

Family Office Bulletin: Workers' Compensation

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Workers' Compensation

Introduction:

Chilton Trust's Family Office Bulletin seeks to provide general commentary and guidelines on timely and relevant topics for clients and their families. While each situation is expected to vary based on each client's individual situation and needs, the topics and discussion herein are intended to encourage thoughtful analysis. A Chilton Trust representative is always available if the observations or guidelines presented in this piece warrant additional attention and a follow up conversation regarding your particular circumstances or situation. Our mission is first and foremost to keep you informed and in a position where you can understand and evaluate your next steps.

Workers' Compensation – What Is It?

Workers' compensation is a type of insurance that offers an employee a fixed amount of compensation for injuries, illnesses, or disabilities sustained as a direct result of his or her employment. The purpose of this insurance is to protect the employee and the employer, as it assures a certain amount of compensation for the employee upon a showing of eligibility and it fixes a set amount that an employer or insurance company will ultimately have to pay regarding the injury. In most instances, the employer pays for the cost of the policy.

There are generally three types of workers' compensation benefits payable to the employee: (i) medical benefits, (ii) income benefits, and (iii) death benefits. **Medical benefits** pay for necessary medical care to treat a work related injury or illness. The specific definition of what is deemed "necessary" and is therefore covered as a medical benefit varies by state, but seems to include (in most cases) doctor visits, prescription medications, surgeries, and rehabilitation. **Income benefits** are meant to replace a portion of any wages lost due to a work related injury or illness. Income benefits are generally subject to a minimum and maximum weekly amount, which is set by state law. The duration of income benefits will generally vary based on the severity of the injury or illness. A minor injury, such as a sprained ankle, may result in a maximum benefit of up to 104 weeks. Unsurprisingly, a permanent impairment is subject to a much longer payout and begins once "maximum medical improvement" has been reached (i.e., the point in time when the injury or illness has improved as much as medically or physically possible). There are also more serious cases where income benefits are paid out for a lifetime. Finally, **death benefits** can replace a portion of lost family income for dependent family members (i.e., a spouse, child, or sibling) of employees who suffer a fatality on the job. In many states, death benefits equal 75% of the deceased employee's average weekly pay, with the duration of such payments dependent on a host of factors, including the beneficiary's eligibility and/or qualifications to such benefits. In some cases, burial benefits may also be paid out and can cover

a portion or all of the deceased employee's funeral expenses. It is important to note that all of the above benefits, if qualified, are paid directly by the insurance carrier, as directed by the relevant state's Workers' Compensation Board.

Employer Considerations – Eligibility for Coverage

As an employer, it may sometimes be difficult to assess whether an injury or illness is considered work related. Generally speaking, a work related injury is one that occurred while the employee was doing something on behalf of or for the benefit of the employer, during the course of employment. Most of the time, these injuries occur at the workplace, but may also occur outside the workplace, so long as the employee was doing something reasonably connected to the job and within his or her scope of employment. For example, if an employee is injured during a company party or other company sponsored event, this will likely be covered under workers' compensation because the employee was attending the event at the request of the employer at an employer sponsored event. In a different example, if an employee is injured while driving to or from work, the injury will likely not be covered by workers' compensation. In the latter, some courts have interpreted that the actual act of driving to or from the workplace is not a benefit to the employer. Yet in a slightly different spin of a similar fact pattern, if an employee is injured while driving a company vehicle to meet with a client and such meetings are typically within the scope of the employee's job, the injury will likely be covered by workers' compensation.

Employer Considerations – Premium Payments

Workers' compensation insurance premiums are often determined using the following three criteria: (i) the size of company payroll; (ii) the employee classification; and (iii) any prior claims experience.

The usual basis for all workers' compensation premiums is the **employer's payroll**. In such instances, for each \$100 dollars of payroll, there is a specific rate applied depending on the **classification codes of your employees**. An employee with a higher exposure to potential injury (such as a construction worker) will have a higher rate, while an employee with a materially lower exposure to potential injury (such as an office worker) will have a lower rate. Often your company will be assigned an **experience modification factor**, commonly referred to as a "**MOD**." In most states, the National Council on Compensation Insurance determines the classification rate and MOD. The MOD is a numeric representation, calculated annually, of your company's loss and claim history. It compares your company to others within the same classification, with respect to frequency of accidents and severity of injuries.

Employer Considerations – Understanding Costs

Employers are legally required to carry workers' compensation insurance, although the specific requirements vary by state. Importantly, if an employer does not carry workers' compensation insurance, it is potentially liable for not only individual employee claims (which can vary materially in size and liability) but also hefty fines. Because workers' compensation insurance is a necessary cost, it is critical to proactively evaluate methods to control and lower this cost.

