

Risk Monitor



Monitoring Experience Modifiers Can Reduce Workers' Compensation Premiums

Employing a rigorous and consistent workplace safety program will bring many benefits to your company. Among these is the potential to reduce your company's experience modifier and in the process substantially lowering workers' compensation premiums. An experience modification (E Mod) rating is a comparative analysis of your company's claims and loss reserves for workers' compensation to other businesses within the same class code as your business.

E Mod is like making par in golf. The more birdies and eagles you make, the lower your score. But unlike your golf game, an E Mod rating requires a team effort. Everyone needs to be conscious of workplace safety. And you need to ensure the factors for figuring your E Mod number are accurate and computed correctly.

Developed by the National Council on Compensation Insurance (NCCI), an E Mod gives employers some power over controlling the cost of their workers' compensation programs. Each year, NCCI, or a separate rating bureau in some states, evaluates your company's payroll and claims experience for the past three years and calculates your E Mod. The average factor is expressed as 1.00. A firm with a factor below 1.00 will pay lower premiums while a firm with a factor greater than 1.00 will pay more.

Experience modification is not optional. It is applied to all qualified firms, whether privately insured or by companies covered through state insurance pools. Understanding what the E Mod rating is and how it is calculated can be confusing, but mastering the procedure can deliver big premium savings for your company.

Usually, a company warrants an E Mod rating when it has paid at least \$5,000 of workers' compensation premiums in each of the last several years or has paid \$10,000 or more in premiums in a single recent year. Typically, payroll and loss data going back four years is used to figure the rating in the first year. The most

recent completed policy year is excluded from the computation. For example, an E Mod effective August 1, 2003, would use policy data from the policies in 1999, 2000 and 2001.

Is your E Mod correct?

Once your company receives its E Mod rating, you may question whether it was figured correctly, and what can be done to make it lower? Rating bureaus, including the NCCI, base their calculations for your rating on data that was reported to them by your insurer. If incorrect or incomplete data was reported, your rating will be inaccurate, and may end up costing you more. If possible, you should have the rating bureau explain how it determined your rating to ensure it was done in an accurate manner. If you discover an error, you must convince your insurer to resubmit its data to the rating bureau to correct the problem. In some states, errors can be corrected over multiple-policy years, and if the error generates a premium credit, your revised rating can bring big savings.

An area that is often overlooked by employers that can negatively affect their E Mod rating is open claim reserves. Loss claim reserves are treated the same as paid claims when an E Mod is calculated. A loss reserve that does not realistically reflect the potential claim can create an overcharge to the employer and raise your rating. Correcting this improbable loss reserve is difficult once the insurance company has reported it to the rating bureau. The best advice is to closely monitor each reserve for a workers' compensation claim. Can appropriate reductions in reserves be negotiated? Can the case be closed? This review of loss reserves is especially imperative toward the end of the policy year.

While making par for most golfers is an achievement more dreamed of than realized, implementing sound safety programs and closely monitoring the reporting and calculation process used to determine this factor can help obtain a lower E Mod rating.

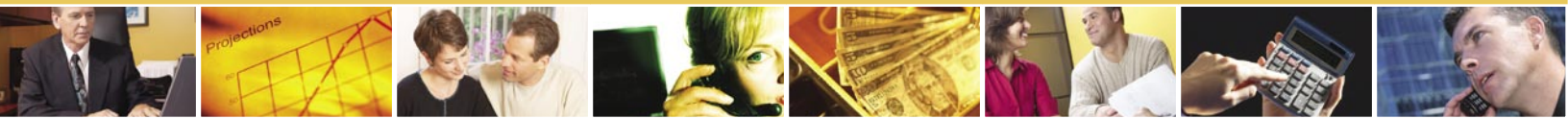
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An Insurance Policy Can Be Forever

A risk manager for a large manufacturing company discovered one stormy morning, to his consternation, that his company had been identified as liable for the release of hazardous materials into a local river – not 5 years ago, or even 20, but 32 years ago. Quickly, yet apprehensively, he pulled out his insurance files. Searching through the old policies and records, he at last pulled out a fat stack of papers. After examining them, he leaned back with relief. Safe in the file was a catastrophe liability and property policy that eventually covered the full cost (well into seven figures) of cleaning up the river.

