

# Risk Monitor



## Lower Workers' Comp Claims by Reducing Work-Related Stress

Employers who don't take work-related stress seriously might be shocked to learn that, according to the American Institute of Stress, U.S. companies incur \$200-300 billion dollars every year in work-related stress claims. The Bureau of Labor Statistics reveals that claims resulting from work-related stress have an average duration of 23 days, which is 4 times longer than the average number of days lost from nonfatal occupational injuries and illnesses.

According to the National Institute for Occupational Health and Safety, work-related stress is defined as the "...harmful and emotional responses that occur when the requirements of a job do not match the capabilities, resources or needs of the worker." Stress can result in both physical and mental illness and can also be directly responsible for physical injuries. An article in The Journal of Occupational and Environmental Medicine suggests that the costs of administering health care are 50% higher for workers who claim job-related stress.

To combat work-related-stress claims, employers must learn to recognize the primary causes of stress. NIOSH has identified 6 main reasons for work-related stress:

1. **Design of Tasks and Jobs:** Heavy workloads; infrequent rest breaks; long work hours; shift work; and hectic or routine tasks that have little inherent meaning, do not fully use worker skills and provide little sense of control
2. **Interpersonal Relationships:** A poor social environment and lack of support or help from co-workers and supervisors
3. **Management Style:** Poor communication and not encouraging participation by workers in decision-making
4. **Work Roles:** Conflicting or uncertain job expectations and responsibilities that are defined too broadly

5. **Career Concerns:** Job insecurity; lack of opportunities for growth, advancement or promotion; and rapid changes for which workers are unprepared
6. **Environmental Conditions:** Unpleasant or dangerous physical conditions such as crowding, noise, air pollution, or ergonomics problems

### Solutions to reduce work-related stress

Proactive steps which employers can take to reduce stress in their work force include:

- **Improve Employee Communications** – Make your workers feel involved by getting their feedback on management plans or decisions.
- **Give Employees a Sense of Control** – Give your employees as much independence in the operation of their jobs as is reasonable and responsible.
- **Keep Employees in the Loop** – Eliminate the stress of uncertainty by telling your employees what changes are going on and how they may be affected.
- **Don't Label Employees** – It's healthy for employees to vent their concerns and frustrations as opposed to bottling up the stress because they fear retaliation, so let them express themselves freely.
- **Don't Overload Your Employees** – Do whatever possible to reduce excessive workloads that exceed an employee's abilities. Spread the load.
- **Create Realistic Work Schedules** – Try to be flexible with your work schedules by considering the demands im-

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### Welcome to the Jackson & Jackson Insurance Agents and Brokers Newsletter!

*It is with great satisfaction that we bring this newsletter to you. In this issue and in coming months, we will discuss pertinent risk management topics which may affect your organization. We sincerely hope that you will find this newsletter informative and please do not hesitate to contact us should you have any questions or needs.*



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# Do You Have Insurance If Your Customer Data Gets Stolen?

A salesman is robbed in a parking garage and loses his laptop computer. Hackers unleash a Trojan horse virus that infiltrates the computer network of a large retail store chain. The virus compromises a customer database. An unhappy employee spirits customer records home with him and begins applying for credit under customers' names. These things can and do happen. They are a technological and public relations nightmare for the businesses involved. They will also likely culminate in lawsuits against the firms for mishandling customer information. Without financial protection against these types of events, a business could very quickly go bankrupt.

The rise of electronic commerce and the use of sophisticated computer networks for storing data has caused the insurance industry to develop products to cover businesses against liability for lost customer information. One such product is the Electronic Data Liability policy, introduced in 2004 and now available in many states. Its purpose is to pay for a firm's defense when customers sue it for allegedly failing to safeguard their information, and to pay any resulting settlements or judgments against the firm.

The policy covers the firm's liability for "loss of electronic data" caused by an "electronic data incident." An "electronic data incident" could be an accident, a negligent act, error or omission, or a series of these. Some examples of the types of incidents this policy might cover are:

- The previously mentioned Trojan horse virus that enables hackers to access the customer database.
- During a power blackout, looters break into an office and take employees' computers.
- An employee leaves customer files in the open on her desk at night, allowing cleaning staff to obtain bank account information and social security numbers.

