

EMPLOYMENT LAW  
INSTRUCTOR'S MANUAL

SHRM<sup>TM</sup>

SOCIETY FOR HUMAN  
RESOURCE MANAGEMENT

# Workers' Compensation

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# Introduction

## **CLASSROOM ACTIVITIES:**

This module provides three in-class activities. Instructors can use all or a combination of some of the exercises.

In the first class, basic workers' compensation concepts are reviewed and analyzed. Students are given a specific case scenario in which an employer is evaluating whether to purchase workers' compensation insurance, join a risk pool or self-insure their workers' compensation program. The facts of the case require students to do basic cost/benefit analysis comparing the three options. Students can work individually or in groups to make a decision.

In the second class, students analyze factual scenarios involving two different employee claims. Students will discuss in groups which management techniques are appropriate for the two different claims. In one claim, the facts about whether the employee is disabled and whether the injury happened at work are clearly in dispute. In the second claim, the facts about the work-relatedness and the disability are not in dispute. However, the method for handling the claim through light-duty work or a more expensive vocational rehabilitation training program can be debated. In this exercise, students are asked to write a business memo justifying their recommended course of action.

In the third class, students draft a request for proposal (RFP) for workers' compensation coverage and claims service to send to commercial insurance companies and third-party claims administrators. A sample RFP and a sample evaluation of proposals memo are included in appendices A and B.

This learning module is designed for students at the undergraduate level who have a major in human resource management or at least one class focused on employee compensation and benefits, or for business students of any major who are at the graduate level and wish to have a more advanced understanding of issues related to the effective management of workers' compensation issues. For those interested in learning more about this topic, the following references may be helpful:

- Kilgour, J. A Primer on Workers' Compensation Laws and Programs. SHRM White Paper.  
*[http://www.shrm.org/hrresources/whitepapers\\_published/Benefits%20TOC.asp#P198\\_6432](http://www.shrm.org/hrresources/whitepapers_published/Benefits%20TOC.asp#P198_6432)*.
- Burton, J. F. (2007). Workers' Compensation Laws in the United States. Perspectives on Work.  
*[http://www.workerscompresources.com/Data\\_and\\_Articles/DataArticles.htm](http://www.workerscompresources.com/Data_and_Articles/DataArticles.htm)*.
- Priz, E. J. (2005). *Ultimate Guide to Workers' Compensation Insurance: Secrets for Reducing Workers' Compensation Costs*. McGraw-Hill.
- Lencsis, P. M. (1998). *Workers' Compensation: A Reference and Guide*. Greenwood Publishing Group.

In preparation for the activities in these learning modules, it is recommended that students read the following articles and case:

- Chapman, R. D., and Garay, J. (2002). Avoiding the “Bermuda Triangle”: Navigating the ADA, FMLA, and Workers' Comp Void. *Compensation and Benefits Review*, 34, 58-67.  
*<http://cbr.sagepub.com/cgi/content/abstract/34/3/58>*.
- Posthuma, R. (2007). Moving conventional workers' compensation systems toward conflict resolution. *Alternatives to the high cost of litigation*, 25, 179-181. Retrieved from *<http://0-www3.interscience.wiley.com.lib.utep.edu/cgi-bin/fulltext/117868890/PDFSTART>*.
- *Siekierka v. United Steel Deck*, 373 Ill.App.3d 214, 868 N.E.2d 374, 311 Ill. Dec. 374 (Ill. App. 3d., 2007). (See Appendix C.)

Sample multiple choice questions and answers appear in Appendix D.

# Module I

## Evaluating Workers' Compensation Alternatives: A Cost-Benefit Analysis

### Notes to the instructor

#### OVERVIEW

This exercise gives students a general background on the management of the risk-financing aspects of workers' compensation costs in a retail organization through commercial insurance, risk pools or self-insurance; and how this relates to the advantages of internal loss control for loss prevention and loss reduction.

#### INSTRUCTIONS:

- First, students should have acquired some background knowledge of workers' compensation through the PowerPoint presentation and/or through other readings.
- Second, have students read the exercise in Module I.
- Third, explain that they will be writing a memo that will be evaluated using the grading rubric attached.

An example of a cost-benefit memo appears in Appendix E.

## The Assignment

### CONDUCT A COST-BENEFIT ANALYSIS FOR ABC STORES

ABC Stores, Inc., is a retailer with 5,000 employees with stores and warehouses located in three different cities in the same state. Their total payroll is \$200 million. In recent years, the president of ABC, Chris Smith, has noticed significant increases in the cost of their workers' compensation (WC) benefits. He is concerned that their current WC insurance premium of about \$5 million per year is too high. He has heard several rumors that employees may be faking their injuries just to get WC benefits or that they may be staying off work longer than necessary, driving up ABC's costs. In fact, the WC claims paid by their insurance company are running a little over the average for their industry for the past few years. ABC has one safety specialist who does loss prevention at all ABC facilities. Chris thinks that ABC's safety program could be improved to reduce the frequency of injuries. Chris directs you, Pat Brown, HR director, to evaluate alternatives to help ABC manage this situation.

You and Chris have briefly discussed several options. ABC could purchase WC insurance coverage from a commercial insurance company as they have done in the past, or they could join a risk pool comprised of other retailers. Finally, they could adopt a self-insurance plan. Your job is to help ABC decide which option is the best choice. To help make this decision, you must do a cost-benefit analysis. A cost-benefit analysis helps an employer identify and evaluate the costs and benefits of alternative courses of action. They can then decide which alternative offers the greatest net benefits.

Follow these steps in your analysis:

1. Identify the expected quantifiable and non-quantifiable costs associated with each option.
2. Identify the expected quantifiable and non-quantifiable benefits associated with each option.
3. Prepare a table that lists the expected costs and benefits for each of the three options.
4. Prepare a written report to Chris Smith in which you analyze and evaluate the advantages and disadvantages of each option. In the report, include your recommendation of the option you think is best for ABC.

Your report should be prepared in a professional format and be free of typographical, grammatical and spelling errors.

Typically this project will be completed by teams of students, although your instructor may assign this as an individual assignment. If the assignment is to be completed in teams, meet with other members in your group to decide how to prepare the report. When you are finished, turn in the final product to the instructor. Your report will be graded using the attached grading rubric.

## **BACKGROUND INFORMATION**

Almost all states require that employers provide WC benefits to their employees. In a few states, employers may have the option not to provide these benefits; however, if they choose not to do so, they expose themselves to additional liability. So even in such states, most employers elect to provide WC benefits.

WC benefits are required only for job-related injuries or illnesses; however, they are required regardless of whether the employee or the employer was at fault. Employees are not entitled to recover pain and suffering damages from their employers for work-related injuries or illnesses.

The WC benefits that must be provided are regulated by state law and typically include the following:

1. All reasonable and necessary medical expenses (e.g., doctor's bills, laboratory tests).
2. Disability income benefits (i.e., wage loss) for most periods during which the worker is unable to work.
3. Death benefits to the survivors of an employee who died.
4. Rehabilitation benefits (e.g., physical or occupational therapy) to help the worker regain some of their lost work capacity.

## **METHODS OF PROVIDING WORKERS' COMPENSATION BENEFITS TO EMPLOYEES**

Assume that in the state where ABC operates, ABC has three options for administering WC benefits. Each option is described below.

### **Commercial Insurance**

Under this option, ABC would purchase WC coverage for all of its employees from an insurance company. ABC can request quotes from several insurance companies, either directly or through insurance agencies. ABC would then select the company that gives them the best coverage and service. The insurance company will charge ABC an insurance premium for the services it provides. This premium covers the insurance company's costs and provides them with an expected profit. The calculation of the premiums for WC insurance policies usually begins with an evaluation of the number of employees in different occupational risk categories.



The basic premium is often calculated in terms of dollars per \$100 of payroll that the employer pays to its workers in wages. The higher the payroll and the more risky the job classification, the greater will be the cost of paying claims. Therefore, the WC insurance premium will be higher. For example, employees who work in the warehouse or drive trucks are more likely to have WC claims than those who work in the office or work in sales. There are expected rates per \$100 of payroll for different job classifications that can be used to estimate the cost of WC insurance for a typical employer. Table 1 on page 9 provides an example of this type of calculation for ABC. Appendix F includes a table that compares the average costs of WC insurance in different states. The U.S. Department of Labor's (DOL) Office of Workers' Compensation Programs collects data that illustrates some of the differences in how states calculate workers' compensation benefits. Some states provide higher benefit maximums, and that is one of the reasons that WC costs are higher in those states. To view the data, go to the DOL website at <http://www.dol.gov/esa/regs/statutes/owcp/stwclaw/tables-pdf/table6.pdf>.

After each year, the WC insurance company would provide ABC with a new quote when requesting renewal of coverage. That quote is based on their own costs and desired profit, the actual WC claims of ABC employees and claims handling expenses, and the expected claims based on the number of employees in different job classifications.

Commercial insurance carriers can lower premiums for quantity purchases or for employers who have a history of paying fewer claims, and can even do retrospective rating adjustments based on formulas that consider claims incurred during the policy period. In the past, ABC has not really explored these alternative rating plans with its WC insurance company; they have preferred to have a fixed-rate plan so they know exactly what to budget for.

Under the commercial insurance option, the insurance company handles all the WC claims. Claim representatives who work for the insurance company deal directly with employees, their doctors, and other medical service providers to determine the appropriate payments. If there is a disputed claim (i.e., the injury was not work-related or the employee was not really disabled), the insurance company hires and pays for an attorney to defend the interests of ABC. Insurance companies are usually good at controlling the attorney costs, but ABC has little control over legal fees or whether claims are settled under a commercial insurance policy. The risk of the cost of individual claims is assumed by the insurance company during the year.

In addition, commercial insurance carriers offer some safety consulting services to their policyholders. It is often the case, though, that these resources are strained because safety experts must provide these services to many different employers in different locations.

## Risk Pools

Two types of risk pools may be available. Under either type, the claims handling function is often handled by the risk pool and its claims representatives or attorneys, just like a commercial insurance company.

The first type is known as an assigned risk pool. These pools are designed to provide WC coverage to employers who have high risks of WC claims and a history of numerous costly claims. It is often difficult for employers with a history of expensive losses to get coverage voluntarily from a commercial insurance company. Because WC coverage is mandatory, they could not operate unless they get coverage from some source. Therefore, many states require WC insurance companies to participate in an assigned risk pool in which a group of WC insurance companies provide coverage to these high-risk employers. Commercial insurance companies charge high rates for this type of coverage.

The second type of pool is essentially a group of employers who are in the same industry and who all choose to share the risks of WC among themselves. Some states permit these risk pools; others may require that the risk pool be organized as a mutual insurance company. In either case, the goal is to take advantage of the fact that all of the employers have similar concerns, thereby enabling the risk pool to function more efficiently. For example, the types of WC claims for retailers tend to focus on back-related matters (as a result of bending and lifting). In addition, the safety consulting services will focus on the particular needs of the members. In retailing, this may include safety consultation on slips and falls, robberies, etc. However, the risk pool they may join has several members that are much larger than they are in terms of the numbers of employees and the premiums that they pay; therefore, ABC is concerned about the level of safety consulting services they will receive. Nevertheless, there is an expectation that the costs will be stable and lower because the pool is essentially owned and/or managed by the participants, so they will not permit it to charge excessive rates just to make a profit for the pool. The pools typically manage the legal defense costs in a manner similar to commercial insurance companies.

Many states also offer state-funded WC plans. These funds are designed to provide coverage to employers even if commercial insurance companies refuse to sell WC insurance to them. This option would probably be similar to the risk pool option for ABC in terms of costs and benefits. Unfortunately, ABC operates in a state that does not have a state fund.

### Self-Insurance

Under this option, ABC would assume most of the risk and responsibility for paying WC claims. Since they have only 5,000 employees and they are in a low-risk industry, they will likely hire a third-party administrator (TPA) who will pay the claims and deal directly with the employees and the medical service providers. In this arrangement, the TPA assumes no risk and the costs of the claims are reimbursed directly by ABC. TPAs hire claims handlers who are well-trained in WC matters. They are familiar with the maximum fee schedules and treatment guidelines that many states use to control WC medical costs for things like physical therapy and office visits. One of the advantages of this arrangement is that the profit margins, risk premiums, taxes, assessments, advertising expenses, etc., that are incurred by commercial insurance companies and passed onto policyholders are less of a cost factor for TPAs. For this reason, the TPAs would probably be less expensive than a conventional WC insurance policy. However, there is greater uncertainty for ABC since they will be required to pay whatever legitimate claims are incurred. Thus, the amount they would need to budget for this expense is not fixed. Moreover, since the TPA is not sharing the risk with the employer, they may have less of an incentive to reduce claim costs. In addition, TPAs may not have the same level of safety consulting services that some pools or insurance companies offer. Although there are some TPAs that provide safety consulting, it is unlikely that they would be focused primarily on the loss exposures most likely for retailers. Therefore, ABC will need to take a more active role in challenging questionable claims and in helping to rehabilitate workers and get them back to work when appropriate.

ABC would also incur costs to expand their own in-house safety programs. However, this could have the benefit of actually reducing the frequency of accidents. They would probably need to hire one or more in-house safety specialists. For legal representation, they could either use the legal counsel typically used by the TPA for disputed claims or hire legal counsel. This gives them some control over the cost of attorney fees and the decision to settle disputed claims. They will also need to consider purchasing what is known as an excess WC policy. This type of policy will have a very high deductible for WC claims (e.g., \$500,000), so it will handle only large claims that might occur in the event of a catastrophic injury or event. However, even with this added cost, the total expected cost of this option is probably lower than a commercial insurance policy.

**Table 1. Workers' Compensation Insurance Basic Rates and Projected Premium Calculation**

Employees	Number	Rate Per \$100	Payroll	Premium
Office	387	\$0.35	\$15,480,000	\$54,180
Maintenance	275	\$5.72	\$11,000,000	\$629,200
Retail/Sales	3,826	\$1.78	\$153,040,000	\$2,724,112
Warehouse	467	\$5.46	\$18,680,000	\$1,019,928
Truck Drivers	45	\$9.23	\$1,800,000	\$166,140
<b>Total</b>	<b>5,000</b>		<b>\$200,000,000</b>	<b>\$4,593,560</b>

**Grading Rubric for the Cost-Benefit Analysis Report**

<b>Grading Factor</b>	<b>Maximum Points</b>	<b>Levels of Earned Points</b>	<b>Points Earned</b>
No typographical errors.	10	One point deducted for each typographical error.	
No spelling errors.	10	One point deducted for each spelling error.	
No grammatical errors.	10	One point deducted for each grammatical error.	
Included table with several options (e.g., insurance, self-insurance) that are correctly described.	10	Three or more options correctly described = 10 points. Two options correctly described = 5 points. Did not list options = 0 points.	
The report includes several cost factors that are correctly described.	10	Two points for each cost factor that is correctly described (e.g., premiums, wages of safety professional, uncertainty of premiums).	
The report offers several benefit factors correctly described.	10	Two points for each benefit factor that is correctly described (e.g., greater internal control, retail expertise).	
A specific recommendation is made.	10	Made a specific recommendation = 10 points. Made a vague/unclear recommendation = 5 points. Did not make a recommendation = 0 points.	
Analyzed each option.	10	Clearly explained the relationship between costs and benefits and the recommendation = 10 points. Somewhat vague, incomplete, or unclear analysis = 5 points. Did not analyze options = 0 points.	
Evaluated the options.	10	Clearly used the cost and benefit factors to evaluate alternatives and make a judgment = 10 points. Somewhat vague, incomplete or unclear evaluations = 5 points. Did not evaluate the options = 0 points.	
Report looks professional.	10	Total points for the following: Concise = 2 points. Complete = 2 points. Professional layout and design = 2 points. Not too many fancy special features = 2 points. Easily readable = 2 points.	
		<b>Total points possible = 100</b>	<b>Total Points Earned:</b>

# Module II

## A. Scripted Interactions Between Employer Representative and Injured Worker

### Initial Injury Report

#### **LEARNING OBJECTIVES:**

Students will learn:

1. What to say when employees report a workplace injury.
2. The importance of completing accident reports.
3. The benefits of referring employees to high-quality and objective doctors.
4. How to treat employees with respect and dignity to reduce the likelihood of a tense or escalating conflict.
5. How to interact with injured workers to collect needed information and direct them to the appropriate medical treatment.
6. How to set the stage for successful rehabilitation and a timely return to work.
7. To identify which employer comments may be helpful in managing injuries.

