver's license number
- * Vehicle registration plate number
- * Credit card numbers
- * Physical appearance
- * Gender or race

When someone's PII you have stored is stolen or compromised, you are responsible for notifying them of the breach. That costs time, money and reputation. If criminals use PII for identity theft, you could be liable for helping victims resolve the problem, a costly and time-consuming process.

The National Cyber Security Alliance (NCSA), a public/private consortium, reports that 69 percent of small businesses have "... sensitive information, including customer data." Hackers are increasingly focusing on small businesses, knowing that they have fewer resources to protect their data. The NCSA also points out that only half of small businesses (52 percent) "have a plan or strategic approach in place for keeping their business cyber secure."

What Can You Do?

All organizations, particularly organizations that use or store others' PII, need a comprehensive data protection plan. Lack of a plan and systems in place can create serious liability exposures.

cal experts assessing claimants for work disability benefits, and in a research setting, where evaluation of patients took place outside of actual assessments, for example, for rehabilitation.

Where medical experts had a higher degree of agreement, they were more likely to use a standardized approach to guide their evaluation of a disability.

The takeaway? Since judgments can vary, having standards by which to evaluate disability can ensure consistency in claims handling, which can help you avoid disputes and better predict your costs.

At a minimum, you should be doing the following to protect your data:

- 1** Make sure all company computers have the latest security software, web browsers and operating systems to protect against viruses, malware and other online threats.
- 2** Turn on automatic software updates, if that's an option. Many updates specifically address known security risks.
- 3** Scan all new devices, including USB devices, before they are attached to the network.
- 4** Use a firewall to keep criminals out and sensitive data in.
- 5** Use spam filters. Spam can carry malicious software and phishing scams, some aimed directly at businesses.
- 6** Adopt a privacy policy and post it on your website and other online sites. Your policy tells customers what information you collect and how you use it.

7 Know what PII you're storing on your customers, including where you store it, how you use it, who can access it, and how you protect it. Delete any unneeded information.

No matter what firewalls, software and authentication protocols you've installed, your cyber security system is vulnerable if you're not educating your employees on avoiding risky behavior online. The Workplace Security Risk Calculator, available free at <https://stay-safeonline.org/stay-safe-online/resources/workplace-security-risk-calculator>, lets your employees gauge the level of risk their online behaviors pose.

If you don't have the time or resources to create your own cyber security audit and plan, your ISP may offer specialized services for small businesses. The NCSA has a list of other resources available at <https://staysafeonline.org/business-safe-online/implementation-a-cybersecurity-plan>.

No cyber security program is complete without insurance. Cyber insurance can protect your organization from the cost of correcting a security breach, notifying victims and even help protect them from identity theft. For more information, please contact us. ■

15-Point Checklist for Your Account Service Instructions

It's not you, it's me. The instructions you give your insurance carrier and broker can determine how effectively they handle your claims.

Often one of the first reactions when workers' compensation costs spike is to look at changing the insurance carrier. Sometimes this is appropriate, but before you pull the trigger, consider the following: The insurer may not be meeting expectations because neither the client nor the broker clearly communicated expectations.

The answer can often lie in improved Account Servicing Instructions (ASI). Every insurer and third-party administrator distributes its standard account servicing instructions to its field offices and adjusters. The ASI governs settlement authority, selection of attorneys, reporting, reserves, subrogation, investigation and virtually all aspects of claim handling.

15-Point Checklist for Your Account Service Instructions

1 Settlement Authority

- ✱ Who has settlement authority? The company or the insurer?

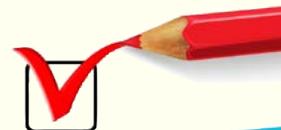
2 Selection of Counsel

- ✱ Do you select your own legal counsel?
- ✱ What type of legal counsel does your company utilize?

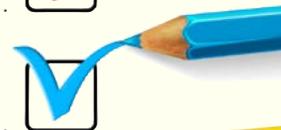
3 Reporting

- ✱ How often do you receive status reports for open claims from your insurer? Over 30, 60 or 90 days?

Adjuster



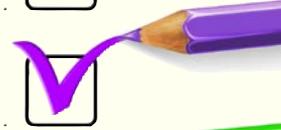
Review



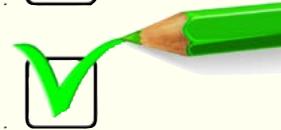
Referral



Counsel



Reporting



4 Reserves

- ✱ Does the insurer provide a written explanation each time reserves are raised over \$10,000 or more?
- ✱ Do reserves set take into consideration the company's aggressive return-to-work program probably resulting in lower wage loss?

