

Insurance Buyers' News



Springfield

PO Box 4207, Springfield, MO 65808
Phone: 800-422-5275
417-887-3550 • Fax: 417-887-3252

St Robert

690 Missouri Ave, Suite 7
St Robert, MO 65583-4684
573-336-5016 • Fax: 573-336-3496

Rolla

PO Box 1258, Rolla, MO 65402-1258
Phone: 800-364-2212
573-364-8888 • Fax: 573-341-2257

West Plains

PO Box 964, West Plains, MO 65775
Phone: 800-400-3896
417-256-6162 • Fax: 417-256-6165



Risk Management

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How to Develop a Business Continuity Plan

When your business must close or suffers a disruption due to any natural or man-made cause, a good business continuity plan can ensure it can survive until repairs are made and operations return to normal.

If a facility is damaged, production machinery breaks down, a supplier fails to deliver or information technology is disrupted, it could affect your business. The business impact analysis identifies possible effects from disruption of business functions and processes. It also helps you make decisions about recovery priorities and strategies to help you minimize the loss of



income and customers.

Have all business function and process managers with sufficient knowledge of the business complete an operation and financial impacts worksheet. Impacts to consider include:

- Lost sales and income
- Negative cash flow resulting from delayed sales or income
- Increased expenses (e.g., overtime labor, outsourcing, expediting costs, etc.)
- Regulatory fines

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This Just In

The Americans with Disabilities Act (ADA) does not apply to medical marijuana use, ruled the typically liberal Ninth Circuit Court of Appeals in *James v. City of Costa Mesa*.

The case involved severely disabled medical marijuana users who alleged the cities of Costa Mesa and Lake Forest, Calif. violated Title II of the ADA by taking actions to close marijuana dispensaries within their boundaries. Title II prohibits public entities from denying public services to any "qualified individual with a disability." The district court sympathized, but denied the plaintiffs' application for preliminary injunctive relief.

The court of appeals acknowledged that California law allows medical marijuana use, but said Congress has made clear that the

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- ✱ Contractual penalties or loss of contractual bonuses
- ✱ Customer dissatisfaction or defection
- ✱ Delay executing business plan or strategic initiative

Once all worksheets are completed, tabulate worksheets to summarize:

- ✱ the operational and financial impacts resulting from the loss of individual business functions and process, and
- ✱ the point in time when loss of a function or process would result in the identified business impacts.

Functions or processes with the highest potential operational and financial impacts become priorities for restoration. The point in time when a function or process must be recovered, before unacceptable consequences could occur, is often referred to as the “recovery time objective.”

Recovery of a critical or time-sensitive process requires resources. Business function and process managers should also complete the Business Continuity Resource Requirements worksheet, which will help you determine the resource requirements for recovery. These resources may include:

- ✱ Employees
- ✱ Office space, furniture and equipment
- ✱ Technology (computers, peripherals, communication equipment, software and data)
- ✱ Vital records (electronic and hard copy)
- ✱ Production facilities, machinery and equipment

- ✱ Inventory including raw materials, finished goods and goods in production.
- ✱ Utilities (power, natural gas, water, sewer, telephone, internet, wireless)
- ✱ Third-party services

Recovery strategies may involve contracting with third parties, entering into partnership or reciprocal agreements or displacing other activities within the company. Staff with in-depth knowledge of business functions and processes are in the best position to determine what will work. Explore possible alternatives and present them to management for approval and spending authorization. Depending upon the size of the company and resources available, you can explore many recovery strategies.

After a disruption, you might relocate operations to an alternate site — assuming it hasn’t been affected by the same incident. This strategy also assumes that the surviving site has the resources and capacity to assume the work of the impacted site. Prioritization of production or service levels, providing additional staff and resources and other action would be needed if capacity at the second site is inadequate.

Telecommuting can reduce alternate site requirements. This strategy requires ensuring telecommuters have a suitable home work environment and have access to a computer with required applications and data, peripherals, and a secure broadband connection.

In an emergency, organizations can convert other spaces into workspace, such as cafeterias, conference rooms and training

This Just In

ADA does not apply to illegal drug use. Federal law still classifies marijuana as an illegal drug.

Generally, employers can prohibit the medical use of marijuana by on-duty employees; refusing to hire or otherwise discriminating against medical marijuana users remains a gray area unless state law specifically prohibits it. Connecticut recently joined Arizona by passing a law protecting medical marijuana users from employment discrimination.

Employment practices liability insurance can protect your organization from costly employment discrimination claims. For assistance in handling a specific situation, please contact an employment attorney.

rooms. These spaces will require furnishings, equipment, power, connectivity and other resources to meet workers’ needs.

