Employee Benefits & Workers' Comp News

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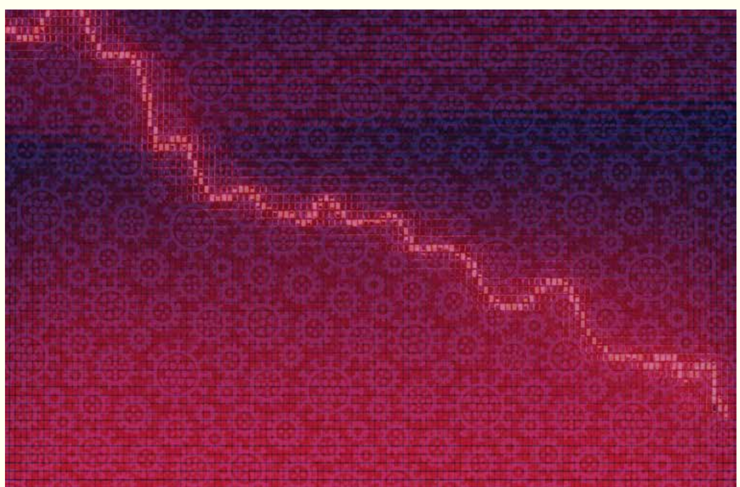
COVID-19 Impact on Workers Compensation Industry

According to a survey put out by health industry guru and strategist Joe Paduda, the workers compensation system could see a 20 percent decrease in new injury claims this year due to the coronavirus pandemic.



In late May, Paduda's consultancy firm Health Strategy Associates asked 35 workers compensation professionals representing large state funds and insurers, third-party administrators, and large self-insured and self-administered employers about their expectations of workers compensation costs amid the pandemic.

"Although respondents are somewhat concerned about presumption laws, the major impact has not come from CO-

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2021 HSA and High Deductible Limits and Maximums

The Internal Revenue Service (IRS) released the 2021 contribution limits for Health Savings Accounts (HSAs) and set the minimum deductible and out-of-pocket maximums allowed for a plan to qualify as a high deductible health plan.

The 2021 HSA contribution limits, adjusted for inflation, are:

- **$3,600 for individual coverage**
- **$7,200 for family coverage**

This is $50 higher for individual coverage and $100 higher for family coverage than the HSA limits for this year. There is also a catch-up contribution limit (for

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VID-19 claims and their costs," said Paduda. (Presumption laws have been passed in many states stipulating that if first line responders, such as police, fire, EMT and other professionals contract COVID-19, their condition is presumed to be work-related.)

Service providers who responded to the survey said their new workers comp claims dropped by as much as 50 percent, with occupational medicine clinics, transportation companies, imaging, physical therapy, field case management and independent medical providers taking the biggest hit.

According to the survey, payers expect to see premium reductions as a result of widespread business closures. But survey respondents also expect to see extended disability claims for non-COVID-19 due to delays in procedures, treatment and the adjudication of cases.

Most leaders in the workers comp industry do not expect to see a significant number of COVID-19 claims, according to the survey. Respondents reported a total of 33,000 COVID-19 claims, with a little more than 20 percent of them accepted. Early figures on such claims have shown them to be generally inexpensive, according to the report. One survey respondent said that 96 percent of the claims it received cost less than $3,500

Accoring to the survey, the pandemic has led to explosive growth in telemedicine and respondents believe the use of telehealth and telephonic case management will have a positive impact on the workers comp industry.

NCCI Says Workers Comp Industry "Well Positioned" for COVID-19

Shortly before release of the Health Strategy Associates survey in June, the National Council on Compensation Insurance (NCCI), the leading ratemaking organization for the workers compensation industry, stated at its Annual Issues Symposium in Boca Raton, Fla., that years of profitable underwriting and healthy reserves in 2019 will help the workers compensation industry weather coronavirus-related claims and lower premium in the coming months.

"The two themes you will hear are unprecedented financial strength and consistent performance," said Donna Glenn, NCCI's chief actuary, in a "state of the line" presentation that addressed where the industry stands as it faces unanswered questions regarding the pandemic's effect on financial results.

"The system is well-positioned to face COVID-19 stress," she said.

The workers comp sector has reported profitable results in recent years. In 2019, the industry reported a combined ratio for private carriers of 85 percent, making it the sixth consecutive year that the workers comp line of business has posted an underwriting gain. Last year also marked the third consecutive year of a combined ratio under 90 percent. The two most recent years, including the 83 percent combined ratio in 2018, showed the lowest workers comp combined ratio since the 1930s, according to the presentation.

Going forward, however, the industry will be deeply affected by COVID-19 claims, said Bill Donnell, NCCI president and CEO.

HSA-eligible individuals age 55 or older) and it remains at $1,000 for 2021.

