

# WHAT'S THE RISK?



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# Leading EDGE

ADVICE & INFORMATION TO HELP YOU MANAGE YOUR BUSINESS

## If your company doesn't know the answer, it's high

By Dennis Seeds

**Y**our company's been fortunate. The last hurricane missed the headquarters by a mile. A fire suppression system worked well when a motor overheated recently. You feel pretty confident that your risks are under control, right? Don't get too sure of yourself yet. What about the unseen threat that comes from discontent among employees? And don't overlook executive protection (errors and omissions, directors and officers, crime and fiduciary liability).

Ask yourself, "How do I find out where my company is most vulnerable, and how can I plan, prepare and mitigate the unforeseen?"

One of the best ways to start to identify risks is to use an exposure survey questionnaire, says Jack Gibson, president of the International Risk Management Institute Inc.

"This is a detailed list of questions prepared by a risk management practitioner that focuses on revealing business practices and conditions, which present unique risks to organizations," he explains.

### Diagram the business

Other good tools that identify risks are flow charts, Gibson says.

"They can help identify weak links in a manufacturing process or supply chain that can lead to increased business interruption risks or legal liability (e.g., the use of foreign suppliers)," he notes.

Robert Olszewski, a director in the Audit and Accounting group of Kreischer Miller, a Leading Edge Alliance firm, has similar thoughts. Simplify the risk assessment process in the early phases by creating a chart detailing the flow of all the major factors that impact the company: customers, vendors, pricing, personnel, government regulators, product lines and competition, he says.

"Conduct a brainstorming session that includes cross-functional personnel, management and professional advisors to detail the specific risks associated with each of the major factors," Olszewski adds. "Subsequently, design and implement an action plan to address each of the identified risks to a tolerable level."

This process requires ongoing monitoring with corrective action plans and alterations being made, he notes. "Many entities engage independent advisory boards to assist in this process which include industry peers, professional advisors and other experts that can provide tremendous insight on matters that may have been overlooked."

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## INTERVIEWING EMPLOYEES, REVIEWING PROCEDURES, AND SIMPLY OBSERVING CAN REVEAL QUITE A BIT FOR A TRAINED PROFESSIONAL.

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### Analyze insurance protection

Dan Weedon, an insurance and risk management consultant and founder of Toro Consulting Inc., says that for property and casualty insurance, the best way is to consult an unbiased professional, independent of the agent or competitor.

"Have him (or her) perform a diagnostic review of the insurance policies and interview the owners," he suggests. "The biggest gaps come in owners' expectation of their protection and what they actually have."

If an insurance competitor analyzes coverage protection, it can be biased because it wants to sell the coverage, Weedon says.

"From a risk management perspective, a walk-through audit is advisable to view any glaring issues when it comes to safety," Weedon continues. "Interviewing employees, reviewing procedures, and simply observing can reveal quite a bit for a trained professional. I don't recommend this be done in-house unless the person doing it has a background in insurance and risk management."

Agents and brokers should be chosen as carefully as you would choose an accountant

or attorney, taking into consideration their education, qualifications and experience, Gibson says.

"Preferably, choose one that has earned one of the more prestigious insurance industry designations, such as Chartered Property Casualty Underwriter (CPCU), Certified Insurance Counselor (CIC) or Associate in Risk Management (ARM).

Jason Kaufmann of Anderson Insurance and Investment Agency agrees.

"For example, a workers' compensation review needs to be completed by an agent or risk manager that knows the laws of the state that the employer operates in with emphasis on every area that affects outcomes," he says.

Pre-hire practices, claims management, medical clinic relationships, whether or not the state allows indemnity payments, reserves and audits are all areas that need to be reviewed. The type of exposure will determine what coverage needs the most attention.

Brian Smith, an advisor with the InsuranceEdge division of American Express OPEN, recommends a professional as well.

"A commercial insurance carrier routinely provides risk control consultants as part of the service offerings," he notes. "One of the main responsibilities of consultants is to perform risk audits—audits are often assigned by carriers, but can also be requested by the customer."

### Communicate with your employees

Getting the pulse of the workforce is not only important, but essential.

"Audits can often be done by good consultants, including insurance brokers, safety specialists and attorneys," says Beth Schroeder, an employment and labor law attorney with Silver & Freedman. "However, it is always important for a business to really know what's going on with its own workforce, and taking surveys of employees or just meeting regularly with the floor managers, and rank-and-file workforce is invaluable."

Management should always be analyzing what's working, what's not, who's disgruntled, what compensation plans are effective, and the like, she adds.

"The biggest threat does not come from the changes in employment law, but from discontent among employees," Schroeder notes.

"That discontent not only can generate lawsuits, accidents and audits, it can be the

trigger that spurs a union organizing drive," she stresses. "The happiest employees tend not to pursue legal violations or outside intermediaries."