You can also arrange partnership or reciprocal agreements with other businesses or organizations that can support each other in the event of a disaster. Assuming space is available, you must address issues such as the capacity and connectivity of telecommunications and information technology, protection of privacy and intellectual property, the impacts to each other’s operation and allocating expenses. Agreements should be set in writing and included in the business continuity plan. Periodically review the agreement to determine if there is a change in the ability of each party to support the other.

Many strategies exist to help in the recovery of manufacturing operations. Manufacturing strategies include:

- ✱ Shifting production from one facility to another
- ✱ Increasing manufacturing output at operational facilities
- ✱ Retooling production from one item to another
- ✱ Prioritization of production—by profit margin or customer relationship
- ✱ Maintaining higher raw materials or finished goods inventory
- ✱ Reallocating existing inventory, repurchase or buyback of inventory
- ✱ Limiting orders (e.g., maximum order size or unit quantity)
- ✱ Contracting with third parties
- ✱ Purchasing business income insurance.

You can find worksheets for the business impact analysis and business continuity resource requirements and other useful information on business continuity at the website of the Federal Emergency Management Agency (FEMA), www.ready.gov.

For more information on business income insurance, which can replace income lost due to an insured disaster and provide the cash needed to help your business remain in operation during recovery, please contact us. ■

Email, Phone and Social Media Monitoring in the Workplace – Know Your Rights as an Employer

Do you know how much privacy your employees are entitled to? For example, if you feel employees are abusing their work privileges, is it legal to intercept emails or phone conversations to find out what they're up to and confirm your suspicions? Can you ask potential job candidates for their Facebook profile log-on information? Here are some general guidelines that can help.

Screening Job Candidates' Social Media Profiles

There has been plenty of coverage in the media recently about companies and public sector organizations asking job candidates for their Facebook passwords as part of the employment screening process. Many of the employers who do this are in law enforcement and are on the lookout for potential illegal activity. But businesses have also been known to use this approach to get a better handle on whom they are about to hire.

Although there is no federal law prohibiting this, the Department of Justice considers it a crime to violate social media terms of service and enter these sites illegally. Asking employees or candidates for their log-on information means you and those individuals are in direct violation of Facebook's terms of service, which state the following: "You will not solicit login information or access an account belonging to someone else"

or "You will not share your password... let anyone else access your account, or do anything else that might jeopardize the security of your account." Many states are also now looking to make this practice illegal.

The bottom line: Simply asking for access to personal passwords is a clear privacy violation and is both offensive to the candidate and unethical. Employers and managers should also be careful they're not accessing profile information to determine an employee's religious, sexual or political views. If it's determined that you used this information to discriminate against an employee, you may be found in violation of equal employment opportunity and privacy rules.



Monitoring Employee Social Media Activity in the Workplace

A recent report by Gartner suggests that by 2016, up to 60 percent of employers are expected to watch workers' social media use for security breaches. Currently, no specific laws govern the monitoring of an employee's social media activity on a company's computer (employers are on the lookout for unauthorized posting of company content — videos, documents, photos, etc.). However, the U.S. National Labor Relations Act does address employee rights in regard to the use of social media and acceptable social media policy. There has also been a ruling against employers who fired workers for complaining on social media sites about their workplace conditions.

The bottom line: Provide employees with a social media policy and be sure to include information about what you consider confidential and proprietary company information that should not be shared. For more tips on social media monitoring do's and don'ts, check out this article from Small Business CEO: "Considerations for Social Media Use in the Workplace," www.smbceo.com/2012/05/24/social-media-in-the-workplace/

Intercepting Email or Phone Conversations

Increasingly sophisticated ways of storing and accessing email have made it easier than ever for employers to monitor email accounts. But is this an invasion of privacy? The law is fuzzy.

The Electronic Communications Privacy

Act (ECPA) of 1986 prohibits the intentional interception of "any wire, oral or electronic communication," but it does include a business use exemption that permits email and phone call monitoring.

This exemption often comes under close scrutiny by courts, and includes several elements. Generally, if an employee is using a company-owned computer or phone system, and an employer can show a valid business reason for monitoring that employee's email or phone conversations, then the employer is well within his or her rights to do so. Likewise, if employees have consented to email or phone monitoring (in their contract of employment, for example), then you may monitor their calls or emails.

But here's the rub: the ECPA draws a line between business and personal email content you can monitor — business content is ok, but personal emails are private.