#### **INSTRUCTIONS:**

1. Pick two students to play the roles of the injured worker and the employer representative.
2. Have the students read the scripts below, out loud to the class.
3. After reading Version I, discuss the comments shown in Version I on page 13.
4. Have the students read Version II, out loud to the class.
5. Have participants critique the strengths or weaknesses of each of the employer's statements from Version II.

**INSTRUCTOR NOTES:**

This interactive exercise engages students in a role-play situation where they can speak and hear the words that might be used to manage an initial report of a work-related back injury. Research on teaching techniques shows that it is important for adult learners to be actively involved in the learning process; this enables them to connect the content of learning experiences to their own life experiences. This exercise engages students by having them act out the interaction between an injured employee and an employer representative.

In Version I, the employer does a poor job of handling the situation. Critiques of the employer's statements are used to explain the learning objectives for the exercise. In Version II, the employer does a much better job. Students will analyze and evaluate the improved comments in Version II in order to gain a greater depth of understanding of the learning objectives.

## VERSION I

**Injured Worker:** “I was lifting a heavy box and all of a sudden I felt a pain down in my back.”

**Employer Representative:** “How bad is it?”

**Injured Worker:** “Well, now every time I bend over it really hurts.”

**Employer Representative:** “Do you want to sit down for a few minutes?”

**Injured Worker:** “No. I don’t think that will help. I think I should see a doctor.”

**Employer Representative:** “O.K. When will you be back?”

**Injured Worker:** “I don’t know. Don’t you have a company doctor or something that I should see?”

**Employer Representative:** “Just because your back is sore doesn’t mean you’re going to get workers’ comp, if that’s what you’re thinking.”

**Injured Worker:** “Well, what should I do now?”

**Employer Representative:** “You can take some sick time and go see your own doctor.”

**Injured Worker:** “O.K. Can I go now?”

**Employer Representative:** “I guess so, but try to be back to work as soon as possible. We really need you to cover your shift.”

**VERSION I WITH COMMENTS**

**Injured Worker:** “I was lifting a heavy box and all of a sudden I felt a pain down in my back.”

**Employer Representative:** “How bad is it?”

.....  
**Comment 1:** Rather than simply asking how bad the injury is, the employer representative (ER) should do more. This is an opportunity for the ER to show concern for the injured worker (IW). In addition, the ER should ask for more information about when and where the injury happened.  
.....

**Injured Worker:** “Well, now every time I bend over it really hurts.”

**Employer Representative:** “Do you want to sit down for a few minutes?”

.....  
**Comment 2:** Resting for a few minutes might be okay, but in this situation, a doctor or other medical expert should make an evaluation of the nature, extent, and work-relatedness of the injury. Also, the IW should probably complete an accident report form. This is the best time to get the information about the accident because it is fresh in the IW's memory, and they may be less likely to exaggerate or make up facts.  
.....

**Injured Worker:** “No. I don't think that will help. I think I should see a doctor.”

**Employer Representative:** “O.K. When will you be back?”

.....  
**Comment 3:** The ER should direct the IW to the employer's preferred doctor. The IW may want to see their own doctor first, and this is permitted in many states. However, many employers use doctors who they trust will provide a fair evaluation of the extent of the disability and the work-relatedness of the injury. Letting the IW choose his or her own doctor might result in them going to a doctor that is biased toward diagnosing a work-related disability. Moreover, the employee should be instructed to report back on the outcome of the doctor's examination. This will avoid giving the IW an open-ended leave from work.  
.....



**Injured Worker:** “I don’t know.”

**Employer Representative:** “Just because your back is sore doesn’t mean you’re going to get workers’ comp, if that’s what you’re thinking.”

.....  
**Comment 4:** This statement by the ER is unnecessary and argumentative. Sometimes an ER may be frustrated by WC claims and may make comments that increase tensions and make it more difficult to settle a dispute. A cool-headed, calm and caring approach should be used to ask objective questions about the worker’s possible disability and the work-relatedness of the accident.  
.....

**Injured Worker:** “Well, what should I do now?”

**Employer Representative:** “You can take some sick time and go see a doctor.”

.....  
**Comment 5:** This is an opportunity for the ER to explain their policies or procedures for handling injuries. The ER should investigate the accident by asking questions about what happened and how, get the accident report form completed, and refer the IW to the right doctor. The ER should treat IWs with respect and dignity and explain what pay, if any, the worker will receive for time away from work. This shows the employee that they will get the benefits they are entitled to receive. If assured of this, the IW may not feel the need to go to an attorney to assert their legal rights.  
.....

**Injured Worker:** “O.K. Can I go now?”

**Employer Representative:** “I guess so, but try to be back to work as soon as possible. We really need you to cover your shift.”

.....  
**Comment 6:** Encouraging IWs to return to work as soon as they are able to do so can have positive benefits for the IW. However, by phrasing the comment in this way, it sends a message to the worker that the ER cares only about the company’s own needs.  
.....

## VERSION II

**Injured Worker:** “I was lifting a heavy box and all of a sudden I felt a pain down in my back.”

**Employer Representative:** “I’m sorry to hear that. How bad is it?”

**Injured Worker:** “Well, now every time I bend over it really hurts.”

**Employer Representative:** “O.K. We should get you some medical attention. First, we have to fill out our accident report form. That will tell us when and where it happened, so hopefully we can try to prevent this type of thing in the future. We should go to the office. Do you want to sit down for a few minutes?”

**Injured Worker:** “No. I don’t think that will help. I think I should see a doctor.”

**Employer Representative:** “Yes. We’ll make sure that you get all reasonable and necessary medical treatment. I’ll guide you through this process. Do you have any questions?”

**Injured Worker:** “I don’t know. Don’t you have a company doctor or something that I should see?”

**Employer Representative:** “I’m going to give you a referral slip that you should take to the doctor. It includes his address and telephone number. When you are done seeing the doctor, be sure to let us know what he said.”

**Injured Worker:** “Well, what should I do now?”

**Employer Representative:** “First we will take a few minutes to fill out the accident report form. It’s required by OSHA regulations and our insurance company. Then you will go right to the doctor’s office. Today, you will get paid for the time you spend there; but be sure to report back as soon as you are finished so we can figure out how to properly take care of you. We are hoping that with the right medical care this will be something temporary, and you can be back to work as good as new.”

**Injured Worker:** “O.K. Can I go now?”

**Employer Representative:** “Let’s go to the office and get the paperwork filled out so that you can be on your way.”

**VERSION II**

You Add the Comments ...

**Instructions to students:** The employer statements in Version II are generally better than Version I. In the boxes for comments 7 through 12, analyze and describe the strengths or weaknesses of each of the employer’s statements in Version II.

Student Name: \_\_\_\_\_

**Injured Worker:** “I was lifting a heavy box and all of a sudden I felt a pain down in my back.”

**Employer Representative:** “I’m sorry to hear that. How bad is it?”

**Comment 7:** \_\_\_\_\_

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**Injured Worker:** “Well, now every time I bend over it really hurts.”

**Employer Representative:** “O.K. We should get you some medical attention. First, we have to fill out our accident report form. That will tell us when and where it happened, so hopefully we can try to prevent this type of thing in the future. We should go to the office. Do you want to sit down for a few minutes?”

**Comment 8:** \_\_\_\_\_

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**Injured Worker:** “No. I don’t think that will help. I think I should see a doctor.”

**Employer Representative:** “Yes. We’ll make sure that you get all reasonable and necessary medical treatment. I’ll guide you through this process. Do you have any questions?”

**Comment 9:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Injured Worker:** “I don’t know. Don’t you have a company doctor or something that I should see?”

**Employer Representative:** “I’m going to give you a referral slip that you should take to the doctor. It includes his address and telephone number. When you are done seeing the doctor, be sure to let us know what he said.”

**Comment 10:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Injured Worker:** “Well, what should I do now?”

**Employer Representative:** “First we will take a few minutes to fill out the accident report form. It’s required by OSHA regulations and our insurance company. Then you will go right to the doctor’s office. Today, you will get paid for the time you spend there; but be sure to report back as soon as you are finished so we can figure out how to properly take care of you. We are hoping that with the right medical care this will be something temporary, and you can be back to work as good as new.”

**Comment 11:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Injured Worker:** “O.K. Can I go now?”

**Employer Representative:** “Let’s go to the office and get the paperwork filled out so that you can be on your way.”

**Comment 12:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **INSTRUCTOR'S NOTE:**

Listed below are some possible answers for comments 7 through 12.

**Comment 7:** Saying, “I’m sorry to hear that” shows concern for the employee.

**Comment 8:** By stating that the employee will get medical attention first, the employer is showing concern for the employee. The employer should also be collecting facts about the accident (e.g., when and where); and by stating that this will help to prevent future accidents, the employer is again showing consideration for employees and sending a message that workplace safety is important.

**Comment 9:** At this point, the employee might have some trepidation about how the employer will respond to their report of a workplace accident. Many employees don’t know what will happen. This is a good time to take the initiative and show that the employee will get what they are entitled to receive, namely, all reasonably necessary medical treatment. Also, by telling the employee that you will guide them through the process, they won’t have to rely on others (who might take a more adversarial approach to workers’ compensation claims).

**Comment 10:** Giving the employee specific instructions that direct them to your preferred doctor is a step in the right direction because it will help to get a fair and unbiased evaluation of the nature and extent of the injury. Also, reminding the employee to come back and tell the employer what happened can reduce some confusion or misunderstanding about the employee’s work status (off work, light duty, etc.). This is important for supervisors who need to know if the employee will be returning to work, and is also important because employers must record lost work time and restricted duty days on the OSHA log record of injuries and illnesses.

**Comment 11:** Sometimes it’s a good idea to explain why things need to be done. By stating that the form is required by regulations, the employee sees that the employer is following a legitimate and probably fair procedure. Giving the employee specific instructions helps them know what to do. Telling them if they will get paid or not helps to reduce some uncertainty and potential anxiety for the injured worker. Also, putting a positive frame of reference around the circumstances of the accident by stating that you hope it will be temporary, etc., may help to avoid unnecessary conflict and may also facilitate a positive expectation about returning to work.

**Comment 12:** Taking the injured employee out of the work area and into the office can avoid distracting other workers from their jobs.

# Module II

## B. Workers' Compensation: Interactive Role-Play with an Injured Employee

### Notes to the instructor

#### OVERVIEW

This exercise gives students an enhanced understanding of how loss reduction may require interactions with employees to gather facts about work-relatedness and the extent of a possible disability.

#### LEARNING OBJECTIVES

Students will learn:

1. The legal rules about retaliating against workers who claim they were injured at work.
2. How the Americans with Disabilities Act (ADA) applies to work-related injuries.
3. How the Family and Medical Leave Act (FMLA) applies to work-related injuries.
4. How the legal rules regarding workers' compensation retaliation, the ADA and the FMLA might be applied in a situation involving a questionable claim of a work-related injury.
5. How to make a sound judgment about the right course of action involving a questionable workers' compensation claim in the face of competing pressures about cost and productivity.
6. How to formulate a mental framework that considers multiple competing demands and that enables a sound judgment to be made about a questionable workers' compensation claim.

## SET-UP INSTRUCTIONS

1. Students should have a basic understanding of the following topics before they begin this role play:
  - a. Workers' compensation and the prohibition of and penalties for retaliating against workers who report work-related injuries.
  - b. How the ADA applies to work-related injuries.
  - c. How the FMLA applies to work-related injuries.

Students can gain this understanding either through assigned readings or from a lecture that precedes the exercise.

2. Have everyone read the general information.
3. Assign students to play the roles of Jack Smith, Ricky Sprint and Marcia Chavez. People who are more extroverted are probably more comfortable at role playing. Have them read and study their roles to understand the characters. It should take them about 15 minutes to become familiar with their confidential information. Then, ask them to sit in chairs in front of the class and act out the meeting.
4. Debriefing discussion: After they have concluded their meeting, thank them and ask the audience to give them a round of applause. Then, discuss with the class the following questions:
  - a. What did you think about this exercise?
  - b. Who will be aware of the outcome of this meeting and why does this matter?
  - c. What did Ricky Sprint do well, and what could he have done better?
  - d. What factors should Ricky Sprint consider to conduct this meeting? What are the risks?
  - e. Describe the thought process you would go through to make sure that you consider all the competing issues.
  - f. Should Ricky Sprint send Jack Smith to a specialist to get another opinion? This will be something that the company will need to pay for either directly or later indirectly as part of a workers' compensation claim that becomes part of the claim history.
  - g. Should Ricky Sprint insist that Jack Smith return to work right away? What if Jack Smith refuses to work and goes to his own doctor?



# A Dispute Over Disability and Work-Relatedness

## GENERAL INFORMATION

### The Key Players:

Jack Smith, employee

Marcia Chavez, Jack's supervisor

Ricky Sprint, HR manager

On Monday morning (June 1) at the beginning of his work shift, Jack Smith claimed that he had a work-related injury for which he wants to receive workers' compensation benefits. According to the injury report he filed on June 1, Jack stated that two weeks ago (May 15), he bent down to lift a box from a lower shelf. He claims that he told his supervisor, Marcia Chavez, on May 15 that he felt a sharp pain after lifting the box. He had picked up the box and put it on the top shelf.

When he came in to work on Monday morning, he complained that his back was hurting. At first, he told his supervisor, Marcia, that his whole back was hurting. Later, he told HR Manager Ricky Sprint that it was his lower back that hurt. He said, "The pain comes and goes depending on what I'm doing."

After Jack told Ricky about the accident, Ricky sent Jack to the medical clinic that the organization uses for worker injuries. The doctor on duty, a general practitioner MD, interviewed Jack and asked him to perform bending and moving exercises to evaluate the possible extent of his injury. Jack told the doctor that his back had also hurt the day before, on Sunday, when he changed the battery on his family car at home in his garage. Based on his evaluation, the doctor gave Jack a form that said he should not do any bending or lifting for the rest of the day and that he could return to work on Tuesday with no restrictions on his duties. The doctor also checked a box on the form that indicated "not work-related."

