



## Controlling Workers' Compensation Costs During Facility Closures and Layoffs



**Corporate downsizing and facility closures continue to be a growing occurrence in the current competitive global economy. Facility closures and layoffs create complex human resource and workers' compensation issues that must be managed to avoid sky rocketing costs.**

The Bureau of Labor Statistics (BLS) reported that in December 2008, employers implemented 2,275 mass layoff actions<sup>1</sup>. With each action involving at least 50 persons from a single employer, the number of workers involved totaled 226,117.

For all of 2008, eleven states experienced record highs for mass layoffs<sup>2</sup>. Among the twenty-one major industry sectors, the BLS found that six industries experienced record highs for mass layoff events for all of 2008—construction; transportation and warehousing; finance and insurance; real estate and rental/leasing; management of companies and enterprises; and accommodation and food services.

With the national unemployment rate hitting 7.6 percent in January 2009 and employers cutting another 598,000 jobs<sup>3</sup>, it is crucial that employers stop and re-evaluate their workers' compensation claims program. If not carefully planned in advance, a reduction in workforce can result in considerable liability and increased expenses.

### Will History Repeat Itself?

In 1996, a survey of approximately 300 large and mid-sized employers that underwent layoffs found that the reduction in staff may have reduced the payroll but the workers' compensation costs increased<sup>4</sup>. The study found that occupational and non-occupational disability claims increased, especially stress-related claims. Not only did the claims rise among employees that lost their jobs, but the number increased among the remaining employees.

<sup>1</sup> Seasonally adjusted as measured by new filings for unemployment insurance benefits

<sup>2</sup> Data available back to 1996

<sup>3</sup> U.S. Department of Labor

<sup>4</sup> Survey done by Cigna Group in association with the American Management Association

## Case Study

In 1993, a clothing manufacturer closed a warehouse and took no action to address residual costs of closing the facility. As a result, 500 of the 550 employees filed workers' compensation claims and received an average award of \$7,500—which translates to \$3,750,000 in claim costs.

Later, the same company decided to close a production facility. This time, they developed a strategic plan to minimize the residual plant closing costs. Only one claim was filed during this plant closing process, and payment of this claim was ultimately denied. The company invested \$1,500 per employee to implement the closing strategies to avoid the \$7,500 in claim costs per employee.

What was the result of strategic planning? \$2.9 million savings!

Plant 1 \$3,750,000

Plant 2 \$ 825,000

The Workers' Compensation Research Institute (WCRI) found similar results in three studies. Starting back in 1990, a WCRI study examined the effects of recessions on medical costs and found that they grow fast during recessions<sup>5</sup>. They concluded that the increase is likely due to a change in the mix of claims and, particularly, the increase in utilization of medical benefits. Then, in 1992, WCRI studied the workers' compensation costs in six states and found that recessions also have an impact on claims severity<sup>6</sup>. They found a longer duration of claims, more frequent and larger lump sum settlements, and an increased use of the workers' compensation system in general. Next, in 1994, WCRI looked at cost drivers in New Jersey and found that the recession had the following impact on workers' compensation claims:

- Increased average duration of temporary disability claims;
- Increased medical costs;
- Higher permanent partial disability ratings; and
- Increased claims for occupational disease or cumulative injury<sup>7</sup>.

The impact of staff reductions will vary from company to company, and can be influenced by a number of factors including:

- Downsizing announcement tactics;
- Employee loyalty (of laid-off and remaining employees);
- Union relations;
- Severance benefits (note: limiting severance to only workers not on workers' compensation is discriminatory);
- Skill level of remaining staff and their ability to learn new skills;
- Economic environment; and/or
- Unemployment rates.

Since the current economic environment is unstable and unemployment rates are high, employers should take action now.

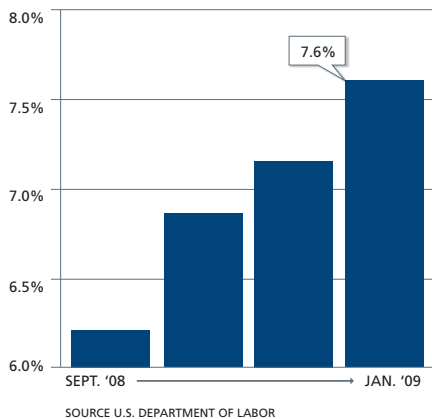
<sup>5</sup> How Choice of Provider and Recessions Affect Medical Costs in Workers Compensation. Workers Compensation Research Institute. June 1990

<sup>6</sup> Cost Drivers in Six States. Workers Compensation Research Institute. December 1992

<sup>7</sup> Cost Drivers in New Jersey. Workers Compensation Research Institute. September 1994

## Soaring Unemployment

Unemployment has risen sharply since the financial crisis hit in September.



