



Business Interruption

Supply Chain Disruptions Keep Growing

AS THE COVID-19 pandemic drags on globally, supply chain disruptions continue to worsen. Most main U.S. ports are logjammed with vessels waiting more than two weeks to load and unload, while a shortage of truckers means containers are piling up at port facilities.

On top of that, each new wave of coronavirus infections results in more factories suspending operations, particularly in Asia. In addition, material shortages are forcing U.S. factories to stop production as they are missing much-needed parts and materials.

Most notably, the shortage of microchips has forced makers of cars, appliances and industrial machinery to halt operations.

All of these factors have upended supply chains, leaving many companies without materials and products.

Prudent companies address these challenges by building safeguards and contingencies into their supply chains ahead of time.

They enhance those risk management efforts by purchasing contingent business interruption insurance, which will cover lost profits if an event shuts down critical suppliers or major customers.

It's important that you create a solid plan for dealing with disruptions to your supply chain.

Understanding your supply chain

You'll be best able to reduce the effects of supply chain disruptions on your business by identifying the risks within your supply chain and developing ways to mitigate them.

External supply chain risks

- **Flow interruptions.** Problems caused by interruptions to the movement of finished goods, raw materials or parts.
- **Environmental risks.** Economic, social, political, terrorism threat and climate factors that can affect the supply chain.
- **Business risks.** Problems caused by a supplier's poor financial stability, or the purchase or sale of suppliers by other entities.
- **Physical plant risks.** Problems caused by issues at a supplier's facility. For example, a supplier could suffer a machinery breakdown or regulators may shut the facility down.

You should document this process in your risk management plan, which is part of your overall business continuity plan.

Developing a plan

The best way to manage a supply chain disruption is to prepare for it. Start by undertaking a business impact analysis to prepare your company.

Form a team of key personnel that should include shipping and receiving, and management and supervisors involved in your key processes. The team should:

- Identify alternatives to key suppliers in advance. You don't want to be scrambling in the midst of a crisis. One option is to contract with an alternative supplier in advance, so you can certify them and ensure they can ramp up if you lose a critical supplier.
- Model the impact of disruptions on your sourcing and inventory strategies for the four supply chain risks listed opposite. Under each of the scenarios, think about how non-delivery of a key part or material would affect your operations. ❖



Credit: Port of Los Angeles



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Proposal: X-Mods to Include COVID-19 Claims

CALIFORNIA'S WORKERS' Compensation Insurance Rating Bureau has proposed plans to start requiring COVID-19 claims to be included when calculating employer X-Mods, according to a report by an industry trade publication.

The proposal, which would have to be approved by the state insurance commissioner, would bring to an end current rules that exclude the impact of COVID-19 workers' compensation claims on X-Mods, the *Workers' Comp Executive* reports.

The current measure was put in place after Gov. Gavin Newsom in April 2020 issued an order that any workers who were reporting physically to work and who contracted COVID-19 would automatically be presumed to have contracted it in the workplace.

That in turn meant that those cases would be treated as workers' comp claims, which entitled the workers to having their medical expenses covered as well as being paid temporary disability benefits for time they missed from work due to the coronavirus.

In response, the Rating Bureau issued the temporary rule excluding COVID-19 claims from X-Mod calculations. At the time, it said that those claims did not reflect effectiveness of employers' workplace safety efforts as they likely had not contemplated the pandemic.

Rationale behind proposed rule change

According to the *Executive*, Rating Bureau staff wrote in the rule proposal: "The COVID-19 workers' compensation claim environment has changed significantly since the experience rating exclusion of COVID-19 claims was first recommended and ultimately adopted.

"In the early months of the pandemic, relatively little was known

about how COVID-19 was transmitted, there was little in the way of widely accepted workplace safety protocols and tens of thousands of COVID-19 workers' compensation claims were being filed."

The Rating Bureau reasons that now that we have a better understanding about how to reduce the spread of coronavirus through mitigation measures, in widespread COVID-19 vaccinations in the state, it's time to no longer exclude these claims from X-Mod calculations.

It said one role of experience rating is to provide an incentive to keep workers safe, according to the *Executive*.

Claims Snapshot*

Total COVID-19 claims	164,320
COVID-19 death claims	1,163
*2020-Oct. 8, 2021	

The takeaway

The proposal will still need to be adopted by California's insurance commissioner. If adopted, it will take effect Sept. 1, 2022.

Any employer with workers on-site should have protocols in place to protect their workers against COVID-19 transmission in the workplace.

The rule change will provide an additional incentive to protect your employees, as any claims that require medical treatment and/or time away from work will count against your workers' compensation claims experience. ❖

NO COVID X-MODS: Currently all coronavirus workers' comp claims are excluded from X-Mod calculations.



