“Tale of 2 Employees”

From the SIGFA Series: It’s Not A Problem... Till It Is!

Once upon a time there were two employees...both lived in the same state...both worked in identical jobs...both for similar sized employers...both for companies who genuinely care for the welfare of their employees and seek to provide a safe workspace. But there is one big difference. One employer obtains the required workers’ compensation coverage through a voluntary market first-dollar workers’ compensation policy from an insurance carrier. The other employer is certified by the state to self-insure its workers’ compensation obligations.

But this difference should not matter to the employees...and in many states it does not. Why? Because in many states both employees are equally protected. The states have created financial safety nets that guarantee awarded, statutory benefits if the carrier or employer defaults on their obligations to pay the injured employee.

For almost 50 years every state has had an insurance guarantee association, funded by the voluntary market carriers, and whose purpose is to pay claims when a carrier defaults on its obligations. These guaranty associations will pay 100% of related expenses for covered workers’ compensation claims with no maximum limit.

Yet there is a problem...but let’s be clear about what the problem is...and what it is not. The problem is not that employers are permitted to self-insure their workers’ compensation obligations. Self-Insurance is a viable and responsible choice offered to employers by the vast majority of states. The issue is whether the state requires equal protection for all employees.

While many states have a similar self-insurance guaranty fund, an association, or other mechanism that is automatically activated to provide similar/identical protection to the injured employees of an employer who has been certified to self-insure their workers’ compensation obligations, not all states have required this safety net. And therein lies the problem.

The state has, through its enacted legislation, provided a safety net and guarantee of awarded benefits to one employee...while failing to provide equal protection to the other employee. And it should be noted that the creation of both guarantee funds is revenue neutral. All costs associated with these guaranty funds are borne by the “members” of the fund...either the carriers operating in the state or the employers certified to self-insure their obligations.

So... what happens when there is a default. In the case of the employee whose employer secured workers’ compensation coverage in the voluntary market, the benefits are guaranteed and paid by the voluntary market guaranty association. The process is rather seamless to the injured worker. Indemnity payments and medical services continue as before.

Unfortunately, that is not the case for the employee whose employer was permitted to self-insure its workers' compensation obligations. In this case there is no guarantee that workers' compensation claims will be 100% covered with no maximum limit. While it is true that the state will require the self-insured employer to post security in an amount that is intended to pay 100% of covered claims, the reality is that all too often the security posted is inadequate to cover all expenses. Rising medical and indemnity costs, along with less than accurate estimates of an employer's ultimate liability that are used to determine the amount of security to be posted, all contribute to a situation where injured workers of a self-insured employer face the prospect of initiating individual legal actions against their bankrupt employer just to have their awarded claims paid.

For one employee there is certainty and a guarantee of awarded claims paid should they suffer a workplace injury. For the other employee, there is no guarantee...no safety net...no assurance that their claims will be paid in a timely and complete manner.

While every state is unique...there is no reason why one employee should be protected...and another not enjoy an equal level of protection. It is not a matter of "if" a default will occur...it is only a matter of time. Preparing for situations that are deemed likely and probable to occur and have known adverse implications when they do, is a hallmark of leadership.

The establishment of self-insurance guaranty funds, in the absence of other mechanisms that will respond to employer defaults and bankruptcies, is an essential and critical component of a complete system of workers' compensation. It is the state's responsibility to make provisions to secure the payment of workers' compensation benefits provided by their governing legislation for all workers and their dependents, guaranteeing the continuation of workers' compensation benefits otherwise delayed or terminated due to the default and/or bankruptcy of a self-insured employer.

Note 1: Voluntary Market Property and Casualty Guaranty Associations are statutorily created and composed of all insurers licensed to sell property and casualty insurance in their respective state. Each state has one. In the event that a member insurer is found to be insolvent and is ordered to be liquidated by a court, the enabling legislation calls for the guaranty association to provide benefits on state covered claims up to any limits that may be spelled out in the legislation.

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