

SHOULD EMPLOYERS SELF-PAY WORKERS' COMPENSATION CLAIMS?

By Rick Weden

Is it a good idea for employers to self-pay workers' compensation claims?

Although this question has been posed to me on many occasions over the years, of late it has come up more often. So I thought this might be a good time to get into some details on this topic.

Every time the question comes up, the inquiring employer's reasoning is pretty much the same. "Instead of reporting all of my workers' compensation claims to my insurance company, what if I do not report the smaller claims, maybe those under \$1,000 or perhaps \$1,500, and just pay them myself? My insurance company will think better of me as a customer, and, by not reporting these claims, my premiums will not increase and might even decrease."

In short, my opinion of this practice is that it's probably not a good idea. But let's discuss this subject so we understand the "whys," the "why nots," some "what-ifs" and, as the great actor Jeff Bridges said in that quirky film *The Great Lebowski*, we'll also talk about some "what have you's."

What is workers' compensation and is it regulated?

Workers' compensation is basically a social-insurance mechanism, adopted by law under the Workers' Compensation Act of 1916 under the administration of then President Woodrow Wilson, designed to improve workplace conditions and protect injured workers. It is required by law for most all employers to carry in most all states.

Each state has its own individual workers' compensation system with its own individual laws, regulations and procedures. There is a fair amount of overlap of these regulations from one state to another, but



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there are also some variations, and in some cases these variations can be significant. Add to that the fact that individual state workers' compensation regulations seem to change all the time. In fact, in many states, the practice of self-paying workers' compensation claims is not legally permitted under the workers' compensation system. So if you are considering this practice, or if you have been doing it, it would be a wise idea to develop an understanding of the legalities in the state(s) you operate in.

The risks of self-paying claims under an ill-advised process have the potential to backfire legally on the employer, and the results can be costly to said employer. One can gather much information about an individual state's workers' compensation laws simply by going online to the state's Workers' Compensation Division.

Self-paying small medical claims may not be helping you all that much anyway. Many states have adopted what is called an Experience Rating Adjustment formula, often referred to as an ERA or an Experience Modification Calculation, to their workers' compensation regulations. The Experience Modification Calculation is the formula that workers' compensation insurers use to increase or decrease a policyholder's premium for having, or not having, claims under their workers' compensation policy.

But what's interesting about the ERA formula is that it actually reduces the size of medical-only claims, often by as much as 70 percent. So in the end, medical-only claims may not impact the ERA all that much, resulting in a minimal change to

one's premium. If the state you are operating in uses the ERA formula as part of the premium calculation, chances are that self-reporting small claims may have little or no positive impact on your premium anyway, and might even make self-paying of smaller workers' compensation claims more costly to the policyholder.

Legal risks of self-reporting medical-only claims

Beyond the ERA issue, there are some potentially worrisome factors that one should consider before adopting the idea of self-paying claims.

Understand that a policyholder's failure to report injuries and self-pay the would-be workers' compensation benefits may not alleviate their workers' compensation insurer's legal obligations to pay benefits to the injured worker. If an insurer learns that one of its policyholders is not reporting and is self-paying claims, the insurer can get, shall I say, not so friendly with their

policyholder. This can result in a series of punitive actions taken by the insurer, including but not limited to non-renewal of one's workers' compensation policy.

Furthermore, additional measures may be directed toward the policyholder that might involve the given state's workers' compensation regulatory arm. The potential impact that can affect an employer varies by state, so one should understand how their individual state's workers' compensation laws address self-reporting claim situations, as well as the penalties that may be applicable.

Other risks of self-reporting claims

Years ago, I had a claim where an employee of one of my clients accidentally stepped on a large nail that pierced his work boot and entered his foot on a job site. On the day of the accident, he sought medical-only care, went to the ER, had the puncture wound treated and was released. This kind of medical-only claim is typical of one that a self-pay insured might han-

dle themselves. Since my client knew the importance of reporting all claims to his insurer, the claim was promptly reported to the workers' compensation carrier on the day of the accident, and a medical-only payment of approximately \$500 was made on the claim. The claim was closed and forgotten as a medical-only claim.