Ricky Sprint knows from his training that retaliating against employees who file workers' compensation claims can result in a big lawsuit. He also knows that in some cases, the Americans with Disabilities Act (ADA) protects workers and requires a reasonable accommodation for a disability if the worker can perform the essential functions of the job. He also remembers that the Family and Medical Leave Act (FMLA) permits employees who have worked a certain number of hours to take

unpaid time off from work for serious medical conditions. Ricky recently attended a seminar during which they explained the pros and cons of bringing employees back to work after they have been injured. In general, the pros included reduced costs (less time off work and lower costs of wage-loss benefits and rehab; plus, getting the employee back to work sooner even with some restrictions can often help the employee to recover both physically and mentally). The cons included the risk of re-injury (the worker might get hurt again and make the injury even worse) and hassles (the problems of making sure that the employee works within their restrictions).

Assume that it is now Monday afternoon. Jack has returned to talk with Ricky about the doctor's report. Ricky asks Marcia to join the discussion and evaluate what to do about this situation. You will be assigned to play the role of Jack, Ricky or Marcia.



# Confidential Information for Jack Smith

You are a little nervous about meeting with the HR manager and your supervisor. However, you know that your back has been hurting off-and-on for several months. You did feel a sharp pain when you bent over to lift the box two weeks ago. You remember saying something to Marcia about it, but you can't remember exactly what you said. You think you may have told her that you hurt your back lifting, but you're not going to admit that you're not sure what you said, because then the organization might try to deny your workers' compensation claim.

You didn't complete an accident report the day of the injury because you thought you could tough it out. You were hopeful that your back would just get better on its own. You did not see a doctor earlier; yet, when you came in to work this Monday, you knew your back was definitely worse and the prospect of bending and lifting and experiencing the pain that would result pushed you to request medical treatment. Your co-workers told you that workers' compensation pays for all medical treatment, not just partial payments with deductibles that you would get under the your organization's health insurance plan. You decided to file for workers' compensation. After all, you've worked for the organization a long time and they never treated you very well. You did hurt your back at work and you should get the benefits you deserve.

# Confidential Information for Ricky Sprint

Just last week your boss came down on you pretty hard about the cost of workers' compensation. As a trained professional, you know that if workers are hurt at work, they are legally entitled to receive workers' compensation benefits. However, your boss told you he is concerned that your organization has filed too many expensive WC claims.

From what you've heard about Jack Smith's claim, it sounds suspicious; he waited two weeks to complete an accident report and wanted to fill it out at the beginning of his work shift on Monday morning. On the other hand, you know that an expert medical opinion by an orthopedic doctor would be stronger evidence than an exam performed by your organization's doctor, who is not a specialist. An expert doctor would probably conduct additional and more sophisticated tests. However, every additional doctor and additional test adds to the cost of the WC claim. Further, there is always a risk that the tests would favor the employee and result in the finding of a work-related disability.

You seriously doubt Jack should be taking time off from work. Everybody's back hurts a little from time to time; that's the nature of working for a living. Also, Marcia Chavez, Jack's supervisor, told you that she heard something about Jack hurting his back at home doing work in his garage.

Your goal in conducting this meeting is to get Jack back to work as soon as possible and avoid another expensive and questionable WC claim.



# Confidential Information for Marcia Chavez

As a supervisor, your primary responsibility is to make sure that the work gets done. Every time a worker calls in sick, you have to find some way to cover for them. Your boss has already been on your case about overtime expenses, but to meet your work goals, you've been forced to assign people to work on Saturday.

Letting Jack take more time off from work because of a questionable work-related injury seems really unfair to you and the rest of the work team. Jack has always been a bit of a troublemaker, and he's one of the slowest workers in your department. You'd like to get rid of him. You think this latest incident is a chance for Ricky to fire Jack because he didn't file the accident report in a timely fashion, as is required by organizational policy. You also heard from a co-worker that Jack hurt his back yesterday while changing a car battery at his home. This seems like the last straw. Now Jack is filing a false claim just so he can get paid for being off from work.

# Module II

## C. Light Duty vs. Rehabilitation: Write a Business Memo

### Notes to Instructor

#### OVERVIEW

In this exercise, students practice writing a business memo that requires them to analyze facts related to a recommendation to handle an injured worker. Students will be required to justify their recommendation.

#### SET-UP

1. First, make sure that students have a basic understanding of how workers' compensation can be managed effectively through loss reduction and effective claims management. This knowledge could be gained through the PowerPoint presentation in this module and/or other readings.
2. Instruct students to read the facts in this module and follow the instructions to write the business memo.
3. Explain that their memo will be graded according to the included grading rubric.

## **FACTS:**

Jack Smith was injured at work when he aggravated an injury to his back by lifting a heavy box. As a result of this injury, the organization's doctor reported that Jack could return to work so long as he does not regularly lift more than 10 pounds and does not have to bend repeatedly. Ricky Sprint, human resource manager, is considering whether to direct Jack to return to work in his regular department, albeit with restrictions on his activities. Ricky believes that getting Jack back to work as soon as possible might speed his recovery, while reducing the cost of his workers' compensation (WC) claim. While there is some risk that Jack could be re-injured, this risk is probably outweighed by the possibility that this informal on-the-job rehabilitation might help Jack recover more quickly.

Ricky has also heard that several other injured employees have used a Work Rehabilitation Center. So far, the results of the testing and therapy that employees receive at that center do not seem to be very successful in returning employees to their regular jobs. However, the success of the Work Rehabilitation Center might have been limited because only the most difficult WC cases have been sent there. In any case, it is an expensive option.

Jack's supervisor, Marcia Chavez, is willing to let Jack come back to work if he can actually be productive. However, she is concerned that Jack might try to lift more than 10 pounds and wonders if she will have the time to make sure that Jack observes the medical restrictions on his work activities.

Jack has also consulted his own doctor, who recommends that Jack go to the Work Rehabilitation Center. There, he would undergo extensive work capacity evaluations and receive physical and occupational therapy. This rehabilitation could take several months. During this time, Jack would receive WC wage replacement benefits. The cost of the exams and treatment at the Work Rehabilitation Center will be paid for by the organization's WC policy.

Your assignment is to write a good business memo from yourself (Ricky Sprint) to your corporate Director of Human Resources Nancy Leonard. In that memo, you recommend either that a.) Jack be returned to work on light duty, or b.) Jack be sent to the more expensive Work Rehabilitation Center. Summarize the costs and benefits of each option in the memo. The memo should be written in a business-like format with no grammatical, spelling or typographical errors. It should be concise, but should also show your thoughtful analysis of the issue. Be sure to put your actual name on the memo before you turn it to your instructor. Your memo will be graded using the included scoring rubric.

## SCORING RUBRIC FOR BUSINESS MEMO

Grading Factors	Scale	Points Actually Earned
Concise	40 points for less than two clear and concise pages.	
Analysis: thorough, clear and objective	50 points for identifying factors (e.g., risk, benefits, rehabilitation, need to accommodate Jack's work restrictions, burden on the supervisor, etc.) and explaining how they have been considered in making your recommendation.	
Good business format: heading, date/to/from, subject, body	10 points for presence of all elements of a good business memo.	
Not too many fancy things (e.g., borders, colors)	Subtract 5 points for overly fancy effects.	
No grammatical errors	Subtract 2 points for each error.	
No spelling errors	Subtract 2 points for each error.	
No typographical errors	Subtract 2 points for each error.	
<b>Total Possible Points = 100</b>		
<b>Total Points Actually Earned:</b>		



# Module III

## A Request for Proposal for a Workers' Compensation Third-Party Administrator

Notes to Instructor:

### OVERVIEW

In this assignment, students will gain experience in preparing a request for proposal (RFP) for a third-party administrator to handle an employer's workers' compensation claims. In preparing this exercise they will hone their knowledge of workers' compensation risk financing and loss reduction techniques.

### SPECIFIC INSTRUCTIONS

1. Instruct students to read the attached assignment and background information.
2. Tell them that their RFP will be graded using the included rubric.
3. Instructors may permit students to search the Internet for examples of RFPs, use them as models and adapt them to this particular exercise. The sample RFP provided in Appendix A was taken from a public domain document, but the names and addresses have been changed.

## AN RFP FOR A WORKERS' COMPENSATION THIRD-PARTY ADMINISTRATOR

### Assignment:

Students will prepare a draft RFP for your employer to acquire the services of a third-party administrator to handle workers' compensation claims. Your draft will be graded using the included scoring rubric.

### Background:

A request for proposal (RFP) is a document that is disseminated to interested parties inviting them to submit their proposals for consideration by an organization. An RFP is often used instead of a request for a specific price quote in situations in which the interested parties provide services in a variety of different ways, necessitating some qualitative judgment in the bidding process. Other goals of the RFP process are to:

- Advertise the desire to acquire the service.
- Give advance notice and a timeline to interested parties so they have time to prepare their proposals.
- Create competition among different service providers to obtain a more favorable price.
- Establish an open and honest system.
- Identify key factors that will be used to make a decision.
- Identify important information that the organization will want to see in the proposal.

### Grading Factors for RFP Assignment

Grading Factors	Scale	Points Earned
Did the RFP provide the address and contact person where proposals must be sent?	10 points	
Did the RFP identify who to contact for answers to questions?	10 points	
Did the RFP clearly state the purpose of soliciting proposals?	10 points	
Did the RFP clearly state the scope of work to be performed?	10 points	
Did the RFP give factual information about the employer (e.g., claims history, payroll information) to enable interested parties to prepare an informed proposal?	10 points	
Did the RFP include a form to complete so that all proposals could be evaluated on a consistent basis?	10 points	
Did the RFP include requests for specific cost estimates for particular services (e.g., medical bill review flat fee, cost for each utilization review, the hourly cost of case management, the hourly cost for a medical peer review)?	10 points	
Did the RFP request references from previous customers?	10 points	
Did the RFP require the vendor to identify their qualifications?	10 points	
Did the RFP give the vendors a good summary of how the employer had handled WC claims in the past?	10 points	
No grammatical errors.	Subtract 2 points for each error.	
No spelling errors.	Subtract 2 points for each error.	
No typographical errors.	Subtract 2 points for each error.	
<b>Total Possible Points = 100</b>		
<b>Total Points Earned:</b>		

# Appendix A

## EXAMPLE: REQUEST FOR PROPOSAL (RFP) FOR THIRD-PARTY ADMINISTRATOR (TPA) SERVICES

<b>REQUEST FOR PROPOSALS (RFP)</b>	
<b>Department of Administration County of Kent, Wisconsin</b>	
COUNTY AGENCY	Department of Administration, Risk Management Office
RFP NUMBER	<b>Enter #109147</b>
RFP TITLE	<b>Workers' Compensation Third-Party Administrator</b>
PURPOSE	The purpose of this document is to provide interested parties with information to enable them to prepare and submit a proposal to provide third-party administrator services for Kent County's workers' compensation program.
DEADLINE FOR RFP SUBMISSIONS	2:00 P.M. Central Time <b>Friday, January 9, 2009</b> LATE, FAXED OR UNSIGNED PROPOSALS WILL BE REJECTED
SUBMIT RFP TO THIS ADDRESS	KENT COUNTY PURCHASING DIVISION ROOM 312 CITY-COUNTY BUILDING 210 MARTIN LUTHER KING JR. BLVD GREEN BAY, WI 53703-3345
SPECIAL INSTRUCTIONS	<ul style="list-style-type: none"> <li>■ Label the lower left corner of your sealed submittal package with the RFP number</li> <li>■ Place the signature affidavit as the first page of your proposal</li> <li>■ Submit an original and four (4) complete copies</li> </ul>
DIRECT ALL INQUIRIES TO	NAME                      Sandra Vasquez
	TITLE                        Purchasing Agent
	PHONE #                    616/266-4966
	FAX #                        616/266-4425
	EMAIL                        vasquez@co.Kent.wi.us
	WEB SITE                    www.Kentpurchasing.com
DATE RFP ISSUED: December 6, 2008	



# Kent County Vendor Registration Program

All bidders wishing to submit a bid/proposal must be a paid registered vendor with Kent County. Prior to the bid opening, you can complete a registration form online by visiting our website at [www.Kentpurchasing.com](http://www.Kentpurchasing.com), or you can obtain a Vendor Registration Form by calling 616.266.4131. Your completed Vendor Registration Form and Registration Fee must be received for your bid to be considered for award.

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### **APPENDIX 1: QUESTIONNAIRE**

### **APPENDIX 2: KENT COUNTY CLAIM HISTORY**

## 1.0 GENERAL INFORMATION

### 1.1 Introduction and background

The purpose of this document is to provide interested parties with information that will enable them to prepare and submit a proposal for third-party administration (TPA) services for Kent County's self-funded workers' compensation (WC) program.

The county, as represented by its Department of Administration/Risk Management Division, intends to use the results of this process to award a contract for workers' compensation TPA services.

### 1.2 Scope of the project

#### 1.2.1 Project description

Process all WC claims including, but not limited to, investigation, reserving and payment, subrogation, filing reports with the state and excess insurance provider, attending hearings, negotiating and settling of claims for an amount pre-approved by the Kent County risk manager, arrange for independent medical exams, rehabilitation services and actively monitor when such procedures may be constructive. The risk manager will have final approval for all outside vendors utilized, including but not limited to attorneys, independent medical examiners and vocational experts. The proposer will handle all claims from 'cradle to grave', except those with the current provider.

**Note: Within 24 hours of notice of injury, the successful agency must contact any employee who loses time from the job. Within 48 hours of notice of injury, you must contact other injured employees that may need major medical treatment.**

#### 1.2.2 Objectives

Kent County seeks a vendor to provide processing of claims in a timely manner and in accordance with the Wisconsin Workers' Compensation Act, and a highly professional level of claims handling including regular on-going communication with injured employees from inception to disposition of a claim, to assist in returning employees to restrictive duty positions, to identify and defend fraudulent claims, to actively pursue subrogation and to keep communication open with risk manager and risk management staff.

#### 1.2.3 Current operations

Kent County employs approximately 2,200 FTE positions. The current TPA is Risk Management Services (RMS). The county and RMS utilize Risk Master through the county's liability insurance pool. See APPENDIX 2 for claims and payroll history.



### **1.3 Procuring and Contracting Department/Division**

This request for proposal (RFP) is issued by Kent County, Department of Administration, Purchasing Division, which is the sole point of contact for the county during the selection process. The person responsible for managing the procurement process is Carolyn Clow, purchasing agent.

The contract resulting from this RFP will be administered by Kent County, Department of Administration/Risk Management. The contract administrator will be Wallis Barbarosa, risk manager.

### **1.4 Definitions**

The following definitions are used throughout the RFP.

**County** means Kent County, Department of Administration/Risk Management.

**Proposer/vendor** means a firm submitting a proposal in response to this RFP.

**Contractor** means proposer awarded the contract.

### **1.5 Clarification and/or revisions to the specifications and requirements.**

**Any questions concerning this RFP must be submitted in writing by mail, fax or e-mail on or before Monday, December 29, 2008 at 3:00 p.m. to:**

Sandra Vasquez, Purchasing Agent  
Kent County Purchasing Division  
Room 425 City County Building  
210 Martin Luther King Jr. Blvd.  
Green Bay, WI 53703-3345  
VOICE: (616) 266-4966 FAX: (616)266-4425  
E-MAIL: VASQUEZ@co.Kent.wi.us

Vendors are expected to raise any questions, exceptions or additions they have concerning the RFP document at this point in the RFP process. If a vendor discovers any significant ambiguity, error, conflict, discrepancy, omission or other deficiency in this RFP, the vendor should immediately notify the above-named individual of such error and request modification or clarification of the RFP document.