Tip: If in doubt, consult your legal counsel. Develop and share a monitoring policy with employees (for example, in your employee handbook). If possible, get them to agree to it. Courts often look at whether employees were informed that their calls or emails might be monitored in the workplace, whether there was a valid business justification for the monitoring, and whether the employer complied with established policy. *Source: U.S. Small Business Administration*

For more information on protecting your business from liability claims by employees, please contact us. ■

How Umbrella Coverage Works with Other Policies

If your business is the typical small or mid-sized business, you probably have somewhere between \$500,000 and \$2 million in liability coverage under your business owner policy (BOP) or commercial general liability policy. How does umbrella coverage work with these policies to provide extra liability protection?

In addition to your BOP, you might also have liability coverage under other policies, such as an automobile liability policy or employers liability policy. Sometimes, a liability claim will exceed the limits of these policies. When that occurs, you will want to have an umbrella liability policy. These policies provide coverage when you exhaust the limits of your "underlying" liability policy.

Umbrella coverage can be attached to commercial liability, employers liability and automobile liability policies. It has three main functions:

- ✦ to provide excess coverage for underlying liability policies (for example, increasing covered loss limits from \$1 million to \$5 million)

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- ✱ to “drop down” and make payments when underlying policy limits have been totally or partially exhausted (such as when maximum aggregate limits have been reached before the end of a policy term or when liability awards consume limits of other layered policies)
- ✱ to provide broader scope of coverage than primary policies offer (for instance, covering damage to property belonging to other parties but in the care, custody and control of the insured).

Although you might hear the terms “umbrella” and “excess” used interchangeably, these two types of policies differ significantly.

Excess insurance simply provides higher limits than your underlying policy. An umbrella policy not only increases your limits, it increases the scope of your coverage as well. In other words, an umbrella policy can protect you from some losses excluded by your primary policy. Policy terms vary, but umbrellas can cover claims filed outside the U.S. or Canada; claims of contractual liability (for both written and oral contracts); liability for items in your care, custody and control; and watercraft or aircraft liability—all excluded by the standard commercial liability policy. Before your umbrella activates this “drop down” coverage, an insured must pay a self-insured

retention (SIR—usually \$10,000 or \$20,000) that acts as a deductible.

What to Look for in Umbrella Policies

Most umbrellas furnish broader coverage and fewer restrictions than general liability policies, but if yours doesn't, consider adding “broad as primary” or a “following form” clause in the contract. This will indicate that your underlying policy's conditions will automatically be included in the umbrella coverage. When possible, amend the language to go beyond the underlying policy's conditions, by agreeing that exposures not covered by the underlying policy will be picked up by the umbrella after your claim costs exceed the SIR. Anniversary dates of all underlying and umbrella coverages should coincide, to avoid potentially damaging coverage gaps or overlaps.

When your organization has several layers of insurance, be certain that covered losses and “drop down” language are identical. Some policies have separate limits for legal defense costs. If your umbrella includes defense costs within its policy limits, you might want to purchase higher limits. If the policy covers more than one company, be certain to insert a “severability of interests” clause; this will treat each company as a separate insured if an employee of one company makes a claim against another insured company.

Umbrella insurance can save the day when a major claim puts your company's finances at risk. Please call us to evaluate your liability exposures today. ■



What to Do in a Policy Review

Scheduling regular policy reviews can ensure your business has enough insurance to survive a disaster. Here are a few action items to consider when filling out the insurance portion of your business continuity plan:

- * Review your current coverage with your insurance agent. The policy should be tailored to your business and take into consideration not only property damage but loss of revenue and extra expenses that occur when an insured disaster causes a temporary shut-down.
- * Ask a lot of questions. Make sure you understand the policy limits, the deductible, and what is actually covered.
- * Consider business owner's insurance. The business owner's policy (BOP) is a standard insurance package of coverages that a typical small or medium-sized business would need. In addition to covering your property, it includes general liability protection and business interruption insurance, which provides money to offset lost profits or pay operating expenses the business could have covered if the disaster had not occurred.
- * What about flood insurance? According to the U.S. Geological Survey, floods are the leading cause of natural disaster property losses. Small business owners, particularly those running home-based businesses, should consider getting coverage from the National Flood Insurance Program (NFIP). Most homeowners' insurance policies don't cover flood losses. The NFIP also covers business property.
- * Know what you own. Inventory your personal and business assets before the disaster occurs. Record the price and estimated replacement cost of furniture, computers, machinery—everything of value at your business. Keep receipts, take photos and video of your property, and store that information office at a secure location.

Having the right insurance policies and the right amount of coverage will make a difference when it comes time to deal with the aftermath any kind of disaster, whether it's a massive hurricane, or the water-main break in the alley behind your business. For more information, please contact us. ■

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