Unbeknownst to the employer, and shortly after the incident, the employee began to have some further discomfort in his foot, which he shared with no one. Also unknown at the time was that the injured worker also was experiencing some form of psychological problems, which soon resulted in the worker completely isolating himself from the outside world. He stopped coming to work and did not respond to repeated communications from the employer as to his work and wellbeing status. This went on for some time until the employer gave up on attempts to reach the worker, finally making the assumption that the worker had voluntarily terminated his employment.

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Weeks later, the employee resurfaced as an inpatient at one of our local hospitals. The injury had manifested itself into an infection so massive that the worker almost lost his lower leg and foot. When the claim was finally closed 18 months after the initial injury, the total loss payment exceeded \$125,000. Unfortunately, the size of the claim impacted the insured's workers' compensation costs. However, since the claim had been presented to the insurer, the business owner never had to worry about any further fallout from this claim.

Were my client to have been a self-payer of small medical claims, which is what this claim would very probably have been considered at the onset, he would have exposed himself to some serious trouble. There is no question in my mind that, on learning that the claim was self-paid, the insurance company would have canceled my client's workers' compensation policy, thereby forcing my client into our state Assigned Pool, where his premi-

um would have increased dramatically. Beyond that, who knows what other steps the insurer may have taken against the insured, as under self-pay, the insurer would never have had the opportunity to manage the claim, which is their right under both state law and the terms of the policy.

I should also add that there are some states where the responsibility of reporting workers' compensation claims rests in the hands of the attending physician/healthcare provider. Under these circumstances, the idea of employers self-paying claims is a moot point.

Small-deductible plan

In light of all I have emphasized on the risks of self-paying workers' compensation claims, be aware that many states offer what are called "Small-Deductible" workers' compensation plans, which are a self-pay option. Using these plans might result in some cost reductions.

In order for a policyholder to obtain such a plan, they must make arrangements

with their insurer, and the plans do come with some "strings" attached to them. For starters, the insured must report all their claims to the insurer. In turn, the insurer will pay the entire amount of the claim on behalf of the injured worker, and will then bill the insured back for the deductible. Many deductible plans start in the \$500-per-claim range, but higher deductibles (with higher policy credits) may be obtainable. Be aware that those looking for larger deductibles may have to demonstrate to the insurer, and possibly the state Workers' Compensation Bureau, that they have the financial capability to meet the financial obligations of paying the deductibles.

Remember that deductible plans and their terms vary greatly from one state to another, so it is critical that one be completely aware of what their individual state allows and how they condition the plans.

In the interest of complete disclosure, I should also make mention that there are also the "big players" in this industry, companies that are extremely large and operate in many states and, due to the sheer size of their workforce, have large and complex workers' compensation plans with premiums that run into the millions of dollars. These insurance plans often have special self-pay arrangements, but these plans and arrangements are reserved for only the giant companies and are not available to smaller or even mid-size companies.

The final word

At the end of the day, the best outcome for everyone is simple. Make every effort to avoid having workers' compensation claims in the first place. Having a solid safety and accident-prevention plan and investing time and money into good safety consulting can save a tree care company thousands of dollars on workers' compensation costs. Backing these up by adopting effective Early Return to Work/Restricted Duty plans only serves to improve one's overall payouts for that occasional claim that may occur. Tree care companies that strictly adhere to these ideals will always pay less for workers' compensation than those that do not employ these practices.

If you are considering self-paying workers' compensation claims, it is highly advisable that you become very familiar with your individual state workers' compensation laws, specifically as they relate to self-paying of claims. You also should discuss the idea with your insurance provider and get his or her opinion on the practice as well. If you are considering a deductible option, then get the particulars from your insurance company on how a

deductible plan will work for you.

