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Workers' Compensation Fraud: What Small Businesses Need to Know

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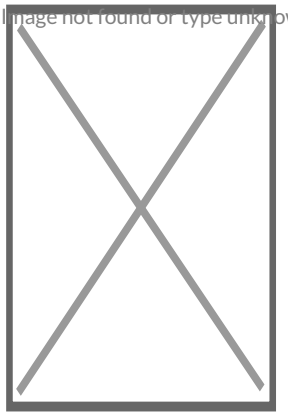

By B.H. Levy, Jr., Bouhan Falligant LLP

Special to *Business in Savannah*

Six weeks ago, two Lee County residents — including the owner of a local insurance agency — were arrested for conspiring to create multiple fraudulent certificates of insurance. The certificates, which indicate proof of workers' compensation insurance, were then presented to a Lee County contractor. As a result, the uninsured subcontractor cost the contractor more than $21,000 in additional premium costs.

Fraudulent workers' compensation claims are nothing new or unique. Last year, the State Board of Workers' Compensation Enforcement Division investigated 160 criminal cases that led to 28 arrests, 10 of which involved employers creating and passing fraudulent certificates. Other employer prosecutions resulted from the willful failure to obtain the required workers' compensation insurance and premium fraud, such as misclassification of employees, lying about the number of employees, and falsifying insurance applications. 2015 also saw the prosecution of two insurance agents for selling bogus policies.

Although it is commonly believed that most workers' compensation fraud is committed by injured employees, the statistics provided by the State Board of Workers' Compensation Enforcement prove otherwise. Although more injured workers are prosecuted, it is employer fraud that contributes the greatest monetary losses to the system.

That being said, workers' compensation fraud is a legitimate concern for businesses (especially contractors) and there are a number of ways to minimize fraud and reduce risk, including:

Thoroughly screen new hires. Background checks can pinpoint red flags such as job hopping or previous fraudulent activity. While it is illegal to disqualify someone from a job for merely filing a previous workers' comp claim, you are within your rights to know if they have filed an inordinate number of claims.

Communicate the importance of safety to employees. Employees should know you take safety seriously and should not be afraid to come to you when such things happen for fear of negative repercussions. In addition, treating an injury quickly helps the employee to recover, which also minimizes costs.

Establish a clear company policy on workers' compensation and, when claims are filed, conduct an investigation. Employees should understand their obligations in a workers' compensation program, as well as know that, when a workplace injury occurs, it will be investigated. Doing so not only reduces potential fraud but could also prevent the likelihood of it happening again. Be on the lookout for contradictory stories, no witnesses, and injuries occurring soon before a major change such a seasonal layoff or strike.

Help injured or ill employees get back to work as soon as is feasible. Stay in touch with injured or ill employees and monitor their progress. If possible, create a light-duty or part-time option to easily facilitate their transition back to work.

Get to know your workers' compensation insurance claims adjuster and medical providers on the panel of physicians posted at your business locations. These are the professionals who see workers' comp claims day in and day out, and they know the signs of fraud. The insurance agent can assist in investigation and the medical providers can ensure the injuries are consistent with the accident. Both can help manage costs.

Another resource available to business owners is the National Council on Compensation Insurance (NCCI), a provider of workers' compensation information, tools and services. In addition to its research and analytical services, NCCI also provides an online coverage search tool. For example, contractors should use this tool to verify a sub-contractor's certification prior to being allowed on a job site to perform work, as well as ensuring coverage has not been canceled for non-payment of premium. Anyone can access this coverage search tool at https://www.ewccv.com/cvs/.

As with all aspects of their business, employers should be up to date on workers' compensation issues and on the lookout for any fraudulent activities. Business owners unsure about their insurance coverage or workers' compensation issues should consult a legal or insurance professional.

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