From the Best Selling Author of *The 10 Laws of Insurance Attraction, Insured to Fail,* and *Turning Premiums Into Profits*

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Frustrated & Overcharged

YEAR AFTER YEAR BY YOUR WORKERS' COMPENSATION PROGRAM

52 ways to dramatically reduce your premiums, eliminate overcharges and headaches, and free yourself to focus on growing and running your company!

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This book contains information about workers' compensation insurance and coverage. The information is not intended as a substitute for insurance, legal, or financial advice from an appropriately qualified professional and should not be treated as such. If you have any specific questions about any workers' compensation matters, you should consult an appropriately qualified professional.

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DEDICATION

To my loving wife and my wonderful children, as the people I cherish the most, I would like to thank you for inspiring and putting up with me for the two and a half years it took to compile the data and write this book.

I would also like to dedicate this book to my late father, Ralph Leng, who was unable to see the final version of the book. My dad always encouraged me to always learn more in my professional career, and guided me in that education. He always believed that the more knowledge you have, the better you can advise and take care of your clients.

INTRODUCTION

Dear Reader,

Today's technology has both overshadowed and enhanced much of yesterday's craftsmanship.

Now, most of us would definitely not compare a risk manager or an insurance professional to the craftsman who constructed our home or designed that jaw-dropping structure that makes us say "wow."

However, author David Leng aptly ties together a direct correlation between the risk manager and insurance professional to a craftsman. As a business owner, you will see and understand the uniqueness with which David works with his business clients. You will understand how he "builds a fortress" designed to fend off a multitude of employee injuries, view his varying techniques in which to help you appreciate varying Workers' Compensation insurance plans and how insurance companies think about you, then crush and ultimately control your Workers' Compensation insurance costs.

The Institute of WorkComp Professionals has trained many skilled and passionate insurance professionals. With this book, David Leng shows employers how he combines that skill and passion in creating a textbook approach to creating a Workers' Compensation program that actually *benefits* your company.

February 18, 2014

Preston Diamond

Preston L Diamond
Managing Director
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PREFACE

Over my 25-plus years as an Outsourced Risk Manager, many business owners, business leaders, and executives have expressed their frustration over the amount of time, energy and/or money they have spent dealing with their workers' compensation program without ever truly achieving the results they were looking for.

You can have some comfort in knowing that you are not alone if you are looking at the amount of money you have wasted on your workers' compensation program while wishing you could have used that money to accomplish a specific goal elsewhere in your company. Like many others, you may be similarly drained of the energy that is spent dealing with such issues as problematic employees and believing that this energy could have been better served bringing about a better outcome for you and your company. You also may share the feeling that your biggest regret is the amount of time frittered away trying to improve your workers' compensation program, only to fall short of the results you wanted and to now realize this time could have been better spent focusing on growing and running your company.

Whether you have 25 or 500 employees, as an owner or leader of a company you likely wear multiple hats. Whether it is the management, finance, operations, human resources, safety, supervisor/foreman, risk management or claims management hat, wearing more than one hat is not an easy task. Most likely, one of those hats fits you more comfortably than the others. However, wearing multiple hats requires a balancing act, and almost all business owners and leaders have stated to me at one time or another that there is no perfect balance in wearing all of them successfully. And therein lies the problem.

All of these particular hats, or disciplines, are needed to grow and run your company, and will ultimately affect you in achieving the success you want in your workers' compensation program. They all need to be working together, utilizing the synergies that exist between them, in order to achieve that success. And if you lose focus of even one of them, you will most likely have reduced results or even significant problems with your workers' compensation program.

As a fellow business owner, the reason I wrote this book is that time after time we have been able to demonstrate how workers' compensation is actually controllable, much like most other areas of your business. When managed correctly, a well performing workers' compensation program can not only provide greater profits to your company, but also enable you to be more competitive in your marketplace.

This book cannot magically make your workers' compensation program successful. However, it *can* help you know more and accomplish more by giving you more tools and a better understanding of what can and should be achieved in reaching your workers' compensation goals. And in doing so, you will be able to concentrate and focus more on successfully growing and running your company.

1

How Can We Reduce Our Premiums?

This was the core question asked by the 1,187 owners, executives, supervisors, foremen, HR professionals, and accountants I met over a two year period, whether it was in a face-to-face meeting or speaking at a workshop. It did not matter if their business was insured using traditional insurance, such as a guaranteed cost program (which is what most business owners purchase), a dividend program, or a high deductible, self-insurance or captive alternative financing program. It did not matter if they were an owner or an employee. They all had the same basic question: “How can we reduce our workers’ compensation costs?”