Invest in management training, Schroeder suggests.

"Even if top management understands the compliance issues, it needs to be carried out from the top down," she explains. "Good intent is irrelevant if the managers are undermining the best efforts of upper management; one stray remark, unfortunate act or failure to report can undercut all the best policies in the world."

### Know the deal

The first thing every business person should know about commercial insurance is that there are many variations among policies as well as options that can be made to improve or restrict coverage with an endorsement, Gibson says.

"A poorly structured program may cost less because it has many coverage gaps, but that doesn't make it a bargain," he explains, adding, "Just remember that no one asks how much the insurance costs following a catastrophe—only whether the loss is covered."

As for property casualty insurance coverage, think of insurance in two baskets, Gibson says.

"One, casualty insurance, covers obligations or legal liability to third parties," he explains. "Think of it as lawsuit insurance as it covers the cost of defense and the amount of any awards or settlements against the company."

All organizations need workers' compensation insurance, commercial general liability insurance and automobile liability insurance. To extend the limits of liability beyond those provided by these basic policies, an umbrella insurance policy should also be purchased, Gibson notes.

"Other types of casualty insurance include employment practices liability insurance, directors' and officers' liability insurance and professional liability insurance; the need for these will vary from company to company," he continues.

The other insurance basket contains various types of property insurance to cover the cost to repair or replace damaged or destroyed property. Options include coverage of the income lost as a result of that damage or destruction (i.e., business interruption) or

extra expenses incurred to maintain operations after the loss.

"The basic building blocks that all organizations need are a commercial property policy to cover real property (e.g., buildings) and/or personal property (e.g., furniture, inventory, machinery) and a commercial crime policy to cover employee theft as well as other crime exposures (e.g., robbery or burglary)," Gibson recommends.

"Some organizations will need to supplement these with other types of insurance such as equipment breakdown insurance and insurance on certain special types of property such as contractors' equipment, fine art, accounts receivables and jewelry for sale."

### Workers' compensation

While workers' compensation insurance may vary by state, Smith says discounts may be considered from the following actions:

- Initiation of a certified drug-free workplace
- Losses related to workplace injuries kept to a minimum because of a strong safety program
- A deductible on the workers' compensation program that will have a positive impact on the experience modification factor if you operate in a state that provides such credit
- A meeting or conference call with the underwriter to discuss highlights and management's commitment to safety
- Claims reported in a timely fashion, within 24 hours, thereby minimizing the cost by engaging the insurance company claims staff

A large part of cost containment in workers' compensation deals with safety, Gibson notes.

"The most important step for controlling workers' compensation insurance costs is to have no losses by making safety part of your corporate culture," he says. "Everyone in the company should take ownership of safety, from the CEO on down; safety should be one of the criteria on which the performance of every manager is evaluated."

Be careful about comparison shopping for workers' comp insurance, Kaufmann urges.

"While they may save 5-10 percent by shopping, their experience modification rate

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## Workplace safety takes commitment

Edwin G. Foulke Jr. was administrator of the Occupational Safety and Health Administration under President George W. Bush. Now co-chair of the Workplace Safety and Catastrophe Management Practice Group at the law firm Fisher & Phillips, he recently spoke to *Leading Edge*.

### LE: What is risk assessment?

**EGF:** Risk assessment from a safety context is where employers determine what safety and health hazards exist within their specific facility or worksite based on the specific jobs that are performed by their employees. It determines the degree of risk that each particular safety and health hazard presents within the work site since hazards will vary in degree of severity and potential injury to employees.

### LE: How can an organization find out where it is most vulnerable to safety and health hazards?

**EGF:** For any organization to determine such vulnerability, it will need to conduct several different inquiries to assist in identifying those issues. Specifically, OSHA law requires in certain circumstances that employers conduct job hazard analysis to identify the specific hazards facing the employees. A job hazard analysis normally is conducted internally but could be conducted by a third-party safety professional.

### Job hazard analysis should discover

- what can go wrong
- what are the consequences
- how could it arise
- what are other contributing factors
- how likely would the hazard occur

### In addition, the job hazard analysis must describe

- where the specific hazard is occurring
- to whom is it happening
- what precipitates or triggers the hazard
- what is the outcome should the circumstance happen
- any other contributing factors

Part of any job hazard analysis would require the employer to discuss with the

employees any hazards they have identified in their specific job. Furthermore, once the job hazard analysis has been completed by the company, periodic (yearly) audits of the job site, either internally or by third-party auditors, should be performed to assure that old hazards are not recurring or new hazards have not developed.

It should be noted that under the Occupational and Safety Health Act of 1970, there are criminal provisions for willful violations of OSHA standards that result in fatalities where officers and directors of the company could be held potentially criminally liable.