In the event that it becomes necessary to provide additional clarifying data or information, or to revise any part of this RFP, revisions/ amendments and/or supplements will be posted on the Purchasing Division web site at [www.Kentpurchasing.com](http://www.Kentpurchasing.com).

Each proposal shall stipulate that it is predicated upon the terms and conditions of this RFP and any supplements or revisions thereof.

## 1.6 Reasonable Accommodations

The county will provide reasonable accommodations upon request, including the provision of informational material in an alternative format, for qualified individuals with disabilities. If you need accommodations at a proposal opening/vendor conference, contact the Purchasing Division at (616) 266-4131 (voice) or 616/266-4941 (TTY).

## 1.7 Calendar of Events

Listed below are specific and estimated dates and times of actions related to this RFP. The actions with specific dates must be completed as indicated unless otherwise changed by the county. In the event that the county finds it necessary to change any of the specific dates and times in the calendar of events listed below, it will do so by issuing a supplement to this RFP and posting such supplement on the Kent County web site at [www.Kentpurchasing.com](http://www.Kentpurchasing.com). There may or may not be a formal notification issued for changes in the estimated dates and times.

DATE	EVENT
December 8, 2008	Date of issue of the RFP.
December 29, 2008, 3:00 p.m.	Last day for submitting written inquiries.
January 5, 2009	Supplements or revisions to the RFP posted on the Purchasing Division web site at <a href="http://www.co.Kent.wi.us/purch/purch.htm">www.co.Kent.wi.us/purch/purch.htm</a> .
January 9, 2009, 2:00 p.m.	Proposals due from vendors.
Late January 2009	Oral presentation by invited vendors, if necessary.
February 2009	Notification of intent to award sent to vendors.
April 1, 2009	Contract start date.

## 1.8 Contract Term and Funding

The contract shall be effective on the date indicated on the purchase order or the contract execution date and shall run for five (5) year(s) from that date, with an option by mutual agreement of the County and contractor to renew for 2 additional 1-year periods.

## 2.0 PREPARING AND SUBMITTING A PROPOSAL

### 2.1 General Instructions

The evaluation and selection of a contractor and the contract will be based on the information submitted in the vendor's proposal plus references and any required on-site visits or oral presentations. Failure

to respond to each of the requirements in the RFP may be the basis for rejecting a response.

Elaborate proposals (e.g., expensive artwork) beyond that sufficient to present a complete and effective proposal are not necessary or desired.

## **2.2 Proprietary Information**

All restrictions on the use of data contained within a proposal and all confidential information must be clearly stated on the attached "Designation of Confidential and Proprietary Information" form. Proprietary information submitted in a proposal, or in response to the RFP, will be handled in accordance with the applicable Wisconsin state statute(s).

To the extent permitted by law, it is the intention of Kent County to withhold the contents of the proposal from public view until such times as competitive or bargaining reasons no longer require non-disclosure, in the opinion of Kent County. At that time, all proposals will be available for review in accordance with the Wisconsin Open Records Law.

## **2.3 Incurring Costs**

Kent County is not liable for any cost incurred by proposers in replying to this RFP.

## **2.4 Submitting the Proposal**

**Proposers must submit an original and four (4) copies of all materials required for acceptance of their proposal by January 9, 2009 at 2:00 p.m. to:**

- KENT COUNTY PURCHASING DIVISION
- ROOM 425 CITY-COUNTY BLDG
- 210 MARTIN LUTHER KING JR BLVD
- GREEN BAY WI 53703-3345

Proposals must be received in the above office by the time specified above. All proposals must be time-stamped in by the County Purchasing Division by the stated time. Proposals not so stamped will not be accepted.

All proposals must be packaged, sealed and show the following information on the outside of the package:

- Proposer's name and address.
- Request for proposal title.
- Request for proposal number.
- Proposal due date.

## **2.5 Proposal Organization and Format**

Proposals should be typed and submitted on 8.5 by 11 inch paper bound securely. Proposals should be organized and presented in the order and by the number assigned in the RFP. Proposals must be organized with the following headings and subheadings. Each heading and subheading should be separated by tabs or otherwise clearly marked. The RFP sections which should be submitted or responded to are:

- Questionnaire (see Appendix 1 of this RFP).
- Cost proposal (see Section 5 of this RFP).
- Required forms (see Section 7 of this RFP).
  - Attachment A    Signature Affidavit
  - Attachment B    Vendor Data Sheet
  - Attachment C    Reference Data Sheet
  - Attachment D    Designation of Confidential and Proprietary Information
  - Attachment E    Cost Summary Page
- Appendices (additional information the proposer submits).

## **2.6 Multiple Proposals**

Multiple proposals from a vendor will be permissible; however, each proposal must conform fully to the requirements for proposal submission. Each such proposal must be separately submitted and labeled as Proposal #1, Proposal #2, etc., on each page included in the response. Alternate acquisition plans do not constitute multiple proposals.

## **2.7 Oral Presentations and Site Visits**

Selected vendors may be required to make oral presentations and/or site visits to supplement their proposals, if requested by the county. The county will make every reasonable attempt to schedule each presentation at a time and location that is agreeable to the proposer. Failure of a proposer to conduct a presentation to the county on the date scheduled may result in rejection of the vendor's proposal.

## **3.0 PROPOSAL SELECTION AND AWARD PROCESS**

### **3.1 Preliminary Evaluation**

The proposals will first be reviewed to determine if requirements in Section 2.0 are met and if additional mandatory requirements are met (see Section 4.0). Failure to meet mandatory requirements will result in the proposal being rejected. In the event that all vendors do not meet one or more of the mandatory requirements, the county reserves the right to

continue the evaluation of the proposals and to select the proposal which most closely meets the requirements specified in this RFP.

### **3.2 Proposal Scoring**

Accepted proposals will be reviewed by an evaluation committee and scored against the stated criteria. The committee may review references, request oral presentations, and conduct an on-site visit, and may use the results in scoring the proposals.

### **3.3 Right to Reject Proposals and Negotiate Contract Terms**

The county reserves the right to reject any and all proposals and to negotiate the terms of the contract, including the award amount, with the selected proposer prior to entering into a contract. If contract negotiations cannot be concluded successfully with the highest scoring proposer, the county may negotiate a contract with the next highest scoring proposer.

### **3.4 Evaluation Criteria**

The proposals will be scored using the following criteria:

Description	Percent
1. Response to attached questionnaire	80
a. General company information	10
b. Experience providing TPA services	30
c. Plan for providing TPA services to Kent County	35
d. References	5
2. Cost	20
<b>TOTAL</b>	<b>100</b>

### **3.5 Award and Final Offers**

The award will be granted in one of two ways. The award may be granted to the highest-scoring responsive and responsible proposer. Alternatively, the highest-scoring proposer or proposers may be requested to submit final and best offers. If final and best offers are requested, they will be evaluated against the stated criteria, scored and ranked. The award will then be granted to the highest-scoring proposer.

### **3.6 Notification of Intent to Award**

As a courtesy, the county may send a notification of award memo to responding vendors at the time of the award.

## 4.0 REQUIREMENTS

### 4.1 Overview of Requirements

Process all WC claims from ‘cradle to grave,’ including but not limited to investigation, reserving and payment, filing reports, negotiating and settling of claims for amount pre-approved the Kent County risk manager. With the approval of the risk manager, arrange for IMEs, rehabilitation services and surveillance when such procedures may be constructive. The risk manager will have final approval for all outside vendors utilized, including but not limited to attorneys, IME examiners, vocational experts and case managers.

### 4.2 Requirements:

- a. Determine and recommend adequate reserves.
- b. Maintain and report complete loss and payment information as well as cost allocations by division and department within the risk master system.
- c. Provide a payment system that insures prompt settlement of claims which the county is liable to pay under WC. Payments are to be coordinated with risk management staff.
- d. Represent the county at WC hearings. **The county does not pay for your expense to travel to hearings. The expense must be included in your rates.**
- e. Provide effective and timely assistance and documentation to legal counsel on litigated cases.
- f. Notify the excess carrier of potential claim as provided by the carrier’s contract terms and monitor and collect all recoveries due the county.
- g. File all reports on a timely basis that are required to be filed with the state.
- h. Monitor and collect all recoveries due from employees and third parties through subrogation.
- i. Provide county with access to its employees’ claims files and related data in your master files during normal working hours. The county or its designated representative(s) must be authorized to visit the TPA’s processing or storage premises and have access to all data, including but not limited to paper documents, electronic documents and any other type that relates to payments or non-payments made by the TPA and charged to the county. **Failure to allow the county or its designee(s) access to the above will be considered a material breach of contract and sufficient grounds for rescission of this contract.**

- j. Provide services as outlined in Section 102 of the WC statutes.
- k. Meet with the county risk manager quarterly or as required.
- l. Provide loss/status/control analysis and associated financial reports, no less than monthly, to be used as management tools by the risk management division.
- m. Provide Form 1099 to vendors for their services.
- n. Assign an account representative to the county as a primary contact on items not directly related to specific claims.
- o. If the TPA does not utilize the risk master system, describe whether or not your system is capable of transferring the data to risk master, how you would have data transferred and the time frame for doing so.
- p. Calculate the county's experience modifier.
- q. Provide the county with the annual rates per \$100 of payroll as provided by National Council on Compensation Insurance (NCCI).

#### **4.3 Mandatory Requirements**

The following general requirements are mandatory and must be complied with.

**4.3.1 Has provided workers' compensation TPA services for at least 10 years.**

**4.3.2 Ability to use the risk master software system.**

**4.3.3 Provide toll-free phone number.**

## **5.0 COST PROPOSAL**

### **5.1 General Instructions on Submitting Cost Proposals**

Two (2) copies of the cost proposal should be submitted in a separate envelope with the written proposal. The proposal will be scored using a standard quantitative calculation where the most cost criteria points will be awarded to the proposal with the lowest cost.

### **5.2 Format for Submitting Cost Proposals**

The county would prefer cost proposals with rate caps. These can be rates not to exceed or actual dollar caps per year.

### **5.3 Fixed Price Period**

All prices, costs, and conditions outlined in the proposal shall remain fixed and valid for acceptance for 60 days starting on the due date for proposals.

## **6.0 SPECIAL CONTRACT TERMS AND CONDITIONS**

### **6.1 Living Wage Requirement**

All employees working on this project are covered by the Kent County Living Wage Ordinance Section 25.015 (d). See Section 28.0 Standard Terms and Conditions. The minimum living wage rate for 2009 is \$9.62. The successful vendor will be required to sign a living wage certification upon completion of the contract. Details are available on the Kent County Purchasing Division web site at [www.co.Kent.wi.us/purch/purch.htm](http://www.co.Kent.wi.us/purch/purch.htm).

## **7.0 REQUIRED FORMS**

The following forms must be completed and submitted with the proposal in accordance with the instructions given in Section 2.0. Blank forms are attached.

Attachment A	Signature Affidavit
Attachment B	Vendor Data Sheet
Attachment C	Reference Data Sheet
Attachment D	Designation of Confidential and Proprietary Information
Attachment E	Cost Summary Page
Appendix 1	Questionnaire



**SUBMIT WITH RFP**

**ATTACHMENT A**  
**SIGNATURE AFFIDAVIT**

In signing this proposal, we also certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise taken any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit a proposal; that this proposal has been independently arrived at without collusion with any other proposer competitor or potential competitor; that this proposal has not been knowingly disclosed prior to the opening of proposals to any other proposer or competitor; that the above statement is accurate under penalty of perjury.

The undersigned, submitting this proposal, hereby agrees with all the terms, conditions and specifications required by the county in this Request for Bid and declares that the attached proposal and pricing are in conformity therewith.

Name (Type or Print) Title

Signature Company

Address (Street, City, State, Zip Code)

Telephone Fax E-Mail

Date

**SUBMIT WITH RFP**

**ATTACHMENT B**  
**VENDOR DATA SHEET**

1. Proposing Company Name:

---

Telephone: \_\_\_\_\_ Toll Free Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

---

Address: \_\_\_\_\_

---

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip + Four: \_\_\_\_\_

---

2. Contact Person in the Event there Are Questions about Your Proposal

---

Name: \_\_\_\_\_ Title: \_\_\_\_\_

---

Telephone: \_\_\_\_\_ Toll Free Telephone: \_\_\_\_\_

---

Address: \_\_\_\_\_

---

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip + Four: \_\_\_\_\_

---

3. All vendors who have 20 or more employees and who are awarded \$20,000 or more on this contract will be required to submit affirmative action information to the County Contract Compliance Office. Please list the person in your company we can contact about this plan.

---

Name: \_\_\_\_\_ Title: \_\_\_\_\_

---

Telephone: \_\_\_\_\_ Toll Free Telephone: \_\_\_\_\_

---

Address: \_\_\_\_\_

---

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip + Four: \_\_\_\_\_

---

4. Mailing address where county purchase orders/contracts are to be mailed and person the department can contact concerning orders and billing.

---

Name: \_\_\_\_\_ Title: \_\_\_\_\_

---

Telephone: \_\_\_\_\_ Toll Free Telephone: \_\_\_\_\_

---

Address: \_\_\_\_\_

---

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip + Four: \_\_\_\_\_

---

**SUBMIT WITH RFP**

**ATTACHMENT C**  
**REFERENCE DATA SHEET**

FOR VENDOR:

Provide company name, address, contact person, telephone number, and appropriate information on the product(s) and/or service(s) used for three (3) or more installations/services with requirements similar to those included in this solicitation document. If vendor is proposing any arrangement involving a third party, the named references should also be involved in a similar arrangement.

Company Name:

Address:

Telephone:

Contact Person:

Product(s) and/or Service(s) Used:

Company Name:

Address:

Telephone:

Contact Person:

Product(s) and/or Service(s) Used:

Company Name:

Address:

Telephone:

Contact Person:

Product(s) and/or Service(s) Used:

Company Name:

Address:

Telephone:

Contact Person:

Product(s) and/or Service(s) Used:

Company Name:

Address:

Telephone:

Contact Person:

Product(s) and/or Service(s) Used:

**SUBMIT WITH RFP**

**ATTACHMENT D**

**DESIGNATION OF CONFIDENTIAL AND PROPRIETARY INFORMATION**

The attached material submitted in response to this proposal includes proprietary and confidential information which qualifies as a trade secret, as provided in Sect 19.36(5), Wisconsin State Statutes, or is otherwise material that can be kept confidential under the Wisconsin Open Records Law. As such, we ask that certain pages, as indicated below, of this proposal response be treated as confidential material and not be released without our written approval. Attach additional sheets if needed.

