

Prequalification: A Pillar to Project Success



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Subcontractor Prequalification: Not A "Nice to Have" – A MUST-HAVE



- Crucial to ensuring project success and minimizing risks and develop longterm partnerships
- Prevention delays, disruptions, rework, accidents, cost overruns
- Capacity to deliver within deadlines; equipment; manpower
- Reduce the risk of hiring the unqualified
- Only those that meet the prequalification criteria should be invited to bid.

Subcontractor Prequalification: IMPACT OF MISTAKES



Data shows that in over **35%** of potential defaults, those issues were identified during the prequalification process....*but they were not addressed*

Potential default issues must be addressed, or subcontractor is disqualified from bidding.

- Failing to Recognize These Errors
 - Damaged Reputation
 - Less opportunities to secure new contracts

• Financial instability could translate into project delays

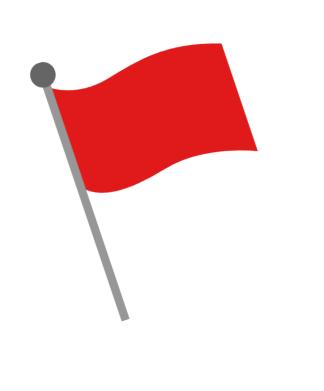
Subcontractor Prequalification: SCENARIO



- Wood framing contractor showed financial weakness during prequalification.
- Subcontractor's labor was brokered instead of internal.
- Sub was 20% lower on their bid.
- The low bid was enticing, so sub was hired with no risk mitigation plan.
- Lack of supervision and changing workforce resulted in poor quality.
- Sub could not bear the costs of the required rework and abandon the job.
- The final cost to complete = 240% of the original subcontract value.



Subcontractor Prequalification: SCENARIO



WHERE WERE THE RED FLAGS?

1. Insufficient financial strength – cash on hand

2. Brokered labor

3. A bid spread in an excess of 10%

Subcontractor Prequalification: MAIN AREAS TO EXAMINE





- Safety and Performance Culture
- Capacity
- Quality
- Reputation and Performance History

KEY CONSIDERATIONS for Subcontractor Prequalification

- **EXPERIENCE**
 - Company and Management
 - PAST PROJECTS
 - Size

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- Project owners
- Completion Dates
- CURRENT BACKLOG
- **PROPER LICENSING**



- STAFFING CAPABILITIES
 - Turnover
 - Labor broker used
 - Assemble crews for each job

• CAPACITY

- Skills and Experience
- Workforce
- Equipment

VERIFICATION OF INSURANCE

- Limits and Exclusions
- Sample Certificate of Insurance

KEY CONSIDERATIONS for Subcontractor Prequalification

ARE THEIR SUBS PREQUALIFYING?

- List of subs they will be using
- SAFETY
 - OSHA 300 logs
 - Citations issued
 - Experience Modification Rate (3 year)
 - Safety training
 - Avetta, ISNetworld, etc.
- **REFERENCES**
 - 3-4 contracts to verify
 - Quality, dependability and credit
 - Suppliers they work with

• FINANCIAL HISTORY

- Dun & Bradstreet
- Revenues
- Working capital
- Total and current assets
- Net equity
- Current liabilities
- Average monthly billing
- History of bankruptcy or project default
- Active and past litigation
- Surety information





Subcontractor Prequalification: CONTRACTOR'S VIEW

• Reputation

- Financial Responsibilities
- OSHA Responsibilities
- Third-Party Qualifiers
- In-House Qualifiers





Subcontractor Prequalification: REPUTATION

• Subs often linked to your program

- News
- Social Media
- Owners' views
- GC views



Subcontractor Prequalification: FINANCIAL AND OSHA RESPONSIBILITIES





• FINANCIAL RESPONSIBILITIES

- Hold Harmless to GC and Owners
 - Exclusive Remedy of Subcontractors
 - General Liability
 - North Carolina Incident

OSHA RESPONSIBILITIES

- Multi Employer Worksite
- Cat/Fat Supervising Company

Subcontractor Prequalification: THIRD PARTY AND IN-HOUSE QUALIFIERS



THIRD PARTY QUALIFIERS

ISNet & Avetta
 Do they ensure a company's ability to
 provide a safe workplace?

• IN-HOUSE QUALIFIERS

- What are we looking for?
 - EMR, TRIR, LWD, Training, Safety Manuals and ToolBox Talks
 - Do the above ensure a good safety and health program?

Subcontractor Prequalification: DO THESE WORK?



- EMR Above 1 OUT
 - Guaranteed Cost Program vs Deductible
- TRIR and LWDR
 - Who governs what is properly recorded?
- Safety Manual
 - Boiler Plate (enter company name here)
- Training
 - This one can be confirmed by records

Subcontractor Prequalification: WHAT WORKS FOR YOUR COMPANY?

- HISTORICAL RELATIONSHIPS
- SAFETY PROGRAM REVIEW WITH REPRESENTATIVE
- UPDATED TRAINING RECORDS
- IN-HOUSE TRAINING
 - Excavators
- PRECONSTRUCTION INVOLVEMENT
- ONE-ON-ONE CONTACT





THANK YOU! QUESTIONS?



