

## WHY SHOULD I BUY WORKERS COMP?\*

Last month, we talked about some of the ways small businesspeople can protect themselves by being proactive in the management of their insurance program. Let's expand on that same idea this month and discuss the purchase of workers comp insurance.

Texas is one of the three states with laws allowing employers to opt out of workers comp coverage. Too many business owners believe that "opting out" simply means saying they don't want to buy it. It is a little more complicated; but first, let's discuss the workers' benefits from your purchase of the coverage.

Workers' compensation insurance benefits can include:

- Lifetime medical benefits for necessary treatment of compensable injuries and illnesses
- Disability income benefits for a specified period of time and up to dollar limits set by law
- Limited funeral expenses for workers killed on the job
- Death benefits for surviving dependents of workers killed on the job.

Benefits are not payable for injuries that:

- Are intentional or self-inflicted
- Result from the employee's horseplay or voluntary drug or alcohol intoxication
- Arise from voluntary participation in off-duty recreational, social or sports events
- Result from "acts of God" unless a person's job exposes him or her to a greater than ordinary risk of injury from such acts
- Are inflicted by someone else for personal reasons unrelated to employment.

So, those are the benefits that your workers enjoy when you purchase workers comp coverage, but what about the benefits to you? They are twofold:

- Relief from liability for claims that would give rise to the benefits noted above
- **AND MOST IMPORTANT, certain legal protections, including immunity from most employee injury lawsuits.**

When an employer has workers comp insurance, a lawsuit may go to court only after the Texas Department of Insurance administrative dispute process has been exhausted. TDI's recommendations must be presented to the court and evidence is limited to the issues in dispute. Resolved issues cannot be reintroduced, and the employer's insurance company pays attorneys' fees and other defense cost.

Employers without workers comp could be forced to pay punitive damages if they lose injury lawsuits. More often than not, they lose lawsuits because, without a workers comp policy, they are prevented from using certain common-law defenses, such as:

- The injured worker's negligence caused the injury
- The negligence of fellow employees caused the injury
- The injured worker knew of the danger and voluntarily accepted it.

Without a workers comp contract, an employer found negligent in *any* way bears full financial responsibility for the loss, even if the employee's own negligence played a greater role in causing the injury.

The danger of "going bare" by operating a Texas business without a workers comp contract in place can be summed up in one sentence, "*It can cost you your business.*"

Knowing that, let's suppose you still choose to take your chances, maybe choose some so-called alternative product, what does the state require from you? Employers who choose not to purchase workers compensation insurance must:

- File an annual notice of no coverage with TDI
- Prominently display notices of non-coverage in the personnel office and throughout the workplace
- Give a written statement of non-coverage to each employee

The Texas Department of Insurance (TDI) regulates the state's workers compensation system, and to my knowledge, whatever penalty is associated with non-performance of the above requirements is rarely, if ever, enforced. Still, in the interest of a pro-active approach to your operations' insurance needs, it's important to consider the state's workers comp rules. It's even more important to seriously consider the purchase of a workers comp contract as a weapon in your arsenal for protecting your operation's financial integrity.

If you are unable to find workers' comp insurance through the voluntary market, Texas Mutual Insurance Company is the insurer of last resort in Texas. Texas Mutual has a special program called START for employers who cannot buy workers' comp in the voluntary market. The coverage is usually more expensive than coverage purchased through the voluntary market. A consideration in favor of Texas Mutual is their dividend program.

As always, I appreciate the opportunity of discussing insurance coverages with you. Please call, e-mail or fax to me your insurance questions and concerns. This column belongs to you, and my hope is that it will provide some light to the darker corners of insurance.

[anmmullen@mulleninsurance.com](mailto:anmmullen@mulleninsurance.com) or [www.mulleninsurance.com](http://www.mulleninsurance.com).

*Ann Mullen-Martin, President, Mullen Insurance Agency Inc.*

*\*Information contained in this article relies heavily upon data excerpts –and contains some direct copy from- from the Texas Department of Insurance website, <http://www.tdi.state.tx.us>*