Section	Page Number	Topic

**Prices always become public information when proposals are opened and therefore cannot be designated as confidential.**

Other information cannot be kept confidential unless it is a trade secret. Trade secret is defined in Sect. 134(80)(1)(c) Wis. State Statutes, as follows: "Trade secret" means information, including a formula, pattern, compilation, program, device, method technique or process to which all of the following apply:

1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.
2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

**In the event the Designation of Confidentiality of this information is challenged, the undersigned hereby agrees to provide legal counsel or other necessary assistance to defend the Designation of Confidentiality.**

Failure to include this form in the proposal response may mean that all information provided as part of the proposal response will be open to examination or copying. The county considers other markings of confidential in the proposal document to be insufficient. The undersigned agree to hold the county harmless for any damages arising out of the release of any material unless they are specifically identified above.

Signature of Authorized Representative \_\_\_\_\_ Company Name \_\_\_\_\_

Print Name of Authorized Representative \_\_\_\_\_ Date \_\_\_\_\_

**SUBMIT WITH RFP**

**ATTACHMENT E**  
**COST SUMMARY SHEET**

Explain the price basis of your proposal. The county expects that this will be a flat price per claim broken out by incidental, medical and indemnity prices. If any services involve additional fees, please specify them.

Price per claim – medical: \_\_\_\_\_

Price per claim – indemnity: \_\_\_\_\_

Incidental expenses \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Percentage increase for 2nd contract year \_\_\_\_\_%  
(April 1, 2010-March 31, 2011)

Percentage increase for 3rd contract year \_\_\_\_\_%  
(April 1, 2011-March 31, 2012)

Percentage increase for 4th contract year \_\_\_\_\_%  
(April 1, 2012-March 31, 2013)

Percentage increase for 5th contract year \_\_\_\_\_%  
(April 1, 2013-March 31, 2014)

## **STANDARD TERMS AND CONDITIONS (REQUEST FOR BIDS/PROPOSALS/CONTRACTS)**

- 1.0 **APPLICABILITY:** The terms and conditions set forth in this document apply to Requests for Proposals (RFP), bids and all other transactions whereby the County of Kent acquires goods or services, or both.
- 1.1 **ENTIRE AGREEMENT:** These standard terms and conditions shall apply to any contract, including any purchase order, awarded as a result of this request. Special requirements of a resulting contract may also apply. Said written contract with referenced parts and attachments shall constitute the entire agreement, and no other terms and conditions in any document, acceptance, or acknowledgment shall be effective or binding unless expressly agreed to in writing by the county.
- 1.2 **DEFINITIONS:** As used herein, “vendor” includes a provider of goods or services, or both, who is responding to an RFP or a bid, and “bid” includes a response to either an RFP or a bid.
- 2.0 **SPECIFICATIONS:** The specifications in this request are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability or performance level, or any combination thereof, desired. When alternates are proposed, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. Kent County shall be the sole judge of equivalency. Vendors are cautioned to avoid proposing alternates to the specifications which may result in rejection of their bid.
- 3.0 **DEVIATIONS AND EXCEPTIONS:** Deviations and exceptions from terms, conditions, or specifications shall be described fully, on the vendor’s letterhead, signed, and attached to the bid. In the absence of such statement, the bid shall be accepted as in strict compliance with all terms, conditions, and specifications and vendor shall be held liable for injury resulting from any deviation.
- 4.0 **QUALITY:** Unless otherwise indicated in the request, all material shall be first quality. No pre-owned, obsolete, discontinued or defective materials may be used.
- 5.0 **QUANTITIES:** The quantities shown on this request are based on estimated needs. The county reserves the right to increase or decrease quantities to meet actual needs.
- 6.0 **DELIVERY:** Deliveries shall be FOB destination freight prepaid and included unless otherwise specified. County will reject shipments sent C.O.D. or freight collect.
- 7.0 **PRICING:** Unit prices shown on the bid shall be the price per unit of sale, e.g., gal., cs., doz., ea., etc., as stated on the request or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price, the unit price shall govern in the bid evaluation and contract administration.
- 7.1 Prices established in continuing agreements and term contracts may be lowered due to market conditions, but prices shall not be subject to increase for the term specified in the award. Vendor shall submit proposed increases to the contracting department thirty (30) calendar days before the proposed effective date of the price increase. Proposed increases shall be limited to fully documented cost increases to the vendor that are demonstrated to be industry wide. Price increases may not be granted unless they are expressed in bid documents and contracts or agreements.
- 7.2 Submission of a bid constitutes bidder’s certification that no financial or personal relationship exists between the bidder and any county official or employee except as specially

set forth in writing attached to and made a part of the bid. The successful bidder shall disclose any such relationship which develops during the term of the contract.

- 8.0 ACCEPTANCE-REJECTION: Kent County reserves the right to accept or reject any or all bids, to waive any technicality in any bid submitted and to accept any part of a bid as deemed to be in the best interests of the County. Submission of a proposal or a bid constitutes the making of an offer to contract and gives the county an option valid for sixty (60) days after the date of submission to the county.
- 8.1 Bids **MUST** be dated and time stamped by the Kent County Purchasing Division Office on or before the date and time that the bid is due. Bids deposited or time stamped in another office will be rejected. Actual receipt in the office of the purchasing division is necessary; timely deposit in the mail system is not sufficient. **THERE WILL BE NO EXCEPTIONS TO THIS POLICY.**
- 9.0 METHOD OF AWARD: Award shall be made to the lowest responsible, responsive vendor conforming to specifications, terms, and conditions, or to the most advantageous bid submitted to the county on a quality versus price basis. Among other things, quantities, time of delivery, purpose for which required, competency of vendor, the ability to render satisfactory service and past performance will be considered in determining responsibility.
- 10.0 ORDERING/ACCEPTANCE: Written notice of award to a vendor in the form of a purchase order or other document, mailed or delivered to the address shown on the bid will be considered sufficient notice of acceptance of bid. A formal contract containing all provisions of the contract signed by both parties shall be used when required by the Kent County Purchasing Division.
- 11.0 PAYMENT TERMS AND INVOICING: Unless otherwise agreed, Kent County will pay properly submitted vendor invoices within thirty (30) days of receipt of goods or services, or combination of both. Payment will not be made until goods or services are delivered, installed (if required), and accepted as specified. Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order.
- 11.1 NO WAIVER OF DEFAULT: In no event shall the making of any payment or acceptance of any service or product required by this agreement constitute or be construed as a waiver by county of any breach of the covenants of the agreement or a waiver of any default of the successful vendor, and the making of any such payment or acceptance of any such service or product by county while any such default or breach shall exist shall in no way impair or prejudice the right of county with respect to recovery of damages or other remedy as a result of such breach or default.
- 12.0 TAXES: The county and its departments are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below. The State of Wisconsin Department of Revenue has issued tax exempt number ES41279 to Kent County.
- 12.1 The county is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. The county is exempt from Wisconsin sales or use tax on these purchases. The county may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Vendors performing construction activities are required to pay state use tax on the cost of materials.
- 13.0 GUARANTEED DELIVERY: Failure of the vendor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the vendor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include administrative costs.

- 14.0 **APPLICABLE LAW AND VENUE:** This contract shall be governed under the laws of the State of Wisconsin, and venue for any legal action between the parties shall be in Kent County Circuit Court. The vendor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct.
- 15.0 **ASSIGNMENT:** No right or duty in whole or in part of the vendor under this contract may be assigned or delegated without the prior written consent of Kent County.
- 16.0 **NONDISCRIMINATION/ AFFIRMATIVE ACTION:** During the term of this agreement the vendor agrees, in accordance with sec. 111.321, Wis. Stats., and Chapter 19 of the Kent County Code of Ordinances, not to discriminate against any person, whether an applicant or recipient of services, an employee or applicant for employment, on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs. The vendor shall provide a harassment-free work environment. These provisions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, including apprenticeships, rates of pay or other forms of compensation.
- 16.1 Vendors who have twenty (20) or more employees and a contract of twenty thousand dollars (\$20,000) or more must submit a written affirmative action plan to the county's Contract Compliance Officer within fifteen (15) working days of the effective date of the contract. The county may elect to accept a copy of the current affirmative action plan filed with and approved by a federal, state or local government unit.
- 16.2 The vendor agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of this agreement as they relate to affirmative action and nondiscrimination.
- 16.3 Failure to comply with these terms and conditions may result in the vendor being debarred, termination of the contract and/or withholding of payment.
- 16.4 The vendor agrees to furnish all information and reports required by Kent County's contract compliance officer as the same relate to affirmative action and nondiscrimination, which may include any books, records, or accounts deemed appropriate to determine compliance with Chapter 19, D.C. Ords., and the provisions of this agreement.
- 16.5 **Americans with Disabilities Act:** The vendor agrees to the requirements of the ADA, providing for physical and programmatic access to service delivery and treatment in all programs and activities.
- 17.0 **PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENT:** The vendor guarantees goods sold to the county were manufactured or produced in accordance with applicable federal labor laws, and that the sale or use of the articles described herein do not infringe any patent, copyright or trademark. The vendor covenants that it will, at its own expense, defend every suit which shall be brought against the county (provided that such vendor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent, copyright or trademark by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.
- 18.0 **SAFETY REQUIREMENTS:** All materials, equipment, and supplies provided to the county must fully comply with all safety requirements as set forth by the Wisconsin Department of Commerce and all applicable OSHA Standards.



- 18.1 MATERIAL SAFETY DATA SHEET: If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29 CFR 1910.1200, provide one (1) copy of the Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).
- 19.0 WARRANTY: Unless specifically expressed otherwise in writing, goods and equipment purchased as a result of this request shall be warranted against defects by the vendor for one (1) year from date of receipt. An equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the vendor. The time limitation in this paragraph does not apply to the warranty provided in paragraph 27.0.
- 20.0 INSURANCE RESPONSIBILITY: The successful vendor shall:
- 20.1 Maintain workers' compensation coverage as required by Wisconsin Statutes, for all employees engaged in the work. The successful vendor shall furnish evidence of adequate workers' compensation insurance.
- 20.2 Indemnify, hold harmless and defend county, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss (including, but not limited to, property damage, bodily injury and loss of life), damages, costs or expenses which county, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of the successful vendor furnishing the services or goods required to be provided under the contract with the county, provided, however, that the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused by or resulting from the acts or omissions of county, its agencies, boards, commissions, officers, employees or representatives. The obligations of the successful vendor under this paragraph shall survive the expiration or termination of any contract resulting from the successful vendor's bid.
- 20.3 At all times during the term of this agreement, keep in full force and effect comprehensive general liability and auto liability insurance policies (as well as professional malpractice or errors and omissions coverage, if the services being provided are professional services) issued by a company or companies authorized to do business in the State of Wisconsin and licensed by the Wisconsin Insurance Department, with liability coverage provided for therein in the amount of at least \$1,000,000 CSL (Combined Single Limits). Coverage afforded shall apply as primary. County shall be given ten (10) days advance notice of cancellation or non-renewal. Upon execution of this agreement, the successful vendor shall furnish the county with a certificate of insurance listing the county as an additional insured and, upon request, certified copies of the required insurance policies. If the successful vendor's insurance is underwritten on a claims-made basis, the retroactive date shall be prior to or coincide with the date of this agreement, the Certificate of Insurance shall state that coverage is claims-made and indicate the retroactive date, the successful vendor shall maintain coverage for the duration of this agreement and for two years following the completion of this agreement. The successful vendor shall furnish county, annually on the policy renewal date, a certificate of insurance as evidence of coverage. It is further agreed that the successful vendor shall furnish the county with a 30-day notice of aggregate erosion, in advance of the retroactive date, cancellation, or renewal. It is also agreed that on claims-made policies, either the successful vendor or county may invoke the tail option on behalf of the other party and that the extended reporting period premium shall be paid by the successful vendor. In the event any action, suit or other proceeding is brought against county upon any matter herein indemnified against, the county shall give reasonable notice thereof to the successful vendor and shall cooperate with the successful vendor's attorneys in the defense of the action, suit or other proceeding.

- 20.4 The county reserves the right to require higher or lower insurance limits where the county deems necessary.
- 20.5 In case of any sublet of work under this agreement, the successful vendor shall furnish evidence that each and every sub-vendor has in force and effect insurance policies providing coverage identical to that required of the successful vendor.
- 21.0 CANCELLATION: The county reserves the right to terminate any agreement due to non-appropriation of funds or failure of performance by the vendor. This paragraph shall not relieve the county of its responsibility to pay for services or goods provided or furnished to the county prior to the effective date of termination.
- 22.0 PUBLIC RECORDS ACCESS: It is the intention of the county to maintain an open and public process in the solicitation, submission, review and approval of procurement activities. Bid openings are public unless otherwise specified. Records are not available for public inspection prior to issuance of the notice of intent to award or the award of the contract. Bid results may be obtained by visiting the Kent County Purchasing Office Monday – Friday, between 8:00 a.m. and 4:00 p.m. Prior appointment is advisable.
- 22.1 PROPRIETARY INFORMATION: If the vendor asserts any of its books and records of its business practices and other matters collectively constitute a trade secret as that term is defined in s. 134.90(1)(c), Wis. Stats., the county will not release such records to the public without first notifying the vendor of the request for the records and affording the vendor an opportunity to challenge in a court of competent jurisdiction the requester's right to access such records. The entire burden of maintaining and defending the trade secret designation shall be upon the vendor. The vendor acknowledges and agrees that if the vendor shall fail, in a timely manner, to initiate legal action to defend the trade secret designation or be unsuccessful in its defense of that designation, the county shall be obligated to and will release the records.
- 22.2 Data contained in a bid, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations shall be the property of the county.
- 22.3 Any material submitted by the vendor in response to this request that the vendor considers confidential and proprietary information and which vendor believes qualifies as a trade secret, as provided in section 19.36(5), Wis. Stats., must be identified on a designation of the "Confidential and Proprietary Information" form. In any event, bid prices will not be held confidential after award of contract.
- 23.0 RECYCLED MATERIALS: Kent County is required to purchase products incorporating recycled materials whenever technically and economically feasible. Vendors are encouraged to bid products with recycled content which meet specifications.
- 24.0 PROMOTIONAL ADVERTISING: Reference to or use of Kent County, any of its departments or sub-units, or any county official or employee for commercial promotion is prohibited.
- 25.0 ANTITRUST ASSIGNMENT: The vendor and the County of Kent recognize that in actual economic practice, overcharges resulting from antitrust violation are in fact usually borne by the County of Kent (purchaser). Therefore, the successful vendor hereby assigns to the County of Kent any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.
- 26.0 RECORDKEEPING AND RECORD RETENTION — PUBLIC WORKS CONTRACTS: The successful bidder on a public works contract shall comply with the State of Wisconsin prevailing wage scale and shall establish and maintain adequate payroll

records for all labor utilized as well as records for expenditures relating to all subcontracts, materialmen and suppliers. All records must be kept in accordance with generally accepted accounting procedures. The county shall have the right to audit, review, examine, copy, and transcribe any such records or documents. The vendor will retain all documents applicable to the contract for a period of not less than three (3) years after final payment is made.

26.1 RECORDKEEPING AND RECORD RETENTION-COST REIMBURSEMENT

CONTRACTS: Where payment to the vendor is based on the vendor's costs, vendor shall establish and maintain adequate records of all expenditures incurred under the contract. All records must be kept in accordance with generally accepted accounting procedures. The county contracting agency shall have the right to audit, review, examine, copy, and transcribe any pertinent records or documents relating to any contract resulting from this bid/proposal held by the vendor. The vendor will retain all documents applicable to the contract for a period of not less than three (3) years after final payment is made.

