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MJ INSURANCE
SORORITY DIVISION

Employment News

The Employment Resource
for Women's
Fraternities & Sororities

Are you new to your position?
Be sure to check out the Insurance Summary at www.mjsorority.com!

Introducing "Employment News"

Over the last twelve months, we have seen a concerning increase in employment-related claims. We have attempted to address employment-related issues in our bi-monthly newsletter, but with the complexity of the employment issues that our clients face, we concluded that a resource focused exclusively on employment-related topics would be helpful to our clients.

We welcome your feedback, as always. If you have questions or topics that you would like to see us address, please contact [Sara Sterley](#), Director of Risk Management Education.

Wage and Hour Claims on the Rise

The insurance industry at large has seen a dramatic increase in the number of employment practices liability claims since 2000. Employment practices liability covers wrongful acts arising from the employment process. The most frequent types of claims covered under such policies include: wrongful termination, discrimination, sexual harassment, retaliation, and wage and hour.

We are especially concerned about the spike in wage and hour claims that have plagued many of our clients in recent years. Wage and hour claims arise when an employee alleges that his or her employer has failed to pay overtime wages owed to the employee. Wage and hour claims under the Fair Labor Standards Act are very easy to allege, but they are difficult claims to disapprove. Additionally, summary judgment or dismissal are rare for employers. Today, of every ten lawsuits filed by employees, eight are wage and hour claims.

Within the past several years, a number of high-profile, high-dollar wage and hour claims have been filed on a class action basis, a fact that has vastly increased the dollar amount payable under such lawsuits. Given the magnitude of this exposure, most employment practices liability insurance (EPLI) policies specifically exclude coverage for wage and hour claims. We are fortunate to have the employment practices liability coverage for the Sorority Book of Business with Chubb, an insurance carrier that specializes in non-profit insurance needs. The EPLI coverage provides defense costs only for wage and hour claims, which means that the insurance company will cover defense costs (but not judgment) for any or alleged violation of the Fair Labor Standards Act or any similar federal, state, or local law governing the payment of wages, overtime, on-call time, rest periods, minimum wages, etc. of employees.

We recommend that employers consider the following in order to minimize the risk for these types of claims:

- Are your exempt employees properly classified? Too many employers classify employees as exempt when they are really non-exempt.
- Are your non-exempt employees receiving their overtime? All overtime, no matter how short, must be accounted for and compensated.
- Are your non-exempt employees receiving proper credit for all their time spent working on your behalf? Employers that hedge employee time, especially when an employee is on an employer's premise, take a great risk.
- Are your non-exempt employees receiving their breaks and other compensated time as required by federal and state laws? Laws differ, but many state laws require mandatory paid breaks during the day.
- Are your employees receiving all the wages due to them? Class actions are emerging where



employers unlawfully deducted money from employee checks.

- Have you had an employment attorney review your wage and hour practices? If not, now is the time.

In addition to discussing the issues above, we recommend the following risk management practices:

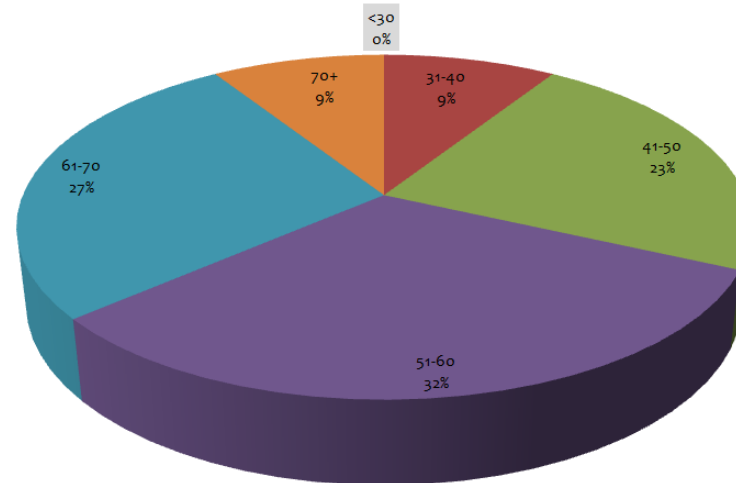
- Do not let a house director work without a signed contract
- Maintain meticulous records
- Clearly define who the employer is (e.g. National House Corporation versus local House Corporation)

For additional information, check out [the many resources](#) available from Chubb, our EPLI insurance carrier. In addition, we have several resources available at www.mjsorority.com, including [an article on FLSA compliance and house directors](#) from *Fraternal Law*.

Workers' Compensation Trends

We are seeing an increase in the frequency and severity of workers' compensation claims. We closely monitor the loss ratio (premium dollars paid divided by dollars of losses paid out) to ensure that our book of business stays profitable for the insurance company. The workers' compensation loss ratio trends are alarming: the master policy's loss ratio is 100 percent and the California policy's loss ratio is 130 percent. These level of loss ratios are unprofitable for the insurance company, so we must attempt better risk management to decrease claims in this area. In an effort to determine if there are any trends occurring that we might be able to address with risk management, we have recently undertaken an extensive workers' compensation claim review (see graphs).

