



Topics Concerning Buyers of Commercial Insurance

MSP PL -02/2011 "New ACORD 25"

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Commercial Insurance Update Newsletter

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The New ACORD 25 Certificate Of Liability Insurance ...and what it means to you

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In September 2009, ACORD revised the ACORD 25 Certificate of Liability Insurance form (ACORD 25 2009/09). The major difference between the new form and the prior form (ACORD 25 2009/01) was a change in the Cancellation provision.

The prior form provided that the insurer would “endeavor to mail ___ days written notice to the certificate holder...”. The new form simply states that “Should any of the above described policies be cancelled before the expiration date thereof, **notice will be delivered in accordance with the policy provisions.**” In other words, the new form does not purport to notify certificate holders of cancellation.

It is important to point out that the prior certificate form (ACORD 25 2009/01) never guaranteed notice of cancellation either. That was the reason for the word “endeavor” in the cancellation wording. Even if the word “endeavor” was removed, it provided false security. In the first place, a certificate of insurance is not part of the insurance policy. It never created an obligation for the insurance company to begin with. In addition, it is impossible to give prior notice when an insured cancels since they have the right to cancel immediately by simply giving notice. Even when the insurance company initiated cancellation, many did not even try to notify Certificate Holders. There

were simply too many certificate holders, and they chose not to make the effort. In many cases insurance companies asked their brokers to provide notice; although some brokers made a good faith effort to do this, many did not, and even if they did try, it was impossible to give notice to certificate holders if the cancellation was initiated by the insured.

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Many certificate holders will have a problem with the new form. They will insist that they be provided notice of cancellation. Unfortunately, for a number of reasons this may no longer be possible. Here are answers to several questions that will certainly be asked.

Why can't you just use the old ACORD form?

Under the ACORD Corporation's licensing agreement, the prior editions of superseded forms can be used for one year from the time the new forms are introduced. Beginning in September 2010, using a prior ACORD 25 form would be a violation of ACORD's licensing agreement and, as a copyrighted document, violation of federal copyright law. Any broker that issues a prior form would subject their agency and staff to serious civil and criminal penalties.

OK, so why don't you modify the new form to provide notice of cancellation?

ACORD forms are designed to be completed, not altered. Amending the form would be a violation of the copyright and licensing issues mentioned above. In addition it would not create an obligation for the insurance company since a certificate of insurance does not modify the policy form. Any broker who modifies an ACORD form would be subjecting their agency and their staff to serious civil and criminal penalties.

What if we require our own Certificate of Insurance Form?

Unless the insurance company providing the coverage reviews the form and approves it, it will be worthless. The broker does not have the underwriting authority to bind an insurance company to an "unfiled" form and doing so would be against the law.

What should we require from our subcontractors and vendors?

In theory you can only request the following:

Prior to commencing the work, Subcontractor shall furnish Contractor with a certificate(s) of

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Risk Management Seminars

2011 Series

450 B Tower, 450 B Street, Suite 1800, San Diego, CA 92101-8005

- Sexual Harassment Prevention Training
Friday, March 4, 2011 — 7:30-10:00 a.m.
- WC Experience Modification
Friday, March 11, 2011 — 7:30-10:00 a.m.
- Identity Theft
Friday, April 8, 2011 — 7:30-10:00 a.m.
- Disaster Recovery
Friday, April 15, 2011 — 7:30-10:00 a.m.

All training sessions available to our clients
Reserve early / seating is limited! *

For more information about upcoming seminars
Contact **Darcee Nichols** at dnichols@cavignac.com
or **619-744-0596**

* **NOTE:** Due to the popularity of our seminars and limited seating, we regret we **cannot provide refunds or credits with less than 72 hours advance notice of cancellation.**

insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

Recognize that the "policy provisions" don't allow for notice of cancellation so in all likelihood you will not receive notice.