5 Dedicated Adjuster

- ✱ How many adjusters are dedicated to processing company files in each office?

6 Payment/Review of Legal Bills

- ✱ Do you receive bills for legal service?

7 Investigations

- ✱ How do you request investigations?

8 Structured Settlements

- ✱ Do you consider structured settlements for all cases over \$20,000?

9 Subrogation

- ✱ Are all cases reviewed for subrogation potential?
- ✱ Who closes a file and waives subrogation recovery?
- ✱ Do you want to be consulted before a lien is waived or compromised?

10 Workers' Compensation

- ✱ Do you receive copies of payments being made on each open file?
- ✱ Do you review checks or list all payments made for accuracy?

11 Referral to Physician Consultant

- ✱ How are outside vendor services activated and coordinated?
- ✱ Are all medical records sent to the physician consultant before an independent medical examination is conducted?

12 Medical Bill Review

- ✱ Who audits medical bills for your open claims?
- ✱ How and when are medical bills audited?

- ✱ Who will audit the hospital bills? What level of hospital bills are audited?

- ✱ Do you decide if medical case management is warranted?

- ✱ Is there immediate and automatic referral of complex lost-time cases to medical case management?

13 Utilization Review

- ✱ How do you decide which bills and services will be reviewed?
- ✱ Who have you retained to provide this service?

14 Referral to Vocational Rehabilitation

- ✱ Who decides if vocational rehabilitation is warranted?
- ✱ Do you automatically refer complex lost-time cases to vocational rehabilitation?
- ✱ Will reports be sent to your company?

15 Alternative Dispute Resolution/Mediation

- ✱ Is alternative dispute resolution considered on all claims for all lines? ■

Author Michael Stack, Principal, COMPClub, Ammax LLC. He is an expert in workers' compensation cost containment systems and helps employers reduce their work comp costs by 20% to 50%. He works as a consultant to large and mid-market clients, is co-author of Your Ultimate Guide To Mastering Workers Comp Costs, a comprehensive step-by-step manual of cost containment strategies based on hands-on field experience, and is founder of COMPClub, an exclusive member training program on workers compensation cost containment best practices. Contact: mstack@reduceyourworkerscomp.com.

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Service Animals, Assistance Animals, Therapy Animals—What's the Law?

Guide dogs and service dogs have helped individuals with disabilities navigate life for decades. Now you also see assistance animals, therapy animals and emotional support animals. What's the difference and what's the law?

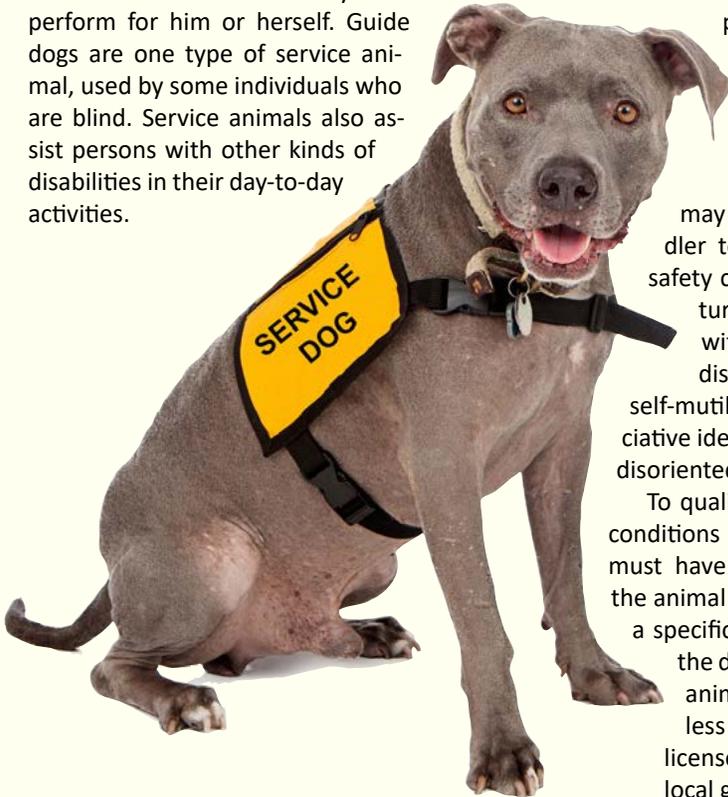
Many people legitimately need service, support or therapy animals, while others use the “therapy animal” name and even fake vests and registries to sneak their pets into public places. So what rights do users of service animals have?

Employment discrimination: Title I of the Americans with Disabilities Act (ADA) prohibits disability discrimination in employment. If employees or prospective hires need a service animal, you cannot prohibit them from having the animal at the worksite. You can ask the nature of the services the animal performs, but you cannot ask about the nature of the person's disability.

