Insurance Buyers' News

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Insuring Employees Who Drive Their Own Cars

Just because an employee uses a personal auto does not relieve the employer of liability if he or she injures someone while on the job.

In many companies, employees who drive during the course of their jobs—whether for deliveries, calling on clients or picking up supplies—use their personal car rather than company cars. This has several advantages for the employer—it does not have to maintain a fleet, it does not have to worry about non-employees driving the car, and the employee's personal auto liability policy provides the first layer of coverage. Accounting is also simpler—the employer does not have to account for an employee's personal vs. business

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This Just In

Turnover costs: another reason to avoid discrimination in the workplace.

According to the Center for American Progress, more than 2 million Americans leave their jobs every year due to unfairness and discrimination. The Center estimates losing and replacing those workers costs employers $64 billion per year. Each individual worker lost represents a significant cost to employers: $5,000 to $10,000 to replace an hourly worker, and between $75,000 and $211,000 for an executive making $100,000 a year, found another study.

"Businesses that discriminate based on a host of job-irrelevant characteristics, including race, ethnicity, gender, age, disability, and sexual orientation and gender identity put themselves at a competitive disadvantage compared to businesses that evaluate individuals based solely on their qualifications and capacity to contribute," said the

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use of the car—all the employer has to do is reimburse employees for their mileage at the current IRS rate.

However, just because an employee uses a personal auto does not relieve the employer of liability if he or she injures someone while on the job. An employer would become "vicariously liable" for any injuries an employee caused to a third party during the course of work. (Time spent commuting to and from work is NOT considered work time; therefore, an employer has no liability for an accident that occurs during an employee's commute.)

An employer can do a couple of things to protect itself from liability when employees drive their own vehicles for work:

A For all positions that require driving, check applicants' motor vehicle records (MVR) before making a final job offer. This will show any tickets they've received or accidents they have been involved in. Avoid hiring someone with multiple moving violations, especially for speeding or failing to obey signals. Studies have shown that these habitually careless drivers are more likely to become involved in accidents.

B Require employees who drive for work to carry a personal auto policy with at least $500,000 in liability coverage. This will serve as your first layer of liability coverage, so be sure to notify employees that if they're involved in a work-related accident, their policy will respond first. Require employees to submit proof of insurance, and make continuing coverage a condition of the job.

C Consider buying a business auto policy to cover auto-related liability exposures. The BAP can be written to cover any of an insured's auto-related liability exposures, indicated by "symbols" on the policy's schedule of coverages. To see whether your policy covers employee-owned vehicles, check for either Symbol 1 (which covers "any auto") or Symbol 9 (non-owned autos only) in the schedule of coverages.

The BAP covers only the liability of the named insured—that is, the employer. The business auto policy (and your other liability policies) will not cover the employee's own liability.

The BAP and other commercial liability policies also will not cover any injuries an employee causes to a fellow employee. Workers' compensation protects the employer from this type of claim.

In some states, employees can sue their co-workers for work-related injuries under certain circumstances. The employer's workers' compensation insurance will not provide coverage for this kind of claim, making the employee personally liable. If you want to provide employees with liability protection for this and other situations, you can buy this additional coverage in an employees as insureds endorsement. The endorsement will provide employees with coverage under your BAP, secondary to the employee's personal auto policy. Please note that if you have Symbol 9 coverage only (non-owned autos only), the BAP provides liability coverage only; it will not cover property damage to the employee's car.

For more information on managing your firm's auto-related risk exposures, please call us.

This Just In

Center. Federal laws prohibit discrimination based on race, ethnicity, gender, age and disability, while 27 states have laws prohibiting employment discrimination based on sexual orientation or gender identity.

Discrimination can be costly in other ways. Employment discrimination can expose businesses to costly lawsuits; accompanying negative publicity can prompt consumers to take their business elsewhere.

For more information on avoiding and minimizing the impact of employment-related lawsuits, please contact us.

Protecting the Environment and Your Business

Once considered a niche business, the insurance industry has developed a wide range of environmental liability coverages. With a wide variety of non-standard policies to choose from, which is best for your needs?

Pollution is not just bad PR. With increasingly robust legislation, maturing catalogs of hazardous materials and stricter interpretations by the courts, pollution risks are one of the greatest hazards facing any company, easily capable of sending even the strongest firms well on their way to bankruptcy.