Age of Injured Workers Involved in Claims Over \$50,000



Ultimately, we have identified the following trends as exacerbating factors in the dramatic increase in workers' compensation claims:

- Workers' compensation claim trends are tied to the macro economy, so, while we appear to be in an economic recovery, much of the economy is still depressed. We see more workers'

compensation claims when employees are facing financial difficulties.

- We are seeing an increase both in medical costs and the indemnity costs (payments to the employee to cover disability, lost wages, etc.) associated with claims.
- Age of audience: most employees of women's fraternities/sororities tend to be older, which is a contributing factor in both the frequency and severity of workers' compensation claims (see chart).

So what should we do about it?

We recommend the following risk management guidelines for all employers:

- As you can see from the graph below, falls/slips/trips account for nearly 40 percent of the total workers' compensation claims. We recommend that you utilize [this resource](#) to help minimize claims of this nature.
- Hire individuals that are physically suited to do the job at hand. Ensure that your job description is accurate and appropriate. [Here is a sample template](#) to help you develop a job description.
- Require employees to use safety equipment to handle hot or sharp objects.
- Store heavy items at waist-level or below. Require employees to use equipment (carts, pulleys, etc.) to transport heavy objects.

Cause of Injury	Kitchen	House Director	Housekeeping	Maintenance	Headquarters	Total	% of Total
Fall/Slip/Trip	14	23	28	1	3	69	30%
Fall/Stairs	2	9	4	1	0	16	7%
Falls from an elevated position	0	0	2	0	0	2	<1%
Cuts	36	3	1	2	0	42	19%
Burns	12	1	0	0	0	13	6%
Lifting	11	5	10	3	1	30	13%
Auto	0	1	0	0	8	9	4%
Falling Object	5	2	1	1	0	9	4%
Shut Hand in Door	0	1	2	0	0	3	1%
Other	12	9	9	3	1	34	15%

Total 92 54 57 11 13 227

Background Checks

There have recently been several situations whereby a university/college instructs and/or requires that all chapter advisors and house corporation volunteers submit to what is being referred to as "background checks." We would like to address the request for background checks from a risk management standpoint.

Purpose of Background Checks

Background checks have long been used in the hiring process and are designed to protect existing employees, assets, members and other individuals with whom the employee may come into contact. A more recent trend has occurred where some type of background check is required for adults who work with young children, youth or even young adults. "Background check" is a common term; however, there are two main types of background checks, each searching for different information and providing different results:

- **Criminal Background Checks:** This will look into the criminal past of an individual, revealing such things as misdemeanors, felonies, and sexual offenses.
- **Credit Checks:** A credit check will uncover an individual's past credit history. This can include loans, mortgages, other lines of credit, and bill-payment histories. Credit reports will not disclose the nature of a problem, such as divorce, medical bills, job loss, etc. In order to qualify to receive credit reports, there are significant compliance hurdles as well as a set up fee.



Background Checks for Employees

Criminal background checks are considered prudent business practice for employees who have significant control over employer property and for those who manage physical and financial assets as well as any other employees. If you choose to run background checks, it is recommended that you develop a policy which would define the positions that are subject to background checks, as well as how you will act upon the information that is discovered during a background check.

We believe that this may yield some benefit to you in the process of hiring employees. However, we

have reviewed our worker's compensation, employment practices and bond claims experience and the claims that occurred with these employees would not have been predicted from the review of a background check. As a tool, it can be of use in specific situations of employment such as where an individual handles the expenses or the inventory of the chapter house property.

Background Checks for Volunteers

Criminal background checks for volunteers have been generally used when adults are working with minors. Because chapter advisors and house corporation volunteers for a sorority work with members who are almost exclusively adults (above eighteen years-old), this is less of a concern. We see many inherent issues with any requirement of the sororities to subject their volunteers to these types of requests. What is it that the requestor is hoping to achieve with the securing of background checks for the volunteers?

Critical points to consider:

- The organization runs the risk of getting too much information, which if abused and not handled properly could develop into a violation of the volunteers' right of privacy.
- It would be administratively difficult, if not impossible to maintain any type of a current and accurate list of alumnae volunteers either serving as chapter advisor or as house corporation volunteers.
- If said list is posted but later not maintained, your liability is increased should a volunteer's name not be on the list and a problem emerge from her actions.
- Alternatively, a posted list may increase the organization's liability for a defamation of character lawsuit, should a potential volunteer feel that she was unfairly included on such a list.
- The cost to secure the background checks would be a significant financial burden upon the organization.
- Should the university take on this responsibility, it begs the question of why would they want to "invite in" greater liability?
- The member groups have a good system in place to address behavioral issues of their collegiate members however we are less confident in the area of alumni issues. Should some disturbing information materialize from a background check, this may be problematic for the group to deal with the issue.
- The only way to secure any type of a background check is to have the individuals Social Security number. This is problematic for a number of reasons:
 - Volunteers may be hesitant to release this information
 - Any location that has the SS#'s of individuals has significantly increased their exposure to a data breach claim of this information which is referred to as Personally Identifiable Information (PII)
 - The costs associated with data breach allegations is substantial with the state law requirements of notification, providing credit monitoring services and the reputational harm to the organization
 - The Sorority community has worked very diligently these last several years to eliminate the need for our members SS#'s and this would undo that work and could put the organization at great risk.