I have heard this question asked by more business leaders over the 25 plus years of my career as an Outsourced Risk Manager than I can count. Many of them thought achieving significant premium reductions to be on par with finding the Holy Grail, a quest often begun without actually knowing where to begin.

Initially, these business leaders focused on lowering their premiums, without fully understanding all of the complexities and costs that impact their workers’ compensation program. And as a result they were unable to reduce their workers’ compensation premiums. It is like reading the last chapter of a book first and then believing you understand everything that came before it. There are no short cuts. When it comes to workers’ compensation, only by focusing on the entire book, on all of the cost drivers, will you, and they, be able to lower premiums.

I have successfully helped countless companies dramatically reduce their workers’ compensation costs by having my clients focus all of their cost drivers and improving their *Risk Profile.* And in doing so, they have seen their premium reductions average 23% in just one year to 52% over five years.

You, too, can achieve similar results.

After meeting and talking to these business leaders, I came to the conclusion that they could be separated into two groups when it came to their state of mind with how they felt towards workers' compensation:

In the first group, a significant number were overwhelmed or lost. They were throwing their hands up in disgust believing that things were so bad there was nothing they could do to improve their outcome. They did not even know where to begin, or how to try to correct the situation they were already in. Their workers' compensation coverage was "killing" them from a profitability standpoint and taking away funds that could be used elsewhere to help grow their company. Equally important, working on the problems surrounding their workers' compensation program was draining the energy they needed to focus on successfully growing and running their company.

In the second group, the executives had a specific incident or two that had "driven them nuts," or cost them more money than they thought it should. It may have been a specific injury that went "big and ugly," or an employee that "milked the system" or "took them to the cleaners," as several owners have commented to me. It may have been an audit so large they were mystified as to why their business or employees were classified in a certain way. With these incidents, it was the proverbial "trying to close the barn door after the horses got out." They had gone too far down the path with nothing to do other than to try to hopefully outlast and somehow make it through a mucky situation. Fortunately, in many circumstances we were able to remedy the situation to a point where there was little or even no financial impact. Unfortunately, in other circumstances, there was no way to actually "fix" the situation and were still going to have deal with significantly larger premium costs as a result. In those situations, the best solution we could offer was to try and eliminate some headaches and frustrations and implement some corrective actions that potentially reduced some of the financial impact caused by their issues.

In either group, when the business leaders were overwhelmed they typically turned to the insurance marketplace, found some agents, attempted to get some quotes, and, if they were lucky, were able to obtain some minor relief for a year. One owner commented that he was “hoping to hit the lottery with huge premium savings” by shopping his insurance, but ultimately acknowledged he “wasted too much time, money and effort buying lottery tickets with nothing to show for it”. In other words, he came to the conclusion that he would have been far better off focusing on solving his problems instead of wishing they would be solved for him. Ultimately, it did not appear that any of these business leaders were able to solve their problems, and none of them were truly happy with the results after they received their quotes.

The one sure fact is that bidding and quoting does not result in lowering your workers’ compensation net cost, because….

- Bidding and quoting does not reduce your experience modifier, which is a large driver of your premium.

- Bidding and quoting will never enable you to reach your lowest experience modifier possible.

- Bidding and quoting has never validated whether or not your experience modifier is correct.

- Bidding and quoting has never prevented an employee injury.
- Bidding and quoting has never stopped an injured worker from visiting a medical provider who ends up putting them on medical leave.

- Bidding and quoting has never helped an injured worker return to work.

- Bidding and quoting has never stopped a workers’ compensation attorney from getting into your wallet by inflating both the injury costs *and* your premium.

- Bidding and quoting has never prevented an insurance company from overcharging you for your workers' compensation coverage.

- Bidding and quoting has never guaranteed your employees are classified correctly on your workers' compensation policy.

- Bidding and quoting has never stopped your premium audit from being incorrect and resulting in overcharges.

- Bidding and quoting has never taught your employees the process for reporting injuries immediately, letting them know there will be no consequences, and that they will not have to pay any money out of their pocket for their care.

- Bidding and quoting has never stopped a fraudulent or exaggerated injury from costing you more money.

- Bidding and quoting has never stopped you from hiring an accident waiting to happen.