Reflecting this change, the insurance industry has developed a wide range of environmental liability coverage. While environmental liability insurance was once considered something of a niche market, the scene is now dominated by major players in the industry, such as Chartis, Kemper, Zurich North America, Chubb and Liberty Mutual. Rates and terms are competitive and offer policyholders the flexibility to overcome the fallout from a wide range of environmental problems.

Pollution liability exposures can arise from many different sources and are not limited to particular industries. Environmental risks can arise from on- and off-site conditions, waste disposal and transportation exposures, merger and acquisition activities, historical and current operations and storage tank releases, to name but a few.

No standard environmental policies exist; however, the policies offered by major insurance companies generally fall into these categories:

Pollution legal liability: Covers claims from unknown pollution conditions at specific locations. Generally, these policies cover both on- and off-site pollution conditions and include claims for bodily injury, property damage and cleanup costs. Often, it covers business interruption and transportation claims, but not the costs of an ongoing cleanup or existing, known contamination.

Property transfer: Offers coverage similar to pollution legal liability policies when property ownership is transferred.

Cleanup cost cap or stop loss: Covers cost overruns for remediation due to the discovery of additional amounts or newly discovered contaminants, or from changes in regulatory requirements at a site. Coverage is limited to cleanup costs; claims for bodily injury, property damage or legal defense are not covered. Policies may also exclude coverage for radioactive matter, asbestos, contractual liability and regulatory fines and penalties.

Brownfields restoration and development: Covers urban development projects

with known contamination. These policies combine pollution legal liability and cost cap insurance and generally cover bodily injury, property damage, cleanup costs for unknown pollutants, and cost cap coverage for cleanup.

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Asbestos abatement: Covers bodily injury and property damage that results from asbestos abatement operations conducted by the remedial contractor.

Asbestos containment: Covers building owners if a release of asbestos occurs. Policies cover sudden/accidental release of asbestos, which results in bodily injury/property damage (BI/PD), on an occurrence basis. (Please see sidebar.)

Transporter insurance: Covers a transporter for off-site spills and liability for disposal of waste at a non-owned location. Coverage is included for oil, asphalt, sand and gravel, construction material, chemicals, and other toxic materials. Bodily injury, property damage and cleanup costs are covered, but known conditions, completed operations, and deliberate acts are commonly excluded.

Storage tank pollution liability: Covers releases from scheduled storage tank systems for corrective action on-site and off-site. It covers bodily injury and property damages; insureds can use these policies to meet Environmental Protection Agency and state financial responsibility requirements.

Owner's spill liability: Policy provides coverage for bodily injury, property damage and cleanup costs resulting from an incident occurring when a carrier transports the named insured's product or waste.

For more detailed information on any of these coverages, please contact us.

Getting Back to Business After a Disaster

Disaster can strike any business, at any time. How well would your business recuperate? According to a Dun & Bradstreet study, 43 percent of companies hit by fire never reopened for business, while only 26 percent could continue as before.

If a disaster struck your company, which category would you fall into? A business continuation plan will help ensure your business recovers as quickly as possible and will minimize any long-term effects. Still, a surprising 40 percent of small business respondents to an Office Depot survey admitted they were not ready for a disaster, and one-third stated they had no current plans to begin preparedness activities. (Business Wire, 2008)

If not knowing where to start is preventing your firm from starting a preparedness plan, the following pointers might help.

1. Form a committee and appoint a coordinator. Ideally, your committee should include senior management, such as the chief financial officer, the heads of human resources and operations or manufacturing, and your chief technical officer.
2. Set a timetable for implementing your plan.
3. Gather information. This includes:
   - The maximum allowable downtime for all vital company functions. To determine this, analyze each function in terms of its impact on customer service, reputation, revenue, market share and compliance with applicable contracts or laws.
   - The resources (personnel, equipment and funds) you need to perform each vital function. If you can't perform a vital function at your facility, determine how you can move it to another location or outsource it.
   - A list of key customers on whom your company will focus its after-disaster efforts.
4. Assign post-disaster responsibilities, such as ensuring the safety of the facilities, employee communications, media relations, restoring information systems, etc.

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5 Determine which employees must be on-site. Until your facilities are operational, other employees may telecommute from home or report to other company locations. The company may also arrange to rent space in office suites or sublease a competitor's plant.

6 Take measures to help employees. After a large-scale disaster, employees are likely to be dealing with personal crises in addition to the stress of longer work hours. Determine who will be responsible for identifying employees suffering from excessive stress and what type of assistance the company will provide. If you don't already have an employee assistance plan (EAP), consider offering one. EAPs can help employees cope with "everyday" problems, such as addictions/alcohol abuse and family problems, along with counseling and help after a disaster.