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Negligent Entrustment, 3rd Party Liability, and Nuclear Verdicts

MCAA Health and Safety Conference- 2025 Mark Lederer MS, CSP, ARM, CRIS, ABCP, CNA Insurance Risk Control



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Objectives



Understand

Understand concepts of negligent entrustment, 3rd party transportation liability, nuclear verdicts.

Recognize

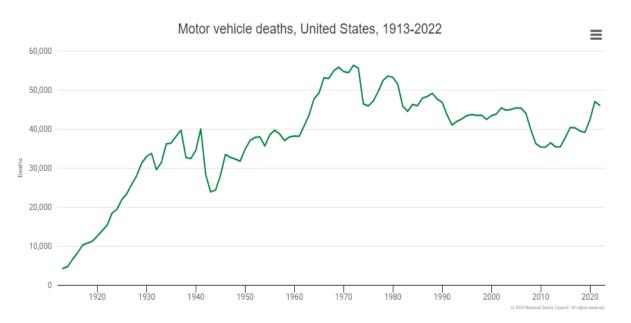
Recognize potential exposures and their implications. Understand how your organization may be found negligent or liable.

Determine

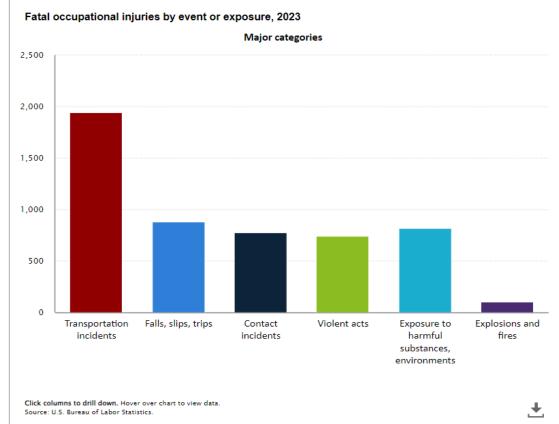
Determine ways to limit and mitigate exposures through established fleet management controls and best practices.



Introduction



Compared to 2013, 2022 motor-vehicle deaths increased by 30% while the mileage death rate increased by 13% and the vehicle registration death rate increased 9%.





Introduction

"Negligent entrustment is a concept in tort law that arises where one party (the entrustor) is found responsible for negligently providing another party (the entrustee) with a dangerous instrumentality, and the entrusted party caused injury to a third party with that instrumentality. The issue typically arises in the context of a person allowing another to drive their automobile." --uslegal.com





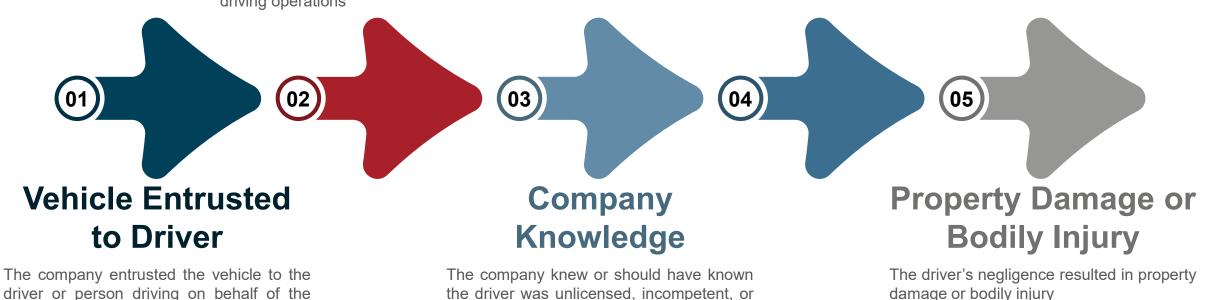
Elements to trigger a negligent entrustment scenario

Driver Incompetence

The driver was unlicensed, incompetent, negligent, or reckless during the scope of driving operations

Driver Negligence

The driver was negligent in the operation of the vehicle.



reckless (negligent retention).

damage or bodily injury



company

Trending Terms

Social Inflation

Nuclear Verdict

Reptile Theory

Rising litigation costs to defend a claim. The higher litigation and claim management costs impace policyholder premiums.