## Consider Statutory Issues

In 1988, Congress passed the Worker Adjustment and Retraining Notification (WARN) Act to provide workers with sufficient time to prepare for the transition between the jobs they currently hold and finding new jobs. The WARN Act requires employers to provide written notice at least 60 calendar days in advance of plant closings and mass layoffs. Under certain circumstances, the law allows an employer to provide less than the required 60 day notice.

A WARN notice is required when a business with 100 or more full-time employees (not counting workers who have less than six months on the job and/or who work less than 20 hours per week) is laying off at least 50 people at a single site of employment, or employs 100 or more workers who work at least a combined 4,000 hours per week, and is a private-for-profit business, private non-profit organization, or quasi-public entity separately organized from regular government.

Each state may have a state WARN act that is less or more expansive than the federal act. Currently, the New York State WARN Act is considered the strictest in the country since it applies to more employers, requires additional advanced notice, and is more easily invoked than the federal WARN.

Employers should also make sure they are familiar with the provisions required by their state, and other federal acts such as the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA).

For more information on the federal acts mentioned, go here:

- ADEA: <http://www.eeoc.gov/types/age.html>
- OWBPA: <http://www.eeoc.gov/abouteeoc/35th/thelaw/owbpa.html>
- WARN: <http://www.dol.gov/dol/compliance/comp-warn.htm>

Other legal issues to consider include:

- Employee contract obligations;
- Collective bargaining obligations;
- Employee handbook/company policy obligations;
- Employee benefit and leave rights;
- Employee severance and separation benefits; and/or
- Protection of company property, trade secrets, confidential information.

## Handling a Reduction in Force

Source, and for more information, visit: [www.jacksonlewis.com/legalupdates/article.com](http://www.jacksonlewis.com/legalupdates/article.com)

## Planning for Layoffs

- Consider the feasibility of voluntary attrition programs.
- Plan for continuous operations and sustained morale.
- Ensure compliance with obligations under state laws.
- Determine impact on pension and benefit plans.
- Access eligibility criteria and plan requirements.
- Consider state provisions, federal acts (WARN), and contract obligations.

## Selecting Employees for Layoffs

- Prioritize selection factors.
- Strive for objectivity.
- Review for possible disparate impact.
- Craft releases to comply with statutory requirements.

## What to Do Now

During a gradual closure of one electric plant location in Southern California that employed 250 employees, the company received 70 workers' compensation claim filings from just 125 workers who were laid off during the first six months alone<sup>8</sup>. These claims tend to remain open for the long-term, since the employees have no incentive to return to work. The cost of these claims can be devastating—adding to the already costly facility closing process and existing balance sheet issues.

This type of workers' compensation claim scenario is avoidable through careful planning and teamwork. Strategic planning by a multi-disciplined management team can reduce the number of claims generated and enable the company to manage the workers' compensation and litigation costs during the facility closing process.

Some of the key issues that must be addressed by management include:

- Job placement assistance and counseling;
- Potential workplace violence scenarios;
- Claim management contacts;
- Ongoing claim investigation and management;
- Proactive disability case management;
- Litigation management;
- Documentation of plant processes, conditions, and exposures; and
- Preservation of critical records and documentation.

## WARN Act

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For more information, go here: <http://www.dol.gov/dol/compliance/comp-warn.htm>.

## Challenges of Closing a Facility/Reduction In Force

During a facility closing, an employer faces the likelihood that their workers' compensation claims will increase and become more challenging. Defending a claim becomes more difficult, too.

When a facility is being closed, workers may be psychologically impaired, under-valuing possible future options, and over-valuing their difficulties. In that environment, the worker sees the company as both offender and a deep pocket. Workers' compensation claims are an increasingly popular way to punish the offender and/or reach the deep pocket. Attorneys may aggressively encourage and assist employees to file and pursue claims.

When claims are filed at or after a facility closing, defending a claim is more challenging because evidence (physical and testimony) is less available and return to work is not a strategy option. Workers' compensation administrative judges may also exhibit a bias to helping the worker (regardless of legal responsibility) or serving their constituency (instead of the jurisdiction's Workers' Compensation statute).