You might insist that the subcontractor or vendor provide notice, and they in turn may ask their broker to provide this notice, which they may or may not do. Even if they are agreeable to this, however, they can only notify you if the insurance company initiates the cancellation, not if the insured requests it. If you want to require some form of notice you might include wording such as:

*Prior to commencing the work, Subcontractor shall furnish Contractor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below. **If the insurance company elects to cancel or non-renew coverage for any reason other than nonpayment of premium Sub/Broker will provide 30 days notice of such cancellation or nonrenewal.***

A Side Note

There may be some insurance companies (although in my opinion most will refuse to this) that are willing to provide notice of cancellation or non-renewal if they, the insurance company, initiate the cancellation or non-renewal. Recognize that this



would not apply if the insured initiates the cancellation. As mentioned above if an insured requests cancellation it takes place immediately and it is impossible to provide notice. It should also be pointed out that any specific notice provisions must be endorsed on to the policy in order to be effective.

Other Considerations

- A certificate of insurance is evidence of insurance at a point in time, that's it! It doesn't modify the insurance policy itself, and it NEVER guaranteed

that the certificate holder would receive notice if the policy in question was cancelled.

- **Appropriate Primary Insurance:** An upstream party/ certificate holder needs first and foremost to have an appropriate insurance program that protects them not only from their own liability but the vicarious liability of those they are trying to transfer risk to.
- The certificate holder should annually require evidence of insurance that meets their contractual requirements.
- It is imperative to work with the right people. Generally speaking if you know who you are working with you are far less likely to get burned by an insurance policy which is cancelled without your knowledge.

Final Comment

Certificates of Insurance have never modified policy terms or guaranteed a certificate holder that they would receive notice if a policy was cancelled. Any broker providing evidence of insurance using an old form is doing so illegally. It does not bind the insurance company. The best way to manage risk in this situation is to make certain that your insurance program is sound and you are working with qualified subcontractors, sub consultants, vendors and other parties to whom you are trying to transfer risk.✂

Disclaimer: This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.

99 Strategies for Avoiding Employee Lawsuits

Strategies 1-13

By Don Phin, Esq., President/CEO of Employer Advisors Network, Inc.
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Introduction

"Don't fall prey to disloyal employees, greedy lawyers and power hungry bureaucrats."

Gary Halbert

99 Strategies (Continued on page 4)

This special report is born of experience—the collective experience of lawyers, business owners, human resource executives, employees, insurers and agencies.

As many clients have learned, some compliance lessons come harder than others. Our risk management approach is focused on mastering today's most critical risks using front-end strategies and tools. The following strategies have proven to save tons of wasted time, money and unnecessary drama for a wide range of clientele.

Documents in bold are part of the HR That Works series of online compliance and management tools. If you are not yet a member... you should be!

Refer to this report frequently. If you check off one or two ideas a week, by the end of the year, your company's risk exposure will be significantly reduced and its profitability proportionately enhanced. If you run into a problem or simply want to ask a question, don't hesitate to email or give us a call.

The information in this booklet has been accumulated from years of legal and management experience. As with any publication, the contents are not to be considered as legal advice. Should you have a legal question, please do not hesitate to contact our office or the attorneys at www.worklaw.com. If we can't help you, we'll find somebody who will.

As stated at the outset, this booklet was derived from materials, published as part of the HR That Works library of compliance and management materials. You can learn more about HR That Works and our services by going to our Web site or by giving us a call.

For additional information please contact us at (800) 234-3304 or email don@hrthatworks.com.

Prevent Discrimination and Harassment Claims

"The importance of civil rights of the workplace and the understanding of these paramount rights and responsibilities are key to the workplace of the future."

— Ida L. Castro, Former Chairwoman, EEOC

1. Make sure to display and hand out all required policies, posters and pamphlets.
2. Your employee handbook should spell out what constitutes discrimination and sexual harassment. Again, make sure to obtain an Acknowledgement of Receipt of having read and understood the handbook.
3. Communicate your policies regarding employee dating and the employment of spouses. Focus on preventing supervisor/subordinate problems and conflicts of interest. Be aware of their privacy rights in the process.
4. Provide employees with alternative reporting channels for filing complaints. Consider using a complaint hotline service.