- Bidding and quoting has never helped create a Zero Accident Culture throughout your organization.

- Bidding and quoting has never stopped you from hiring a problematic employee.

- Bidding and quoting has never improved your *Risk Profile* – what an underwriter perceives the risk of your company

> to be and how they determine how much they want to charge you in premiums to insure your risks. In fact, bidding and quoting, if not done correctly, can actually create a negative risk profile or a negative appeal to insurance companies, which dramatically increases what they would provide in terms of insurance premiums.

I received questions about this from those 1,187 individuals and whittled them down to ten root questions that fairly well encompassed their concerns. I then put these questions into two different groups: tactical or strategic.

<u>Tactical –</u>

These are processes employers should do, or need to accomplish more effectively. For example, I have heard employers say, "we have a Return-to-Work Program, and return all of our injured employees to work as quickly as possible." But after conducting an injured worker cost analysis, we would find that 60% to 70% of the workers' compensation injury (claim) costs were from wages (indemnity), while the industry average shows that 40% of claim costs are from wages.

I have also heard employers say, "We are a very safe company," or "We are OSHA compliant." However, when we conduct an injury analysis and compare OSHA records and DART rates, we discovered that employees were suffering injuries 1.5 to 2.5 times more frequently than the number of injuries from comparable employers. It is possible to see from a quick analysis that the number of injuries, compared to the number of employees they have (frequency), revealed that 10% or more of their employees were hurt in any given year, which is a staggering amount no matter how you look at it.

Keep in mind high frequency will lead to more scrutiny from underwriters, and some underwriters look at frequency more than the costs of claims as a bigger reason to quote or not quote a business.

<u>Strategic –</u>

The other area of questions is strategic. This is where the rubber meets the road. There are certain concepts you need to understand and focus on to truly achieve better results for your organization.

1

These are steps that can be taken like moving from traditional, guarantee cost insurance to alternative programs such as retrospectively rated, captives, high deductibles, or even partial or self-insurance items, which will ultimately reduce your insurance premiums because you are betting on yourself rather than the insurance company betting against you.

But keep in mind, rating programs cannot solve your problems. Many times insurance companies say, “We are going to put you on a retro (retrospectively rated program)” or, “We are going to put you on a high deductible program.” However, they are not necessarily looking to reduce your premium, but to increase your exposure so that if you do not have the proper controls in place, the rating program they provided for you will enable them to collect more of your money and reduce their exposure.

You also need to focus on understanding *Risk Profile Improvement*. As I mentioned before, insurance companies base your premium on what they perceive your risk to be. I created the following premium formula to help you visualize how an underwriter looks at your business in order to calculate your Risk Profile and to determine the premium they will charge to insure you as a risk:

Your claim costs over 5 years	+	Perception of additional potential risks and claims	–	Perception of how much you improved your risk and addressed claims over the past year(s)	=	**Your Risk Profile and Premium**

2

Ultimately, the goal is to improve your *Risk Profile* by addressing some or all of the risks causing you to have higher premiums.

Now that you understand that bidding and quoting will not solve your problems, let us focus on what *is* in your control when it comes to workers' compensation. You need to learn how to overcome what your data (loss runs) shows, improve your Risk Profile, and truly make yourself more attractive to the insurance companies. By doing so, you can create a feeding frenzy in the marketplace leading to significant reductions in your insurance costs.

Let us focus now on questions executives and professionals have expressed over the past two years. We will cover several areas: understanding the financing of injuries and policy program management; understanding the management of injuries; understanding how to prevent injuries; understanding true risk management or Risk Profile Improvement; understanding risk transfer; and understanding how to best engage with agents and insurance companies.

2

Why Do I Always Seem to Pay More Than I Expected for My Workers' Compensation Insurance?

This question is asked by almost every executive I meet. Why do they end up paying more for their workers' compensation policy than they anticipated? This is especially true when the subject of their year-end policy payroll audit is discussed.

The root of the question revolves around "tactical" issues, including your year-end policy payroll audit, the classifications that you should have on your policy, and the credits that you should or could have applied to your policy. It is necessary to provide some overview as to what you need to do to maintain better control of your premium.

First is the premium audit.

3

There is more unnecessary money wasted here by employers than you will ever realize. The Institute of Work Comp Professionals (IWCP) has compiled data from the Advisors they educate around the country and have found that almost 80% of all audits are incorrect. You read this correctly; it is 80%. So chances are your audit contains errors resulting in you being overcharged.