27.0 YEAR 2000 COMPLIANT: Vendor warrants that: a) all goods, services and licenses sold otherwise provided pursuant to this procurement have been tested for and are fully year 2000 compliant, which means they are capable of correctly and consistently handling all date-based functions before, during and after the year 2000; b) the date change from 1999 to 2000, or any other date changes, will not prevent such goods, services or licenses from operating in a merchantable manner, for the purposes intended and in accordance with all applicable plans and specifications and without interruption before, during and after the year 2000; and c) vendor's internal systems, and those of vendor's vendors, are year 2000 compliant, such that vendor will be able to deliver such goods, services and licenses as required by this procurement.

28.0 LIVING WAGE REQUIREMENT: The vendor shall, where appropriate, comply with the county's living wage requirements as set forth in Section 25.015, Kent County Ordinances.

28.01 In the event its payroll records contain any false, misleading or fraudulent information, or if the vendor fails to comply with the provisions of S. 25.015, D.C. Ords., the county may withhold payments on the contract, terminate, cancel or suspend the contract in whole or in part, or, after a due process hearing, deny the vendor the right to participate in bidding on future county contracts for a period of one (1) year after the first violation is found and for a period of three (3) years after a second violation is found.

28.02 Bidders are exempt from the above requirements if:

- The maximum value of services to be provided is less than \$5,000;
- The bid involves only the sale of goods to the county;
- The bid is for professional services;
- The bid is for a public works contract where wages are regulated under S. 62.293, Wis. Stats.;
- The bidder is a school district, a municipality or other unit of government;
- The service to be provided is residential services at an established per bed rate;
- The bidder's employees are persons with disabilities working in employment programs and the successful bidder holds a current sub-minimum wage certificate issued by the U.S. Department of Labor or where such a certificate could be issued but for the fact that the employer is paying a wage higher than the minimum wage;
- The bidder is an individual providing services to a family member; or
- The bidder's employees are student interns.

# Questionnaire

## QUESTIONS 1 - 5 10 POINTS

1. Provide a **brief** statement of the firm's experience and qualifications to meet the requirements of the county. Include a brief general overview and history of the company, number of years in business, number of employees (full-time v part-time) both adjusters and clerical support, corporate headquarters location, type of business, location of office providing the TPA services.
2. Is your company currently involved in arbitration and/or litigation for any reason? If yes, please elaborate.
3. Has your company or any of your proposed sub-contractors ever filed for reorganization or bankruptcy? If yes, please provide name of each company, dates and resolution.
4. Describe the quality and financial controls in your system. Include the approach to and frequency of internal claims audits.
5. Identify any of the work that you intend to sub-contract to others and identify the proposed sub-contractors including names, phone numbers, specific assignments, and the qualification of the sub-contracting firm and its key personnel. Provide a client reference list for the sub-contractor(s).

## QUESTIONS 6 - 9 30 POINTS

6. The proposer must have provided workers' compensation TPA services for at least 10 years. How many years have you provided WC TPA services?
7. The proposer must have the ability to use the risk master software system. The county uses risk master through its liability carrier for its risk management information software. Do you have the technology to access risk master via the internet? Does your firm have experience in using risk master? If not, can you provide training to staff at your expense and be ready to take over claims on 4/1/09 if you are awarded the contract?
8. You must provide a toll-free number for employees. Does your firm have a toll-free number for the TPA clients and employees?

9. Identify proposed staff members who would be involved in providing service to Kent County and submit statements or resumes detailing their qualifications. Your proposal should include information of each of the individual's years and type of claims handling experience, the position each person currently occupies in your organization, the length of time they have been with the company and detailed descriptions of their involvement with projects of similar or identical scopes, especially experience with municipality experience that involve multiple unions.

### QUESTIONS 10 - 22 35 POINTS

10. The successful proposer will be expected to contact any employee who loses time from the job within 24 hours of receiving the First Report of Injury. They will be expected to contact employees that incur major medical treatment without lost time within 48 hours of receiving the First Report of Injury. Can your firm meet those requirements? What is your current practice for contacting employees?
11. Although the successful proposer will be processing all WC claims, the claims adjuster must work cooperatively with county staff and the risk manager. IME's, rehabilitation services, case management, attorney selection, outside vendor selection, surveillance and settlement of claims (list may not be all inclusive) must be pre-approved by the risk manager as well as questions related to compensability of the claim. What is your current practice in this regard?
12. The successful proposer will also be expected to not only process claims from 'cradle to grave', but to investigate, establish reserves, make payments, subrogate against third parties, file reports with the state and excess insurance provider and attend hearings at the proposer's expense. Please explain the following: a) how reserves are established; b) the approximate percentage of claims subrogated and the percentage of money collected.
13. The successful proposer will be expected to assist in returning employees to restrictive duty positions and identify and defend fraudulent claims. What is your experience in these areas?
14. The county supplements an employee's pay for up to 180 days while on WC. Identify your ability to work in conjunction with the risk management staff to coordinate the payment amounts and timing of check receipt. Will you have backup staff to assist when the claims examiner is not available?
15. Identify the process for the transfer of money from the county to your firm for covering WC claims. Include the financial arrangement for funding that you would expect to have with the county. Can you process wire transfers?

**16.** Describe and demonstrate the capabilities and cost savings comparative of your managed care/medical cost containment program including, but not limited to, case management services, utilization review and bill reviews. Indicate which services are owned by your firm and which services are contracted out. If services are contracted out, does your firm receive commissions and/or any other type of compensation from the companies used? Please state any commissions or other compensation you receive from the companies used.

**17.** What is the caseload of your claims examiners/adjusters?

Medical-only claims \_\_\_\_\_

Lost time claims \_\_\_\_\_

**18.** Who reviews claims for medical necessity, appropriateness of treatment and appropriate billing?

**19.** What percentage of claims do you close within:

1 year – medical \_\_\_\_\_ indemnity \_\_\_\_\_

2 years – medical \_\_\_\_\_ indemnity \_\_\_\_\_

more than 2 yrs \_\_\_\_\_ indemnity \_\_\_\_\_

**20.** Describe the cost containment procedures established by your firm.

**21.** The successful proposer will be expected to provide the County with its experience modifier each year. Are you able to provide the calculation?

**22.** Describe the level of service that you intend to provide which demonstrates a clear understanding of the work to be performed.

**QUESTION 23 – 5 POINTS**

**23.** Provide three (3) references for similar customers including municipalities of similar size, with dates of performance and/or completion, customer name, contact person and telephone numbers for which you perform(ed) WC TPA services. By providing such references you agree that neither the county nor the clients referenced shall have any liability regarding the provision of such references of the county's use of such references in making the selections under the RFP.

## CLAIMS HISTORY

April to April Contract Period, 2000 - 2006

	MEDICAL ONLY	LOST TIME	INCIDENT ONLY	TOTAL CLAIMS PAID	COLLECTIONS	TOTAL CLAIMS INCURRED
4/1/00 - 4/1/01	113	72	n/a	\$1,297,623.72	\$231,512.45	\$1,238,870.06
4/1/01 TP 4/1/02	114	50	n/a	\$556,687.82	\$11,254.23	\$565,664.43
4/1/02 - 4/1/03	110	45	n/a	\$1,029,927.58	\$4,223.43	\$1,066,353.61
4/1/03 - 4/1/04	123	43	138	\$628,049.72	\$10,371.99	\$667,941.99
4/1/04 - 4/1/05	121	53	160	\$676,280.81	\$14,554.98	\$731,863.22
4/1/05 - 4/1/06	108	37	259	\$575,874.75	\$51,749.70	\$743,071.23
4/1/06 - 11/30/06	77	23	112	\$98,830.92	\$0.00	\$179,896.36

PAYROLL DATA	CODE	2003	2004	2005	2006
AERIAL APPLICATION	7423	\$1,822,422.62	\$1,691,361.83	\$1,618,148.74	\$1,632,198.88
POLICE	7720	\$23,445,907.30	\$20,772,155.85	\$21,429,011.68	\$20,882,613.82
PRINTING/COPYING	8015	\$225,414.14	\$243,439.90	\$244,270.68	\$236,041.52
AUTO REPAIRS & PARTS	8391	\$1,009,823.98	\$1,003,797.69	\$1,018,476.86	\$927,481.49
PARKING LOT	8392	\$111,069.36	\$42,121.82	\$38,899.99	\$35,724.27
SOCIAL WORKERS (SPEC AGENTS)	8742	\$9,874,326.96	\$10,036,152.18	\$10,139,708.52	\$9,729,761.70
CLERICAL	8810	\$34,620,802.38	\$35,542,017.83	\$36,054,441.17	\$34,952,318.45
NURSING HOME	8829	\$6,313,991.82	\$6,392,969.43	\$6,286,318.59	\$5,979,367.17
PUBLIC HEALTH NURSES	8835	\$1,769,722.64	\$1,756,454.71	\$1,704,376.68	\$1,541,884.51
FOOD SERVICE	9058	\$1,389,496.97	\$1,271,205.68	\$1,217,545.89	\$1,102,434.36
COUNTY/TOWN EMPLOYEES	9413	\$18,118,026.61	\$18,075,151.14	\$18,151,563.03	\$17,396,889.65
		\$98,701,004.78	\$96,826,828.06	\$97,902,761.83	\$94,416,715.82

Decreases are due to overtime fluctuations, not replacing employees that leave county service, or 0% COLAs.

# Appendix B

## EXAMPLE: MEMORANDUM SUMMARIZING THE EVALUATION AND SELECTION OF A TPA

### CITY OF SUNSHINE MEMORANDUM

Date: May 6, 2008

To: City Council

From: Ricky Rincon, Risk Manager

Subject: Evaluation of Proposals for a Third-Party Administrator (TPA) for Workers' Compensation

For the reasons stated below, it is recommended that Admin-Claims Services be awarded a three-year contract to be the TPA for our workers' compensation claims. This three-year contract will have an option to renew for two additional years.

On December 23, 2007, RFP #2008-090R was released for TPA services. Proposals were due on February 15, 2008. A list and evaluation of the vendors who submitted proposals is summarized in the table below.

There was an evaluation committee that consisted of eleven employees from different departments and representatives from different employee associations including: Sunshine Municipal Employees Association, Sunshine Police Officers Association, Local 99 Fire Fighters Union, two employees from administration, and Rebecca Sanchez, an outside consultant. An initial rating of the vendor's proposals was performed in accordance with our purchasing department policies. The committee members rated each of the proposals. One vendor did not include the estimated total cost for medical cost containment and was therefore declared non-responsive. The vendor with the lowest price received the lowest overall scores on criteria other than price. As a result, three vendors with the highest overall scores were invited to make presentations on April 3, 2008. Below is the final scoring for all the vendors. The evaluation committee decided that Admin-Claims Services, Inc. provided the best value for the services proposed. Therefore, we recommend that we choose them as our vendor.



Evaluation Criteria	Total Points (Average of Committee Member Ratings)					
	Max Points	Companies				
		Admin-Claims Services, Inc.	Trifecta Risk Management	One-2-One Claims Management	Nova Risk Solutions	American Group
Service Capability & Responsiveness to RFP	40	35.60	35.40	27.40	31.20	Non-responsive
Administrative Fees & Guarantees	40	34.74	30.08	40.00	34.25	Non-responsive
Fees		\$3,542,562	\$4,091,656	\$3,076,687	\$3,582,624	
Financial Stability	10	8.80	8.90	4.50	9.40	Non-responsive
Quality of Response	10	8.60	8.50	6.20	6.50	Non-responsive
<b>Total</b>	<b>100</b>	<b>87.74</b>	<b>82.88</b>	<b>78.10</b>	<b>81.45</b>	

# Appendix C

## COURT OPINION DEALING WITH WORKERS' COMPENSATION AND FMLA

**NO. 3-06-0365**  
**SLIP OPINION**

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Filed May 4, 2007.

IN THE APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT  
A.D., 2007

TERRY L. SIEKIERKA, Plaintiff-Appellant, v. UNITED STEEL DECK, INC.,  
Defendant-Appellee

Appeal from the Circuit Court for the 13th Judicial Circuit  
LaSalle County, Illinois  
No. 02-L-182  
Honorable Eugene P. Daugherty Judge, Presiding

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JUSTICE O'BRIEN delivered the opinion of the court:

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Plaintiff Terry L. Siekierka filed a complaint against defendant United Steel Deck, Inc., alleging United Steel had wrongfully discharged Siekierka in retaliation for his assertion of his rights under the Illinois Workers' Compensation Act. 820 ILCS 305/1 *et seq.* (West 2002). United Steel filed a motion for summary judgment. Following discovery and a hearing on the motion, the trial court granted United Steel summary judgment and Siekierka follows with this appeal. We reverse the trial court.

## FACTS

Plaintiff Terry L. Siekierka filed a complaint against defendant United Steel Deck, Inc., alleging United Steel wrongfully discharged Siekierka in retaliation for his assertion of his rights under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2002)). In his complaint, Siekierka made the following allegations. Siekierka alleged that on May 11, 2001, he was injured while performing his duties as an employee of United Steel. Siekierka pursued his rights to compensation under the Act, including compensation for medical treatment and temporary total disability benefits (TTD). On August 31, 2001, while Siekierka was in the process of recuperating from the effect of his work-related injury, United Steel terminated Siekierka's employment.

Siekierka alleged in his complaint that the termination was unreasonable, without just cause, and motivated in part because he had pursued his rights and remedies under the Act. Siekierka sought relief for compensatory and punitive damages. In response to Siekierka's complaint, United Steel answered as a defense that its action in terminating Siekierka was unrelated to his pursuit of workers' compensation rights and that Siekierka's failure to return to work within his authorized leave period was a legitimate reason for his discharge. United Steel moved for a summary judgment which the trial court granted.

The record sub *judice* consists of the following depositions, exhibits, affidavits and proceedings. The record contains a letter to Siekierka from Kristine Paul, a human resources manager with the United Steel plant in Peru, Illinois. In the letter, dated July 31, 2001, Paul informed Siekierka that he had been off work since May 14, 2001; that his 12 weeks of family leave would end on August 6, 2001, and that United Steel was willing to extend his leave for "one month," to the end of August. Paul further informed Siekierka that if he was unable to return to work by the end of August he would be terminated and offered "COBRA" coverage. Paul later informed Siekierka, by way of a letter dated August 31, 2001, that he was terminated and that his workers' compensation benefits would continue until he recovered. She also invited him to apply for reemployment with United Steel once he was released to work again.

Medical doctor Steven C. Delheimer testified by way of deposition. Delheimer attested he specializes in neurosurgery. Delheimer first examined Siekierka on May 21, 2001. As of May 24, 2001, Delheimer had documented Siekierka as "totally incapacitated." Delheimer recalled when he saw Siekierka on June 4, 2001, he scheduled him to undergo surgery on June 11, 2002. Delheimer was informed by "the insurance company" that surgery was not authorized. He did not see Siekierka again until August 6, 2001.