Coverage applies on a "claims made" basis. This means the policy will cover incidents that occurred on or after a specific

date stated in the policy (known as the "retroactive date") and reported to the insurance company during the policy period. For example, assume that a policy has a term of January 1, 2008 to January 1, 2009, and it lists January 1, 2005 as its retroactive date. On September 30, 2008, the firm finds out that hackers broke into its systems in the summer of 2006. It reports the incident to the insurance company that day. The policy would cover this claim because it occurred after the retroactive date. This would not be true if the break-in happened in 2004, before the retroactive date.

To keep the policy's cost down, it does not cover several types of losses. For example, it does not cover losses caused by theft or unauthorized use of electronic data by past or present employees, temporary workers or volunteers. The policy will not provide coverage for the acts of the previously mentioned disgruntled employee. It also does not cover losses arising out of a firm's providing "computer products or services." These include, among other things, installing or repairing computer equipment and software, storing data for others, providing Internet services, and providing communications services to others. It also does not cover acts such as alleged copyright or trademark infringements.

While the policy covers claims reported during the policy period, it has a special provision to give additional time for reporting. The insurance company will treat claims reported within 30 days after the policy expires as if the policyholder reported them while the policy was in force. For an additional premium, the company may extend the reporting deadline to three years after the policy expires. However, this additional premium can be up to 100 percent of the original premium.

High-speed computer networks have given modern business opportunities it has never had before. However, those opportunities have come at the cost of higher risks with potentially large consequences. Any firm doing business over the Internet or private networks (that is to say, all firms) should discuss electronic data liability coverage with an insurance agent.

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posed on employees outside the job. Be as creative as possible and show you care. Be approachable.

- **Define Their Roles** – Ensure employees clearly understand their responsibilities and what roles they play.
- **Give Meaning to Your Employees' Skills** – Try to design jobs so they stimulate and give meaning to your employees. Treat each employee as an asset and offer opportunities for advancement and cross-training. Try to incorporate all the skills they have to offer.

- **Socialize** – Give your employees a venue in which they can interact socially, such as company picnics, sports or other activities.

Work-related stress affects the morale of your company. Stressed employees file more work-related claims resulting from physical injuries, health and mental conditions. You can reduce workers' compensation claims simply by taking action and implementing positive stress-relieving measures.



# What Is and Isn't Age Discrimination

With a troubled economy and continually soaring health-care costs, employers are always on the lookout for ways to limit expenses. Much as they might not want to, they often look at personnel costs, including those for healthcare. Personnel moves, however, can be a minefield for the unwary. Handled incorrectly, they can land a well-meaning employer in court, especially if they smack of possible discrimination against older workers or retirees. Several court and regulatory decisions over the past few years have weighed in on what employers can and cannot do regarding their older employees.

In February 2008, a unanimous U.S. Supreme Court declined to rule on the question of whether a court must, in an age discrimination case, accept testimony from former employees who are not parties to the lawsuit and whose accusations are against supervisors not accused in the lawsuit. Rather, they ruled that a federal appellate court was incorrect in overruling the trial court on the question. The court said that the appellate court should have sent the case back to the trial court with orders to clarify its decision. The ruling left the question about testimony from non-party employees unsettled.

In March 2005, a divided Supreme Court ruled that the Age Discrimination in Employment Act authorizes older employees to recover damages from an employer when the employer's decision adversely impacted them because of their age. The court found that the law's language was virtually identical to that in the Civil Rights Act of 1964, which prohibits limiting, segregating or classifying employees in a way that adversely affects their status because of race, color, religion, or other protected characteristics. While noting that the ADEA's scope is narrower than that of the

Civil Rights Act, the court nonetheless ruled that the ADEA, in principle, provides for recovery in so-called disparate impact cases.

The Supreme Court also ruled in 2004 that employers may make employment decisions that favor older employees over younger ones. In 2007, the EEOC announced an amendment to its rules implementing the court's decision. The prior rules had forbidden such practices.