All too often, when these situations face risk managers, they find the insurance policy drawer empty, or filled with worthless policies and records. Increasingly, claims for exposures that were never considered valid a decade ago are now being recognized by the courts as legitimate and insureds are being hit with monetary demands. Often, these unforeseen events are covered by older insurance policies that were written decades ago and had fewer exclusions than policies do today.

Further, having a central repository for all insurance policies and information is especially prudent when a company has a history of mergers and acquisitions, downsizing, office closures and relocations. It is the responsibility of the policyholder to establish the existence of a policy if a claim is submitted for an exposure blamed on an acquired company. If you don't have the policy, or even just the declaration page, persuading the issuing insurance company that such a policy once existed can be difficult and may require hiring a firm that specializes in searching for old policies. While brokers or agents may retain clients' policies, most only keep your policy and supporting documents for, at most, seven years after you have ceased to be a client. To be sure you can find that long-ago insurance document when you desperately need it, risk managers should establish a retention system covering the company's insurance policies.

Storing them is now convenient and inexpensive by scanning them onto digital media where they can be saved and stored on a CD. The cost of preserving these policies is low compared to the potential benefits you could realize in the future

by quickly uncovering the exact policy to cover that years-old exposure.

While there is no hard and fast rule on which policies to keep and for how long, some experts suggest keeping all policies indefinitely. In many cases, millions of dollars have been recovered from "old" liability and property policies. Remember, when you purchase insurance, you purchase a promise by the insurer to pay, subject to the conditions and limitations of the policy. And today's courts are increasingly interpreting policies more broadly than they were originally intended.

But if you don't want to keep all your policies, consider retaining all liability policies – general liability, commercial auto liability, errors & omissions, officers and directors, workers compensation, excess and umbrella, and others. It's okay to throw away the correspondence related to them at normal intervals per a company retention policy, but keep the vital parts.

Most of the time property policies can be discarded after the expiration of the policy, but should be kept if there are any claims outstanding, such as a business interruption claim. Once in a while, an old claim on a property policy may arise involving structural failures, for instance, of a building that developed after the expiration of the policy. The policy may offer coverage for that claim.

The best advice: Keep all insurance policies forever. You just never know when having that exact one will save your company millions.



continued from page 4...Learning How to Drive Again – The Importance of Safe Driving on the Job

Even if a formal driver's safety course is not implemented in the workplace, we can all keep in mind a few common sense tips to being a safe driver. Fatigue and technology are both potentially deadly when combined with drivers on the road. If you are tired, pull over – plain and simple. Don't be afraid to ask someone else to drive or to pull over for a few minutes. In addition to fatigue, technology - cellular phones, mp3 players, PDAs - can be deadly. Pull over to make an important business call or to jot down a note. It may be the most important stop you make that day.

It's difficult for a company to enforce suggestions for improving an employee's driving habits. Driver's training courses offer employers a way to verify that their employees are learning good driving skills and hopefully being more cognizant of their safety on the road. Safe driving skills may benefit the employer, but they also benefit the employee personally through reduced speeding tickets and fewer accidents. The financial costs associated with the implementation of such a program are quickly outweighed by the benefits to everyone involved.

Understanding Hold Harmless and Contractual Liability Insurance

aspects of liability. Be aware, for example, that a new insurance endorsement that became effective July 2004 in many states excludes coverage for assumption of another party's sole negligence.

The hold harmless agreement, in our example above, gives the general contractor the right to collect for damages paid to the third party to the extent enforceable under the law. A word of caution, however, for the party indemnified. A hold harmless agreement may not fully protect you under the law. The ability to uphold indemnification agreements differs by state because state laws vary as to what risks may be transferred. In addition, some courts have ruled indemnification clauses unenforceable if they were not clear and precise.

Protecting your assets

Contractual liability insurance is automatically provided as part of the commercial general liability policy. The coverage is designed to pay to a third party damages assumed as part of an "insured contract." The definition of an insured contract is limited, however, and coverage is written as an exception to an exclusion. That means the policy excludes coverage except for specific circumstances. Other types of policies, such as professional liability insurance, may be needed to cover exposures that are not covered under contractual liability policies.

Generally, contractual liability insurance covers only bodily injury or property damage. But these, too, are subject to exclusions, conditions and limitations, and the injury or damage must have occurred after entering into the contract.

In addition, the liability must be one that would be imposed without the contract or one that is assumed in a hold harmless or indemnity agreement that falls within the definition of insured contract under the policy. Contractual liability policies do not cover breach of contract.

