



**CORCORAN & HAVLIN  
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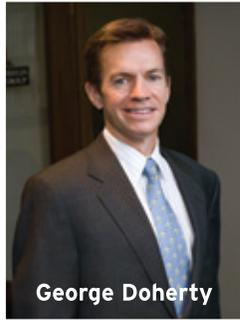
### MANAGING YOUR RISKS PROTECTING YOUR INTERESTS

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George Doherty

## Reducing Worker's Compensation Costs

How a business can reduce costs associated with their worker's compensation experience modification factor.

By George Doherty, Corcoran & Havlin

How a business can reduce costs associated with their workers' compensation experience modification factor.

quickly. In many states, employers get a 70 percent discount for the injury on their experience mod if they return the employee to work before lost-wage payments begin. Additionally, employees who return to work, even in modified positions, save employers from lost-wage payments that increase the mod. Further, the longer employees are off the job, the less likely they are to ever return to work. It's a good idea for claim adjusters to work closely with physicians who specialize in workplace injuries, since they can more efficiently treat employees and may have more experience authorizing returns to work for light duty assignments.

Third, keep track of injured employees. There should be a process in place so employers report injuries to the insurer as soon as they occur. This allows the claim adjuster to better manage the process. Assign someone in your organization to work with the claims adjuster to make sure that he or she is making a maximum effort to get the injured employee back to work.

Fourth, correct job misclassifications. The experience mod reflects the difference between what the insurance carrier expects to pay and what it actually pays for injuries. High-risk jobs and occupations cause the insurer to expect to pay more. If you have employees that are misclassified, your experience mod will be incorrect. Review the classifications with your Corcoran & Havlin representative and make sure they are correct.

Fifth, be sure to address any open claims and examine their current status with your claims representative. The "unit start date" is when the insurance carrier looks at the employer's business over the 3-year experience period (not including the most recent year) to determine what the insurer has spent and what it expects to pay on claims. So look at open claims before the

Most business owners are aware that an employer's workers' compensation experience modification (mod) is the adjustment of manual premium based on previous loss experience. Experience mods are normally recalculated for an employer annually. Each year, a newer year's data is added to the three-year window of experience used in the calculation, and the oldest year from the prior calculation drops off. The other two years worth of data in the rating window are also updated on an annual basis. Experience mods are usually calculated by NCCI (National Council on Compensation Insurance), but a few states, like Massachusetts, have their own workers' compensation rating organization.

The experience modifier adjusts workers' compensation insurance premiums for a particular employer based on an evaluation of past losses of that employer in comparison to "average" losses of other employers in that state in the same business, adjusted for size. There are several steps a business owner can take to help lower their mod and insurance costs.

First, find out the minimum experience mod, (where it would be had your company not encountered any employee injuries during the period covered by the experience mod). Knowing this minimum mod means you know how much of the insurance costs your company can control. Some companies form safety committees to find more ways to reduce workplace injuries and to provide training that helps employees stay safe.

Second, be aware of the importance of getting injured employees back to work

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**The Corcoran & Havlin Insurance Group has been awarded the 2012 Reader's Choice Award for the 9th consecutive year.**

# Penn State Crimes Raise Liability Insurance Issues

## C & H's

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Most institutions carry liability insurance to protect themselves against the bad acts of employees working in an official capacity, or misusing their facilities – and Penn State is no exception. But the recent, lurid child sex abuse scandal embroiling the Penn State football program and former coach Jerry Sandusky isn't a typical "slip-and-fall" case.

### Background

If you're not much on sports, here are the basics: Pennsylvania State University assistant football coach Jerry Sandusky has been convicted on 45 counts of sexual molestation, both in his home and in the Penn State football program's restroom and shower facilities.

The criminal trial phase is over, although as of this writing, Sandusky has yet to be sentenced. The civil liability side of the case is just warming up.

Technically, Sandusky retired from the coaching staff in 1999, though he was granted "emeritus" status after he retired, and allowed free use of the University of Pennsylvania athletic facilities for years while he served as director of Second Mile, the charity he founded as an outreach to disadvantaged youth. But he was using the charity to gain access to victims the whole time, some of whom he raped in the locker and shower room himself.

The ultimate financial liability the University will face is unclear. The current Penn State University president, Rodney Erickson, claims that the University did carry sufficient insurance coverage to cover anticipated claims. And normally liability insurance would cover civil suits from actions on campus.

But the Sandusky case is different – and the carrier is balking.

At issue: According to an investigative report conducted by the former Director of the FBI Louis Freeh, the University was first alerted to the possibility that Sandusky was a sexual predator as early as 1998. If that weren't enough, another football coach, Mike McQueary, walked in on Sandusky apparently sodomizing a child in the locker room/shower facility in 2001. He informed the Nittany Lions' head coach Joe Paterno, and Paterno notified the school Administration – which did nothing.



The school took no action to restrict Sandusky's access to the facilities or to children on campus. Instead, the Free Report concluded that Paterno and the University administration, including the former director of the Campus Police, "repeatedly concealed critical facts relating to Sandusky's child abuse from authorities, the University's Board of Trustees, the Penn State community, and the public at large."