The Institute has recently reported that a certified Advisor found a $404,000 error paid by an employer because of mistakes made during the audit. The employer had changed the business from a manufacturing operation to that of a wholesaler by means of outsourcing all manufacturing. The insurance company or agent, not recognizing that this organization evolved into a different type of business that needed different classifications (and lower rates), dropped the ball, resulting in a $404,000 overcharge.

Fortunately, the Advisor identified this significant oversight, made the changes with the insurance company, and was able to recover the money. But not before the employer had lost two years' use of that capital that could have been utilized to improve their business during the recent economic recession.

In another instance, we corrected and recovered a $381,480 error for an executive who came to us complaining about his premium. In this case, the auditor misapplied rules relating to the Voluntary Workers' Compensation endorsement which the business had on their policy.

These two examples are extreme in the amounts returned to the business owners, but errors of hundreds, thousands and even tens of thousands, are quite common. Therefore, it is important that you make certain your premium audit is error free.

The issues with audits are related to how the audit is conducted. Typically, the auditor, as well as the employer, is motivated to get the audit process over as quickly as possible. Auditors are good, hardworking people who typically are working with less than all the information that they really need. Still, they would not be disappointed if the audit generated an additional premium for the insurance company. Therein lies the problem.

Keep in mind auditors are the eyes and ears of the insurance company, whether they are an independent auditor or insurance company employee. They are there to determine the final rating basis (payroll) for your policy, and to understand what business you are in and determine if you are properly classified.

Most people do not realize auditors typically report to the insurance company finance department, and not the underwriting department. After the auditor determines the final payroll audit, the payroll totals go through the accounting department, where they are calculated into the final audited premium and you get a bill for the difference.

This is why most businesses typically receive the final audit bill first, and then at some point later they receive the report showing what payroll totals were used in the audit. Which leads us to the question, “Why am I paying so much and why do these payrolls appear to be incorrect?”

Let us start by understanding how the payroll audit process works, or in other words, the map the auditor follows as a checklist to reduce the likelihood they miss something. The auditor asks for your quarterly unemployment tax filings, your payroll records, your ledger, and your financials so they can also verify your payrolls and see who you use as a subcontractor.

Once they have that information, they take your entire payroll amount and place it into the class code with the highest rate on your policy. This class code is commonly referred to as your “governing class code,” where everyone ends up who does not fully fit into any of your other available class codes with lower rates. Then they ask you, “Okay, who works in the office?”, “Who works in sales?”, as these class codes typically have much lower rates than your highest rate governing class code.

If you happen to forget anybody in that process, these employees end up going into your highest rated class code. You need to make certain that the person working with the auditor knows exactly who your employees are, where they work, and what they do. This way, your employees do not end up inadvertently misclassified. You do not want your clerical person being rated in a higher rate class code and you being overcharged.

> For example, I met a roofing company’s controller, who was in attendance at their industry association’s workers’ compensation workshop in which I was the keynote speaker. After providing an overview of the audit process, much like we just went through in this chapter, I noticed that she was looking rather uncomfortable, so I asked her, “What’s wrong?” She said that their premium audit was conducted the previous week and the auditor was in and out in about 10-15 minutes, and she was worried.
>
> She said the auditor requested their payroll reports, quarterly unemployment tax reports and ledger. He then asked if there was anything else she had prepared for him.

She did not know what exactly he was asking for, so she did not have anything additional prepared. At that point, he looked everything over and said that if he had any questions he would give her a call. He never called again.

She called me about three weeks later and sent me their auditor worksheets I suggested she request from her insurance company. I found that all the people in the office, including her, were classified in the roofing classification at a rate of $32.89 per $100 of payroll. The office people should have been in the clerical office classification at a rate of $0.39 per $100, a dramatic difference.

To make it worse, the auditor included a charge for all the subcontractors used, even though the contractor did have certificates of insurance for all of them. The issue is, if copies of certificates of insurance are not provided as proof that the subcontractors maintained insurance, the auditor is allowed to charge for "uninsured" subcontractors. So he did without even bothering to ask for them.

We filed an audit dispute with the insurance company so the employer did not immediately have to pay the audit invoice. We then fixed the errors by compiling all of the necessary job descriptions of the employees and certificates of insurance of the subcontractors. The result was the employer did not have to pay $43,842 in overcharges. It was a success, but a complete headache and nuisance to the employer.