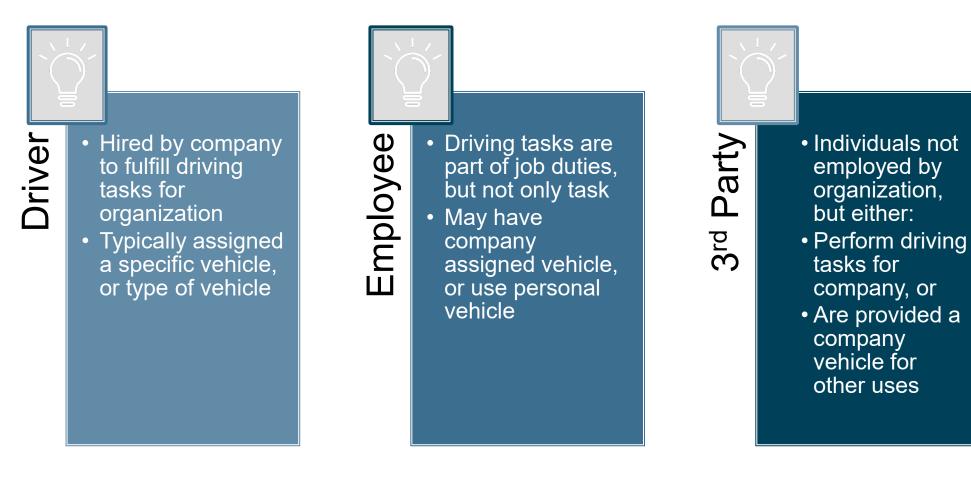


An exceptionally high jury award that surpasses what should be a reasonable or rational amount

Trial strategy that uses fear and anger to solicit a higher award amount to the plaintiff



Where does this exposure exist?







Driver Incompetence

(01) (02) 03 (04)

Not possessing a valid driver's license, driving with a suspended license, not possessing proper type of license/ endorsement (CDL, endorsements)

Driver lacks proper experience/ skills for type of vehicle, operation, etc.

A motor vehicle record (MVR) with multiple at-fault violations

An operator who is impaired while driving



Negligent Entrustment – Example 1

Example

The Accident

An employee driving a company vehicle during the scope of their job tasks turned left into oncoming traffic and collided with an oncoming motorist.

The other driver and their passenger sustained significant injuries as a result of the collision.

The at-fault driver failed to yield and was using navigation features on their phone near the time of collision.

The Issue

The Driver:

Had a DUI resulting in license suspension.

The Employer:

Only checked MVR at time of hire, 5 years prior.

Had a policy stating they conduct annual MVR's and outline qualification criteria.

Did not enforce their cell phone policy.



Was the Company Negligent?

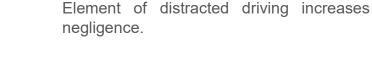


Vehicle Entrusted to the Driver

The driver was in scope of employment duties.

Driver Incompetence

Driver had past driving violations, including DUI and a suspended license.



Property Damage or Bodily Injury

Driver Negligence

Driver caused an at-fault accident.

Injured parties and vehicle damage to third party.

Company Knowledge

Company should have known of suspended license.



Real Case Examples \$\$\$

- Frac Tech Services- \$101million
- RAI Corporation- \$71million
- Coca-Cola- \$21million
- Dominos Pizza- \$32million
- JHOC- \$34million





Driver Qualification

Motor Vehicle Record Checks License & Certification Review Substance Abuse Program

Vehicle Assignment

Personal Use Policy Hired and Non-Owned Exposure Appropriate Vehicle for Appropriate Driver

Distracted Driving

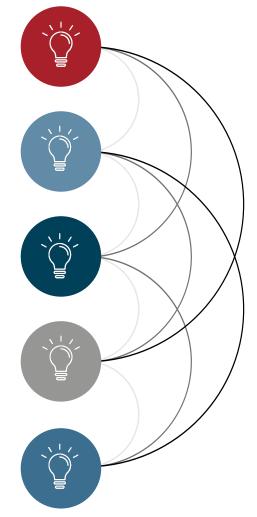
Cell Phone Policy Telematics Integration Workplace Well-Being

Driver Training

Road Tests (specific vehicles) Pre-Use & Ongoing Industry and Company Trends

Accountability

Enforced and Consistent Outlined and Communicated Driver Acknowledgement



Fleet Safety Program

ANSI Z.15 Standard

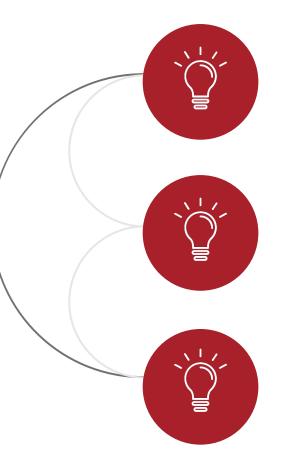
Regulatory Compliance



5 Key Elements

Driver Qualification

Putting the right individuals at the wheel is the single most important action your company can take to ensure long-term success of your Fleet Safety Program



Motor Vehicle Record Checks

Include driver criteria in fleet safety program

Best practice is 5-year lookback when reviewing MVRs (check by state; some only allow 3-year)

License & Certification Review

Minimum standard of qualification

Regulatory requirements for commercial drivers license; review driver file and violation history through FMCSA

Substance Abuse Program

Ensure drivers comply with company and regulatory substance abuse program elements

Offer training and assistance

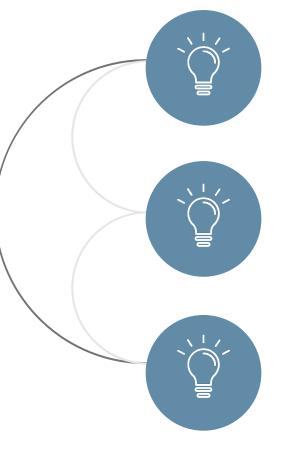


5 Key Elements

Vehicle Assignment

Aids in ensuring the proper driver has been assigned the proper vehicle for their specific operational needs.