An HSA is an account that helps employees who have high deductible health plans pay for qualified medical expenses, such as doctor visits, prescriptions, chiropractic care and premiums for long-term-care insurance. Contributions to the accounts are made by employees on a pre-tax basis. The money can accumulate year after year tax free and is available for withdrawal tax free to pay for a variety of medical expenses. Employees can take the account with them if they change jobs or leave the workforce.

The 2021 minimum deductible for individual coverage will remain the same at $1,400. The 2021 minimum deductible for family coverage will remain the same at $2,800.

The 2021 maximum out-of-pocket limit for individual coverage will be $7,000. The 2021 maximum out-of-pocket limit for family coverage will be $14,000.

"Every aspect of workers compensation will be affected" by the pandemic, including claim activity stemming from infections, the extent of which is still unknown, and claims in states adopting changes to workers comp laws that would provide presumption coverage for frontline workers outside of health care who are usually not covered for viral infections.

Ms. Glenn highlighted that as of year-end 2019, the overall reserve position for private insurers stood at a $10 billion redundancy, doubled from $5 billion at year-end 2018. This means premium rates continued to outpace loss costs.

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Meanwhile, average lost-time claim frequency across all 38 states that work with NCCI declined by 4 percent in 2019, on a preliminary basis, and preliminary 2019 accident year data showed average indemnity claim severity increased by 4 percent compared to 2018. Medical lost-time claim severity increased by 3 percent.

Looking ahead, Ms. Glenn said one of the "biggest unknowns" will be the length of shutdowns. In addition, different industries will post different results. The decline in hospitality, manufacturing and distribution, for example, could be offset by increased demand for health care, groceries and home delivery of goods. In the "middle," many industries have increased telecommuting, which has led to fewer layoffs in some fields.

Claim activity will also vary, Ms. Glenn said. Some employees may delay care or not report claims, and some existing claimants could see their return to work and recovery hindered by fewer jobs and doctor check-ups. "Hard data" on the overall effect of the pandemic will be "extremely limited in the short run," she said.

COVID-19 Liability Waivers

At a recent campaign rally attendees were asked to sign liability waivers to protect against lawsuits related to contracting Covid-19. Many businesses are doing the same with customers and employees.

As businesses reopen around the country customers and even employees might be asked to sign liability waivers saying that they won't sue if they catch COVID-19.

Even if they follow the precautions put out by the Centers for Disease Control, many businesses feel they are still vulnerable to lawsuits.

Some states are trying to alleviate the concerns of business by passing legislation holding business harmless for allegations of liability arising from COVID-19 infections.Five states to date — Utah, North Carolina, Oklahoma, Arkansas and Alabama — have done so already.

Critics of the waivers and the legislations argue that these defenses allow employers to neglect taking proper precautions such as erecting Plexiglass barriers, providing masks and requiring they be worn and having people maintain at least six feet of distance.

Attorneys such as Hugh Baran with the National Employee Law Project, a worker advocacy group, say that the workers are put in a terrible position. "Do you sign this and potentially give up your legal recourse or do you refuse and feel like you are going to lose your job?" he said to a reporter from the *Syracuse Post Standard* in Syracuse New York.

On the other hand, by refusing to sign the waiver, employees risk losing unemployment benefits.

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Will the Waivers Hold up in Court?

According to attorney Sohn Wolohan, a law professor at Syracuse University, in 45 states and the District of Columbia courts generally uphold voluntary waivers. In any case, some businesses are taking a better safe than sorry approach.

Chreyl Falvey, a partner at the Crowell and Moring law firm in Washington, D.C., says the waivers wouldn't hold up in situations where someone is infected by a person who signed a waiver, as they weren't party to the waiver agreement.

While the waivers are often required of customers, it doesn't appear that most employers are requiring employees to sign liability waivers. Often, though, they are asking returning employees to declare whether they are infected or have reason to believe they may have been infected with COVID-19. One widely available form on the internet used by some employers is called the "Coronavirus Self Declaration Form." It says that in the interest of "the health and safety of our community, declaration of illness is required. Be sure that the information you'll give is accurate and complete. Please get immediate medical attention if you have any of the COVID-19 signs." It then lists COVID-19 symptoms and asks related questions and requires employee to attest to the accuracy of their statements.

As reported by the Associated Press, as of the second week of June there were 2,741 lawsuits filed in the U.S. over COVID-19 infections, according to a complaint tracker maintained by the Hunton Andrews Kurth law firm. Many of the cases were over government shutdown orders and which businesses were deemed essential. Only seven came from consumers and 49 were filed by employees over exposure to the virus or other related injuries. It is thought that federal legislation would be the best way to prevent a huge surge of litigation against employers.

IRS Health Plan Changes for 2020

Those changes include making it easier to get health care and allowing employees to make mid-year changes to their FSAs if their employers allow it.

The threat of COVID-19 has made people even more aware of how important it is to have good health care coverage. As a result, the Internal Revenue Service (IRS) issued several rules making it easier for individuals to get health care this year. However, implementation of the majority of the rules depends on getting buy-in from employers.