4 Please understand several things about your audit. You need to know what should and should not be included as payroll. It varies by state, but typically there are anywhere from 15 to 18 types of payroll that should not be included in the audit. These can be found in your state's workers' compensation manual under Excluded Remuneration.

5 For example, one of the Excluded Remunerations is employee fringe benefits. If an employee has a company

car it is a taxable income charge which typically ends up on their W2 tax form, but it can be excluded from the payroll being used on the audit. Meal Money provided when employees work late should also be excluded. And in some states, expenses such as tool or uniform allowances can be excluded.

6 If you are a contractor that performs Davis-Bacon (prevailing wage) work, you may be able to deduct the fringe benefit portion of the wage payment to your employees. The rules vary by state as to the required documentation needed to be able to deduct the fringe benefit amount.

7 Also, there are minimum and maximum amounts that apply when calculating the chargeable wage for officers. Payroll for officers are capped, and any earnings over that capped amount are to be excluded in the audit. Reversely, if an officer does not take a payroll, or only a token amount, but works for the company, they are usually charged for a minimum amount of payroll as they are still covered for medical costs of an injury.

8 Another item that might be excluded is severance pay. If you pay an employee two weeks' severance upon termination, or you have a situation where you want to offer a severance package to make an employee "go away quietly," this severance pay should not be included in your audit. Keep in mind though, that unused vacation time, PTO (Paid Time Off) days, and sick days which have been accumulated and are still owed to the employee, are included in the audit.

9 If you do not provide proof that your subcontractor has workers' compensation insurance, the insurance companies will charge for them. The reason is that most courts will rule that an uninsured subcontractor or individual or sole proprietor may be under your control and direction at the time of injury. The subcontractor will, therefore, be viewed as an employee and would be eligible for workers' compensation coverage. Hence, the insurance companies charge for uninsured subcontractors. This also applies to sole proprietors and owner operators that do not provide proof of workers' compensation coverage. More on subcontractors to follow in a later chapter.

It is best to have all of your certificates of insurance showing workers' compensation coverage ready and available for the auditor. If you do not have proof of coverage from your subcontractors, you should understand the rules the auditor follows for charging for uninsured subcontractors:

- If you hire a subcontractor who is providing you with only labor, most states will allow you to reduce the amount paid by 10% for audit purposes. This allowance is for the overhead and profit of the subcontractor as the entire amount you paid the subcontractor was not used as wages for their employees.

- If the subcontractor you hire is providing material and labor, the rules allow you to reduce the amount you paid by 50%. This allowance is for the cost of material versus the amount paid as wages to the subcontractor's employees. Some insurance companies may require you to go through significant effort by requesting all of the detailed invoicing from your subcontractors so they can pull the cost of materials out. Therefore, you should check your state's workers' compensation manual on how to determine this amount.

- Lastly, if you are hiring a subcontractor who operates mobile equipment, such as a crane or a truck for delivery, the auditor should reduce the amount paid to the subcontractor by two-thirds, knowing that most of that cost paid to them is going to paying for, maintaining, and fueling that equipment or truck.

So much money is involved in your audit that it is very important for you to understand the audit rules. Think of it this way… would you go to an IRS audit without all of your bases covered and an expert at your side? Well, then why would you go to your workers' compensation audit without being similarly protected?

An IRS audit is rare, whereas a workers' compensation audit is annual. You need to be equally prepared. The audit rules are the rules, however, there are some gray areas you can push on if you have a defensible position. However, keep in mind that you absolutely do not want to commit fraud.

10 The problem is that agents, insurance companies, and the auditors are not educating their clients on how to properly prepare for an audit. Prior to the auditor's arrival, you should prepare the complete audit and not just provide the auditor with the information. You want to have the complete audit finalized, with all the data formatted and totaled, so you know what the outcome will be *before* the auditor arrives. Eliminate surprises.

You want to build yourself an overcharge-proof audit package. You want to utilize spreadsheets or templates and make sure you classify each employee into the correct classification. You want to provide, show, and justify the excluded payroll or excluded remuneration. You want to have a summary statement ready so that you know what your payroll totals should be. But most of all make certain that all of your totals balance to match your payroll records. Because if they do not match, the auditor will conduct the audit their way, and most likely you will not like the outcome.

