

WORKERS' COMPENSATION INSURANCE: HOW TO MANAGE THE **EVOLVING** MARKET

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Being an employer in the State of Florida poses many challenges. One of which is the state-mandated insurance coverage of Workers' Compensation (or in some cases an alternative but equal form of indemnification for injured employees). Many employers recognize that they are required to purchase this insurance coverage but don't understand what this policy provides and what important aspects to be aware of in order to take a proactive stance on cost control.

WHAT BENEFITS ARE PROVIDED THROUGH WORKERS' COMPENSATION INSURANCE?

Both the employer and employee are afforded coverage via workers' compensation. Schedule A refers to the benefits granted to an injured or deceased employee and schedule B is for the employer. The injured worker received three main benefits via schedule A. First, their medical expenses are fully covered at 100% of the cost with no deductibles or co-payments and for the lifetime of that injury. Try matching that under a personal health insurance policy! Second, there is a death benefit in the event that an employee dies from the work related injury. The death benefit covers \$7,500 in funeral costs as well as up to \$150,000 granted to legal dependents. Third, if the injured employee is unable to return to work as a result of the injury then there is lost wages/indemnity coverage. This is limited to two thirds of their salary up the States maximum, which is an average of the weekly wage and is currently set at \$863 per week.

While most view workers' compensation as something that only benefits the employee there are two main benefits for the employer. First, Workers' Compensation insurance is considered "sole remedy" meaning the injured workers are not allowed to sue their employer because of their injury if they are covered by workers' compensation insurance. That being said, the employer is not completely immune to lawsuits stemming from work injuries. A third party such as a dependent or spouse can sue the employer in cases of willful negligence. Therefore the second benefit afforded to the employer under schedule B is called "Employer's Liability" and provides limits of coverage for third party claims against the employer.

SCHEDULE A EMPLOYEE

MEDICAL EXPENSES

- No Deductibles
- No Co-payments
- Lifetime of injury

DEATH BENEFIT

- \$15,000 to Legal Dependents
- \$7,500 max for Funeral Expense

DISABILITY/ INDEMNITY

- 2/3 of Salary or \$863/week
104 week max
 - PIR > 20%
- AWW x .75 x 1.03
To age 75

SCHEDULE B EMPLOYER

SOLE REMEDY

EMPLOYER'S LIABILITY "ACTION OVER"

- \$100,000 each accident
- \$500,000 Disease Aggregate
- \$100,000 Disease Occurrence



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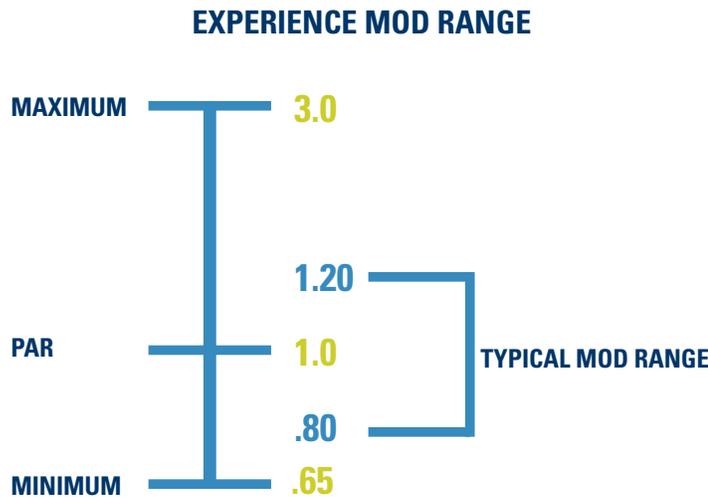
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WHAT SHOULD EMPLOYERS BE CONCERNED ABOUT?

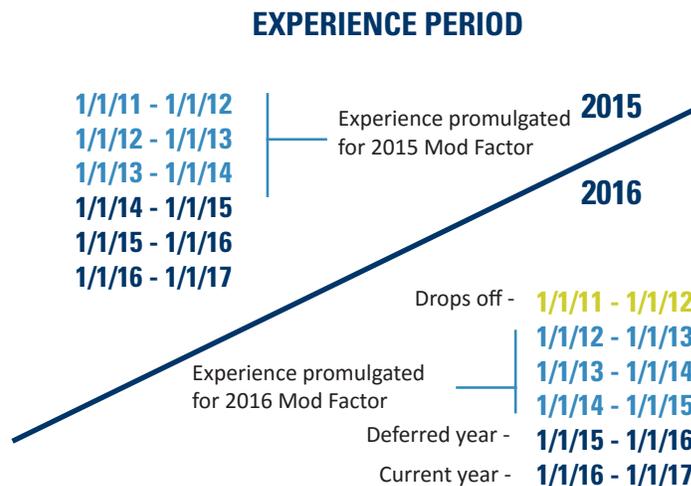
The Workers' Compensation insurance program is set up to benefit the injured employee and thus the system works to their favor in most cases. It is a system that rewards good loss history and severely punishes employers that high claim frequency and severity. Naturally, concerns over cost control are front of mind for employers when it comes to workers compensation, especially in today's environment. Many employers feel at the mercy of a system that works against them and hinders their ability to remain profitable. The first step to addressing those concerns is a greater understanding of how workers' compensation premium is generated, what recent changes will be increasing those premiums and what employers can do to control cost.