Rick Weden is team leader of the Tree Care Insurance Specialty Team at Corcoran & Havlin Insurance Group, a division of Cross Insurance based in Wellesley, Massachusetts. He and his team manage the insurance needs of a large and growing number of tree care professionals countrywide. He also is a member of TCIA and the Massachusetts Arborists Association (MAA). He has given numerous presentations on insurance topics at past TCI EXPOs and other gatherings and events for the tree care industry.

This article relates to his presentation on the same subject at TCI EXPO in Columbus, Ohio, last fall. To listen to an audio recording of that presentation, go to this page in the digital version of this issue online, under the Publications tab, and click here.

Industry Almanac

(Continued from page 20)

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October 26, 2018*

Aerial Lift Specialist Workshop
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October 29, 2018

UMass Extension's Green School
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Contact: ag.umass.edu/landscape/education/umass-extensions-green-school

November 4-6, 2018*

New England Chapter ISA Annual Conference
Mystic, CT
Contact: www.NewEnglandISA.org

November 6-7, 2018*

Certified Treecare Safety Professional/CTSP Workshop
Charlotte, NC
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November 7, 2018*

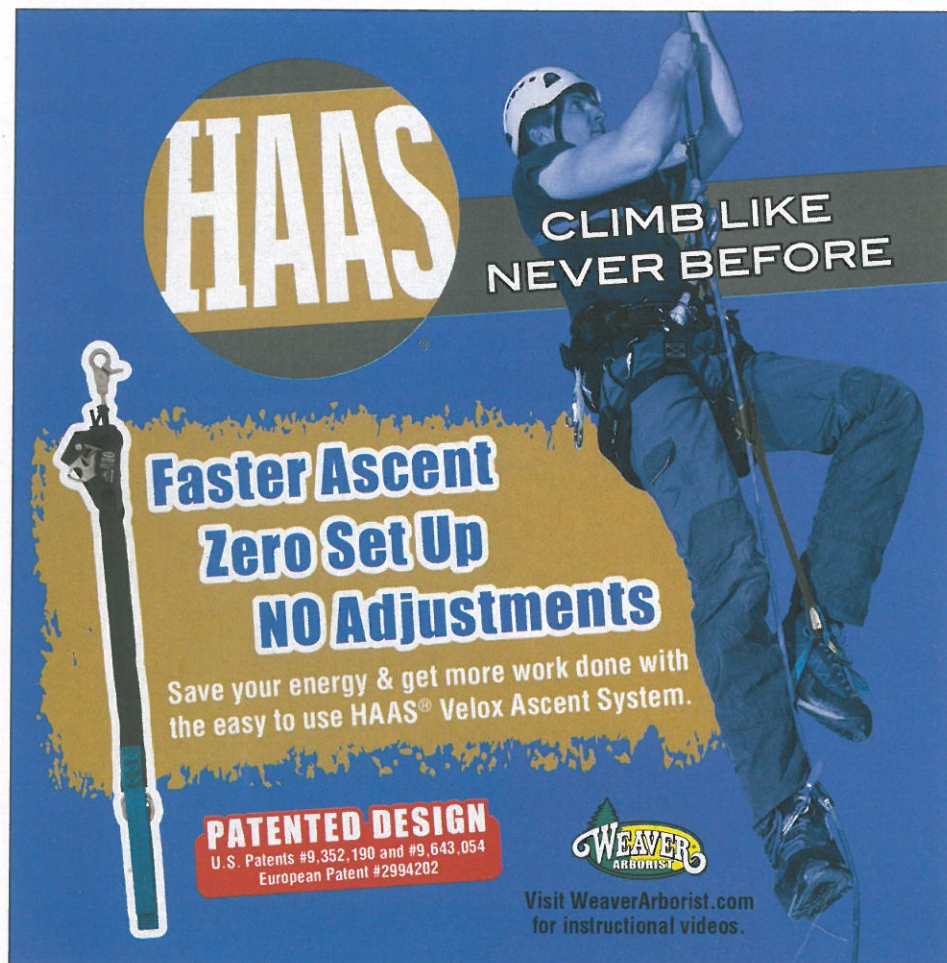
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