The MOD is one area within an employer's control and there are a few simple ways to lower this. **First and foremost**, as an employer, you should make safety a top priority and actively seek ways to minimize the risk of injury or mitigate the potential effect of any injury. This could involve developing a written safety control program and/or mandating employee safety training. Additionally, you could enroll in a state sponsored program (if available). Most states sponsor programs to improve safety in return

for a deduction in MOD rating. **Second**, search for an existing group (or create one if possible) to request a group rating, as most states offer large discounts to recognized groups. **Third**, to the extent that an accident does occur and a claim is filed by an employee, ensure that the claim is confirmed and resolved as quickly as possible and actively manage the recovery of the injured employee to facilitate his or her return back to work as soon as possible. Quick and accurate reporting is essential and active communication with the injured employee helps to reduce the possibility of fraud and/or a prolonged and expensive recovery process. **Finally**, it is important to review each employee's assigned classification code, as insurance companies (and states) may ultimately classify each employee in a manner inconsistent with his or her actual risk of injury.

Additional Considerations and Examples

As an illustration, let's assume for the fact patterns below that an entity employs workers in the states of New York and Virginia and as such, the entity is required to hold two separate workers' compensation policies, one for each state. While all employees of the payroll entity are covered by one of the above policies, application of the general rules becomes much more complicated when an employer personally pays other individuals or businesses for services directly outside of the company. In some cases, when you pay an individual for a service, you are establishing an "employee-employer" relationship and are subject to employment guidelines (i.e. workers' compensation) in the state in which the exchange occurred. This means that under some applications of workers' compensation law, the legal definition of "employee" is much broader than the common everyday usage of that term.

It may be helpful to see how this applies when looking at a few specific scenarios that often occur outside of the payroll entity we initially described. Please note that these scenarios and any observations relating thereto are for discussion purposes only and are not meant to reflect how the specific laws will apply in your jurisdiction or to your situation. Even minor differences may materially alter the state's interpretation of how such laws will apply. Please seek professional assistance and counsel before acting on anything mentioned below or herein.

Scenario #1: An individual, such as a landscaper/handyman/tennis pro, is working as an independent contractor on your property and paid directly by you.

- The first thing you need to do is ask this individual for a certificate of insurance (i.e., proof of general liability insurance and/or workers compensation). Once provided, you should retain a copy for your files. If a certificate of insurance is not available and/or the service provider does not carry his or her own insurance, you should evaluate your risks and make sure you are still comfortable receiving services from such provider. Alternatively, depending on the circumstances, it may make sense for you to consider adding the provider to your payroll.
- Specific application: if this individual is injured while on the job (and all other eligibility requirements are met), there is a strong chance this is considered a workers' compensation case; such service providers are likely to be considered "part time, domestic employees" by the applicable jurisdictions despite their absence on the employer's payroll.

Scenario #2: You throw the "occasional" party on your property and hire individuals to assist with the party (i.e. wait staff). You pay these individuals directly.

- These individuals are considered “casual labor” (i.e., they work a day here, a day there). You should still ask for a certificate of insurance and retain a copy for your files.
- Specific application: if these individuals are injured while on the job, it is likely not going to be considered a workers compensation case. Note that the most common outcome in these situations is that your homeowners insurance covers any serious injuries (usually under the liability or medical payments section of your coverage).

Scenario #3: You hire a company, such as Bob’s Tree Service/Vine Landscaping/Poolscap Pools to work on your property. You pay the company directly.

- Again, the first thing you need to do is ask for a certificate of insurance. A company, such as Bob’s Tree Service, should carry its own liability and workers’ compensation insurance. You should generally avoid contracting with companies that do not have their own coverage policies.
- Specific application: if an employee of Bob’s Tree Service is injured while on the job, the employee will be covered under Bob’s Tree Service’s workers’ compensation insurance.

Conclusion

We hope that the few examples that we raised above and the foregoing discussion of how workers’ compensation typically applies is helpful and relevant. As with most issues relating to insurance and liability claims, workers’ compensation is not a simple black and white issue – not only are the issues themselves incredibly fact sensitive but the interpretation of each plan is state-regulated and therefore potentially different across multiple jurisdictions. For these reasons, we strongly encourage you to reach out to us so we can provide assistance in determining appropriate next steps for you and your family.

Chilton Trust Company

New York

300 Park Avenue
New York, NY 10022
Phone: (646) 443-7733

Palm Beach*

396 Royal Palm Way
Palm Beach, FL 33480
Phone: (561) 598-6330

Stamford

1290 East Main Street
Stamford, CT 06902
Phone:(203) 352-4000



Skye Payette is a Vice President – Controller. Skye Payette is Vice President- Controller in the Family Office Services Group for Chilton Trust. Prior to joining, Ms. Payette was a Controller at Buffington Capital Holdings, a real estate investment firm located in Austin, Texas. Previously, she was a Corporate Accounting Associate at SAC Capital Advisors in Stamford, CT. Ms. Payette received her B.S from the University of Rhode Island in Accounting and is a Certified Public Accountant

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