5. Train both management and the rank and file in discrimination avoidance measures. We believe live compliance training is best left up to the lawyers at www.worklaw.com.
6. Disseminate an Employee Compliance Survey at least twice per year, asking a) whether or not the employee understands the company's policies and procedures prohibiting harassment and discrimination, and b) whether or not they, or someone else they know, have been victims of harassment or discrimination.
7. When hit with notice of potentially unlawful conduct, do not attempt to ignore, bury or deny it. These human nature tendencies will only cause the problem to grow cancerous with greater risk exposures. You must have a plan in advance for managing complaints and grievances.
8. Investigate any claims promptly and thoroughly. Use an attorney, or professional investigator, to comply with investigation protocols.
9. Engage in an appropriate discipline of any offenders. A slap on the wrist for unlawful conduct does not sit well with judges or juries. As Cicero stated, "Let the punishment fit the crime."
10. Correct any deficiencies in your personnel management or compliance system, which may have enabled discriminating or harassing conduct.
11. Accommodate Family and Medical Leave. The Family and Medical Leave Act (FMLA) applies to companies with 50 or more employees and requires a 12-week leave period. Many states have similar provisions.
12. Make sure that an employee who requests FMLA leave fills out a Medical Certification Form. Make sure to provide the employee with an FMLA Designation form as well.
13. Accommodate disabled employees. This is a particularly confusing area wherein expertise is a must. Call the HR That Works Hotline or the Job Accommodation Network (www.jan.wvu.edu).✂





Articles courtesy of Cavignac & Associates Employee Benefits Department

LIVE WELL, WORK WELL

Is Your Heart at Risk?

In the United States, someone has a heart attack every 34 seconds according to the Centers for Disease Control and Prevention. What better time than February, American Heart Month, to take control of your heart health? Determine if you're at risk for heart disease. Answer the following questions and tally your points in this heart disease risk quiz:

What is your blood pressure?

- Below 120/80 (+0)
- Between 120/80 and 140/90 (+1)
- Above 140/90 (+3)
- Don't know (+1)

What is your cholesterol?

- HDL above 50, LDL below 130, triglycerides less than 150 (+0)
- Any of the following: HDL below 50, LDL above 130, triglycerides above 150 (+2)
- Don't know (+1)

How often do you eat fried foods?

- Once a month (+1)
- Several times a month (+2)
- Never (+0)

Does anyone in your family have heart disease?

- Yes, my mother did before age 65 or my father before age 55 (+2)
- No (+0)
- Don't know (+1)

On a typical weekend night, you:

- Have one glass of alcohol (+1)
- Have more than one glass of alcohol (+2)
- Don't drink alcohol (+0)

How many cigarettes have you smoked this week?

- None (+0)
- A few (+3)
- Half a pack or more a day (+8)

How many colors were in your last meal?

- 1 – ex: chicken and rice (+2)
- 2-4 – ex: some vegetables (+1)
- 4 or more – ex: salad and assorted vegetables (+0)

How do you feel after climbing three flights of stairs?

- Fine or even energized (+0)
- Winded (+1)
- I hardly ever climb stairs (+2)

What is your body mass index (BMI)?

- 18.5 – 24.9 (+0)
- 25 – 29.9 (+1)
- 30 or above (+2)

Results

0-2: You are on the right track to preventing heart disease. Exercise, eating right and not smoking can prevent about 80 percent of heart disease.

3-7: Even a few harmful habits can increase your risk of developing heart disease. Simply knowing your risk factors is important, especially if you need to reduce your cholesterol or blood pressure.

8 or higher: Get to the doctor. Make the commitment to one healthy behavior change, such as quitting smoking or exercising. ✨



Community Bulletin Board

"Neighbors helping neighbors in San Diego"



Monarch Schools

✧ Web Site



Senior Community Centers

Mission:

To provide quality and compassionate services for the survival, health and independence of seniors living in poverty

✧ Web Site



✧ Web Site



The San Diego Police Foundation supports the men and women who "protect and serve" by raising community awareness of important

unbudgeted or "discretionary" needs that will improve crime-prevention and law enforcement efficiency. The Foundation puts your tax-deductible contributions to measurable work in local communities.

✧ Web site

✧ For more information, contact info@sdpolicefoundation.org



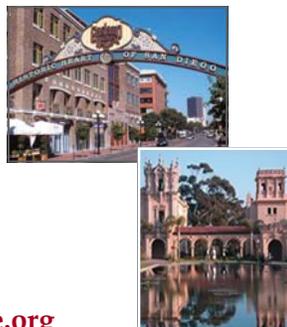
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✧ Questions? Contact **Alicia Gettys** by phone at **619-232-7451** or e-mail agettys@ymca.org



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