COVERAGE INSIGHTS

Provided by ToughComp - a PCF/FFB Company

Understanding Employers' Liability Insurance

Accidents can happen in any workplace, and they often result in employee injuries and illnesses. These events can pose serious consequences for both employers and their staff. That's why almost every state prescribes certain statutory benefits for injured and ill employees and requires organizations to have workers' compensation insurance. The primary insurance agreement provided by such coverage helps reimburse employees' medical bills, rehabilitation expenses, lost wages and—in severe cases—death benefits following occupational ailments, but it's important to note that organizations may face other exposures related to workplace accidents.

Specifically, employees, their loved ones and other third parties may file costly lawsuits against organizations to recoup injury- or illness-related losses that extend beyond the benefits provided by workers' compensation insurance. In these cases, it's vital for organizations to have employers' liability coverage. This is a separate insurance agreement that can offer financial protection for organizations' legal liabilities and damages stemming from occupational injuries and illnesses that fall outside the scope of applicable workers' compensation requirements.

This article provides more information on employers' liability insurance and outlines key coverage benefits.

Overview of Employers' Liability Insurance

For most organizations, employers' liability insurance is included in their workers' compensation policies. However, some states (i.e., North Dakota, Ohio, Washington and Wyoming) provide workers' compensation insurance through state funds. Organizations with operations in these locations, also called monopolistic states, can purchase standalone employers' liability insurance, sometimes referred to as stop-gap insurance.

Every state besides Texas currently has its own workers' compensation legislation, which requires organizations to purchase varying levels of coverage that offer certain financial and medical benefits to employees who experience injuries or illnesses due to accidents on the job. Part one of workers' compensation insurance can help pay statutory benefits to injured and ill employees; commonly deemed part two of workers' compensation insurance, employers' liability coverage can reimburse organizations for various legal expenses (e.g., defense costs, settlements and judgments) arising from accident-related lawsuits that aren't protected under state legislation. Examples of covered claims include:

- **Third-party-over action lawsuits**—Sometimes, an employee's occupational injury or illness is linked to a third party. In these instances, the employee may initially sue the third party for causing the accident. However, the third party may respond by suing the employer and holding them liable for the event. For example, if a construction employee gets injured after using a hammer at work and files a lawsuit against the manufacturer of the hammer for playing a role in the accident, the manufacturer may then take legal action against the employer for failing to maintain the hammer, ultimately holding them responsible. This type of claim, also known as a third-party-over action lawsuit, would likely be covered by employers' liability insurance.

This Coverage Insights is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel or an insurance professional for appropriate advice. © 2024 Zywave, Inc. All rights reserved.

- **Dual-capacity lawsuits**—In addition to third-party-over action lawsuits, employers' liability insurance may provide protection for claims in which an employer is sued in multiple capacities, frequently deemed dual-capacity lawsuits. These lawsuits involve an organization being sued by an employee both as their employer and under a secondary relationship (e.g., a supplier, service provider or property owner). For instance, if an employer supplies products that their staff use during work tasks and one of these products ends up injuring an employee, the employee might take legal action against both the employer and the product supplier, resulting in two lawsuits against the same party.
- **Consequential injuries**—This coverage may also apply to lawsuits in which an injured or ill employee's spouse or another close family member sues the employer for injuries they sustain in response to the employee's occupational ailment, commonly called consequential injuries. For example, if an employee experiences a life-threatening injury (e.g., a blow to the head) at work and this stressful event causes their spouse to have a heart attack, the spouse could sue the employer for related damages.
- **Loss of consortium**—If a workplace accident results in an employee's death or leaves them with life-altering injuries (e.g., permanent nerve damage) that keep them from being able to work or fulfill their usual obligations, the employee's spouse or another close family member may sue the employer for negligence. This type of claim, sometimes referred to as a loss of consortium lawsuit, would likely be covered by employers' liability insurance.

There are some accident-related claims that are excluded from employers' liability insurance. Here are common coverage exclusions:

- Claims involving statutory obligations that would be covered under state or federal requirements (e.g., workers' compensation, unemployment compensation and disability benefits)
- Lawsuits stemming from injury- and illness-related liabilities assumed under contract
- Claims involving criminal acts, fraud, illegal profit or advantage, purposeful violations of state or federal laws, and related fines and penalties
- Lawsuits resulting from poor employment practices (e.g., discrimination, harassment, failure to promote or hire, and wrongful termination)
- Claims involving employees who reside or accidents and subsequent injuries or illnesses that occur outside of the United States or Canada
- Lawsuits arising from downsizing, layoffs, organizational restructuring, and mergers and acquisitions

Employers' liability insurance often comes with three separate coverage limits: a limit per workplace accident (regardless of how many employees are affected), a limit per injury or illness (regardless of how many employees sustain this ailment), and a limit per employee. For instance, an organization may have a $500,000 limit for each accident, a $250,000 limit for each type of injury or illness, and a $100,000 limit for every employee. The amount of coverage an organization needs will vary based on its size, industry, operations and particular workplace safety exposures. Organizations can consult trusted insurance professionals to determine sufficient employers' liability insurance limits.

Key Coverage Benefits

Employers' liability insurance can assist organizations in a number of ways. Some key coverage benefits include:

- **Financial stability**—Employers' liability insurance can help organizations prevent costly litigation from wreaking havoc on their finances. Since accident-related lawsuits can carry substantial losses, maintaining financial stability amid these events is crucial.
- **Enhanced compliance and credibility**—Since most states require organizations to have workers' compensation insurance and employers' liability insurance is often included with this coverage, having such a policy can help organizations comply with applicable legislation. It's also worth noting that stakeholders are more likely to trust organizations with appropriate risk

management and loss control measures, including a robust insurance portfolio. By securing employers' liability insurance, organizations can demonstrate to their stakeholders that they are committed to protecting these individuals as well as their own operations against accident-related losses.

- **Peace of mind**—Employers' liability insurance can help ease stress regarding the risk of workplace accidents and associated legal liabilities and damages. In conjunction with adopting adequate employee safety protocols, purchasing this coverage can provide ultimate peace of mind, equipping organizations with the resources and protection needed to navigate even the most difficult accident-related scenarios.

Conclusion

Employers' liability insurance can make all the difference in helping organizations stay resilient amid workplace accidents and reduce the fallout of associated lawsuits. By reviewing the protection this coverage provides and considering its key benefits, organizations can customize their employers' liability insurance to their unique needs.

Contact us today for more insurance solutions.