Talk to an attorney before signing any contract so that you do not assume liability that is not covered under your commercial liability insurance policy. Read your insurance policy endorsements carefully and ask your insurance agent to explain anything you do not understand. Your agent can help you determine the type of coverage your business needs to protect your assets.

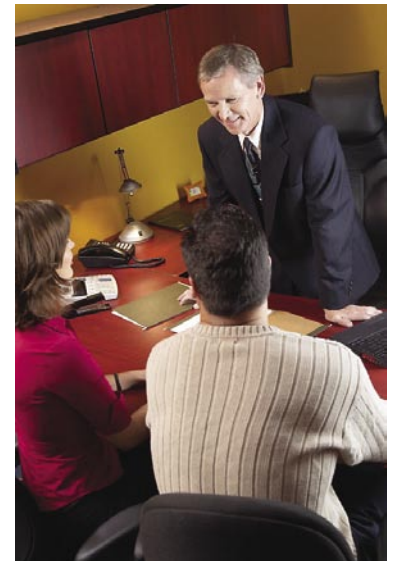
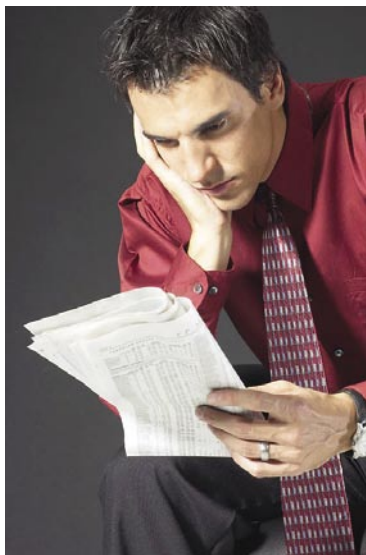
In our litigious society, lawsuits abound. Specifying your responsibility in a contractual relationship is an effective way to limit your liability. Risk is transferred contractually by including "hold harmless" clauses in agreements.



In a hold harmless agreement, one party agrees to protect or "indemnify" another from claims brought by a third party for financial loss or damage. An example is a general contractor who hires a subcontractor to provide services to a third party. The general contractor may require the subcontractor to sign a hold harmless agreement to indemnify the general contractor if any problems arise due to the work provided by the subcontractor.

Know what you're signing

The indemnitor in a hold harmless agreement (the party that has assumed the liability) is responsible for all financial loss. Some hold harmless clauses are very broad. They may include liability even if the indemnified company was solely responsible for the damage. A contractual liability insurance policy can protect the indemnitor, but may not cover all



Learning How to Drive Again – The Importance of Safe Driving on the Job

You took to the roads and haven't looked back since you were sixteen. In fact, you probably haven't re-evaluated your driving skills since you first learned to drive. What you may not realize is that your driving skills, or lack thereof, may have a large impact on your safety at work.

Highway accidents are the number one cause of death on the job. The National Safety Council states that in 2002 (the last time these statistics were compiled) there were approximately 4,900 on-the-job fatalities in the United States, 1,400 of which were the result of passenger car accidents. In fact, most of the fatalities were salespeople headed to sales calls or someone out for an occasional trip in the company vehicle. It's not surprising to learn that some employers are taking steps to reduce accidents by implementing driver's training for some or all of their employees.

Car accidents can have a serious financial and emotional impact on a company. Offering a driving course to employees is an expense for an employer. However, the insurance company may offer a discount to companies who participate in driver's training programs, which may offset those costs. Programs range from videos and workbooks to online classes, some of which are available directly from the National Safety Council. With the National Safety Council program, for example, employer's can track which employees signed up for the online course.

This way, an employer can individually reward an employee for participating in the program.

Teaching safe driving is not a new concept, of course. In the 1940's Harold L. Smith introduced the Smith System to help prevent accidents before they happen. Today, the five basics of The Smith System are still taught to help drivers make good choices behind the wheel. The company offers driver safety classes across the country. The five basic keys of The Smith System are:

- Look ahead at least 15 seconds, giving you an opportunity to see a problem and make a decision before it's too late.
- Keep a 360-degree view of what is going on around your vehicle. Check mirrors every 5 to 8 seconds to update yourself on what is happening.
- Keep your eyes moving! Avoid staring straight ahead by looking around and maintaining your involvement in the road conditions.
- Maintain space around your vehicle to provide an alternate way out in the event of a dangerous situation.
- Seek eye contact with other drivers and pedestrians to make sure that you are seen in your vehicle.

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