Alliant

Property & Casualty

Avoid Coverage Gaps

In less than 20 years, the percentage of contingent and temporary workers has gone from less than 5% of the total workforce to a staggering 49%, according to Ardent Partners.

How to Make Workers' Compensation Work With a Growing Contingent Workforce

As the demand for contingent workers increases, many companies work with staffing agencies that select, hire and train these workers. Outsourcing temporary workers allows companies to swiftly adapt to fluctuating demands without the commitment of permanent hires. This cost-effective strategy empowers organizations to efficiently allocate resources and maintain agility in an ever-evolving market landscape.

But what happens if a contingent worker is injured on the job? Who is responsible for covering the injury—the company where the temporary worker was employed or the staffing agency that placed them? What if the injured worker seeks to pursue legal action against the company due to negligence in the incident?

Answering these questions depends on several factors, including how the employee was classified, which determines if workers' compensation or general liability policies will apply to work-related injuries and to what extent either company may be held responsible.

Understanding Coverage Options

Typically, companies are required to provide medical treatment and compensate lost wages for injured employees using workers' compensation insurance. Workers' comp operates on a no-fault basis and offers employees a level of financial security during their recovery from work-related injuries. In return for these benefits, employees relinquish their right to bring legal action against their employers for negligence and associated damages. These benefits are applicable for traditional employer- employee relationships established between the company and its workers. On the other hand, commercial general liability (CGL) policies shield companies when individuals outside the employee category (third parties) suffer harm due to the company's negligence or improper conduct.

For companies using contingent workers, CGL policies become especially crucial, as it's often unclear whether a direct employment relationship exists between the company and these workers. To fully appreciate the nuances of the issue, companies need to accurately classify outsourced workers as either leased or temporary workers.

Classifying Contingent Workers

To add to the complexity of classifying contingent workers, definitions vary from state to state. In selecting an outsourcing firm, an extensive understanding of state and local requirements is critical when minimizing risk exposure.

What Constitutes a Leased Worker?

In terms of CGL insurance, a "leased worker" is someone provided to a company by a labor leasing firm, as per an agreement between the company and the leasing firm. This person performs tasks related to the company's operations.

TEMPORARY WORKERS ARE NOT CONSIDERED IN THIS CATEGORY.

According to this definition, leased workers are viewed as employees of the company they're leased to and are therefore not covered under that company's CGL insurance.

On the other hand, CGL policies define a "temporary worker" as a person supplied to a company to fill in for a regular employee on leave, or to handle seasonal or short-term workload demands. Temporary workers are seen as employees of the staffing agency and they are covered by the staffing agency's workers' compensation policy. Additionally, they could also be covered by the CGL insurance of the client company.

Coverage Gap

A coverage gap in insurance happens when a leased worker gets injured while working for the client company. Even though leased workers are seen as the client company's employees in terms of CGL insurance, they might not meet the criteria of being employees under workers' compensation rules. This situation could lead to injured workers having the option to sue the client company for negligence since they are not restricted by workers' compensation rules. If a company lacks CGL coverage, they will have to pay any court-ordered damages because CGL coverage doesn't apply to the company's own employees.

Solutions

While navigating these classifications can be complicated, employers do have options to minimize their exposure. To address coverage gaps, companies can shift the responsibility for work-related injuries to the staffing company in the following ways:

Contractual Agreements

Include clauses in the contract with the staffing agency clearly stating that the staffing agency assumes liability for work-related injuries to its employees.

Indemnification Clauses
Insert indemnification clauses in contracts, stating that the staffing agency will indemnify and hold the client company harmless from any claims related to work-related injuries suffered by the staffing agency's employees.

Insurance Requirements
Require the staffing agency to carry specific insurance coverages, including workers' compensation and general liability insurance, and verify the adequacy of the coverage.

Alternate Employer Endorsement
Negotiate with the staffing agency to include an "alternate employer endorsement" on its workers' compensation and employer liability policies. This endorsement extends coverage to the client company in case of a claim.

Service Agreements
Draft comprehensive service agreements with the staffing agency, clearly outlining the responsibilities and liabilities related to work-related injuries.

Risk Transfer Strategies
Employ risk transfer strategies like risk sharing arrangements, where the staffing agency shares the responsibility for work-related injuries based on pre-defined agreements. Training and Safety Requirements Implement specific training and safety requirements for the staffing agency to ensure a safe working environment for its employees.

Compliance Audits
Conduct periodic compliance audits to ensure the staffing agency is adhering to agreed-upon contractual and safety requirements.

Sources:
"The Continued Rise Of The Extended Workforce," The Future of Work Exchange
"Contingent and Alternative Employment Arrangements," U.S. Bureau of Labor Statistics.

How Can Alliant Help?
Alliant Risk Solutions offers creative and powerful strategies with on-site consulting services to help clients effectively respond to the ever-changing circumstances and regulatory landscape. We offer a team of leading specialists to support key loss drivers and exposures. Our Risk Management Center (RMC) all-inclusive platform creates effective risk mitigation programs for employee safety and compliance. This unique and robust web-based suite of safety and risk management tools provides a risk reduction and safety center for all departments and locations across client organizations, designed to make risk prevention efforts more impactful, cost-effective and easier to manage.

Contact Us
Reach out today to request a consultation and minimize your risk exposure.

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