### LE: Can you give some other tips or ideas on how to plan, mitigate and prepare for unforeseen circumstances?

**EGF:** In some cases, OSHA has standards which require the employer to develop emergency action plans or hazardous waste operation emergency response programs. In developing an emergency action plan, the employer should develop procedures for reporting all potential types of emergencies that may occur at that facility, including natural and man-made disasters.

Also, the action plan should include procedures for emergency evacuation, including the type of evacuation and the exit route assignments. In certain operations, the emergency action plan will also include procedures to be followed by employees who remain to operate critical plan operations before they are evacuated.

In addition, procedures to account for all employees after evacuation as well as procedures to be followed by employees performing rescue or medical duties should also be detailed in any type of emergency action plan.

Of course, if an employer has an emergency action plan, then training of all employees, especially those designated to assist in a safe and orderly evacuation of other employees, should be done on a yearly basis.

### LE: Any other points?

**EGF:** All employers should realize that in order to have an effective risk assessment program, the commitment must start at the upper levels and be pervasive at all levels.

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is continually rising year after year because of the lack of proactive measures that are implemented," he says.

"A workers' comp expert needs to be utilized who has the ability to help with claims management, establish a medical clinic relationship, review and discuss reserves on open claims prior to the 'experience mod' being calculated, strengthen return-to-work programs and so on," Kaufmann adds.

### Be prepared

The challenges of the 21st century make it all the more important to be prepared.

"We live in a fast-pace environment and failing to plan is a major detriment to the success of many entities," Olszewski observes. "My father wisely taught me at a young age that if you fail to plan, plan to fail."

Take the time necessary to address the needs and concerns of the company that cause you wake up in the middle of the night, and mitigate risk by addressing matters on a proactive, versus reactive, basis, he recommends.

What are the chances a company won't bounce back from a calamity?

"Statistics show that about 60 percent of

organizations do not resume business following a major disaster," Gibson notes. "The organizations most likely to recover have business continuity plans and have trained their employees for response."

Kaufmann says planning for a disaster is a no-brainer.

"I have seen time and time again where a business has not saved for unforeseen expenses," he relates. "The businesses that I have seen succeed in this economy were prepared financially to do so."

Part of being prepared is to know how to report a claim, Smith claims.

"Have a plan in place to investigate losses effectively that may be related to employee injuries, property or automobile issues," he says.

Think outside the box when you plan for a catastrophe, Weedon says.

"My analogy is sports as I used to coach high school basketball," he notes. "If you never discuss, plan for or practice a situation, you will most likely fail unless you get lucky. Not planning for an 'end of the game' situation is lazy and dangerous."

Not planning for disaster can have terrible consequences to business survival and to employees, Weedon adds.

"It's not the most compelling topic; however, time must be made regularly to review, discuss, challenge and practice your processes, procedures, plans and protection," he says. "Being ambivalent about it and letting it just go without proper planning is asking for trouble."

Weedon says, "My experience tells me that organizations rarely practice their own 'fire drills.'"

As a final thought, Smith notes that there are many service offerings by the insurance and risk industry that are usually complimentary.

"By asking a business insurance agent for a list of service and coverage offerings, a business owner has an entire team of professionals at their disposal, a luxury that should be taken advantage of," he suggests.

"Webinars, press releases, newsletters and insurance programs on claims management and risk control are offered almost on a weekly basis," Smith adds. "Look to these sources for assistance when trying to uncover improvements to your business risk. The professionals have seen so many operations and claims that their advice and counsel minimizes the business owners' need to reinvent the wheel." **LE**

## Check out these blind spots that can sink a company

By Michael Zeldes, senior vice president of HUB International Northeast

Here are four blind spots that pose significant dangers that a company may want to consider when conducting a risk assessment:

1. The possibility that a disgruntled employee, especially one laid off due to a downsizing, will sue the company on the grounds of discrimination. Even if there is absolutely no merit to the charge, the business may face \$100,000 or more in legal fees. Employment practices' liability insurance can remedy this risk by paying for legal bills and possible settlement costs and fines.
2. The need for a business to suddenly shut down all or part of its operations because of a fire or other disaster. This closure may result in loss of substantial income, thus jeopardizing the company's very existence. Business interruption insurance, however, pays the bills for all qualified cases where the company must temporarily close all or part of its operations. You can think of it as a financial lifeline.
3. A key person is so instrumental to the success of a business that his or her departure because of death or disability can have a profound impact on the company. Fortunately, key person insurance pays a lump sum to compensate for the loss and carry the company until a replacement is found.
4. Individuals who serve as directors or officers of companies are often named in lawsuits against the business and may be liable for damages that can threaten their personal assets. For this reason, it is critical to have directors' and officers' insurance, in sufficient sums, to protect the people who sit atop the company.