

Navigating E&O Exposures for Workers Comp Claims

Each year, thousands of individuals become ill while employed or are injured on the job. In such circumstances, an employee may be entitled to workers compensation benefits as provided by federal and state law.

That means almost all businesses need adequate workers compensation insurance to cover their exposures. An insurance agent should always be careful in procuring and renewing of this type of insurance—and be mindful that he faces a significant errors & omissions exposure when a workers compensation claim is improperly reported.

Here are some steps for navigating an agency's exposure to potential E&O claims from workers compensation claims reporting:

Understand Policy Reporting Requirements

The first step to successfully report a workers compensation claim is to understand the reporting requirements of a client's policy. Each state regulates workers compensation claims reporting, and some states require businesses to report injuries to the state within seven days of being informed by an employee.

All incidents should be reported to the carrier for investigation, even if they appear minor or to not trigger coverage under the policy. For instance, if an employee of a subcontractor is injured at a work site and the subcontractor lacks workers comp coverage, the injured employee may seek coverage under your client's workers comp insurance policy.

In some states, your knowledge of an incident may be imputed to the carrier, even if the claim was never reported. As such, the carrier may have a basis to file a suit against you for its unexpected coverage obligations.

Further, the cost of the claim increases with each day it remains unreported. Claims reported seven to 14 days after the injury cost 18% more than those filed within the first week of the injury, according to a Hartford Financial Service Group study. Claims costs increased by 30% for claims reported more than 15 to 28 days after the date of injury.

Such an increase in claims expenses results in higher experience ratings and insurance premiums.

Determine Who Reports the Claim

Another step for reducing an agency's E&O exposure is to determine who will report claims to the workers comp carrier. It is important to establish a claims-reporting process with your client because many carriers require notice of workplace incident within 48 hours.


Document Claims Properly

Once a claims-reporting protocol is in place, document your agency file using a consistent method—especially if your client opts to report claims directly to the workers comp carrier. All incidents should be reported in a timely manner to the carrier because failure to provide timely notice may violate state law and expose your client to penalties and fines.

Many businesses address some of their risk exposures by utilizing risk transfer agreements—hold-harmless, indemnity and waiver of subrogation—which have a significant effect on the procured insurance coverage.

In this situation, a workplace incident may now trigger a reporting requirement under your client's commercial general liability, professional liability or umbrella policy with respect to potential third-party claims, which may be filed by an injured worker against any landlords, contractors, suppliers and others who are additional insureds.

As such, notice of a workers comp claim should be routinely provided to all of your client's liability carriers. This is important because many agency agreements require an agent to provide prompt notice of all incidents. An agent's failure to do so may create an E&O exposure.

An agency's file provides the best weapon in defending a lawsuit brought by a client or insurance carrier concerning the reporting of a workers comp claim. Every step of the claims-reporting process should be documented because any legal action may ultimately be resolved by how a court or jury perceive an agent's credibility against that of a client. 

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Claims Files: CGL Insurer Sues Agency over Unreported Claim

An agency's client told the agency about worksite explosion that resulted in serious injury to an employee. The workers compensation carrier was notified, but the client's commercial general liability carrier was not.

The client had previously requested additional insured coverage for its landlord and general contractor under its liability policies. Prior to the explosion, the agency issued several certificates of liability insurance to the landlord and general contractor.

One year after the incident, the injured employee sued the landlord and general contractor for negligence.

The landlord and general contractor sought coverage under the client's CGL policy pursuant to the additional insured provision, but the CGL carrier denied coverage based on late notice of the claim.

Consequently, the client, landlord and general contractor sued the insurance agent for failing to report the explosion to the CGL carrier in a timely manner.

At trial, the plaintiffs presented evidence of the agency's knowledge of the workers comp claim to the jury, which ultimately returned a verdict in favor of the plaintiffs.

—C.I.