- o Volunteers are often hard to engage and retain and the requirement for a background check may deter someone very qualified from volunteering.

The only instance in which we feel the benefits of getting a background check on a volunteer outweighs the risk is for any volunteer who is serving as a treasurer and has access to substantial funds of the organization. A modest credit check may reveal some prior behavior that should be noted.

However, we have also reviewed our past claims of volunteers and, once again, a background check would not have revealed any prior violations and, therefore, would not have prevented any loss or claims. What we find with these types of claims, primarily embezzlement, that it is an independent action due to current issues facing the volunteer. We do not see "career criminals," hence diminishing the effectiveness of this risk management tool for our clients.

It is our stance that background checks pose a substantial increase of risk to our clients and we are opposed to this requirement. We fail to see the need for this additional information and in creating this requirement the increased risks far outweigh any potential benefit.

For additional information on background checks, including recommended vendors, please refer to [our resource on the topic](#) at www.mjsorority.com.

Claims Corner: Embezzlement Claims

Heather Cox, Claims Services Manager

Embezzlement claims are on the rise. We often see more frequent and more severe embezzlement claims during economic downturns. Because of the increase in claims, we wanted to remind you of the importance of reporting embezzlement claims **as soon as you** suspect that an embezzlement claim may have occurred. According to the policy language, it is a condition of coverage that the organization must



1. Give written notice to MJ Insurance at the earliest practicable moment, and in no event later than 90 days after the initial discovery
2. Furnish affirmative proof of loss with full details to the insurance company at the earliest practicable moment, and in no event later than six months after initial discovery

We have had a recent claim that was not reported within 90 days of it being discovered, which jeopardizes the coverage available to the client in this situation. Unlike homeowner's insurance, there is no penalty under your organization's insurance program for submitting an incident, even if you're unsure whether or not it will arise to the level of a full-blown claim. It is in your organization's best interest to call us at any time that you suspect any type of embezzlement activity because of the strict reporting guidelines under the embezzlement coverage.

Embezzlement claims are often very difficult and costly to investigate, which is why we have

negotiated with the insurance company on your behalf to add expense coverage to the policy. The expense coverage affords the client with \$25,000 to spend to document the embezzlement for the purposes of the claim (e.g. moneys spent on forensic accountants, time to procure documents, etc.).

Refer to your [Insurance Overview](#) for your location's specific limits and deductibles for all of the coverages afforded under the insurance program, including embezzlement.

For more information about preventing embezzlement from occurring in the first place, review the [Guide to Preventing Workplace Fraud](#) from Chubb, the insurance company with whom we partner to provide the embezzlement coverage.

In the event that you suspect an embezzlement claim has occurred, do the following as soon as possible:

- Notify [Bev Stiles](#) or [Heather Cox](#) at MJ Insurance as soon as possible.
- Remove all financial responsibilities from the individual immediately.
- Begin the process of developing the details to the loss.

([Bookmark this page on our website](#) for future reference)

Employment Practices Liability Resources

The Employment Practices Liability coverage is provided by Chubb Group of Insurance Companies, one of the leaders in professional and management liability insurance coverage. Employment Practices Liability coverage protects an employer against claims made by employees, former employees, or potential employees that covers allegations of discrimination, wrongful termination, sexual harassment and other employment-related allegations.

Chubb offers many resources to help our clients better understand and prevent employment-related claims, including the following:

- [ChubbWorks.com](#) website: a free online resources for clients seeking assistance with employment issues
- [Employment Practices Loss Prevention Guidelines Manual](#): a free booklet that discusses key employment issues in layman's terms and offers proactive ideas for avoiding EPL lawsuits
- [EPL Hot Line](#): the toll-free hot line enables employers to contact directly with a nationally recognized law firm for immediate answers to your EPL questions.

We are most excited to be able to offer the EPL Hot Line to our clients to assist you with your human resource and employment law questions. The Hot Line is available to employers all over the country, not just specially designated individuals at each organization's national headquarters like the previous helpline.

The toll-free number is (888)249-8425. In order to connect with a Hot Line attorney, you will need to reference your EPL policy number, which should be located on the Insurance Overview that was emailed to you at the inception of your policies. Please [contact your Account Executive](#) if you have trouble identifying your policy number.

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