

Insurance Buyers' News



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Liability

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Managing Human Resources Risks

Outsourcing human resource management responsibilities could reduce your administrative burdens. However, it will have risk management implications.



For most companies, managing human resources will probably require more attention than any other aspect of your risk management plan. Workers' compensation, safety, compliance with wage/hour laws and avoiding discrimination—these responsibilities can keep one or more managers busy full-time.

Many companies have chosen to manage these responsibilities by outsourcing them. According to the U.S. Census Bureau's 2002 statistics, 8.5 percent of nonfarm U.S. businesses used temporary staffing from a leasing service or

a professional employer organization and 2.2 percent leased employees from a leasing service or a professional employer organization.

PEO arrangements differ from employee leasing. They are long-term relationships that involve all or most of a company's employees. Under a PEO arrangement, the company and PEO enter a contractual agreement to become co-employers and share or allocate employment responsibilities. The PEO generally handles all human resource and benefit management functions. It hires workers, controls payment of wages, provides

unemployment insurance and other benefits, and handles employment taxes. The subscribing company retains some employer responsibilities, including supervision to ensure the delivery of the company's products or services.

Smaller employers in particular find advantages in PEOs and leasing. According to the National Association of Professional Employer Organizations, the average NAPEO member company client is a business with 17 worksite employees.

Benefits of leasing or PEO arrangements include:

- ✓ Expert human resource and benefit administration. PEOs and leasing firms can devote full-time, professional staff to these tasks.
- ✓ Better benefits. Larger PEOs and leasing firms manage thousands of employees, giving them more purchasing power than individual small employers have.
- ✓ Better safety. A PEO should have safety professionals, who conduct regular audits that

This Just In...

You've probably heard the horror stories about cell phones causing cancer; insurers have apparently heard them, too. Insurers are excluding coverage for electromagnetic radiation from their commercial general liability policies, according to an article in *Business Insurance* (June 4, 2007). Insurers that haven't excluded coverage are avoiding writing policies for businesses such as wireless phone service providers and manufacturers.

Scientists have not come to a consensus on the health risks of electromagnetic radiation or electromagnetic fields caused by cell phones and other communications devices. A recent Danish study that included people who had used cell phones for as long as 21 years found no increased incidence of cancer. Michael Thun, MD, MS, the American Cancer Society's vice president of epidemiology and surveillance research, also said that of 16 earlier studies on cell phone use and cancer, only two found a link, and "the methods used in those two studies led many researchers to question the findings."

Still, the insurers are taking no chances due to the long-tail nature of cancer liability claims, which take a long time to develop and become reported as claims. ■



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could reduce injuries and costs.

Unless you properly structure your program, however, leasing employees or using a PEO can create risk exposures, including:

1. Workers' compensation coverage gaps.

Some states permit PEOs to provide workers' compensation for their clients. If yours does, ask the PEO for a certificate of insurance as evidence of coverage. And make sure the PEO's policy includes an "alternate employer endorsement" to cover employees injured while working for you.

Even if your PEO provides coverage, you might want to keep a minimum premium workers' compensation policy in place. A minimum premium policy will provide some protection if your PEO fails to buy coverage or stops making premiums—just make sure your insurer agrees to cover leased employees as regular employees.

2. Lawsuits from injured workers.

Even if your PEO or lease arrangement includes workers' compensation coverage, the worker can sue your company for negligence if unsafe or hazardous conditions led to the injury. Most commercial general liability policies exclude coverage for "special employees," such

as leased employees or independent contractors. You can remedy this coverage gap by adding the "coverage for injury to leased workers" endorsement.

3. Gaps in umbrella liability.

Some umbrella policies require you to schedule the underlying employers' liability policy, which is part of your workers' compensation policy. If you have no workers' compensation policy in place, your umbrella might not respond to an employer's liability claim. Having a minimum premium workers' compensation policy could help eliminate this coverage gap as well.