Assigning vehicles to a specific driver provides an additional layer of driver accountability.



Personal Use Policy

Company policy should outline position on drivers using a company owned vehicle for personal use.

If allowed, strict guidance and adherence to policy guidelines

Hired and Non-Owned

Guidance required for H/NO drivers to include confirmation that drivers have personal insurance & appropriate limits.

Must be included in driver selection, training, & accountability.

Appropriate Vehicle – Appropriate Driver

Ensure drivers are properly qualified to drive the assigned vehicle.

Outline accountabilities and responsibilities for each driver.





5 Key Elements

Distracted Driving

In 2022, over 3,300 were killed in motor vehicle crashes involving distracted drivers.⁽¹⁾

Disctractions in Different Forms⁽²⁾:

- Visual
- Auditory
- Manual
- Cognitive







Cell Phone Policy

Develop and implement a policy to restrict cell phone use

Manage expectations of cell phone use and operational $\ensuremath{\mathsf{logistics}^{(3)}}$

Telematics Integration

Technology solutions can alert drivers of distracted driving activities

Continuous monitoring and real-time feedback drive results

Workplace Well-Being

Consider how overall work and home environment may impact a driver's cognitive distractions

Provide support and assistance to all employees for wellness efforts

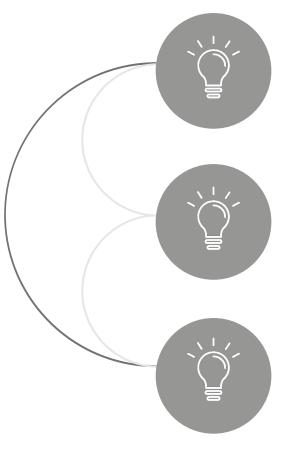




5 Key Elements

Driver Training

Training should encompany aspects such as situational awareness and accident prevention as well as what to do in the event of an accident.



Road Tests

Contirm the drivers are qualified to use the vehicle in question. Conducting road tests.

Pre-Use & Ongoing

Training can be in-person, online, or one-on-one.

Training should be ongoing and adjusted to the needs of each individual driver.

Industry & Company Trends

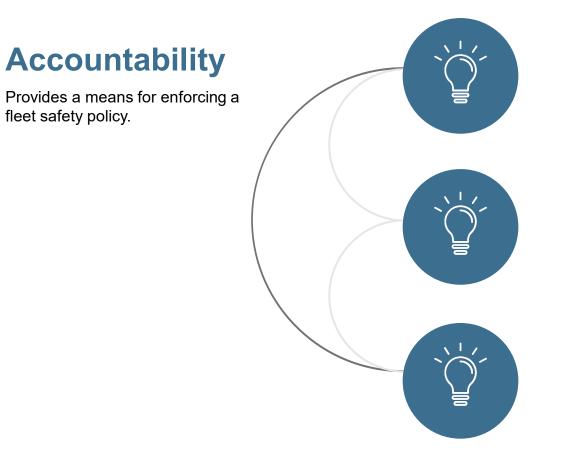
Educate employees on both industry and company trends.

Bring awareness to hazards and risks all drivers should consider.





5 Key Elements



Enforced & Consistent

Standards must be applicable to all drivers.

Variations in enforceability is prohibited. Exceptions lead to incompliance.

Outlined & Communicated

Provide clear and consise requirements for driver accountability.

Ensure driver policies are properly communicated, and received.

Driver Acknowledgement

Formal review and signed acknowledgement of expecations.





3rd Party Transportation Liability

Introduction

- 3rd party transportation liability is potentially assumed by a company when that organization contracts/ hires another company/ motor carrier to perform transportation of goods, materials, equipment, etc.
- Current litigation landscape can hold companies responsible for negligent hiring of a carrier
- Case examples:





3rd Party Transportation Liability

Think about your organization's potential risk?

- Transportation of equipment, materials, prefabricated components, etc.?
- Remember that you as a "hiring entity" may be held liable for your "responsibility" in the shipping process
- Potential impact on commercial auto, general liability and umbrella





3rd Party Transportation Liability

Suggest best practices...

- Contracts, regular legal review
- Established minimum liability limits
- Prohibition of double brokering
- Hold harmless language
- Additional named insured
- Systems to track contracts and insurance
- Documented procedures
- Vetted carriers
- Review registration, operating authority, SMS/ SAFESTAT information

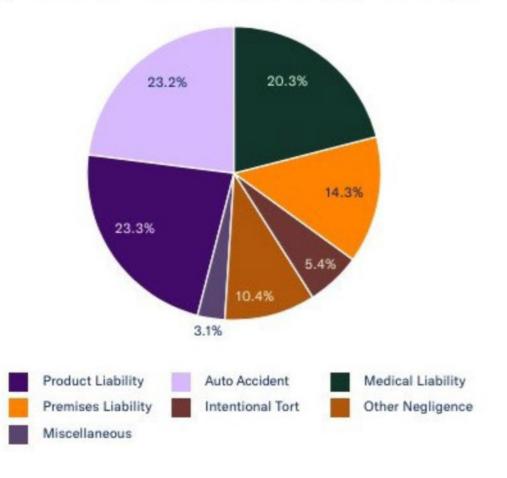




Nuclear Verdicts

- Defined as verdicts of \$10million or more
- Nuclear and thermonuclear (\$100m+) verdicts reached 15year high in 2023
- Rising trend in auto space
- Alarming trends of artificially inflated non-economic damages (reptile theory, social inflation)
- 3rd party litigation funding