Discrimination in public accommodations: Title II and Title III of the Americans with Disabilities Act (ADA) prohibits privately owned businesses that serve the public, such as restaurants, hotels, retail stores, taxicabs, theaters, concert halls, and sports facilities, from discriminating against individuals with disabilities. The ADA requires these businesses to allow service animals onto business premises in what-

ever areas customers are generally allowed. As with employers, owners or managers of public accommodations can ask about the nature of the services performed by the animal, but not the nature of the person's disability.

The ADA defines a service animal as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability. Service animals perform some of the functions and tasks that the individual with a disability cannot perform for him or herself. Guide dogs are one type of service animal, used by some individuals who are blind. Service animals also assist persons with other kinds of disabilities in their day-to-day activities.



Examples include:

- ✱ Alerting persons with hearing impairments to sounds.
- ✱ Pulling wheelchairs or carrying and picking up things for persons with mobility impairments.
- ✱ Assisting persons with mobility impairments with balance.

The ADA does not limit its definition of disabilities to physical disabilities—psychiatric, intellectual, or other mental disabilities also qualify. The ADA National Network says, “Tasks performed by psychiatric service animals may include reminding the handler to take medicine, providing safety checks or room searches, or turning on lights for persons with post-traumatic stress disorder (PTSD), interrupting self-mutilation by persons with dissociative identity disorders, and keeping disoriented individuals from danger.”

To qualify as a service animal, two conditions must apply: the person must have a disabling condition and the animal must be trained to perform a specific task or tasks. If they meet the definition, the ADA considers animals service animals regardless of whether they have been licensed or certified by a state or local government.

Service Animals vs. Assistance Animals and Therapy Animals vs. Pets

Some people use therapy dogs or emotional support dogs. These animals may provide therapeutic or emotional support to a person with a mental health disability, such as PTSD. They are not trained to perform specific tasks; instead, their mere presence has a calming effect on their owner.

The FHA, Fair Housing Amendments Act of 1988, allows therapy or emotional support dogs to be kept in housing with pet restrictions. If the owner has a verifiable disability, the animal is a “reasonable accommodation.” HUD specifically states that “[w]hile dogs are the most common type of assistance animal, other animals can also be assistance animals.” Title II and Title III of the ADA do not view emotional support animals, therapy animals and comfort animals as service animals. This means that, outside of housing and air travel, owners of therapy or emotional support animals have no legal right to bring their animals into places where animals are prohibited, even with a doctor’s letter.

The ADA and other anti-discrimination laws are complex. Running afoul of them can lead to discrimination claims, fines and negative publicity. A good liability insurance policy can help protect your business from the cost of defending discrimination claims and paying damages, if any—please contact us for a policy review. ■

Climate-Change Disclosures Recommended

Publicly traded companies should report disclose their climate-change risks and what they're doing about them, says the Financial Stability Board. The Board, an international body that monitors and makes recommendations about the global financial system, includes members of the G20, government ministers and central bank governors of 20 leading economies.

In 2015, nearly 200 countries agreed to reduce greenhouse gas emissions and accelerate the transition to a lower-carbon economy in the so-called Paris Agreement. "Because this transition to a lower-carbon economy requires significant and, in some cases, disruptive changes across economic sectors and industries in the near term, financial policymakers are interested in the implications for the global financial system, especially in terms of avoiding severe financial shocks and sudden losses in asset values," said the Financial Stability Board's Task Force on Climate Change in a December 2016 report.

In its report, the Task Force urged publicly traded companies to disclose their climate-change risks. According to the report, "One of the most significant, and perhaps most misunderstood, risks that organizations face today relates to climate change. The potential impacts of climate change on organizations, however, are not only physical and do not manifest only in the long term."

Climate-Related Financial Disclosures

The Financial Stability Board says that investors, lenders, insurers and other businesses need access to better information to support informed decisions to mitigate climate-related risks and to "...help promote a smooth rather than an abrupt transition to a lower-carbon economy."

The Task Force notes that, "In most G20 jurisdictions, companies



with public debt or equity have a legal obligation to disclose material risks in their financial filings—including material climate-related risks. The Task Force believes climate-related risks are material risks for many organizations..." It recommends that these companies include climate-related financial disclosures in their public financial filings. These filings should include information on: governance, strategy, risk management, and metrics and targets related to the effects of climate change on the organization.

Failure to disclose information that could affect investors can lead to lawsuits against directors and officers. We can help you mitigate your directors and officers liability risks—please contact us for more information. ■