Developed by Marsh's Claim Consulting Practice, CIW is a solution tool designed to reduce the number of open claims and to reduce the associated outstanding liability associated with these claims. An aggressive claim closure strategy, CIW is suited for companies with operations in the United States that have a growing number of open claims, increasing claims costs, and/or a deteriorating portfolio of claims.

Other means of protection from claims following a downsizing include:

- Choose an aggressive WC carrier and keep them informed.
- Utilize accident reporting procedures.
- Obtain signed verification forms.
- Conduct wellness exams and videotaping.
- Keep accurate and detailed records.
- Implement employee assistance programs.
- Examine security measures.
- Conduct thorough accident investigations.
- Learn potential fraud indicators.

## Frequency of Claims

Increased claim filing by the laid-off employees may be influenced by the following:

- WC benefits are nontaxable and can partially substitute loss of income.
- WC benefits are usually larger and paid over a longer period of time than unemployment benefits.
- Laying off employees who have open WC claims is difficult.
- Closures are typically accompanied by deterioration of relations between management and employees.
- When workers fear they may lose their jobs, they may focus less on compliance with safety policies.

## Severity of Claims

Severity of claims increases during facility closures, and may be caused by the following:

- Increased duration;
- Increased medical utilization;
- Increased filings for injuries; and
- Larger and more frequent lump sum settlements.

## Develop a Plan

A claims consultant should become involved immediately. With proper notification, claim professionals can mobilize a quick and efficient system of operations. A task force of claim specialists needs to meet with the employer's risk management team and outline the steps and procedures to create a successful program.

Develop a plan, focusing on two critical areas. The first step is to develop and implement ways to help reduce the number of open claims, and find alternatives for assisting the displaced employees. There are a wide variety of ways to help employees find new jobs from outplacement counseling services to in-house seminars on job hunting. The announcement of a facility closing or massive layoffs usually results in some level of alienation of the work force, but when employees are treated with dignity, many problems can be eliminated.

The second area of activity deals with preparation and protection. In order to properly defend the company against an onslaught of workers' compensation claims, a claims consultant must immediately begin to acquire all necessary details and information pertaining to the employees affected by the closing.

Marsh Risk Consulting offers a comprehensive approach to help navigate the risks associated with restructuring or closing operations. Consultants begin by meeting with senior executives, plant personnel, brokerage team members, TPAs, and loss control specialists. With input from these key stakeholders, Marsh loss control consultants will then develop an action plan and support implementation of initiatives to contain claim costs. Potential tactics include:

- Documenting the work environment, including plant processes, conditions, and exposures, and possibly videotaping different workstations.
- Assuring that appropriate medical surveillance is current and documented, including hearing tests and physical capabilities assessments.
- Completion of a comprehensive industrial hygiene study.
- Verifying the inventory of all chemicals used in the plant.
- Gathering OSHA inspection and incident reports.
- Updating job descriptions, documenting task requirements.
- Arranging for record storage, ensuring that work-related medical records as well as payroll and personnel files are easily accessible.

## Claim Inventory Workout

Claim Inventory Workout (CIW) is the latest tool to help clients address their legacy claim issues. Developed by Marsh's Claim Consulting Practice, CIW is a solution tool designed to reduce the number of open claims and to reduce the associated outstanding liability associated with these claims.

CIW is suited for companies with operations in the United States that have a growing number of open claims, increasing claims costs, and/or a deteriorating portfolio of claims. CIW is also a strong consideration for companies at either end of a potential merger and acquisition, as a method for reducing outstanding liabilities.

## Marsh Can Help

Marsh can help you develop strategic plans for managing the facility closing process and minimizing the related workers' compensation costs. Our consultants deliver the range of expertise necessary to assist with the diverse and complex issues that must be managed—from documenting exposures to developing the critical medical and claim management systems.

Marsh consultants offer experience and proven solutions to the challenges that arise during the plant closing process. Some of the services that may help you include:

- Facilitating meetings management team to plan cost management strategies;
- Developing claim management strategies to close claims and identify problems;
- Developing job descriptions and documenting working conditions;
- Performing occupational health risk assessments;
- Identifying critical workplace and record retention policies; and
- Devising job placement assistance plans.

Marsh provides the assistance needed to help you successfully manage the costs of closing a facility. For more information on strategies to minimize the costs related to plant, store or office closings or large lay-offs, visit [www.marsh.com](http://www.marsh.com) or contact your local Marsh representative.

## Marsh Resources

To learn more about workers' compensation and other Marsh capabilities, please visit <http://global.marsh.com/workerscompensation/index.php>

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