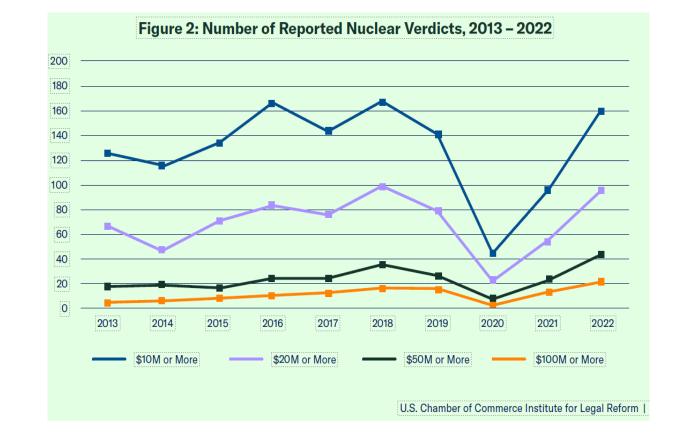
Figure 1: Nuclear Verdicts by Case Type, 2013 - 2022





Nuclear Verdicts

- Median verdict was \$21 million
- Average verdict was \$89 million
- 1/2 were valued at \$10-\$20million
- 1/3 were valued at \$20-\$50million
- 19% exceeded \$50million
- Several exceeded \$100million (mega or thermonuclear)



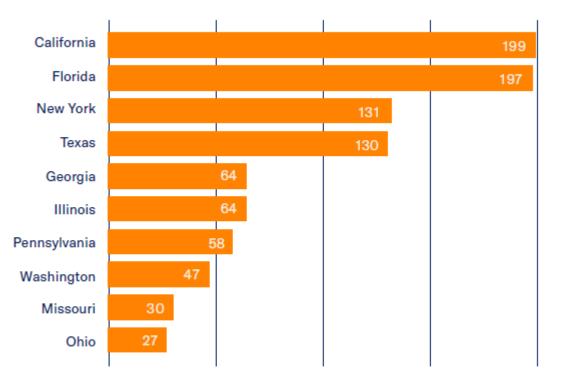




Nuclear Verdicts- Where?

- Four states— California, Florida, New York, and Texas account for half of the nation's nuclear verdicts
- When comparing frequency of nuclear verdicts to state population, Florida is by far the worst concerning nuclear verdicts
- Georgia and Washington also host more nuclear verdicts than expected when factoring in population

Figure 5: Top 10 States by Cumulative Nuclear Verdicts, 2013 – 2022





Recap

Takeaways to bring back and reduce/ mitigate exposures at your company?

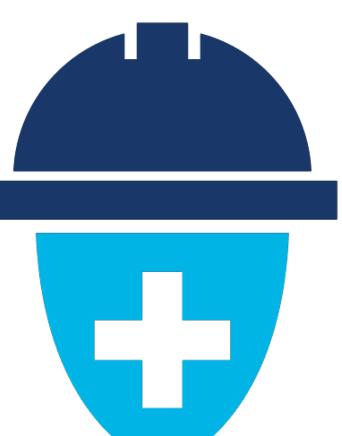
- Negligent entrustment
- Third party transportation liability
- Nuclear verdicts



Questions?



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Economics of an injury

Kirk Baisch

Safety Director/ Owner UMC

Introduction

UMC Safety Director

- One of 8 owners
- 24 years in construction safety
- 18 years in Mechanical Industry
- 6-year director of safety Kiewit





Economics of an Injury

- Discuss Perspectives to motivate all levels of management to focus on proactive management
- To understand how important it is to "over manage" after an incident.
- To understanding of project profitability, after the fact,
- what it takes to recover.



Focus on Proactive Management

- Setting the tone
- Building the trust
- Creating the team culture
- Mental health







PRIDE-BASED SAFETY CULTURE

REMEMBER: NO TASK IS MORE IMPORTANT THAN YOUR SAFETY.







- Write the final chapter first
- Align the vision
- Tell the story
 - Each member of your team is a main character not and extra
 - How do they fit, how do you make them a hero
 - That's how they will show up
- Every decision and resource to towards the vision







Don't Neglect Safety on the Inside

Protect What's Under the Hard Hat

Your mental health is just as important as your physical health. Our employees and their family members have free access to BuildWell Health, a confidential virtual program to get support for stress, anxiety, depression, substance use, or suicide.

How to Get Started

BuildWell Health is a confidential, virtual program to help with stress management, depression, anxiety, substance use, and suicide. It's available at no charge to employees and their families.