Practice Safe Driving When Operating a Forklift

TENS OF thousands of forklift-related injuries occur every year in U.S. workplaces, most of them preventable.

Employees may be injured when a lift falls between loading docks and an unsecured trailer, and others are injured or even killed when forklifts are accidentally driven off loading docks.

According to OSHA, some of the most common types of forklift accidents include:

- Forklift rollovers
- Human impacts
- Falling loads
- Truck falling off a dock or trailer
- Crushed by forklift

The key to avoiding accidents is training and regular inspections and maintenance. Here's what you need to know:

Training

Common mistakes that cause forklift accidents include improper backing techniques, turning and failure to warn others about a forklift usage nearby.

Proper training and monitoring are crucial to avoiding forklift accidents and injuries. Employees need adequate training under close supervision in proper operational procedures and safety regulations.

Such training should include written operating procedures and safety regulations, as well as the inspection guidelines and maintenance schedule for the machinery.

Forklift operating procedures should be clearly written and monitored.

They should be posted where everyone can see them and include the obvious; everything from not giving rides to the need for good communication between those in the work area when the equipment is in use.

Inspection and maintenance

Furthermore, equipment requires continuous inspection and maintenance.

An operator should inspect the equipment every day before using the forklift, ensuring that the brakes and steering are in good working order. They should also check fluid levels and visually inspect for leaks beneath the equipment.

The final step in ensuring safe forklift operations is to make sure all machinery is kept in good maintenance.

If a forklift begins to show its age, it should be replaced. No employee should be forced to use equipment that is clearly unsafe or has not properly been maintained.

You may not think that a forklift that hasn't undergone regular maintenance is dangerous. Think again:

- Brake failure can lead to an out of control forklift.
- Broken tines can drop heavy loads.
- Bald tires are more likely to skid, and
- Dirty machines are more likely to contribute to fires. ❖



COVID Drives Surge in Employment Practices Claims

EMPLOYERS ARE being hit with a wave of COVID-19-related employment lawsuits, which is starting to have an effect on employment practices liability insurance (EPLI) rates and coverages.

A tally by the law firm Fisher Phillips found that as of August 2021 there had been 2,950 COVID-19-related employment lawsuits filed in the U.S.

Most of the complaints concern remote work arrangements, workplace safety and discrimination.

Lawyers predict a new wave building as employers get pushback from some employees about their vaccine policies and safety measures, or lack thereof.

The outlook

Fisher Phillips warned that a few signs point to a continued surge in litigation:

No summer case slowdown – Usually new employment litigation slows during the summer, according to Jay Glunt, a Fisher Phillips partner. “But the fact that we didn’t see much of a lull in employment-related COVID litigation – and in fact saw an uptick – sends a clear signal that we could be in for a rough couple of months ahead.”

In fact, the number of COVID-19 workplace lawsuits jumped 61% during June through August 2021 to 715 cases, compared to 444 such lawsuits filed in the same period of 2020, according to the law firm.

Furthermore, according to Fisher Phillips’ COVID-19 Tracker, the busiest litigation months follow periods when coronavirus cases have been surging, such as in January to March 2021, when 826 cases were filed (an average of 275 a month).

Vaccine mandates – Employment lawyers predict that as more employers issue vaccine mandates for their workers or penalize staff who refuse to get vaccinated, they may be sued..

The Equal Opportunity Employment Commission has issued guidance that vaccine mandates are legal, and OSHA is about to issue new vaccination rules. Even so, some firms will be sued.

Even if an employer manages to win the case or settle, it would still have to pay legal fees and related court costs.

The backdrop

In light of this growing exposure, employers would be wise to consider purchasing an EPLI policy. These policies are triggered for employment-related claims, which include COVID-19-related claims, and cover legal defense costs, settlements and compensation awards.

However, many insurers have increased their rates as well as the deductibles that policyholders have to bear. Some are also capping policy limits. Rate hikes have been averaging more than 10% on EPLI policies as litigation has skyrocketed during the pandemic.

If you have an EPLI policy, it can be tapped if you are sued, but policies won’t cover all types of claims, including the following:

- A returning employee alleges he or she contracted COVID-19 at the office as a result of the employer’s inadequate safety policies and practices. Many EPLI policies exclude losses resulting from OSHA violations and for workers’ comp claims.
- An employee alleges that an employer had failed to provide legally required protective equipment, resulting in enhanced risk of exposure to COVID-19.
- Many EPLI policies will exclude coverage for costs incurred to comply with injunctions, such as claims demanding accommodations for disabled persons under the Americans with Disabilities Act or to repair unsafe workplace conditions. ❖

MOST COMMON COVID-19-RELATED COMPLAINTS

- Remote work and leave issues
- Employment discrimination
- Retaliation/whistleblower
- Wage and hour
- Unsafe workplace
- Wrongful discharge
- Negligence/wrongful death
- Other

