

By Daniel M. Isard

A Workers' Compensation Primer

Make sure you understand workers' comp insurance and use a broker with funeral service experience.

Dear Dan,

I just switched to a new casualty insurance broker. Unfortunately, my carrier doesn't know the funeral business and I now find myself educating the whole company about it. The good news is the agent is Greek, and they have big funerals that will come my way. The big issue is who do I cover? There are two stockholders and me; do I cover each of us? Also, my broker told me we can cover our 1099 employees. Sometimes, I employ these people as pallbearers. Should we do that also?

Compfused in Compton

Dear Compfused,

Allow me to answer your questions one at a time, but let's also make sure we start at the beginning with the matter of understanding workers' compensation insurance. Workers' comp is form of insurance issued by private insurance companies required for each employer to have in force. The insurance is intended to provide money as compensation to workers who are injured while at work or develop an occupational disease based on their work.

In funeral service, we tend to have employees who get hurt on the job due to lifting bodies or caskets. We have others stricken by occupational diseases from exposure to formaldehyde.

The insurance premium is paid by the employer; the employee does not pay a portion of this coverage. Benefits and premiums are set by a workers' compensation board in each state. The duration and amount of benefits vary based on many factors, including the state and type of claim. The benefit for a claim of injury or disease can be paid in dollars or medical care benefits or perhaps even both.

The premium rate is set by the workers' compensation board based on various risk factors. For example, a funeral home will have a lower rate than a cemetery, as many of the tasks conducted in a funeral home are white-collar. The cemetery rate is higher due to the physical nature of the jobs that tend to exist throughout the business. When a combination business exists, it is generally rated on the higher premium of the cemetery; thus, all employees are rated at the more expensive premium.

Unlike civil suits that claim damage, claims made through workers' comp do not presume someone was at fault. That's not to say a funeral director can't still retain some right to sue someone for further issues. For example, if a worker lifts a casket and the handle falls off, the funeral director may collect under workers' comp and sue the company per the cause of the failed handle.

The lack of "fault" means the benefits are not reduced if the injured party caused the injury, nor is it increased if the employer was at fault. Unlike a civil litigation, the injured party may have caused or contributed to the injury and still collect full benefits.

In a civil case, contributory negligence can void some of an award for workplace disease or injury. There are two exceptions to the issue of contributory negligence. The first is if the employee was injured solely due to intoxication from drugs or alcohol. If the injured party is injured trying to hurt someone else, he or she may also lose the rights of coverage.

Occasionally, the employer or insurance company may contest the validity of the claim. The claim can be contested for its legitimacy or for its cause being directly related to a workplace incident.

In funeral service, we have seen embalmers claiming workers' compensation due to infectious diseases caused by finger pricks from needles. In some cases, insurers or employers thought that the employee's lifestyle may have caused the contraction of the disease. The contesting of a claim is infrequent but not rare.

When an employer or insurer disputes a claim, no cash or medical benefits are paid until the workers' compensation judge decides the case. While awaiting benefits, because the employer or insurance carrier is arguing that the injury is not work related, the claimant may be eligible for disability benefits from a privately owned or employer-offered group insurance policy. If the claimant draws on these benefits, any payments made under the disability insurance will be deducted from future workers' compensation benefits.

Occasionally, after treatment or time off, the injured worker will return to work. If that workplace injury was so severe as to keep the injured worker from making his or her pre-injury income, workers' comp can make financial payments to bridge the gap for this shortfall.

With this being a primer on the subject, let me address your two questions. Should the owners be covered by workers' compensation? I think not. I do think that shareholders of a business should have several agreements, one of which is an employment agreement. Part of the employment agreement should deal with the issue of a stockholder being injured or disabled regardless of whether it is workplace related.

The business is affected any time an owner is unable to fulfill his or her full-time employment responsibilities. It doesn't matter if the cause is due to the job, which is why an employment agreement should deal with disability.

Furthermore, you can have personal disability insurance to

protect against this. This insurance can also have a provision providing long-term coverage. Long-term disability would go well beyond the coverage of most workers' comp claims. The definition of disability could also specify the loss of income and not just disease or injury. There is much more protection in using this agreement and personal disability insurance for a higher paid owner than just workers' comp benefits.

Your agent's offer to have workers' comp also cover 1099 workers troubles me. Imagine you are a 120-call funeral home and 100 of those calls employ a visitation and chapel service. If you employ three part-time people for three hours each at \$10/hour, that equates to about \$18,000 of added payroll, which would increase your premium for workers' comp. I ask,

what are these people doing that could cause an injury or disease? Probably nothing. Therefore, you are paying a premium for which there is very little chance of benefit.

Pallbearers do have a chance of injury. Caskets are heavy. But here's the bigger question: Are pallbearers considered cash advances or are they employees?

A pallbearer is a person honored by the family with the opportunity to support the casket of a loved one. If they are paid an honorarium, it is a token payment. It is a payment from the family to the person(s) honored. Therefore, if you act as the intermediary for these payments, it is a cash advance. If pallbearers are paid for their services, they are being paid by the family, not the funeral home. Therefore, if there is an injury from this service, it is as the agent of the family, not the funeral home (in my opinion).

I occasionally see well-meaning owners mark up cash advances. If that is your attempt at balancing your declining profit, find another way. Treat the pallbearer honoraria as a cash advance and increase your basic non-declinable by the dollar amount of the markup. Keep it clean. Protect yourself if a pallbearer is injured. You could even have a statement pallbearers sign indicating their understanding that they are doing this for the family as an honor to the deceased, for which the family is giving them some honorarium.

I hope, Compfused, that you are no long confused. I hope you will rethink the insurance agent you have selected and find one with funeral service experience, as workers' compensation coverage is just a small part of the total business insurance package.

And as far as the Greek funerals, they will find their way to your door if you offer baklava in the arrangement room!

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