Appendix A of this book includes a list of questions you may want to ask yourself to guage if you may have been overcharged on your audit. If you have, it still may not be too late to seek to recover any overcharges.

11 You can download a FREE COPY of our AuditCheck Program™ manual from www.PremiumReductionCenter.com/audit. Because of its size, it is very difficult to include within these pages the entire packet we provide to our clients to assist them in obtaining an error-free audit.

Second, we can dig into classifications.

12 There are over 600 classifications. Keep in mind bureau rules classify a business as a whole (although there are

exceptions) by what you do, what you sell, what you make, or how you make it. As we discussed previously, the “governing class code” assigned to your company is the default classification that best fits your business as the bureau will not provide individual classifications based on each and every function your employees conduct.

13 The exceptions to this are construction and staffing, where you can classify an employee based on what specific task they do, assuming you keep the appropriate payroll and time records for each task.

If you track, for example, time worked for an employee working as a carpenter for one hour, the next hour a plumber, the next hour a roofer, and the next hour a drywall installer, you can actually apply the wages for each hour to each classification. If you do not keep such records, the auditor then will classify that employee by the highest rated task performed and do so for the entire year. It is best that you make sure you are tracking wages earned by each classification by the hour, or at least by the job, so that you are not charged higher rates for the whole year.

Also, keep in mind that in some states the insurance company is allowed to change your classification at the time of the audit. The auditor is never allowed to change or add a classification if the new classification would have a higher rate associated with it. They could only do so if the insurance company endorsed the policy prior to the end of the policy year that they are going to be auditing. They can only change or add classifications to lower rates, not raise them.

Given the number of classifications, please understand what your business is and what classifications apply to you. There are many nuances you need to understand, so having an expert on your side is financially critical.

An example of this can be seen with an electrical contractor. Sounds like a simple class, however, there are classification codes based on inside work, outside work, and high voltage work. Then within inside work, there is a separate classification if a company installs Cat5 wire, coaxial or fiber-optic wire. This separate classification code for low voltage inside work is usually buried in the “fine print” of the Burglar Alarm Installation classification code.

You need to look at fine details of all the classifications available to you, but be warned. Before you request a change of classification, the first rule of thumb is always “**Do No Harm!**”

> For example, I was once contacted by an employer to help him get control of his workers’ compensation costs. One of the things he said was that an agent commented that his business should be classified as a “*precision* machine shop” instead of a “machine shop.” A precision machine shop is an eligible class code for a machine shop that has more than 50% of their work completed for customers is required to be within 0.001 of an inch tolerance or better. The classification code change would have an excellent result for the owner as the precision machine shop rate is almost 40% lower than machine shop rate.
>
> While touring the facility, I developed a clear understanding of how they made their parts, and felt they were a well-run operation. However, they were more than just a precision machine shop. After the tour concluded, I asked the owner if the agent went through his facility. With a puzzled look on his face, he said he could not remember taking the agent through the shop.
>
> When I asked him if the request for the classification inspection audit from the bureau (bureau inspection is required by that state to make any classification changes) was already made, he said the bureau was coming the next day. I suggested he cancel that inspection.
>
> The reason for my concern was that the business had an aluminum smelting area. Basically, the employees would take worn out parts, add liquid aluminum to them, and once cooled, they could then machine the parts to the customer’s tight specifications.

My fear was if the bureau came to conduct their classification audit they would classify this employer as a smelting operation, much like a foundry, because of their employees working with molten metal.

Unfortunately, the employer could not cancel the classification audit. I attended the audit and discovered my initial assessment was correct. The auditor was going to classify them as a smelting operation. The smelting classification code rate was more than double that of the machine shop rate he currently had, and even worse, the smelting rate was almost four times the rate of the precision machine shop rate he was hoping to receive. However, after the auditor stated he would be changing the classification to smelting, I was able to run my idea past the auditor of having the business owner put in a full wall that would provide a clearly defined physical working area for the smelting operation that separated it from the rest of the facility. In addition to the physical barrier, I was looking to suggest to the employer that he change his operations slightly so there was one dedicated employee who would perform all of the required aluminum pouring, rather than all employees.

By suggesting these changes, my goal was to have the auditor agree that only one employee (or possibly two employees if the bureau auditor would have asked who backs up the one individual when he is out) would be classified at the much higher smelting rate and hopefully receive the approval of precision machine shop for the rest of the operation and shop employees.

The auditor agreed with these changes and we scheduled a secondary follow-up meeting three weeks later after the wall was to be completed.