Most of the boys whom Sandusky was convicted of victimizing were assaulted after 2001, after the Administration had an opportunity to bring Sandusky's depraved acts on campus to a halt – and this is the crux of the matter from a liability insurance perspective:

In concealing the reports of Sandusky's sexual depredations on campus, the University concealed information from insurance company underwriters that was material – indeed, central – to their underwriting decision. As a result, lawyers representing the Pennsylvania Manufacturers Association Insurance company filed suit in court seeking to limit their liability to pay damages in this case.

The company also pointed to specific contractual provisions: Their contracts with the University had been amended in the early 1990s to specifically exclude coverage for sexual harassment and assault claims. The company also asserts that such claims are routinely excluded in Pennsylvania as a "matter of public policy."

### Playing Defense

Obviously, there's no foolproof way to screen out, a priori, every employee or associate who may commit a bad act. If

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there were, everyone would do so. But anyone with staff or who offers access to facilities to the public should review coverage and assess possible gaps in their coverage: Most policies will honor claims for inadvertent acts, but not for deliberate ones – and Penn State's carriers will point to the University administration's cover-up of the Sandusky crimes as a deliberate act. Indeed, at least two Penn State administration members have been indicted for perjury.

Further, many policies specifically exclude claims of abuse or molestation. If this is the case with your liability insurance coverage, you may need to buy a separate abuse and molestation insurance policy.

In the case of athletic programs, some companies that issue general liability programs to sports facilities and their directors and boards will underwrite additional coverage. But the carriers typically vary by industry.

This is a high-risk area for insurance companies, so when you apply for coverage, be prepared to show that you're taking some risk mitigation measures of your own, such as requiring background checks for staff members, implementation of a "buddy system," ensuring adequate supervision and reducing or eliminating "sleepover" events.

### Outlook

Penn State's liability exposure does not necessarily extend to all of Sandusky's victims – just the ones

abused on campus or at or as a result of officially sanctioned university events. Some estimates, based on the cases already known to the public, peg the University's exposure to about \$100 million. Their endowment could cover that, easily, though it will hurt future programs and scholarships. However, other people may yet come forward with liability claims, and that will take time to work out.

More broadly, we are already seeing a tightening of the market – liability premiums and molestation and abuse premiums have climbed following the public exposure of the case. But the insurance risk pool should also expand as a result of increased public awareness of the importance of abuse and molestation insurance – especially as distinct from a general liability policy.

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unit start date and talk to your insured to ensure that the reserves are adjusted properly, i.e. not too high.

Finally, be aware that canceling or rewriting a workers compensation policy mid-term may negatively impact your experience mod. A cancel or rewrite of the workers' compensation policy will change how many months of experience will be considered on the experience mod. If this cancellation and rewrite of a workers compensation policy is made at the wrong time, it can cause policies to stay with a detrimental experience mod longer than you would had the policy effective dates not been changed.

## Important Tips for Hiring Reputable and Reliable Subcontractors

There are plenty of advantages with hiring subcontractors. Whether contractors hire them for renovations or new building projects, there are a few important things to know. The most important thing to think about is who the individual is and how he or she will represent the company name. When customers complain, they will likely name the company and not the individual subcontractor. In addition to this, the contractor is responsible for everything the subcontractor does. This is why it is so important to hire individuals who are capable, professional and responsible.

### Before Hiring

**Ask to see proof of insurance.** Have the subcontractor provide a certificate of insurance. If a project will last more than one year, make note of the policy's expiration date. When that date arrives, ask to see the new certificate of insurance to ensure the subcontractor is keeping the policy active. Make sure the individual is insured for workman's compensation and liability. The subcontractor's staff should also be properly insured.

**Verify degree program completion.** It is important to hire a subcontractor who has been properly trained. Ask to see a degree. The individual should also have a minimum of four years of experience working as a foreman.

**Ensure the individual is licensed.** Each state has its own rules for licensing and verification, so be sure to use individual state procedures and check local laws. If the subcontractor has additional staff working on the project, they should also be insured.

**Ask for references.** Ask for a minimum of three current references that can be contacted directly. It is also helpful to ask to see samples of the subcontractor's previous work.

**Make a written contract.** This document should include what the contractor expects of the subcontractor and his or her staff. It should include a rate of pay, who will be responsible for mistakes and who is responsible for other various tasks. It is also important to make sure the subcontractor is willing to make repairs or changes after the job is finished.

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**Tour the site together.** When doing this, make sure the subcontractor knows what must be done. The subcontractor should also understand how to get the job done and who is in charge of various tasks. When the job starts, there should be no guesswork involved.

**Make communication a priority.** The individual should be easy to contact and talk to. Communication should be good on both ends, so it is important that the subcontractor and contractor get along well.

#### During A Project

**Keep communication lines with customers open.** It is important that customers bring their concerns and questions directly to the contractor. Take necessary steps to make the customer feel that his or her input is highly valued. Messages can get lost in the network if they are passed along to the subcontractor and his or her crew, so make sure the customer has all

current contact information.

**Make a file for subcontractors.** Keep track of all conversations and transactions. This includes emails, notes, calls, face-to-face conversations, licenses, certificates and any receipts.

#### After Project Completion

**Do a final inspection.** Walk through the construction site to make sure the job has been completed in a satisfactory manner. Bring a checklist with items that can be marked off as they are verified. Make note of any repairs or changes that must be completed.

**Make sure the agreement has been upheld.** It is important to make sure all the terms of the contract have been met. Subcontractors' actions and work should comply with every detail in the agreement. The project is officially over when the terms have been met and the contractor is satisfied.



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