4. Employment practices liability.

When a PEO handles hiring and firing, the employer can still be responsible for discrimination law violations. To protect your company, consider buying employment practices liability coverage. If you already have a policy, make sure it includes leased and special employees in its definition of covered employees.

5. Employment tax liability.

When you contract with a PEO, the IRS considers it the "employer of record" for employment tax purposes. However, if you main-

tain too much control over the employees, the IRS could consider your firm the employer and liable for withholding and Social Security. State laws on leased employees vary. Some states consider the PEO to be the employer, while others consider the PEO a co-employer.

Before entering into a PEO or leased employee arrangement, check the provider's qualifications and references. The Employer Services Assurance Corporation conducts voluntary accreditation for PEOs, verifying the organization is financially stable, complies with important federal and state employment laws, is owned and operated by qualified professionals and has a surety bond to cover clients in the unlikely event of default. See their listing of accredited PEOs at www.esacorp.org. You can also check whether a PEO's risk management staff has earned professional accreditation at www.certificationinstitute.org.

We can review your insurance program to help you manage any employment-related exposures, whether you decide to use leased employees or enter a PEO arrangement or not. For more information, please call us. ■

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Surety Bonds: The Other Risk Management Tool

When you buy a surety bond, it guarantees that you (the principal) will fulfill the terms of a contract or other obligation with a third party.

Surety bonds and insurance policies both provide financial security, but in very different ways. Generally speaking, you buy insurance policies to protect yourself or your business from financial loss; you buy surety bonds to protect another party from loss.

Surety bonds cover obligations an individual or business owes to others. Examples abound in the business world. If your profession requires a license, the state will likely require you to have a license bond to protect your clients if you don't uphold the laws or regulations that govern your license. Contractors often use construction or performance bonds to guarantee that a project or job will be completed according to the contract; many also buy bonds to guarantee they

will pay their employees' workers' compensation claims. Crime bonds guarantee that a covered employee won't embezzle your funds.

When you buy a surety bond, the surety company guarantees that you (the principal) will fulfill the terms of a contract or other obligation with a third party. If you fail to meet these obligations, the surety company will pay the other party (called the "obligee").

When a surety company issues a bond, it's saying that it believes you will make good on your obligations. Therefore, when you apply for a surety bond, the surety company will make a thorough investigation of your company, including its finances, qualifications and experience. If a surety company has to make a pay-

ment to an obligee on your behalf, you must reimburse the surety.

Each bond specifies a maximum amount of money the surety will pay, called the penal sum, in the event of your default. The premium you pay depends on how the surety underwriter assesses your default risk. The greater your perceived risk of default, the higher your premiums will be.

Guaranteeing a financial obligation such as a loan requires a different set of underwriting tools—and a different type of bond. Financial guarantees require the analysis of complex contractual terms and conditions and an evaluation of how they will affect your ability to pay the loan or financial obligation you want to guarantee. Because underwriting financial guarantees is so complex, insurance regulations permit only companies licensed expressly for that line of business to write it.

Surety bonds can play an important role in your risk management program. For more information, please call us. ■

Fire Prevention: Don't Forget the Outdoors

Summer brings hot weather and increased risk of fire.

Many businesses focus their fire-prevention energies on the interior of their building. As we enter the hotter summer months, though, don't forget the many potential fires waiting to occur outside your buildings. Here's how to prevent them and minimize resulting damage.

1. Use fire-resistant materials, particularly on roofs. Many fires spread by jumping from roof to roof.
2. In suburban, rural or "campus" environments, make sure your landscaping creates a "defensible space" around your buildings. This area prevents the spread of fire and gives firefighters room to do their work. Recommendations for the size of a defensible space vary with the conditions of your area; check with your local fire fighting agency.

A defensible landscaping plan uses low shrubs and plants close to buildings to prevent fire from climbing up to eaves and other structures. Use taller shrubs and trees only outside the defensible zone. Certain types of trees, such as eucalyptus, firs and other evergreens, contain resins that can explode in a fire, causing it to spread outward rapidly. Avoid using these trees altogether and opt instead for hardwoods, particularly native species adapted to your climate.