In the end, the owner was happy to be informed that the auditor agreed that since it was only one employee out of 34 who was exposed to the more hazardous work of aluminum pouring and the other employees were physically separated and protected from that operation, all shop employees would be classified as precision machine shop.

Make certain that you will receive a lower rate classification, and not a higher rate classification, when you request any change to your class codes.

There are many other classifications that are commonly misapplied. If you are a sheet metal contractor, there are classifications for inside shop sheet metal as well as some for outside sheet metal work, with two different rates.

For paving contractors, there are separate classifications for street and road construction, street and road sub-surface work, and for parking lots and driveways. Each of these three classifications has different rates.

Some states have a separate class code for employees whose primary job is to drive delivery vehicles, even if delivering your own goods or materials. Others states do not separate drivers out as a separate class code and therefore include drivers in the governing class code of the business.

You need to investigate exactly what you do and what classification should truly apply. Sometimes just changing where somebody physically works, or how they do something, can make a difference in their classification.

<u>Important Note:</u>
In addition to the classification, you also must be aware that if you are an employer working upon or near a navigable body of water, you may also need to carry Longshoremen and Harbor Workers (USL&H) coverage which is a different rate and classification than you normally would have.

This is also true if you have an employee working as a crew of a boat on a navigable body of water. Such employees are subject to the Jones Act, and special coverage would need to be purchased to provide the coverage needed to meet the Act's requirements.

For example, a concrete construction contractor was going to drill to obtain core samples in a levy wall along a river. These samples needed to be drilled on the water side of the wall, and therefore the contractor needed to rent a barge to work from. A barge company placed the barge where the work was to be performed and the contractor hired a boat and pilot to shuttle the employees from a wharf to the barge. In this example, the employees would be subject to the USL&H coverage, but not the Jones Act as they were not the crew of the boat. On the other hand, if the contractor had rented or owned the shuttle boat and piloted it themselves, or rented and placed the barge themselves, then there would be employees subject to the Jones Act and the contractor would be required to have Jones Act coverage. Either way, you should consult a professional before you conduct any work on or near a navigable body of water.

Third, are rating program credits.

There are a number of credits programs available to employers that offer premium reductions for participating in these programs. At last count, 36 states and the District of Columbia offer programs that can reduce your premiums. Not all states offer the same programs, and each state varies in how they are implemented. Therefore you should research what programs are available to your business in your state(s). I will highlight the most common ones:

Safety Programs

14

Typically you will need to form a committee comprising general employees and management. The committee will need to maintain proof of meetings with written agendas, minutes and attendance records. Members will need to be trained on safety specific to your operations, conduct inspections of your facilities, and conduct post-accident investigations and recommend corrective actions to prevent incidents from reoccurring. In many cases, external training and inspection (auditing) of the committee is required to receive the program credits.

Using the Risk Profile formula presented to you in the introduction, you can impact the *Perception of how much you improved your risk and addressed claims over the past year(s)* by managing a proactive and effective safety committee. You can use the committee and their notes to highlight and offer proof of the changes you have made to your organization to improve your Risk Profile.

Drug and Alcohol Free Workplace Programs

15

Unfortunately, just stating that you have a drug-free workplace or having your employees pledge to that affect is not enough. Typically you will need to meet the following requirements:

- Have and distribute a written drug-free workplace policy
- Conduct employee and supervisory training
- Establish a policy to include, and conduct testing for the following situations: pre-employment, random, post-accident, and reasonable suspicion testing;
- Establish protocols if an employee fails, and retesting if need be
- Establish an employee assistance program (EAP)

Please remember that state and federal laws must be followed in the administration of your drug-free workplace program, and laws do vary by state.

Managed Care Programs

16

You can receive a discount if you use an approved third-party managed care provider. The thought behind this program is that proper injury management in a cost containment (pre-negotiated reduced fees) by specifically trained medical personnel familiar with work related injuries will result in lower medical costs and hopefully faster recovery and therefore lower wage (indemnity) costs.

More on managing medical costs in Chapter 5.

Construction Classification Premium Adjustment Programs

17 Some contractors may pay their employees a much higher wage per hour in comparison to their peers, particularly those involved in Davis-Bacon, prevailing wage jobs. There are a number of states that offer a premium adjustment program to avoid penalizing these employers for their higher wages.

