



Safe Not Sorry

How Workers' Compensation Works

Depending on your state and your restaurant's claim history, your workers' compensation insurance premiums can be a significant expense. In this article, we explain how insurers determine them, and what you can do to keep yours as low as possible.

By Lindsey Danis

If you employ more than a few staff, you likely know that most states require businesses to carry some manner of workers' compensation ("workers' comp") coverage. Most states allow coverage by private insurance companies. Some states limit the availability of coverage through state-run programs. (And a few states allow for self-coverage.)

You also likely know workers' comp insurance can be an expensive line item. And if you are like many independent operators, your biggest question about workers' comp coverage is how to keep your costs in check.

What you might not realize is workers' comp premiums are based on a formula that considers the following:

- Your industry "classification code" – Restaurant owners, who under normal operating conditions provide table service for their patrons through the use of a wait staff, will find their business classified under code 9082. This likely means very little to you; however, for insurers it signals the risk based on the type of business.
- Your gross payroll

- Your “experience modification rating” (EMR). – The EMR is a calculation used by insurance firms to price the cost of workers’ compensation premiums. The rating offers a prediction of future risk based on your business’s history of claims, if any.

By knowing how these variables work together to determine your premium, you can better understand how workers’ comp works, and even lower your premiums. While not all variables are within your control, you can implement workplace changes designed to prevent injuries and obtain a favorable rate.

Do the Math

Your gross payroll divided by 100 is one part of the formula used to determine workers compensation rates. Since payroll directly impacts your premium, it’s important that you calculate it accurately from the outset.

For workers’ comp coverage, you’ll typically need to estimate how much you expect payroll to be for the year ahead, counting full-time, part-time, and seasonal employees. If you under-report your payroll, you’ll be hit with a big bill at the end of the year to cover the discrepancy. If you over report your payroll, you may get money back, though most operators would prefer not to give their insurer a short-term loan by overpaying in the first place.

Tina Gerard, a sales executive with the John M. Glover Insurance Agency, says that a lot of independent operators don’t include family members working in the restaurant in their calculations when applying for workers comp coverage. If your relatives work in the restaurant, whether it’s informally or on a regular schedule, you’ll want to factor them into your calculations. Otherwise, your family members could be paying out of pocket for injuries sustained on the job and receive no workers’ comp benefits during the time they are unable to work.

In some states, you are legally required to include your relatives when calculating workers compensation. If it’s revealed that you didn’t have the right levels of coverage, you could be fined by the state.

You never know what could happen. Gerard encourages independent operators to consider covering themselves, too. “A lot of owners are in the kitchen, and they don’t have health insurance or a disability policy. Workers’ comp is somewhat of a bridge for that,” she says.

If your company has employees who fall into different classification codes or class codes, Gerard explains, you’ll need to account for these separately. Classification codes are assigned by the National Council on Compensation Insurance. These codes reflect the typical risks associated with a role; riskier jobs have higher rates than safer jobs.

For example, restaurant employees, such as floor managers, are classified at one rate that reflects the active nature of their role, whereas an employee that works offsite, such as

a bookkeeper working remotely, will have a different classification that is reflective of their role.

A bookkeeper working from home is less likely to get injured than a floor manager who could slip and fall in the busy restaurant environment, and the different rates for these two classes would reflect this difference. When you understand how classification codes work, you can categorize your staff accurately and avoid overpaying for coverage.

Workers’ comp premiums might depend on the states where you operate. State insurance authorities set particular rates for restaurants as a class. States that have the lowest workers comp premiums include Arkansas, Indiana, Ohio, Michigan, Texas and Washington, D.C. In these areas, average premiums ranged from \$0.51 to \$0.70 per employee in 2021. On the higher end, average premiums in Alaska, Montana and California are \$1.70, \$1.84, and \$2.25 per employee respectively.

Variation in premiums is based on state workers’ comp laws, including how much coverage businesses are required to carry and which businesses must offer it. States also set schedules for medical fees, outlining costs for treatments. If a state has higher medical costs, this can bump up the rate for its workers comp coverage premiums.

