



WS&Co. Briefing

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Restricted Stock Awards and Workers' Compensation: What You Need to Know to Avoid an Unexpected Premium Surprise

Background

Many emerging businesses have long favored paying their employees with a combination of equity incentives and cash. One popular method to entice employees to remain onboard and share in the success of the company is to offer restricted stock units.

Grants of restricted stock work like this: the company offers a stock grant to its employees which is tied to meeting specific conditions; hence, it is restricted and subject to forfeiture back to the company if the conditions are not completely fulfilled. Typically there is a time period until the stock fully vests. The vesting may be time-based (over the course of several years as long as the employee remains with the company) or performance-based (often tied to achievement of corporate goals). Once the vesting requirements are met, the employee is granted the stock and owns it free and clear.

The Issue

Currently for workers' compensation purposes, the value of the stock at the time of vesting is included as payroll for premium computation. (As an aside, an option is included

as payroll once exercised.) If employees were granted stock shares but left the company prior to the end of the vesting period, they have not received any additional compensation and the value is not included. Companies who are offering restricted stock awards should be careful to budget or accrue for the additional premium that is associated with this added "payroll."

What You Can Do

Although the value of the shares needs to be reported by the insurance carrier to the respective rating organizations (NCCI, WCIRB), the decision to include the payroll for premium purposes resides with each individual insurance carrier. It's important to identify this potential payroll in advance to try and pre negotiate with the insurer how this will be charged for, and preferably exclude.

While this approach is the exception with insurers, the likelihood of obtaining this is enhanced with loss sensitive programs.

By identifying the amount of RSU's prior to policy inception, selecting a large deductible program, or a carrier with a flexible rating option can greatly minimize the impact on premium.

What the Future Holds

Arguments have been made by employers that this payroll should not be included since there was not any additional exposure to injury (however, this is counter to how cash bonuses are also handled). As a general rule, if the employee receives compensation for which the employer receives a benefit, the amount is included in the premium calculation. The rating organizations are currently reviewing whether restricted stock units should be included as remuneration and a decision is expected to be announced in 2018.

If you have questions please contact your Woodruff-Sawyer Account Executive.

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