Delheimer stated when he saw Siekierka on August 6, 2001, his condition was no worse than on the June 4, 2001, visit. Delheimer acknowledged Siekierka's surgery took place on August 15, 2001, and it took three months, until November 15, 2001, for him to fully recover. Delheimer opined that had Siekierka undergone surgery as originally scheduled, he would have been back to work by August 31, 2001. Delheimer would have advised Siekierka to proceed with the surgery and would have sent Siekierka back to work a little earlier if he had known he was in danger of losing his employment. Delheimer opined there was nothing gained by Siekierka in delaying the surgery.

The surgery was postponed solely because of the lack of authorization from the insurance company. The record contains a letter from medical doctor David Shenker to Liberty Mutual Insurance, United Steel's insurer. In his letter, Shenker acknowledged that on July 11, 2001, he performed a neurological evaluation of Siekierka as a second opinion. Shenker noted Siekierka had been employed as a machine operator at United Steel for over 1 ½ years. Shenker stated Siekierka's injury occurred as a result of activity related to removing sheets of steel off of a conveyor. Shenker documented Siekierka's symptoms and noted the severity of his pain had diminished since the injury.

Shenker considered Siekierka's prognosis uncertain but opined he was improving. The doctor recommended Siekierka remain off of any heavy-duty work and take a wait-and-see approach for a month before considering whether to have surgery; he stated that any surgery would be related to the May 11, 2001, incident. Shenker's letter is initialed at the bottom by Delheimer, following the notation, "agree to waiting for a period of time." Delheimer acknowledged in his deposition that he had reviewed Shenker's report.

Terry Siekierka was also deposed. Siekierka attested that on November 29, 1999, he had signed a document indicating he had received training from United Steel with respect to the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. A. §2601 *et seq.* (2000)). He did not recall whether he was informed that under the FMLA policy of the company, "[e]mployees who fail to return to work after expiration of the requested leave, in the absence of any other approved form of leave, will be deemed to have resigned their employment with the company." Siekierka did not know the FMLA could apply to a work-related injury. Siekierka also attested to his signature on a document that indicated he had received United Steel's employee handbook, which contains a provision explaining the FMLA and which states that "excessive absenteeism" may result in dismissal. Siekierka acknowledged other documentation reflecting conversations he had "on and off" with United Steel personnel before he was terminated. Siekierka stated the documentation accurately reflected the content of his conversations.

Siekierka testified he was under the impression until he was terminated that he was going to be allowed to return to work after he recovered from his injury. He stated

“everything was pretty much kept on a positive note” when he was in contact with United Steel personnel. He was notified by a letter dated July 31, 2001, that he had to be back to work by the end of August or he would be terminated. Siekierka stated his surgery was rescheduled for August 15, 2001.

Siekierka indicated as obvious the impossibility of returning to work by the end of August when the surgical recovery was estimated to be four to eight weeks. Siekierka referred to United Steel’s insurer insisting he see a second physician after he had consulted with Delheimer. Siekierka attested it took a month to get in to see the second physician, Shenker, after which Shenker recommended he wait another month to heal. Siekierka stated that eight weeks were “shot right there.” He opined that had he had the surgery as originally scheduled, he could have returned to work within the 12-week allotment. Siekierka attested that after Delheimer gave him a full duty medical release to work on November 15, 2001, he contacted the company about reemployment and was told it was not hiring at the time. Siekierka agreed that as workers’ compensation benefits, for the period of May 15, 2001, to November 19, 2001, he received \$293.33 a week. His workers’ compensation claim was settled for \$27,355 as per a directive approved in February of 2003. Siekierka opined that United Steel did not look “too fondly on people that get hurt at work.” He recalled that one employee who had experienced several job-related accidents was considered “accident prone” by company managers.

Paul, the human resources manager, also testified by way of deposition. Paul stated that when a worker is injured at United Steel she reports the injury to Liberty Mutual, the company’s workers’ compensation insurer. Thereafter, she does not monitor the claim or participate in further decision making with respect to the workers’ compensation claim; however, she does receive updates on the claim from the insurer. Paul admitted the United Steel employee handbook does not contain a section explaining the workers’ compensation policy.

Paul attested that the FMLA policy was established at United Steel in 1999. The FMLA is explained in the employee handbook, which indicates that the use of family medical leave “cannot result in the loss of employment benefits that accrued prior to the start of employee’s leave.” Paul stated the federal FMLA policy mandates up to 12 weeks of leave and she and Ron Grant, the plant manager, decide whether to extend the leave for a particular worker. The grant of an extension is done on a case-by-case basis, and depends on factors including the nature of the injury or illness.

Paul stated that before a decision is made to extend the leave, she looks at all the different company policies and laws, including, the FMLA, workers’ compensation, short-term disability and the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §12132 (2000)). Paul admitted that a person under leave through ADA would be granted more time to return to work because the law mandated it.

Paul acknowledged Siekierka was considered a good employee. Paul recalled no dispute over whether Siekierka's injury was work-related. When she received notice of Siekierka's injury she notified the insurance carrier. Paul admitted Siekierka did not request to be put on FMLA. Paul stated the FMLA may be initiated by the employee or the employer. Paul notified Siekierka on July 31, 2001, that the leave had been applied to him and that it was going to expire on August 6, 2001.

United Steel gave Siekierka an extension of his leave from August 6 to August 31. At the time the extension was granted, Paul was aware of Shenker's report.

Paul recalled meeting with Grant and Siekierka on August 14, 2001, when Siekierka asked for a further extension of leave. Siekierka informed Paul and Grant he was to have surgery on August 15 and it would take four to eight weeks for him to recover. After Siekierka left, Grant and Paul discussed the possibility of extending Siekierka's leave. According to Paul, factors they considered included past practice; an employee with cancer, Jack Downey, had been given 3 ½ months of leave, including FMLA; he did not receive workers' compensation. Another employee who did file for workers' compensation was given a nine-day extension beyond FMLA. Paul stated that she and Grant considered an additional two-month extension would be excessive in light of company consistency and fairness to all the United Steel Peru plant employees. Paul stated she and Grant were concerned about setting a precedent regarding work-related injury leaves. She could not recall ever granting an extension of longer than a month. Ron Francisco of the New Jersey office concurred with their judgment. Siekierka was not given an additional extension. According to Paul, the decision to grant or deny an extension was not related to Siekierka's workers' compensation claim. She was aware that without a further extension, in light of his impending surgery, Siekierka would not be able to return to work.

Ron Grant, the plant manager for the United Steel facility in Peru, was also deposed. Grant stated to his knowledge the company had only one leave policy, the FMLA, and no separate policy that related to injured workers. Grant attested the FMLA policy allows for a 12-week period of leave, after which, if the company does not grant an extension, the employee is terminated. Grant stated he considered a four-week extension to be fair to the employee without detracting from the operation of the company.

Grant acknowledged Siekierka was a good employee. Grant stated the decision to extend additional time to Siekierka did not relate to his workers' compensation claim but was in keeping with the extension given to another employee, Jack Downey, who had been ill in a way unrelated to work. Grant admitted that by August 14, 2001, he and Paul had already decided they would not grant Siekierka an additional extension, although he told Siekierka he would take the matter up with the New Jersey office.

When Grant spoke to the vice president of United Steel manufacturing, Kevin Gennarelli, Gennarelli endorsed the decision not to extend Siekierka's leave. Grant stated the only other policies that would allow an employee additional leave time would be related to some type of disability or a military necessity.

Grant acknowledged he recognized that in light of Siekierka's pending surgery, he was unlikely to return to work without another extension. Grant admitted that under the company's operating policy, any worker who, like Siekierka, took longer than four months to recover from a work-related injury, would be terminated. Grant acknowledged an employee who previously filed workers' compensation claims was later terminated for insubordination. Grant also recalled another workers' compensation claimant employee who was terminated when he failed to appear for work after the expiration of his family leave, plus a few days' extension. James Francisco was deposed by telephone. Francisco is the human resources director for United Steel, based in New Jersey. Francisco acknowledged he was instrumental in developing the employee handbook for United Steel. Francisco stated the handbook contains no information about an employee's rights under the Workers' Compensation Act. According to Francisco, workers' compensations claims are a routine matter handled through the company's workers' compensation insurer. He considers them an insurance matter.

Francisco knew of no employee, who, following a work-related injury, was allowed more than four months to return to work. Francisco stated that for the Peru facility, the leave granted to employee Downey, who was afflicted with cancer, was the benchmark used to determine a fair balance between the needs of the employee and the company's business needs. Francisco attested the company's leave policy has no relation to an employee's retention of workers' compensation benefits; he also stated Siekierka was not terminated because he filed a workers' compensation claim.

Kevin Gennarelli, was also deposed by telephone. Gennarelli is the vice president of United Steel based in New Jersey. Gennarelli stated he, Grant and Paul had agreed to accommodate Siekierka in the same manner they had accommodated Downey, giving him a one-month extension of his family leave, the most they had ever given anyone. Gennarelli admitted that even if the only reason Siekierka could not return to work was because he was recuperating from the effects of a work related injury, Gennarelli would not have further extended Siekierka's leave; he would not want to jeopardize the company's leave policy. Gennarelli acknowledged that an employee in need of more than four months recuperation from a work-related injury would not be able to keep a position at United Steel.

Following a hearing, the trial court granted United Steel's summary judgment motion. Siekierka follows with this appeal, in which he asserts the trial court erred in granting the summary judgment motion. Siekierka argues, in part, that there is a genuine issue of material fact as to whether there is a causal nexus between Siekierka's discharge and the exercise of his rights under the Act.

## ANALYSIS

Our review of a summary judgment ruling is *de novo*. *Sheth v. Wunderlich* 363 Ill. App. 3d 252, 254, 842 N.E.2d 1155, 1157 (2006). Summary judgment is proper when, viewed in a light most favorable to the nonmovant, the pleadings, affidavits, depositions, admissions, and exhibits on file reveal there is no issue as to any material fact and the movant is entitled to judgment as a matter of law. *Sheth*, 363 Ill. App. 3d at 254, 842 N.E.2d at 1157. In ruling on a motion for summary judgment, the trial court should construe the pleadings, affidavits, exhibits, and depositions most strictly against the moving part and most liberally in favor of the opponent. *Bray v. Stan's Rental, Inc.*, 196 Ill. App. 3d 384, 386, 553 N.E.2d 791, 792 (1990). Furthermore, “summary judgment is not intended to be used as a means of weighing conflicting issues of fact.” *Bray*, 196 Ill. App. 3d at 386, 553 N.E.2d at 792.

Under section 4(h) of the Act, it is unlawful for “any employer, individually or through any insurance company or service or adjustment company, to discharge or threaten to discharge ... an employee because of the exercise of his or her rights or remedies granted to him or her by [the] Act.” 820 ILCS 305/4(h) (2002). Because the workers’ compensation law replaced common-law rights available to employees and employers, the court in *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 180-81, 384 N.E.2d 353, 356-57 (1978), carved out an exception to the general rule that an employer may fire an at-will employee for any reason or for no reason at all. The *Kelsay* court reasoned that the sound public policy underlying the Act dictated the recognition of an employee’s cause of action for retaliatory discharge. *Kelsay*, 74 Ill. 2d at 181, 384 N.E.2d at 357. An underlying principle of the retaliatory discharge exception to the general rule of at-will employment is the recognition that an employer may not present the employee with a choice between his job and his legal entitlement to compensation. See *Kelsay*, 74 Ill. 2d at 182, 384 N.E.2d at 357 (stating that workers’ compensation law would be seriously undermined if employers were permitted to abuse their power to terminate by threatening to discharge employees for seeking compensation under the Act). *Kelsay* prohibits an employer from utilizing an employee’s job as leverage to condition his exercise of rights under the Act. *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 166, 601 N.E.2d 720, 731 (1992).

Cases brought for retaliatory discharge predicated on an employee’s filing of a workers’ compensation claim are reviewed using traditional tort analysis. *Clemons v. Mechanical Devices Co.*, 184 Ill. 2d 328, 339, 704 N.E.2d 403, 408 (1998). The burden rests with the plaintiff to prove the elements of the cause of action. *Clemons*, 184 Ill. 2d at 337, 704 N.E.2d at 407. To sustain a cause of action for the tort of retaliatory discharge based upon the filing of a workers’ compensation claim, an employee must prove: (1) that he was an employee before the injury; (2) that he exercised a right granted by the Act; and (3) that he was discharged and that the discharge was causally related to his filing a claim under the Act. *Clemons*, 184 Ill. 2d at 335-36, 704 N.E.2d at 406.



The ultimate issue concerning the element of causation is the employer's motive in discharging the employee. Clemons, 184 Ill. 2d at 336, 704 N.E.2d at 406. "The element of causation is not met if the employer has a valid basis, which is not pretextual, for discharging the employee." Hartlein, 151 Ill. 2d at 160, 601 N.E.2d at 728. For instance, an employer may terminate an employee for excess absenteeism, even if the absenteeism is caused by a compensable injury.

Hartlein, 151 Ill. 2d at 160, 601 N.E.2d at 728. The mere existence of a valid or sufficient reason, however, does not defeat a retaliatory discharge claim. "[I]f an employer chooses to come forward with a valid, nonpretextual basis for discharging its employees and *the trier of fact believes it*, the causation element required to be proven is not met." Clemons, 184 Ill. 2d at 336, 704 N.E.2d at 406. (Emphasis added). Furthermore, despite an ostensibly neutral absenteeism policy, where the actual purpose and effect of the scheme penalize employees for filing workers' compensation claims, the employer's action may in fact be retaliatory. See *Hess v. Clarcor, Inc.*, 237 Ill. App. 3d 434, 450, 603 N.E.2d 1262, 1273 (1992) (upholding the trial court's denial of injunctive relief where the evidence of a facially neutral absenteeism policy, adopted for a legitimate business purpose and applied evenhandedly, did not support a finding of retaliatory intent on the part of the employer).

In the instant case, it is undisputed that Siekierka was a good employee of United Steel; that he exercised his rights under the Act; and that United Steel terminated his employment. The only issue is whether there is an issue of material fact as to whether there existed a causal connection between Siekierka's termination and the filing of his workers' compensation claim. United Steel has chosen to come forward with a valid nonpretextual basis for terminating Siekierka's employment: his failure to return from authorized leave. There is testimony from United Steel's employees to support this assertion.

On the other hand, the evidence also supports an inference that United Steel's insurer set in motion a process that made it impossible for Siekierka to return to work within the time granted to him by United Steel. Siekierka presented evidence that his doctor, Delheimer, recommended surgery as of June 11, 2001, and that United Steel's insurer refused to accommodate the surgery and forced him to seek the opinion of an insurer-provided doctor, Shenker. Shenker was unavailable for consultation for four weeks and his "wait and see" recommendation cost Siekierka an additional four weeks. Siekierka's condition remained unchanged and ultimately the surgery Delheimer had recommended for June 11, 2001, took place on August 15, 2001.

Although it was three months after the surgery that Delheimer released Siekierka to work, there is evidence he could have been released to work earlier; Delheimer testified that had he known Siekierka was in danger of losing his job, he would have released him earlier, and just before his surgery, Siekierka told Paul and Grant he would need four to eight weeks of recovery time. If Siekierka's surgery had taken place on June 11, 2001, it is conceivable he could have returned to work 10 weeks later, by the end of August 2001.