THE MOD FACTOR: How is it calculated and how does it directly impact cost?

The Experience MOD factor, MODifies workers' compensation premiums based on loss history (experience). It is in essence the employer's loss history report card. Good loss history can be described as having fewer/lower cost claims than anticipated for a given class of risk. Conversely, bad loss history is more/higher cost claims than expected for that given class. NCCI or the National Council on Compensation Insurance receives unit statistical data from workers' compensation companies and will promulgate the mod factors utilizing a complex formula that assigns a penalty for each work comp claim.



A normal or "par" mod is 1.0 and does not modify the premium up or down. A mod factor of less than 1 is considered a credit mod and will modify the premium down due to favorable loss history. A mod higher than 1 is called a debit mod and will modify the premium up due to unfavorable loss history. NCCI will utilize a rolling three-year collection of claims data called the experience period in order to calculate the mod factor for a given employer. Upon each renewal, the oldest year in the experience period will drop off and a new year will be incorporated in to the experience period for the new mod factor.



WHAT RECENT CHANGES WILL INCREASE WORKERS' COMPENSATION PREMIUMS?

Two recent court rulings will have a direct and negative impact on claims cost and thus significant workers' compensation premium increases should be expected.

In the Castellanos case, Florida's Supreme Court ruled that portions of a 2003 Senate Bill (40A) limiting attorney fees in workers' compensation cases, was unconstitutional. (Keep in mind that workers' compensation rates decreased over 70% in the 13 years following this bill.) Now, attorneys are allowed to bill hourly to litigate WC insurance claims which immediately increases the cost of claims and thus, rates.

In the Westpahl case, Florida's Supreme Court ruled that the 104 week cap on Temporary Total Disability (TTD) benefits was unconstitutional reviving the 1990 law allowing for 260 weeks of TTD. This decision immediately more than doubles the reserves on current and future TTD cases. Increases in loss costs, experience MOD factors and rates will follow.

As a result of these two cases, NCCI recommended a pro rata increase of nearly 20% effective October 1, 2016. The Florida Office of Insurance Regulation (OIR) responded by approving a 14.5% increase in workers' compensation rates on all new and renewal policies effective December 1, 2016. Given the anticipated increase in loss costs overtime, these increases are just the beginning.

WHAT CAN BE DONE TO HELP CONTROL COST?

While the court rulings can't be changed, there are ways to help control cost! Many employers benefit from various work comp strategies that become a fundamental part of their operations:

Discounts.

There are two discounts available in Florida that when implemented result in a 7% reduction in premium. They are the Drug-Free workplace discount and the Safety discount. There are certain requirements that need to be followed in order to obtain these two discounts but many employers already do them and are simply not receiving the credit.

Claims Management.

When a claim occurs it is vital to have a plan for how that specific claim will impact the company and how it will be managed with the injured employee. There are ways to reduce the claim penalty by utilizing a "return to work" policy in order to limit disability/indemnity payments. The employer can also take advantage of "wage continuation" payments to those employee needing to stay home from work for extended periods of time. Florida law allows for the disability payments to be made by the employer and as a result the claim can be considered "medical only" and receive a 70% reduction in the amount of the claim that is counted as a penalty for the purposes of mod calculation.

Risk Management.

Effective risk management practices can prevent or significantly reduce claim activity which has a direct impact on the Experience MOD Factor and thus a tremendous impact on the long term cost of workers' compensation insurance. There are many facets to risk management, but a few of them are performing pre-employment background checks, utilizing a Friday "No accident certification form" to prevent weekend activities becoming Monday morning work comp claims, and many others.

While this article provides a high-level overview of workers' compensation in Florida and viable strategies to consider to control costs, the real benefits are realized with a proactive risk management and insurance brokerage partner with experience in delivering exceptional financial results. As one of the largest privately held insurance brokerage, risk management, and employee benefits firms in the US with offices in Tampa, Sarasota, Naples, Fort Myers, and The Villages, our firm, "BKS," stays on the vanguard by offering holistic solutions to manage risk.



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