7 Implement a system to track and submit extra expenses needed to return to full operations to your insurer for reimbursement under your business income policy.

8 Check your business property policies for so-called "time element" coverages, which cover a loss of earnings or increased expenses resulting from a covered property loss. These include business income (BI) coverage, extra expense coverage and contingent business interruption coverage. Business property packages sometimes provide these coverages, which are also available on a standalone basis.

Business income insurance will reimburse lost profits and continuing operating expenses when a covered loss on your premises causes a shutdown or slowdown. Continuing to receive a near-normal income after a disaster helps you retain valued staff and maintain your financial stability during rebuilding. Business income continues to pay for up to 30 days after the damage is repaired to allow the company to regain lost business.

You can buy coverage for a longer time, called an **extended period of indemnity.** This extends the business income coverage period to provide your business additional time to get your income back to "normal" pre-loss levels after you have repaired damage from a covered loss. If your business has been shut down for some time, you likely won't resume a pre-loss level of business the day repairs are completed. This coverage gives you extra time to do the marketing and production needed to recapture your income base.

Extra expense coverage goes into effect immediately after an insured disaster damages your premises to cover any additional expenses needed to continue business operations. Extra expenses are eligible for coverage if they will reduce the length of the business interruption or enable the business to stay in operation after a covered loss. Eligible expenses would include such things as data restoration services, renting a temporary location or buying a generator to keep powering the company after a covered loss.

Another coverage, called **contingent business interruption**, protects businesses that depend on other businesses for their survival. These could be suppliers, key clients or even a neighboring business that draws customers to the area, such as an anchor store in a mall. If a covered loss closes or slows business at one of these "dependent properties," your business income policy will not respond, because there has been no loss at your insured property. Contingent business interruption coverage will cover your lost income due to business interruption at these properties. You can buy this coverage on a named property basis, which would cover you for losses at specific locations, or on a blanket basis.

Sometimes, a catastrophe causes such tremendous damage to the area surrounding the insured business that the public cannot reach it or authorities might prohibit access. When this occurs, you could suffer big income losses—even if your business operations are undamaged. However, without damage to your own property, your business income coverage will not trigger. **Loss of ingress/egress coverage** protects you from losses sustained because a peril not excluded by your policy prevents ingress to or egress from your property.

We can help you analyze your business operations to develop a disaster recovery and business continuation plan. We can also review your current business continuation policies to determine whether you have the type of coverage you need. The future of your business could depend on the preparations you make today—please call us for more information.

Know Your Enemy

When creating a disaster preparedness plan and evaluating your business insurance needs, it helps to know the types of hazards your organization is most likely to encounter. Here's a list from FEMA, the Federal Emergency Management Agency:

Natural Hazards

- **Meteorological** - flooding, dam/levee failure, severe thunderstorm (wind, rain, lightning, hail), tornado, windstorm, hurricanes and tropical storms, winter storm (snow/ice)
- **Geological** - earthquake, tsunami, landslide, subsidence/ sinkhole, volcano
- **Biological** - pandemic disease, foodborne illnesses

Human-Caused Hazards

- **Accidents** - workplace accidents, entrapment/rescue (machinery, water, confined space, high angle), transportation accidents (motor vehicle, rail, water, air, pipeline), structural failure/collapse, mechanical breakdown
- **Intentional acts** - labor strike, demonstrations, civil disturbance (riot), bomb threat, lost/separated person, child abduction, kidnapping/extortion, hostage incident, workplace violence, robbery , sniper incident, terrorism (chemical, biological, radiological, nuclear, explosives), arson, cyber/information technology (malware attack, hacking, fraud, denial of service, etc.)

Technological Hazards

- **Information technology** - loss of connectivity, hardware failure, lost/corrupted data, application failure
- **Utility outage** - communications, electrical power, water, gas, steam, heating/ventilation/air conditioning, pollution control system, sewage system
- **Fire/explosion** - fire (structure, wildland), explosion (chemical, gas, or process failure)
- **Hazardous materials** -hazardous material spill/release, radiological accident, hazmat incident off-site, transportation accidents, nuclear power plant incident, natural gas leak supply
- **Chain interruption** - supplier failure, transportation interruption.

Insurance programs can protect your business from financial loss due to many of these hazards; others can be managed with risk controls. For more information, please contact us.