Online Learning

Access to Youturn Health's virtual library with 35+ courses and over 300+ individual lessons on mental health, stress management, substance use, and suicidal ideation.

Peer Coaching Support Phone Line



Family Support

Recovery is easier when you have support, so your family members have access to the online video library and peer coaching support line at no extra cost.



umc



To Enroll: Scan the QR code to view Youturn Health's online video library. The registration code is UMCcode.



Reactive Safety Management

- Keep small problems small
- Over manage





Incident Reporting

- ALL injuries, accidents, and near-misses, regardless of severity, must be reported <u>immediately</u> to your foreman.
- Foreman will call
 - UMC Director of Safety: Kirk Baisch : (206) 604-2743
 - UMC Field Safety Manager: Bill Jones : (425) 359-1913
- The injured worker, foreman, and safety team will investigate.
- All foreman should have current First Aid/CPR certification





Over Manage (eye/ massage)



Need Help?

24/7/365 MUSCULOSKELETAL CARE ANYWHERE

Drive improved outcomes for your employees and deliver lower costs to your organization with the world's only digital, virtual, and in-person musculoskeletal clinic.

How it Works Pricing



What does it all mean?

- Safety vs. compliance
- RIR vs EMR
- Self Insured vs State fund vs work comp.
- Industrial injury vs
 - **Occupational disease**





Think About EMR

• Will your company be able to compete when the market is tight?

 Will you be able to win the project with a bad record on your proposal?

• Will your insurance costs drive you out of the competitive market?



EMR Calculation

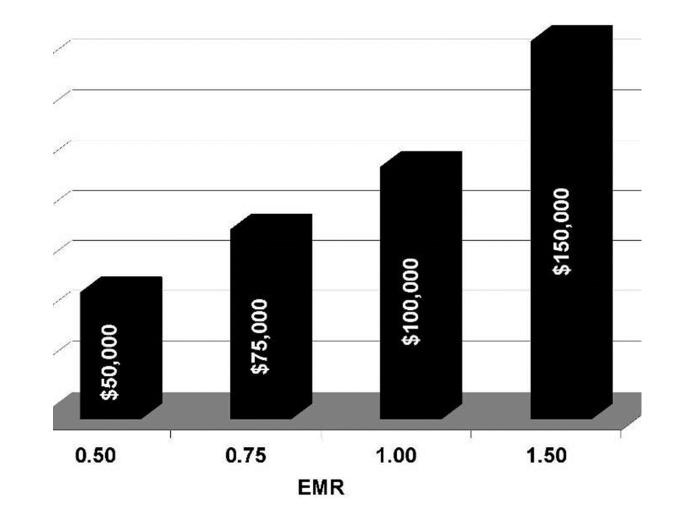
EMR = <u>Actual Claims Value</u> Expected Claims Value

 $\mathsf{EMR} = \frac{\$50,000}{\$100,000} = 0.50$

EMR = <u>\$200,000</u> = 2.00 <u>\$100,000</u>

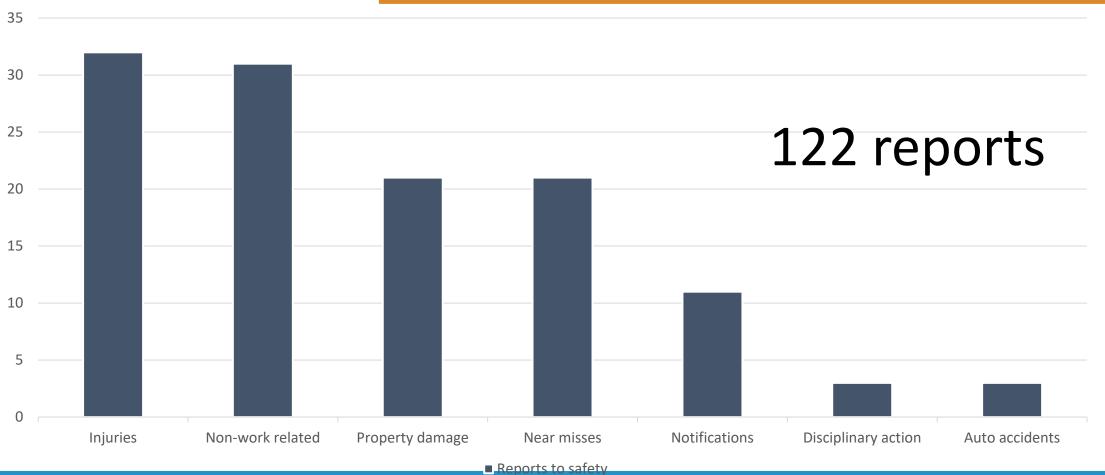


EMR Effects on Premiums





Reports to Safety 2024





Claim Impacts

- Case study Wa Contractor
- Hidden costs
- Insurance costs





Hidden Costs

- Time lost from work by injured
- Overtime to make production
- Continued payment of fringe benefits
- Loss of efficiency due to break-up of crew
- Decreased morale
- Cost of selecting, training and breaking in new workers
- Time damaged equipment is out of service
- Loss of production
- OSHA penalties
- Personal costs to employee....