Credits are determined based on your average hourly payroll, including overtime and bonuses. The greater the average hourly wage you pay to your construction employees over the minimum hourly rate required by your state's program, the higher the credit you will receive. The amount can be as great as 40% in some states.

To qualify for the program, you must first be able to prove the average hourly wage for all your construction employees (even part-time workers) is greater than the required minimum amount. You will have to submit your payroll and hour records each year to receive the credit. Typically, you will be using your payroll and hours from your third quarter payroll data.

Deductible Programs

18 You can receive a credit for taking a deductible for each claim that occurs. Deductibles can vary starting at small amounts of $1,000 or $5,000, and go to large amounts of $50,000, $100,000, $250,000 or greater. Obviously, the higher the deductible, the larger the credit that you would receive.

More on deductible programs in Chapter 11.

Schedule Rating Programs

19 Most states allow insurance company underwriters to vary the premium that they can charge you for your operations through the use of Schedule Rating. These are subjective credits or debits (surcharges) used by an underwriter based on their perception of your *Risk Profile*. They are based upon your risk control management experience, safety program, hiring practices, etc. Typically, the maximum credit or surcharge an underwriter can apply is 25%. In order to assist underwriters, the Pennsylvania Compensation Rating Bureau even goes so far as to offer a suggested Risk Characteristic Chart in Pennsylvania's state workers' compensation manual. They identified the following risk characteristics for assignment of credits or debits subject to the maximum ranges of 25%:

Features of Workplace Maintenance or Operation	-10% to +10%
Risk Elements Not Addressed in Classification Plan	-10% to +10%
Availability of Medical Facilities in or Near Workplace	-5% to +5%
Safety Equipment/Devices Present in/Missing From Workplace	-5% to +5%
Extraordinary Safety Programs Applicable to Workplace	-5% to +5%
Qualifications of Employees	-10% to +10%
Accommodations/Cooperation with Carrier by Management	-5% to +5%
Considerations Related to Policy Expenses	-5% to +5%
Other Risk Characteristics Not Addressed Above (Specify)	-10% to +10

The Pennsylvania Manual goes on to state "Schedule rating adjustments for any given risk shall be based on information contained in the carrier's files and records when the credit or debit is determined, and such supporting information must be retained in the carrier's files and records for such risk throughout the period of time in which the policy is subject to audit under provisions of the policy."

In other words, the underwriter must have documentation as to why they are applying credits or surcharges to your policy. This is where your *Risk Profile* can have a significant impact on your premium, good or bad. As the credit or surcharge is subjective, it is important for you to provide documentation that the underwriter can clearly see and use to justify why and how much they are using as credits on your policy.

More on understanding and impacting your Risk Profile and rates in Chapter 10.

You are not alone in feeling frustrated at the amount of money you have wasted on your workers' compensation program, while wishing you could have put that money to better use elsewhere in your company to accomplish a specific goal, namely to help grow and run your company.

This book was written to help every business owner, business leader, or executive who has ever been frustrated by the amount of time, energy and money spent dealing with a workers' compensation program that has never achieved the results they were looking for. *Until now.*

ABOUT THE AUTHOR

"David Leng is very knowledgeable about Workers' Compensation and a pleasure to work with. His knowledge allowed our company to reduce its Workers' Compensation premiums by almost 55%." — Mike Spitznagel, JetNet Corporation

"David's knowledge of Workers' Compensation blew me away when he came in and uncovered $42,000 in overcharges. I would recommend David's book to any company looking to make a positive impact on their Workers' Compensation premiums." — Alex Yawney, Odyssey Communications

"Working with David we were able to enhance the safety culture in our organization and reduce our Workers' Compensation costs." — Gary Bowser, Jr., Bowser Automotive Group

"I first became acquainted with David's knowledge of Workers' Compensation when I attended a seminar in 2007. I took the opportunity to meet with David to discuss better ways we could handle not only our Work Comp claims, but how we needed to drastically overhaul our HR processes. The benefits have been multitude. I have great confidence in David Leng and his ability to help businesses turn around their HR practice in ways that ultimately can make a company more profitable." — Colleen Maize, Kastco, Inc.

"Throughout David's career he has always been on the forefront of thinking. His understanding of insurance and specifically workers compensation allows him to see things and establish practices that others eventually follow. David takes an entrepreneurial approach to problem solving resulting in both savings and added protection for his customers." — J. Kieran Jennings, Esq., Siegel Jennings

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