Furthermore, Paul did not inform Siekierka until July 31, 2001, after he was three weeks into Shenker's "wait and see" approach, that he had already used up 11 weeks of family medical leave and would be terminated if he did not return to work by the end of August. By that time, it was obvious Siekierka could not undergo surgery and recover in time to return to work within the time allotted. The United Steel employees testified that once aware of Siekierka's need for surgery they knew he would not be able to return to work within the amount of leave United Steel had provided him. Siekierka, on the other hand, before he received Paul's letter, had no idea United Steel was giving him a finite amount of leave and labored under the apparently false impression, conveyed by the "pretty positive" tenor of his interaction with United Steel, that he would be able to return to work after he recuperated from his injury.

United Steel's actions served to delay Siekierka's surgery at the same time he was left uninformed that the delay had the potential to cost him his job. When Siekierka was finally made aware of the possible consequence of his continued absence from work, he was faced with the option of pursuing his worker's compensation right to have the surgery or attempting to return to work without it. This is the kind of choice prohibited under Kelsay and if United Steel's intent was to create this dilemma, its motive was retaliatory. For these reasons, viewing the depositions, affidavits and exhibits liberally in favor of Siekierka, and bearing in mind United Steel has chosen to argue a valid nonpretextual basis for terminating Siekierka's employment, we consider there is a genuine issue of material fact as to whether there exists a causal nexus between Siekierka's discharge and the exercise of his rights under the Act.

For the foregoing reasons, the judgment of the circuit court of LaSalle County is reversed.

Reversed.

LYTTON, P.J., and HOLDRIDGE, J., concur.

# Appendix D

## Multiple Choice Questions and Answers

### Multiple Choice Questions

1. Workers' compensation provides benefits to workers who are injured:
  - a. At home and away from work but require hospitalization.
  - b. Driving to and from work.
  - c. While at work.
  - d. At a store buying products produced by their employer.
  
2. In most states, employers are required to pay the following for employees who are injured at work:
  - a. All reasonably necessary medical expenses.
  - b. Wage loss.
  - c. Necessary rehabilitation services.
  - d. All of the above.
  
3. In nearly every state, employers
  - a. Have the option to provide workers' compensation benefits.
  - b. Must provide workers' compensation benefits.
  - c. Must purchase a workers' compensation insurance policy from a commercial insurance company.
  - d. b. and c. are correct.
  
4. Employers who terminate employees for filing workers' compensation claims:
  - a. Can be held legally liable for retaliation.
  - b. Can reduce their costs.
  - c. Can do so if the employee is unable to work.
  - d. All of the above.

5. A Third-Party Administrator (TPA) is a company that will:
  - a. Assume all the risks of workers' compensation liability of another employer.
  - b. Handle the processing of claims for an employer.
  - c. Sell workers' compensation insurance.
  - d. None of the above.
  
6. Employers can reduce the cost of workers' compensation by doing the following:
  - a. Having a proactive safety program that reduces workplace injuries.
  - b. Seeking competitive bids from insurance companies or TPAs.
  - c. Actively managing claims by disputing fraudulent claims and rehabilitating injured workers so that they can return to work.
  - d. All of the above.
  
7. Which federal statute requires employers to have workers' compensation coverage for their employers:
  - a. Family and Medical Leave Act.
  - b. Americans With Disabilities Act.
  - c. Social Security Act.
  - d. None of the above.
  
8. In addition to reducing the likelihood of workers' compensation claims with a good safety program, employers may be able to reduce the severity or cost of claims by doing the following:
  - a. Challenging whether an injury was work-related.
  - b. Getting a second doctor's opinion on whether the employee is disabled and impaired from working.
  - c. Offering the employee some form of light-duty work assignment to help them to transition back to work.
  - d. All of the above.
  
9. An assigned risk pool is typically:
  - a. One of the last resorts for resorts for employers with a bad claims history.
  - b. One of the least expensive forms of workers' compensation coverage.
  - c. Sponsored by the federal government.
  - d. Managed by expert workers' compensation attorneys.

- 10.** The most important factor in determining the cost of workers' compensation insurance is:
- a.** The state in which an employer is operating.
  - b.** The skills of their lawyers.
  - c.** The amount of their payroll and the number of workers in higher risk job classifications.
  - d.** Their insurance agent.
- 11.** Secondary gain occurs when:
- a.** An injured employee starts to enjoy the benefits of being away from work and thereby prolongs the length of their disability.
  - b.** An insurance agent shares the premium with the employer.
  - c.** A claims representative working for a TPA conspires to pay workers' compensation benefits to a friend who is not entitled to receive them.
  - d.** A doctor mistakenly bills for the same service twice.
- 12.** Suppose that an employer refuses to pay a workers' compensation claim because they believe that the employee is not disabled and should return to work. The employee hires an attorney and a dispute begins. Suppose that the employer and employee agree to resolve their dispute. For the employer to be satisfied with the settlement, it should probably include:
- a.** An agreement that the employee resign.
  - b.** A satisfactory payment to the employee.
  - c.** A promise from the employee to release the employer from any and all other claims.
  - d.** All of the above.
- 13.** Sometimes when an employee is injured at work, part of the cause of the accident is the negligence of a third party. In such cases, the employer may be able to reduce the cost of the claim by:
- a.** Refusing to pay for the wage loss and medical expenses caused by the third party.
  - b.** Filing a claim or lawsuit against the third party to seek to recover some of the cost of the workers' compensation benefits they had to pay.
  - c.** Hope that the health insurance coverage of the employee's spouse will pick up the tab.
  - d.** There is nothing they can do.

- 14.** One way to proactively manage workers' compensation claims is to diary files. In this technique the claims administrator does the following:
- a.** Records all gastrointestinal injuries separately.
  - b.** Keeps a record of all attorney fees.
  - c.** Sends e-mail messages to the employee to tell them to get back to work.
  - d.** Sets up a reminder system to initiate a review of the status of the employee at some time in the future to determine if they are still disabled or if they can return to work.
- 15.** Employers can reduce their workers' compensation costs by reducing the frequency and/or severity of claims. The difference between frequency and severity is:
- a.** One deals with the number of accidents per worker and the other with the cost of each accident.
  - b.** One deals with noise complaints and the other with back complaints.
  - c.** One is controllable by loss prevention and the other through active claim management.
  - d.** Answers a. and c. are correct.
- 16.** The following are possible advantages or disadvantages of using in-house (employer staff) attorneys to handle workers' compensation claims:
- a.** They may not have the expertise to deal with workers' compensation matters unless this is all they do.
  - b.** They are less able to understand the employer's own policies.
  - c.** Their billable hours and costs per hour are higher.
  - d.** They do not need to be licensed attorneys.
- 17.** Can an employer ever (under any circumstance) terminate the employment of an employee who files a workers' compensation claim?
- a.** No, because the employee is protected from retaliation by the Americans with Disabilities Act.
  - b.** Yes, if they are unable to perform the essential job functions, but the employer may still be liable for some wage-loss benefits depending on the circumstances.
  - c.** Yes, most states permit employers to fire employees at will.
  - d.** No, because workers' compensation laws prohibit retaliation against workers who file claims.

- 18.** The cost of workers' compensation insurance is typically influenced by risk-based factors and experience-based factors. The difference between these two is:
- a.** One is based on the uncertainty of insurance market pricing and the other based on the years of experience of the claims handlers.
  - b.** One is based on the occupational classifications of the employees and the other is based on how experienced they are.
  - c.** One is based on the occupational classifications of the employees and the other is based on the experience of the employer in terms of actual claims filed.
  - d.** One is based on the uncertainties of market pricing and the other based on the experience of the employer in terms of actual claims filed.
- 19.** Sometimes employers try to reduce the cost of a workers' compensation claim by bringing an injured employee back to work in some limited capacity that is within the medical restrictions that the doctor has placed on them. Typically, when this occurs, the employee does not perform all of their normal job duties. Often in these circumstances, a supervisor makes sure that the employee does not do work that could result in an aggravation of their previous injury. This type of claims management tactic could be called:
- a.** Light-duty work.
  - b.** Favored work.
  - c.** Supervised work.
  - d.** All of the above.
- 20.** Self-insurance differs from commercial workers' compensation insurance in the following way:
- a.** The employer does not have to pay all of the wage-loss and medical benefits that a commercial insurance company must pay.
  - b.** The variability of the cost is assumed by the employer.
  - c.** It is always cheaper to self-insure.
  - d.** Self-insured employers are exempt from state workers' compensation regulations.

## Answers

1. c
2. d
3. b
4. a
5. b
6. d
7. d
8. d
9. a
10. c
11. a
12. d
13. b
14. d
15. d
16. a
17. b
18. c
19. d
20. b



# Appendix E

## EXAMPLE: COST-BENEFIT ANALYSIS MEMORANDUM

ABC STORES, INC.

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### MEMORANDUM

Date: [Month, Day, Year]

To: Chris Smith, President

From: HR Manager

Subject: Cost-Benefit Analysis for Workers' Compensation Alternatives

This memo analyzes the costs and benefits of three alternatives for handling our obligation to provide workers' compensation benefits to our employees. For the reasons stated below, I believe that self-insurance is our best option.

Workers' compensation benefits can be provided by a commercial insurance company, through a self-insurance plan or through a risk pool. These options are summarized in Table 1, attached, and are analyzed below.

### COMMERCIAL INSURANCE

We can purchase workers' compensation insurance from a commercial insurance company either directly or through an insurance agent. The insurance company will charge a premium in exchange for paying all the claims and expenses (e.g., medical costs, wage loss, attorney fees) that are necessary and covered under the policy. Under this option, the insurance company will assume some of the risk of the variability in the claim amounts and, for assuming this risk, they charge a premium in addition to their costs and profits. The relatively stable premium ABC stores would have to pay is an advantage to ABC because it makes our cost for workers' compensation more predictable, although the premium can change from year to year. However, the overall costs are likely to be higher, barring extraordinary catastrophes befalling our employees. Commercial insurance companies often have safety specialists who can provide us with advice; but because their services are often spread across many different employers, we might not get all the safety services we want and need.

## SELF-INSURANCE

We can get approval from our state government to self-insure our workers' compensation obligation. If we do so, we should also hire a third-party administrator (TPA) with the expertise to handle the claims processing function, and purchase an Excess Workers' Compensation Insurance Policy to cover rare and extremely large losses (e.g., more than \$500,000). We would pay all other claims directly to employees through the TPA. This approach will result in greater uncertainty in the amount we may pay to employees because that amount will depend on the frequency and severity of accidents that occur. This uncertainty can be mitigated if we hire an additional safety technician to help make ABC safer, thereby reducing accidents. The cost of this safety technician's salary may well be more than offset by the lower cost for paying claims. In addition, if we work proactively with the TPA, we can assertively manage the claims that do occur, and thereby reduce the costs of claims by getting employees back to work sooner.

## RISK POOL

A third option is to join a risk pool. A group of retail employers in our area have formed a pool that shares the risks of workers' compensation claims. This pool acts like a commercial insurance company because it takes all of the responsibility for handling and paying qualified claims and because it has safety consulting services that we could use. The cost of the premiums charged by the pool are lower than what a commercial insurance company would likely charge because they are non-profit and have lower advertising expenses. However, we will be somewhat at the mercy of the pool because they have member employers who are much larger than we are, so we might not get the same level of service as the larger employers. We would also be giving up the opportunity to more proactively manage our safety and claims handling functions that we would have with the self-insurance option.

Because of issues related to cost and control, I recommend that we opt for the self-insurance option. We should also get quotes on the cost of hiring a TPA and buying excess coverage so that we can put more specific dollar cost estimates to this proposal.

Please let me know how you would like to proceed.

**Table 1. Options for Workers' Compensation**

Option	Description	Benefits	Costs
Workers' compensation insurance (commercial)	Purchase workers' compensation coverage from a commercial insurance company.	Expertise of insurance company (safety). More predictable cost. Insurer handles claims.	Higher total cost. Possible less incentive for insurer to reduce claim costs. Uncertain level of safety services.
Self-insurance with a TPA, plus excess coverage	Hire a TPA to pay employee WC claims and purchase an excess WC policy that only kicks in for catastrophic claims (> \$500,000).	Lower costs. Eliminate costs that insurers have (profit, fees, etc.). Added in-house loss control may reduce expenses from claims over the long term. More proactive claims handling could reduce claim costs.	Would have to add safety staff to ABC payroll. ABC assumes more risk of claim cost uncertainty.
Risk pool	Join a risk pool. They handle and pay claims.	Join with employers who have similar concerns/claims. Lower overhead, lower cost.	Other members in the pool may distract from interests of ABC Stores.

# Appendix F

## COMPARISON OF WORKERS' COMPENSATION COSTS ACROSS THE UNITED STATES

### STATE RANKINGS OF WORKERS' COMPENSATION RATES

**Notes:**

“Rate” is the average rate (dollars per \$100 of wages) used for premium calculation in each state.

The most expensive states are Alaska and California.

The least expensive states are Indiana and North Dakota.

2006 Ranking	2004 Ranking	State	Rate	Median
1	2	Alaska	5.00	201%
2	1	California	4.13	166%
3	7	Delaware	3.91	158%
4	6	Kentucky	3.78	152%
5	8	Montana	3.69	149%
6	3	Florida	3.32	134%
7	17	Vermont	3.24	130%
8	13	Maine	3.21	129%
9	19	Alabama	3.17	128%
10	18	New York	3.15	127%
11	9	Louisiana	3.10	125%
12	5	Ohio	3.00	121%
13	15	Oklahoma	2.96	119%
14	11	Connecticut	2.90	117%
15	4	Hawaii	2.89	116%
16	10	DC	2.86	115%
17	14	Texas	2.84	114%
18	20	Pennsylvania	2.80	113%
19	12	New Hampshire	2.75	111%
20	23	Illinois	2.69	108%

<b>2006 Ranking</b>	<b>2004 Ranking</b>	<b>State</b>	<b>Rate</b>	<b>Median</b>
21	21	Minnesota	2.69	108%
22	16	Rhode Island	2.68	108%
23	29	New	2.52	102%
24	22	Missouri	2.50	101%
25	39	South Carolina	2.50	101%
26	25	Tennessee	2.48	100%
27	27	New Mexico	2.41	97%
28	28	Wyoming	2.40	96%
29	31	Colorado	2.40	96%
30	26	Nevada	2.36	95%
31	36	Mississippi	2.29	92%
32	34	Idaho	2.29	92%
33	38	Nebraska	2.25	91%
34	24	West Virginia	2.20	88%
35	33	Wisconsin	2.18	88%
36	35	Washington	2.17	88%
37	32	North Carolina	2.17	87%
38	46	Utah	2.06	83%
39	30	Michigan	2.05	82%
40	40	Maryland	2.03	82%
41	37	Georgia	2.02	82%
42	42	Oregon	1.97	79%
43	44	Kansas	1.84	74%
44	41	South Dakota	1.83	74%
45	43	Iowa	1.75	71%
46	49	Arizona	1.73	70%
47	45	Massachusetts	1.70	68%
48	48	Arkansas	1.59	64%
49	47	Virginia	1.52	61%
50	50	Indiana	1.24	50%
51	51	North Dakota	1.10	44%

Source: Moran, J. 2007. Connecticut Workers' Compensation Costs. OLR Research Report 2007-R-0173.



SOCIETY FOR HUMAN  
RESOURCE MANAGEMENT

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