

The Wright & Kimbrough Report



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POST-CHARLIE HEBDO

Reassessing Your Need for Terrorism Coverage

THE TRAGEDY that unfolded in Paris at the satirical magazine *Charlie Hebdo* and a kosher market, as well as a number of other smaller-scale terrorism attacks, is evidence of a new kind of terrorism that's hit the West.

Besides the risk of loss of life and injuries, an act of terrorism would sink most small and mid-sized businesses. But that doesn't have to be the case, since the cost of terrorism coverage is relatively cheap compared to other lines of insurance.

Companies with a total insured value of less than \$100 million paid a median of \$51 per million in coverage in 2013, according to the "2014 Terrorism Risk Insurance Report" by Marsh. Prices differ depending on the industry and location, with construction paying some of the highest rates.

It should be noted that even if your business is not hit by terrorism but is in an area where an event unfolds, it could still be affected. Besides the obvious – the risk to property – the biggest risk to businesses

is lost revenue.

There are usually two categories of effects from terrorism:

- Businesses that suffer direct damage, which would be covered by a terrorism rider. However, if they have a property policy, the damage would not be covered.
- Businesses located in the area of the event. In the case of the Boston bombing, that was a rather wide area that was closed for more than a week as authorities investigated. Coverage for such businesses would be dependent on the interpretation of "civil authority" under the policy.

A civil authority provision is usually contained in many business-owner property insurance policies. Civil authority provisions are usually written as additional coverage provisions, not exclusions. They generally provide coverage for lost business income due to an "action" taken by a civil authority, such as closing streets to investigate.

Payouts are dependent on how the government classifies an attack. Businesses

with terrorism coverage have to wait for this ruling by the Treasury Department.

As part of this process, the Treasury Department says that the event or attack must be "committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion."

Additionally, total insured damage must reach at least \$5 million.

Why not property coverage?

Business property insurance protects companies from financial loss due to the physical assets of a business being damaged. These can include the building the business is housed in, its inventory, its equipment and other essential contents. This type of coverage protects against things like fire, lightning, hail, wind storms, explosions, riots and vandalism.

Also, you can purchase endorsements

See 'Cover' on page 2

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Smartphones and the Wage and Hour Dilemma

DO YOU EVER wonder if your non-exempt employees are sneaking a peek at work e-mail off the clock? Do they feel pressured to respond to calls and e-mails after the workday ends?

If they do, it could spell trouble for your organization.

The proliferation of smartphones has led to a rapidly rising number of lawsuits by employees claiming they were required to work uncompensated on evenings and weekends when not on the clock. The lawsuits are often class actions stemming from overtime-eligible employees using smartphones to extend their workday without those after-hours tasks being compensated.

The class action danger

The problem for employers is that when one employee complains to the Labor Department that they are not being compensated for time working on their smartphones when away from work, the agency's investigators won't stop with the complaining employee. They also look at how many others are "similarly situated."

A single employee's complaint can turn in to a class action when other similarly situated employees are included.

Just a few minutes a day over months or years can add up if employees regularly use their phones for uncompensated work.

In the last several years, the courts have seen a flood of lawsuits in which groups of employees claim the time they spend reading and responding to e-mail should be considered work time, and therefore paid.



When employees sue, employers typically use the *de minimis* defense, but that's a dead end. Here's why:

De minimis means very little, perhaps just a minute or two. Just five minutes a day adds up to almost a half hour a week. There are precedent-setting court decisions that have said that even 30 minutes extra a week is not *de minimis*.

Additionally, you may not even know that some employees are checking work e-mail at home whether they're told to or not.

An employer doesn't have to require employees to answer e-mail and perform other tasks off the clock to run into trouble. Merely permitting work without counting it as compensable time, puts the employer at risk.

What should you do?

The extension of work time made possible by smartphones and other electronic devices poses a new danger for employers.

To ensure you don't find yourself the target of a wage and hour lawsuit, you need to put in place a solid policy about non-exempt employees working on their smartphone after hours.

You should put the policy in place, communicate it to your staff in a meeting, as well as include the policy in your employee handbook.

Passing out a memo on the matter is also helpful.

Once the policy has been communicated, you must monitor and survey staff to make sure they are not breaching the rules. ❖

Continued from page 1

Assess Risk to See if Terrorism Cover Is Right for You

that can be added to a policy that will protect it further. Common endorsements include ones for flood, earthquakes, business income and equipment breakdown.

