AVOIDING COSTLY WORKERS' COMP MISCLASSIFICATIONS:

A SMALL MISTAKE CAN COST YOUR COMPANY BIG MONEY

For years, an oil delivery company in North Carolina paid consistent Workers' Compensation premiums. Then, suddenly, the premiums went up, though the job functions, number of employees and incidents remained constant. An audit revealed that the classifications of two employees were now truck drivers, even though they were actually maintenance workers.

In Colorado, an outpatient, long-term care provider that transports the elderly to day-centers and provides in-house services, sees its Experience Modification Factor go through the roof. The company discovers that its 512 employees are classified in eight different class codes, several of them at a higher risk level than expected. In fact, none of the employees were classified at the lower "office code," although 20% of the employees were strictly office personnel.

What these two companies have in common is "misclassification." This occurs when the clerical worker at a sawmill, using all 10 fingers to input data into a computer, is "classified" at the same job risk level as her co-worker at the buzzsaw who could lose a finger at any moment. And with over 600 possible job classifications, and more being added all the time, it's an all too common problem among employers.

ERRORS ARE COMMON

In 2007, the Workers' Compensation Insurance Rating Bureau (WCIRB), a government entity that oversees job classifications in California, undertook a study to determine if there were classification errors among 219 large companies. These companies represented $26.4 billion in combined payroll and their premiums were large enough to impact 10% of the Workers' Compensation ratings.

The final results were a wakeup call not just for California employers, but companies throughout the country. Of the 219 companies audited, 46 had payroll errors. All because of misclassifications, and all of them could have possibly been avoided.

The National Council on Compensation Insurance (NCCI), which acts as the insurance industry's ratings bureau, determines most job classifications. Their "bible" is the Scopes Manual, which gives specific ratings and descriptions of all types of jobs, from miners (among the highest) to office workers (among the lowest). These ratings, based on an estimated level of risk, are the jumping off point when determining how much Workers' Compensation premiums a company will pay for each job classification.

BUSINESS CHANGES

While businesses change constantly, the change often does not trigger a review of job codes. This was the case of a sawmill in North Carolina, a company with high-risk exposure and high premiums because of the work they do. When the decision was made to close the mill and have the wood cut overseas so they could turn their business into a wholesale operation, it didn't occur to the company to change its classifications.

The insurance agent probably never once walked through the facility to see that the operation had fundamentally changed, and to discover why the company continued to pay Workers' Compensation premiums based on a higher manufacturing rate and not the lower service rate. Once the errant classification was discovered and changed, the company saved more than $400,000 in premiums.

INSURANCE COMPANY ERRORS

Sometimes a misclassification will occur through no fault of the employer, but through the incorrect actions of the insurer. Such was the case of a local hauler located in the South that handles towing risks.

Following an audit of the company's Workers' Compensation policy, the employer was shocked to find itself charged an additional $46,000 in premiums. The company paid the first installment of the additional premium – $26,000 – and was now being called upon to make the second installment of $20,000.

A Certified WorkComp Advisor (CWCA) reviewed the coverage, performed an audit, and discovered that the insurer,

SEVEN SIMPLE STEPS

Ask your insurance agent how jobs are being classified. But don't be surprised if he doesn't understand it himself. One of the biggest challenges is getting the insurance companies to understand the ratings and how they are applied.

Don't assume the job classifications are correct just because they haven't changed. Once they are set, it is unusual for the ratings bureau to revisit them unless there is a dispute.

Read your policy. It only takes 5-10 minutes, but that error you find could result in substantial savings. For instance, an outdoor sign company in Wisconsin had $80,000 in payroll tied up in an $8 class code, never realizing for years they could split the payroll over two codes. Once they discovered this, they were able to split the payroll into an $8 code and a $3 code, saving over $12,000 per year in premiums.

Don't let the insurance agent copy from an old policy from year to year. Things change; your business changes. As the employer, you are the steward of your business. You should know everyone's job. Don't wait for your premiums to sky-rocket to discover something is off kilter.

Do your own homework. If the agent is less than accommodating in getting you information on class codes, go to a library and do the research yourself (or get a new agent).

Don't take no for an answer. If you are sure of your facts, and feel that some of your workers are improperly classified, be tenacious and demand that your business or plant be re-visited.

Don't feel like you're in the fight all by yourself. By bringing a trained Workers' Compensation Advisor into the situation, someone who knows how to spot the red flags and can offer solutions, you can greatly increase your chances of solving any problems and saving money.

unbeknownst to the employer, had incorrectly changed a classification on the audit, resulting in the additional premium.

Not only was it the wrong classification, the problem was compounded by the fact that the insurance company violated the rules governing classification codes in the company's home state by making the classification change within 90 days of the policy. Then, to make matters worse not only did the insurer deny any wrongdoing, they then proceeded to threaten the company for the second payment.

After several months with no result, the CWCA finally got the NCCI involved by sending the agency the results of the audit, which indicated the new code was incorrect and that the carrier should not have been allowed to make the change under the rules for classification code changes in that state. After several more months, the NCCI agreed the revised classification change had been incorrect and the proper code was designated.

It took more than 10 months of fighting to change the classification code, but it was worth the battle as the NCCI ruled that the additional premium should only have been $5,000, not $46,000. The insured was instructed not to make the second payment of $20,000 and is now awaiting the return of a premium check for $21,000.

DON'T LET THIS HAPPEN TO YOU

So the question is how can businesses make sure they are being accurately classified for the work they are doing? This is what Vicki Pullins did. As co-owner of LinguaCare Associates, Inc., a privately-owned practice of speech-language pathologists, she saw her premium shoot up, but felt she was ill equipped to contest the increases.

She enlisted the services of a Certified WorkComp Advisor, who did an extensive overview of what the company did, when they did it, where they did it, and what the risk was. It was discovered that the company was receiving an extremely high-risk classification for a relatively low risk operation (visiting schools and hospitals to conduct speech therapy). The Advisor further discovered that all 17 employees were classified as doing off-site work when in reality, only two were actually traveling to various locations. The workers were reclassified, saving the company approximately $15,000 annually in Workers' Compensation premiums.

"When we were told it didn't have to be this way, and we had an option to change it, we were delighted," recalls Ms. Pullins. "It couldn't have come at a better time. We were coming off a lean year in 2009 and our margins were tight. But that change in our premiums gave us the opportunity to grow in what could have been a problem year for us."

Misclassifications are common and you can pay dearly for the mistakes. However, by knowing what to look for, being pro-active, not accepting that every classification is correct and working with experts who know the Workers' Compensation system inside and out, you can save significant dollars, year after year.

This article is adapted from an article by Teresa A. Long, Director of Injury Management Strategies for the Institute of WorkComp Professionals that has appeared in several major insurance and trade publications. The material is provided as general information and is not a substitute for legal or other professional advice.