History Lesson

Clearly, new concepts don’t have a track record of anything – including workers’ comp claim history. Therefore, their operators tend to pay more for workers’ comp insurance. While this can be a tough pill to swallow when starting up your restaurant, it’s usually a temporary surcharge. As your restaurant establishes a claims history track record (and hopefully, a good one), the insurer can re-evaluate your premium. Of course, if you have a poor track record with multiple claims on your account, it can cost you.

In short, your claims history is considered when determining your premium, and that’s where your EMR comes into play. Restaurants are rated for their loss experience on a national level compared to other restaurants, with payroll and premiums factored in. To determine the EMR, evaluators look at the actual losses versus the expected losses within the industry. Restaurant employees are evaluated against restaurant employees and not with employees in a related industry, like grocers or distributors.

As you would imagine, if you’re a new business and there’s no history to evaluate, or if you are a very small business, you might not get any experience modification. Experience modifications aren’t calculated unless premium costs top \$4,000.

Thus, if your restaurant is safer than the average, you’ll save money. This usually happens in the form of a discount off your premium upfront. “The fewer claims you have, the lower your experience modification is going to be. The more claims you have, your experience modification goes up” and your account is debited, says Jeff Kroeger, executive vice

president and head of commercial lines at New York-based World Insurance Associates, LLC.

The size of the business in terms of hours worked is considered, since a busier workplace is likely to experience more losses simply by virtue of having more employees on the floor for more gross hours.

Evaluators value the frequency of losses more than the severity of an incident. In other words, it's worse to have several smaller claims that total \$30,000 than one gross \$30,000 incident.

Ways to Lower Your Workers Comp Premiums

At the time of renewing your workers' comp coverage, if you had a safe year or your payroll is less than it was for the previous coverage period, you could pay less. If you've grown as a business, with a higher payroll to reflect that growth, you'll pay more even if you manage to maintain a safe workplace.

Restaurant operators used to be able to get a discount on their workers' comp premiums if employees were TIPS certified. TIPS (Training for Intervention ProcedureS) is the global leader in education and training for the responsible service, sale and consumption of alcohol. That said, today, TIPS certification is not as big a deal as this training is becoming a standard of care for the industry, Kroeger says.

Some carriers offer multi-policy discounts; thus, by bundling other business insurance policies with the same carrier, you may be able to get a price break on your premium. Kroeger notes that companies looking to reduce premiums will join workers compensation safety groups to get a more favorable rate by doing so.

A safety group is a collection of companies who are in the same trade or industry. They have similar work conditions, safety hazards, and job risks. These fully insured safety groups pool all of the members' annual workers' compensation premiums and then deduct the costs of claims plus administrative charges. You can search for safety groups online; however, you will find they are more common outside the restaurant industry, such as in construction.

When it comes to negotiating rates, Kroeger says that having a broker you can trust is important. A knowledgeable broker will be able to put premiums into context for you and help you identify ways to save. When your policy is coming up for renewal, Kroeger suggests you call your broker to review your coverage, how your premiums are calculated, and how your EMR is affecting your premiums.

If the broker you've been working with can't answer these questions or can't provide other relevant information, your business may be better served by another insurance broker. While comparison shopping can help you save on premiums, the best way to get a favorable rate is to have a favorable loss history," says Kroeger.

KEEP LEARNING...

Safe Knife Handling Practices for the Entire Kitchen Team

Knives are an essential tool in the kitchen, and your restaurant's staff will be using them daily. They can be dangerous, but knives are not something to be feared. Help your staff to understand them, respect them, and use them safely.

Have your BOH team watch this video and make sure they know these practices and techniques to ensure that your kitchen is a safe, injury-free environment.



Workers' Comp in a Nutshell

Workers' compensation insurance protects both the employee and employer. For the employee, it provides swift compensation for injuries incurred in the course and scope of duties. For the employer, it provides limited liability. If every worker had to adjudicate relief for workplace injuries in the court system, it would be cumbersome, expensive and in many cases, unfair to all parties.

Even relatively minor injuries should be reported per your state's workers' compensation regulations. The take-home message is you need to ensure worker safety in every area of the house. While a small knife cut might not require more than a bandage, insurance carriers take note of them.