Unfortunately, however, according to data from the Congressional Research Service, nearly four out of 10 commercial insurance policies have exemptions relating to terrorism, which would allow insurers to reject business interruption claims.

Large office buildings are much more likely to have terrorism insurance than small businesses.

Some issues to consider:

- Is terrorism coverage worth it for your business? It's up to you to decide if it's worth it. There is a wide range of factors that you'll use to determine whether this coverage is wise. First, consider your location. If you're in a small town, then your need for this coverage is likely much lower than a company located in New York City.

If you are concerned, you can start by analyzing your current insurance coverage and determine if you are protected in the event of a terrorist attack. Many businesses don't know they have gaps

in their coverage for terrorism.

- Consider the cost. Cost is another issue, though it will be tied to your location. In a small town you might pay as little as \$25 for an entire year's worth of coverage, but in larger metropolitan areas the rates are typically higher, although not by much.

- What's covered and not covered by terrorism coverage? You'll need to read the specifics of your policy, but generally speaking, terrorism insurance doesn't cover nuclear attacks, biological attacks, or acts of war.

The takeaway

As with any type of coverage, the key to deciding if you need to add terrorism insurance comes down to a simple risk assessment. What do you stand to gain if you have the coverage and you need it, and what you stand to lose if you need it and don't have it? ❖

We can help you assess your risk.
Call us today: (800) 822-3694

Are You Preventing the Most Common Injuries?

THE FIVE leading causes of workplace injuries accounted for about 65% of workers' compensation costs in 2012, according to new research by Liberty Mutual Group Inc.

The results, published in the Liberty Mutual Research Institute for Safety's "2014 Workplace Safety Index," found that overexertion – or injuries related to lifting, pushing, pulling, holding, carrying or throwing – was the top cause of workplace injury in 2012. Overexertion injury claims cost U.S. employers \$15.1 billion that year, or 25% of all workplace injury costs, according to the study.

This index is a good tool for employers as it helps businesses understand the nature of the majority of workplace injuries. With this information in hand, you can put in place safeguards in your workplace to reduce the likelihood of injuries. ❖

Preventing Overexertion

When your workers handle materials:

- Have a handling plan that avoids slippery hazards and includes a destination.
- Test the load to ensure that it can be safely carried.
- If the load is too heavy, awkward or bulky to carry alone, the worker should get help.
- Use machinery or equipment, such as pushcarts, hand trucks, forklifts or hoists.
- When possible, use levers, incline planes or rollers to move loads.

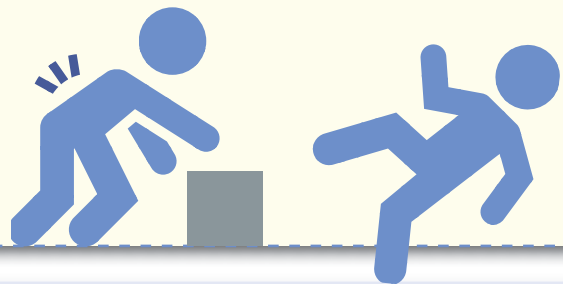
Guidelines for safe lifting:

- Get a good grip. Grasp the load firmly. Use gloves if they allow for a better grip.
- Get strong footing. Center body weight to provide a line of thrust and good balance.
- Keep it close. Grasp the load firmly and lift towards the belt buckle. Hold the load close to the body to avoid putting pressure on the back.
- Lift smoothly. Raise, carry and lower the load smoothly. Never jerk a load.
- Avoid twisting. If turning is required while lifting or carrying a load, turn the feet and body instead of twisting the back.
- Push. Push rather than pull the load.



10 Leading Injuries by Cost

1. *Overexertion*: Total cost in U.S.: \$15.1 billion (25.3% of all workplace injury costs).
2. *Falls on same level*: Total cost: \$9.2 billion (15.4%).
3. *Struck by object or equipment*: Total cost: \$5.3 billion (9%).
4. *Falls to lower level*: Total cost: \$5 billion (8.6%).
5. *Other exertions or bodily reactions*: Total cost: \$4.3 billion (7.2%).
6. *Roadway incidents involving motorized land vehicle*: Total cost: \$3.2 billion (5.3%).
7. *Slip or trip without fall*: Total cost: \$2.2 billion (3.6%).
8. *Caught in/compressed by equipment or objects*: Total cost: \$2.1 billion (3.5%).
9. *Repetitive motions involving micro-tasks*: Total cost: \$1.8 billion (3%).
10. *Struck against object or equipment*: Total cost: \$1.76 billion (2.9%).