In August 2007, a federal appellate court held that defined benefit plans employing a cash balance formula do not violate the Employee Retirement Income Security Act. Older employees argued that the cash balance formula discriminated against them because younger workers who received the same employer contributions would be entitled to a retirement benefit greater than that due the older workers. The court rejected this contention, saying that the employer's plan was legal so long as the contribution rates did not discriminate on the basis of age.

Lastly, in June 2007 a federal appellate court ruled that the Equal Employment Opportunity Commission acted within its authority when it issued rules permitting employers to reduce or eliminate employer-sponsored retiree health benefits when retirees become eligible for Medicare or comparable state-sponsored programs. The American Association of Retired People had sued the EEOC on the grounds that the ADEA prohibits these practices. The court said the rules were consistent with the law's purposes and intent; it also said that the rules actually encourage employers to provide all retirees with the best possible health benefits.

As these decisions show, employers must be very careful when they make employment decisions that will impact groups of employees in different ways. A qualified human resources consultant can advise an employer on the legal implications of a decision. Also, employers should consider purchasing an employment practices liability insurance policy. Such a policy will cover the employer for defense of age discrimination lawsuits and for the cost of judgments against the employer. An insurance agent can give advice on the availability and cost of the most appropriate coverage.

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shows the importance of proper claims management. Lingering problems such as back injuries can result in large reserve increases if the injured worker does not receive effective medical treatment early on.

A good insurance agent will work with the firm to analyze the experience modification worksheet and verify its accuracy.

The firm and its agent should inform the insurance company of any errors in reported losses or payroll. Also, the firm should question an usually large decrease in a reserve and appeal to have its mod reduced. A properly calculated experience mod should neither over-reward nor under-penalize a firm for its loss experience.

# Workers' Compensation Experience Modifications: What Happens When a Loss Reserve Changes?

For many businesses, workers' compensation insurance is one of the largest expenses. A firm's experience modification, which is a numeric factor that applies to the workers' compensation premium, is a major influence on that cost. It is designed to reward firms that have below average loss activity and penalize those with above average activity. Firms with losses below average will have a mod of less than 1.0, while others with above average losses would have mods greater than 1.0. The insurance company multiplies this number by the calculated premium, producing either a reduced or increased premium. Firms with frequent, small losses fare worse under experience rating than those with infrequent, large losses. However, large losses and changes to the amounts reserved for them can still have a great impact.

In each state, a bureau independent of the insurance company calculates an eligible firm's experience mod. The bureau uses a formula that considers the type of operation, the payroll over the previous three policy periods (not including the current one), the losses with values of less than \$5,000 each, and the losses valued at more than \$5,000. Through the application of mathematical factors, the formula determines the firm's actual losses for the three-year period. The bureau divides this number by the expected losses for a firm in that classification with that amount of payroll. If actual losses exceed expected losses, the mod is greater than 1.0; the mod is less than 1.0 if the converse is true.

The formula values losses of less than \$5,000 at full value. For example, a firm that had five losses totaling \$10,400 would be charged that amount in the experience rating formula. However, a firm with one \$10,400 loss would not be charged the full amount. The formula breaks this loss into two amounts -- \$5,000 plus some fraction of the amount in excess of that. The experience rating manual contains the factors that apply to the amount over \$5,000, and they will vary by the firm's expected losses. Factors are greater for firms with greater expected losses. Each state has a maximum amount for which any one loss can be valued, no matter what its actual size. For example, if a firm suffers a loss reserved at \$900,000 and the state's maximum single loss is \$200,000, the formula will apply the factor only to \$195,000 (the amount between \$5,000 and \$200,000).

A significant change in the amount reserved for a loss can have a dramatic effect on a firm's experience mod. In the example above, if the reserve dropped from \$900,000 to \$100,000, the factor would now apply to \$95,000 instead of \$195,000. This would produce a major decrease in the formula's calculation of actual losses, resulting in a big drop in the experience mod. Conversely, a loss reserve that jumped from \$50,000 to \$250,000 would produce a sizable increase in the calculated actual losses, as the factor is now applied to \$195,000 rather than \$45,000. This

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