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ALTERNATIVES TO TRADITIONAL WORKERS' COMPENSATION FOR RETAIL AND WHOLESALE COMPANIES

Purchasing workers' compensation insurance is an effective way for most retailers to protect against the costs of workplace injuries and illnesses while complying with state regulations. But traditional insurance is not the only way to mitigate workers' compensation risk and deliver benefits to injured employees. Retailers can consider several alternatives, including single-parent captives, member-owned group captives, and, in Texas, non-subscription.

FIGURE 1 **Industries with the highest nonfatal occupational injuries and illnesses incidence rates per 100 full-time workers, 2015**

Source: US Bureau of Labor Statistics

SINGLE-PARENT CAPTIVES

Retailers and wholesalers were the fourth-largest industry user of captives in 2016, according to data collected by Marsh Captive Solutions. These captives were used to underwrite a variety of risks, including workers' compensation. For US-based companies across all industries, workers' compensation is the top risk underwritten by captives.

The reasons for this are simple: Captives can offer several benefits when used to manage workers' compensation risks. From a financial perspective, captives allow retailers and wholesalers to more easily access the reinsurance market, better control costs, and in some instances, benefit from tax efficiencies. And the ability to more strategically control how workers' compensation claims are managed is especially beneficial to companies in the retail industry, which has a higher than average incidence rate of nonfatal occupational injuries and illnesses, according to Bureau of Labor Statistics data (see Figure 1).

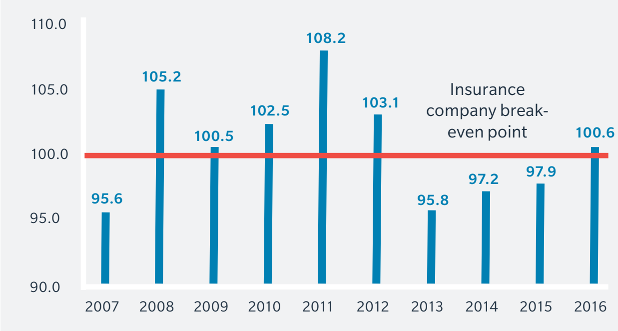
Using a single-parent captive in a broader workers' compensation program and risk management strategy can be relatively easy, especially if a retailer already owns and operates a captive to manage other risks. A feasibility study can help you determine whether this approach to managing workers' compensation risk is right for your organization.

GROUP CAPTIVES

In a group captive, several companies share risk via joint ownership of a captive. Group captives are typically used to provide coverage for all three primary casualty lines, with workers' compensation naturally representing the bulk of covered exposures and premiums written.

A group captive offers more predictable annual insurance expenses for its owners by insulating them from potential swings in the traditional insurance market. Traditional insurance market rates directly correlate with the industry's profitability; insurers typically raise rates when the industry's combined ratio — which represents losses plus expenses — is above 100% and lower rates when the combined ratio is below 100% (see Figure 2).

FIGURE 2 Insurance Industry Combined Ratio (after Dividends)



Source: A.M. Best Company

Most retail and wholesale companies can benefit from joining a group captive, but prospective members must typically meet specific criteria set by other members. Because all owners of the captive share risk, existing members will want to ensure that new joiners exhibit strong safety cultures that are embraced by senior management and are in good financial health. Group captives also often target prospective members with favorable historical loss experience, using a workers' compensation experience modification rate of 1.25 or less as an initial guide.

TEXAS NON-SUBSCRIPTION

In Texas, employers have the option of opting out of the state's workers' compensation system, which is known as non-subscription. Instead of providing benefits to injured workers as outlined in the state's workers' compensation law, nonsubscribers typically create modified health and benefit plans akin to group health programs to provide benefits to injured workers, although this is not required. These modified plans are regulated under the federal Employee Retirement Income Security Act (ERISA). Nonsubscribers also replace their workers' compensation policies with specialty insurance programs that are typically lower in cost.

Under these plans, employers can often offer equal or superior benefits to those provided to injured workers' under traditional workers' compensation. Non-subscribers can also access a broader range of medical providers as many Texas physicians do not participate in the state's workers' compensation system. They can also provide care to employees more quickly. The combination of these factors typically leads to shorter durations of disability and significant cost savings, especially for employers with a large number of employees in Texas.

Any private employer with exposure in Texas can choose to non-subscribe; as of 2016, 22% of Texas private sector employers, including 20% of retail, wholesale, and transportation industry employers, were non-subscribers, according to the Texas Department of Insurance. The design and implementation of a modified benefits program, including an economic feasibility study, typically takes three months or less.

But non-subscription can also carry risk. Under traditional workers' compensation, retail and wholesale employers are protected by what is known as the exclusive remedy provision, which prevents injured workers from seeking benefits from filing civil litigation against their employers. Non-subscribers have no such protection. Federal and state government contractors may also be contractually obligated to participate in the workers' compensation system.

CONSIDERING ALTERNATIVES

Although each of these options could present cost savings and other benefits to employers, retail and wholesale risk professionals should carefully consider them. Talk to your insurance and risk advisors about whether these options are appropriate for your organization and work with them to build the most effective programs to manage your costs and provide adequate benefits for your injured workers.

This briefing was prepared by Marsh's Food & Beverage Practice, in conjunction with Marsh Captive Solutions and PartnerSource, Inc.

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