Proper pruning can also help contain a fire—the removal of lower branches can prevent a ground fire from climbing into the canopy and spreading.

3. Keep landscaping well-maintained. This means keeping it well watered. If your buildings lack formal landscaping, keep any grass or other vegetation within 20 feet of the building mown.
4. Remove any debris from the defensible zone. This includes trash as well as leaves and twigs.
5. In high-risk areas, such as wildland/urban interfaces or areas in or near parkland, consider protecting buildings with roof-mounted sprinkler systems. Wet chemical systems can provide protection in the event that municipal water becomes unavailable.

For more information on fire mitigation, please contact us. ■



Do You Have Flood Coverage?

Standard commercial property policies generally do not cover water damage caused by flood. So unless you have separate flood coverage, a flood could prove to be a very costly problem.



Check the “causes of loss” section on your commercial property policy. Standard commercial property policies do NOT provide coverage for water damage caused by “flood, surface water, waves, tides, tidal waves, overflow of any body of water or their spray, all whether driven by wind or not; mudslide or mudflow; water that backs up from a sewer or drain; or

water under the ground surface pressing on, or flowing or seeping through foundations, walls, floors or paved surfaces; basements, whether paved or not; or doors, windows or other openings.”

The commercial property policy does, however, cover “loss or damage by fire, explosion or sprinkler leakage.” So unless you have a flood caused by sprinkler leakage,

your policy won’t pay.

The National Flood Insurance Program (NFIP) offers flood insurance to individuals and businesses in “participating communities.” These communities may be towns, cities, unincorporated county lands and tribal or native authorities that have chosen to participate in a floodplain management program.

NFIP flood policies limit coverage for non-residential buildings to \$500,000, with an additional \$500,000 in coverage for contents. They generally have a 30-day waiting period before coverage goes into effect, so plan ahead if you may need coverage this rainy season.

Flood coverage is also available through private insurers. If you need flood coverage to meet the requirements of a federally insured loan, verify that the coverage is written by an “admitted” carrier— one that is licensed to do business in your state. Make sure the policy guarantees coverage at least as broad as the Standard National Flood Policy and that the insurer will provide thirty days’ notice to the insured and lender before canceling the policy.

A difference-in-conditions (DIC) policy may also provide flood coverage. Most DIC policies exclude coverage for floods, but these non-standard policies can often be tailored to cover unusual risks. DIC policies generally make most sense for larger insureds.

We can help you determine whether a DIC policy can provide the coverage you need, and whether flood insurance makes financial sense for your firm. ■

These steps can help you minimize damage from floods.

1. Have the right equipment on hand. This includes sandbags to divert water away from your building’s foundation and sump pumps to remove water from enclosed below-ground spaces, such as basements or underground garages. The Institute for Business & Home Safety (IBHS) recommends having sump pumps hard-wired to a back-up generator, as flooding can cut off regular electric supplies. Test the back-up power system, and consider having a back-up sump pump.

2. Regularly check underground spaces and foundations for settling or cracking. All buildings settle, but excessive amounts could indicate runoff, underground water, soil compaction or other problems that could lead to foundation damage and flooding.

3. Have guidelines for snow removal, if your climate warrants. During snow removal, avoid piling snow against the building walls, keep drains clear and remove snow so snowmelt runs away from the building foundation.

4. Regularly inspect drains in parking lots and around buildings. Keep them clear and free of leaves and other debris.

5. Regularly inspect landscaping for potential problems. Look for standing water—unless you’re over-watering, this can signal clay-based or heavily compacted soils. These soils won’t absorb water readily, which can cause rapid runoff in a rainstorm or flood. Professional aeration and soil amendment can mitigate.

6. Check irrigation systems regularly during daylight hours to spot broken sprinkler heads and other problems. Make sure landscape and maintenance crews know the location of underground irrigation pipes to prevent breakage.

7. Keep any water features in your landscaping well maintained. Document the locations of any drains, shutoffs and power supplies for pumps and lights; give copies to maintenance and landscaping contractors. ■