INDIRECT or HIDDEN COSTS



Activity – Case Study

- Employee worked for on the job for just 9 days when he stepped off a ladder on the jobsite and twisted his knee.
- The injury was reported immediately to Safety Department
- Although the injury seemed minor at first, the employee eventually required surgery for a torn meniscus.



Activity – Facts

- The medical costs of the claim were \$14,000 for surgery and rehabilitation.
- He missed 22 weeks of work and his time loss amounted to \$33,000.
- Mr. Trip was also paid a PPD of \$3,000.



Activity 3 – What do you think?

- What was the total cost of the injury?
- What impact did this injury have on the company bottom line?
- How much work (in \$) has to be completed injury-free to make up for the injury expenses?



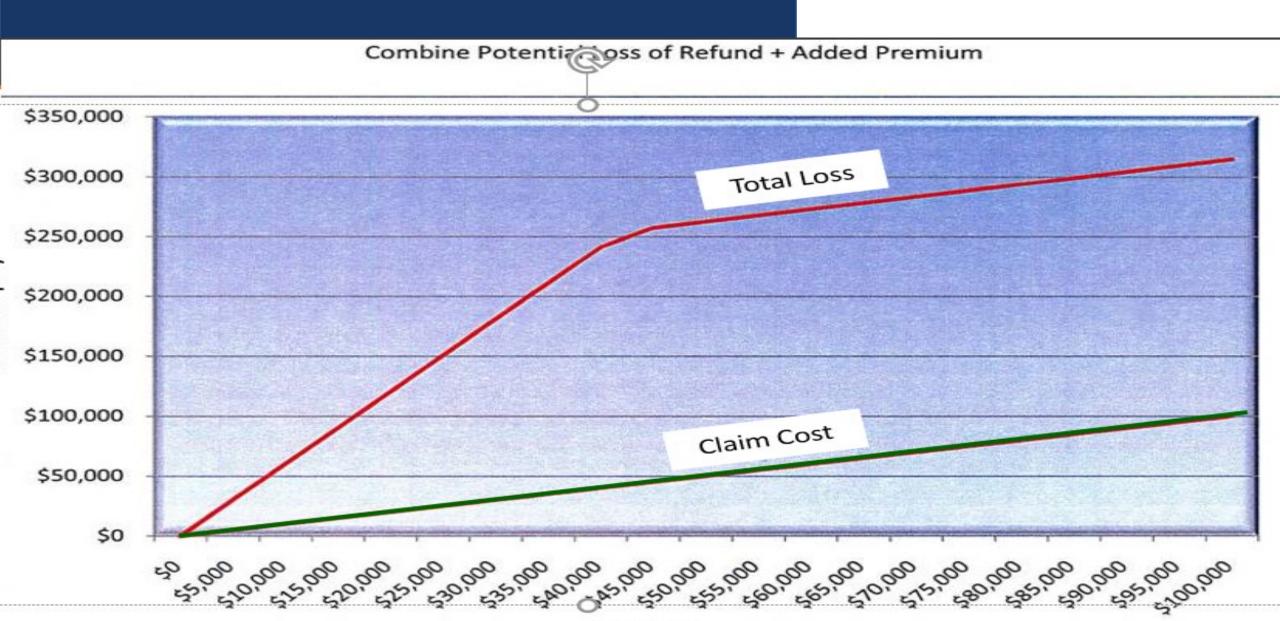
Cost of an Accident

The rest of the story!