The rules affect 2020 employer-provided health insurance, Flexible Spending Arrangements (FSA) and High-Deductible Health Plans (HDHP).

Employer-sponsored Health Insurance

Some employees realize the health coverage they signed up for no longer meets their medical needs, while others who declined coverage wish they hadn't. Usually, the only time employees can sign up for employer-sponsored health insurance is during the plan's renewal period or when they have a qualifying "life event" such as marriage or the birth of a child.

For this year only, IRS Notice 2020-29 allows employers to modify their health benefit plans so employees can make certain mid-year changes to their 2020 health insurance.

If employers choose, they can amend their health plan to allow employees to do one or more of the following:

- Sign-up for health insurance for 2020 even if they initially declined coverage.
- Sign-up for a different health plan.
- Allow an employee to revoke their existing coverage if they promise in writing to enroll in other coverage not sponsored by the employer.

Employers also can limit health insurance changes to only those changes that would improve an employee's coverage, such as switching from a low-option plan to a high-option plan.

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FSA

An employer can set up an FSA to allow employees to contribute pre-tax money to pay for qualified medical expenses. A dependent care FSA can be used to pay for childcare or adult-care expenses.

This year the IRS is also allowing employees to make mid-year changes to their health and dependent FSAs — if their employer modifies the company's FSA plan.

If their employer approves the modification, employees can:

- Sign up to contribute to a health or dependent care FSA for 2020
- Decide not to contribute to an FSA
- Increase or decrease their 2020 contribution amount.

Employees generally have to use all of the savings in the year they put it in their account or they will lose it. An employer can choose to allow workers to carry-over to the next year up to $500 of unused contributions.

Effective for plan years starting on and after Jan. 1, 2020, Notice 2020-33 increases the $500 carryover limit for health FSAs to 20 percent of the annual salary reduction contribution limit. This means that the limit is increasing to $550 for 2020. The carryover amount will be adjusted for inflation going forward.

This change doesn't apply to amounts carried over from 2019 to 2020.

HDHP

An HDHP insurance plan has a lower monthly premium than traditional health insurance, but requires members to pay more of their health care bill before the insurance company starts to pay its share. An HDHP usually is combined with a health savings account (HSA), which allows an HDHP member to save money tax free in order to pay qualified medical, pharmacy, dental and vision expenses

In Notice 2020-15 the IRS said that health plans that otherwise qualify as HDHPs will not lose that status merely because they cover the cost of testing for or treatment of COVID-19 before plan deductibles have been met. The IRS also noted that, as in the past, any vaccination costs continue to count as preventive care and can be paid for by an HDHP.

The IRS also expanded the types of testing and treatments permitted without applying usual required HDHP deductibles. The services added include:

- Diagnostic testing for influenza A & B; norovirus and other coronaviruses; respiratory syncytial virus (RSV) and any items or services required to be covered with zero cost sharing
- Telehealth and other remote care services.

If you decide to make any of these changes for 2020, you should communicate the changes to employees in time to be useful and you must adopt conforming plan amendments no later than Dec. 31, 2021.

Non-Calendar Year Plans and Plans with Grace Periods

For 2020 only, Notice 2020-29 also includes special relief for plans under which the deadline to incur expenses ends before Dec. 31, 2020. Under this relief, a plan may extend the deadline to incur expenses up to Dec. 31, 2020.

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Company Policies Must Now Address LGBTQ Rights in the Workplace

Employers who do not have policies and practices that are inclusive of lesbian, gay, bisexual, transgender and queer (LGBTQ) workers, should craft guidelines addressing the issue.

The U.S. Supreme Court ruled in June that LGBTQ workers are protected by federal employment anti-discrimination law and that an employer who fires a worker for being gay or transgender violates Title VII of the Civil Rights Act of 1964.

Title VII is part of a federal law that protects employees against discrimination based on race, color, national origin, sex, and religion. Employers who have 15 or more employees must treat employees fairly in the areas of recruiting, hiring, promoting, transferring, training, disciplining, discharging, assigning work, measuring performance or providing benefits.

Despite the federal law, and the fact that many state and local governments already have laws prohibiting discrimination based on sexual orientation and gender identity, there was still the question of whether the act prevents discrimination against LGBTQ employees on the basis of sex.

In October 2019, the U.S. Supreme Court heard three cases on the issue — two brought by men who allegedly lost their jobs because they were gay and one on transgender discrimination in the workplace. The three cases were consolidated into Bostock v. Clayton County, Georgia.

Moving Forward

Employers who already have policies prohibiting discrimination in the workplace should keep those policies in place.

Employers who have not yet addressed the situation are encouraged to do so as soon as possible. Company policy should include protections for sexual orientation and gender identity.

Experts also advise employers to perform a comprehensive review of their job application process, hiring practices and ongoing work procedures to ensure the operations are fair and decisions are not being made in ways that would adversely affect LGBTQ employees.

It is not yet known how this decision will impact religious liberty laws.