Falls

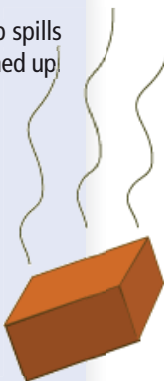
To avoid injuries:

- Maintain a workplace free of clutter and assign staff to make sure the work area is tidy.
- Eliminate wet or slippery surfaces if possible. Clean up spills immediately and make others aware of spills until cleaned up.
- Avoid creating obstacles in aisles and walkways.
- Ensure that you have proper lighting in all areas.
- Make sure workers have the proper shoes.

Struck by objects

A few ways to reduce struck-by injuries are:

- Wear hardhats to avoid being injured by falling objects.
- Stack materials properly to prevent sliding, falling or collapse.
- Always wear proper PPE. This includes safety glasses, goggles and face shields, to name a few.
- Don't work under cranes, hoists or heavy machinery while it's being operated.
- To avoid incidents with vehicles, workers should wear seat belts, check vehicles thoroughly and wear visible clothing.



Beware of the ACA Whistleblower Complaint

BY NOW you should be aware of the various penalties that can be levied against employers for not providing health insurance to their full-time employees once the employer mandate takes full effect.

But are you aware of another liability contained in the Affordable Care Act – the whistleblower complaint?

The task of investigating whistleblower complaints is the responsibility of the federal Occupational Safety and Health Administration.

Employees that feel they've been wronged in terms of the ACA have 180 days to file an administrative complaint with the OSHA Whistleblower Directorate.

So far there have been no Department of Labor (DOL) administrative tribunals for an ACA whistleblower complaint. That's not surprising since the employer mandate has partly taken effect only this year for employers with 100 or more full-time or full-time equivalent employees.

While there have been no tribunals, the OSHA has received one complaint that was thrown out. Nonetheless, the case could be a reflection of what a complaint might look like in the future, after the employer mandate is fully implemented.

The case:

A woman employed as a "durational employee" by the Housing Authority of Columbus, GA, filed an ACA whistleblower complaint in August 2014.

She alleged that she was terminated in January 2014 – four months after she'd refused to sign and acknowledge that she understood "and agreed" with the terms of the company's policy on health coverage for employees.

Those were laid out in a letter she'd received in September 2013, which stated that durational employees were ineligible for participation in the employer's group health insurance plan and that only regular, full-time employees were eligible.

She said that after she had refused to sign, she received her first unsatisfactory performance evaluation and a significantly lower annual bonus based on the unsatisfactory review.

She alleged that adverse employment actions were the result of her refusal to accept the terms.

OSHA dismissed the complaint, on the grounds that it was filed too late – more than 180 days following the date of termination.

The woman appealed the decision to the DOL Office of Administrative Law, claiming that her complaint was timely because she had attempted, unsuccessfully, to file complaints

New Rule Book

THE ACA bars an employer from discharging, discriminating or retaliating against any employee because they have:

1. Received a tax credit or a subsidy for buying health coverage on a public exchange;
2. Provided, caused to be provided, or are about to provide or cause to be provided to the employer, the federal government or the state attorney general, information regarding a violation of Title I of the ACA;
3. Testified or are about to testify in a proceeding concerning an ACA violation. Or if they assisted or participated, or are about to assist or participate, in such a proceeding.
4. Objected to, or refused to participate in, any activity, policy, practice or assigned task that the employee reasonably believes was in violation of any provision of the ACA.



within the 180-day statute of limitations with other federal agencies.

But the administrative law judge threw out the complaint, saying the employer could not be held liable for retaliation prior to the effective date of the employer mandate.

The takeaway:

The case illustrates the most likely scenario under which an employee may gain ACA whistleblower protection after this year.

Other whistleblower complaints likely to surface in 2016 would concern complaints of adverse employment actions taken after an employer receives notice that one or more of its employees qualified for a tax credit or a subsidy for purchasing health benefits through a public exchange.

However, all employee complaints must be filed within 180 days of an adverse employment action. ❖



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