Actual Cost

	Estimated	Estimated	Estimated			Potential	Potential	Potential
Time Loss	Developed	Additonal	Additonal	Estimated Lost		Cost of Sales	Cost of Sales	Cost of Sales
Claim Costs	Losses	Premium	3 Yr Premium	Refund	Combined Loss	@ 7% Profit	@ 5% Profit	@ 3% Profit
\$ 0	\$0	\$0	\$0	\$0	\$U	\$0	\$0	\$0
\$5,000	\$14,150	\$1,732	\$5,195	\$24,903	\$30,097	\$429,960	\$601,944	\$1,003,239
\$10,000	\$28,300	\$3,463	\$10,389	\$49,820	\$60,209	\$860,134	\$1,204,187	\$2,006,979
\$15,000	\$42,450	\$5,195	\$15,584	\$74,760	\$90,344	\$1,290,629	\$1,806,881	\$3,011,468
\$20,000	\$56,600	\$6,926	\$20,779	\$99,740	\$120,519	\$1,721,696	\$2,410,374	\$4,017,291
\$25,000	\$70,750	\$8,658	\$25,974	\$124,690	\$150,664	\$2,152,343	\$3,013,280	\$5,022,133
\$30,000	\$84,900	\$10,389	\$31,168	\$149,685	\$180,853	\$2,583,615	\$3,617,062	\$6,028,436
\$35,000	\$99,050	\$12,121	\$36,363	\$174,695	\$211,058	\$3,015,111	\$4,221,155	\$7,035,259
\$40,000	\$113,200	\$13,852	\$41,557	\$199,728	\$241,285	\$3,446,928	\$4,825,699	\$8,042,831
\$45,000	\$127,350	\$15,584	\$46,752	\$210,805	\$257 557	\$3,679,387	\$5 151 142	\$8,585,237
\$50,000	\$141,500	\$17,316	\$51,947	\$210,805	\$262,752	3,753,59	\$5,255,036	.758,393
\$55,000	\$155,650	\$19,047	\$57,141	\$210,805	\$267,946	\$3,827,807	\$5,358,930	\$8,931,549
\$60,000	\$169,800	\$20,779	\$62,336	\$210,805	\$273,141	\$3,902,017	\$5,462,823	\$9,104,705
\$65,000	\$183,950	\$22,510	\$67,531	\$210,805	\$278,336	\$3,976,226	\$5,566,717	\$9,277,861
\$70,000	\$198,100	\$24,242	\$72,726	\$210,805	\$283,531	\$4,050,436	\$5,670,610	\$9,451,017
\$75,000	\$212,250	\$25,973	\$77,920	\$210,805	\$288,725	\$4,124,646	\$5,774,504	\$9,624,173
\$80,000	\$226,400	\$27,705	\$83,115	\$210,805	\$293,920	\$4,198,855	\$5,878,398	\$9,797,329
\$85,000	\$240,550	\$29,437	\$88,310	\$210,805	\$299,115	\$4,273,065	\$5,982,291	\$9,970,485
\$90,000	\$254,700	\$31,168	\$93,504	\$210,805	\$304,309	\$4,347,275	\$6,086,185	\$10,143,641
\$95,000	\$268,850	\$32,900	\$98,699	\$210,805	\$309,504	\$4,421,485	\$6,190,078	\$10,316,797
\$100,000	\$283,000	\$34,631	\$103,893	\$210,805	\$314,698	\$4,495,686	\$6,293,960	\$10,489,933

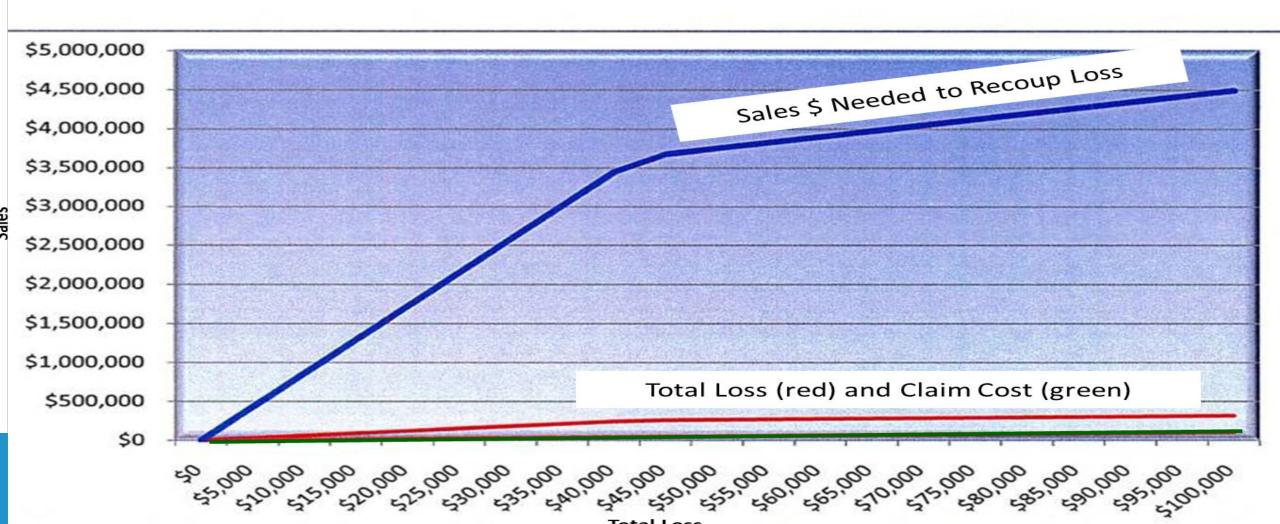
Combined Costs



					44		
Days Paid	Medical Costs Paid	Time Loss & LEP Paid	Disability Awatds	Total Reserves	Retro Developed	Job Class	DOI Age
0	\$1,164	\$0	\$0	\$0	\$2,112	030701	29
0	\$0	\$0	\$0	\$643	\$1,167	030701	41
0	\$142	\$0	\$0	\$0	\$258	030600	31
0	\$1,088	\$0	\$0	\$0	\$1,974	030701	36
0	\$404	\$0	\$0	\$0	\$733	030701	31
0	\$1,312	\$0	\$ 0	\$698	\$3,897	030600	56
0	\$142	\$0	\$0	\$0	\$258	030701	20
0	\$2,523	\$0	\$0	\$0	\$4,578	030701	45
0	\$6,775	\$0	\$0	\$1,341	\$14,977	*****	

Amount of Work to Recoup Costs

Combine Potential Loss of Refund + Added Premium vs. Cost of Sales to Pay For These Costs





PRIDE-BASED SAFETY CULTURE

REMEMBER: NO TASK IS MORE IMPORTANT THAN YOUR SAFETY.



They don't care what you know... until they know that you care