Again, the frequency of claims – even small claims – can hurt you, says Gerard. If every year, you have a dozen claims that are treat-and-release medical with no lost time from work, the carrier will come to think “it's just a matter of time” until there is a “shock loss”, which is a larger-than-expected loss.

Major claims, such as a slip and fall incident in which an employee suffers a spinal injury, combined with a history of frequent small claims, can be disastrous to your rating and thus your premiums, Gerard adds. Moreover, with a bad claims' history, you might not be able to purchase private coverage, but rather be required to purchase insurance from your state's risk pool – the market of last resort for risky



businesses unable to obtain coverage elsewhere, and with costly surcharges.

The upshot: Given the steep cost of workers comp coverage with a history of claims, you have a significant financial incentive to operate your business as safely as possible.

Foster a Culture of Safety

You can't plan for injuries that you haven't considered. Unfortunately, regardless of whether they are on your radar, they can happen even if you haven't considered them. A great starting point for safeguarding your business against unfortunate incidents is for you and your broker to review industry data on common restaurant claims and taking precautions to fend them off in your concept.

For example, Gerard mentions rushing around the restaurant as a cause of increased injuries. When employees are rushing back and forth, such as from the kitchen to outside tables, they're more likely to trip and fall. Encouraging staff to be deliberate in the way they move around the house can go a long way in avoiding such incidents. Other hazards, like a messy or disorganized workplace, impact injuries, too. When the kitchen is messy, it takes workers a lot longer to find what they need and distracts them enough to be burned, cut or trip. Maintaining an uncluttered and organized workplace will decrease injuries.

If kitchen equipment isn't maintained properly and its faulty operation causes an injury, and it turns out that you

did not keep up with required maintenance, your insurer may deny coverage. For this reason, Gerard recommends having independent contractors service equipment that have a safety component, such as hoods or chemical systems. A knife sharpening service that keeps kitchen knives sharp will decrease cuts from dull knives and should likewise be factored into your maintenance plan.

To prevent slip and fall injuries, invest in slip-resistant flooring and slip-resistant mats throughout the back of house. Regularly inspect and replace mats, as the edges can begin to curl from wear and tear, creating a trip hazard. Throughout the restaurant, use cleaning products that are compatible with your flooring and maintain its slip-resistant qualities.

Training employees on safe working practices is also critical. Require that employees wear non-slip footwear. Train employees on how to respond to a spill quickly and effectively to reduce the chance of injury. Make safety a part of your onboarding program for any new hires, bearing in mind the statistics about summer injuries. Let your staff know that you are interested in learning from them about any problem areas or safety concerns. It's better to have a team member bring a new hazard to your attention, so you can mitigate it, than wait until an accident happens.

Stuff Happens

Even if you make safety a priority in your workplace culture, accidents can still happen. A claim will have to be

filed and the employee might have to be away from work, compensated by workers' comp insurance until their doctor clears them to return.

This is where a "return-to-work plan" comes into play. It outlines how an injured employee can return to work safely. Not only does this plan help you lower your workers comp premium, it can increase employee retention.

The steps of a return-to-work program vary by role, but typically include modifying duties or reducing hours to accommodate an injury. An employee may be prohibited from certain tasks, like lifting and carrying, while they are on light duty. Instead of their usual tasks, they might take on additional responsibilities they can safely perform while in recovery.

There are resources on the web, including those created by the Society for Human Resource Management (SHRM) to provide guidance on creating a return-to-work plan. There are also consultants that can assist with the process. A typical plan will often assign light-duty work to the returning staff member and a list of tasks they can and should not perform. It will also require the employee to obtain medical clearance to return to work, with a doctor's note for any work restrictions that are deemed as medically necessary. The employee might require reasonable accommodations, pursuant to the Americans with Disabilities Act. A human resources consultant or employment and labor attorney can help you establish a plan and know when to seek outside expertise.

Honesty is the Best Policy

Gerard offers one last piece of advice for operators hoping to lower their premiums: while it may be tempting to tell your insurance broker what they want to hear, you should always "tell the truth."

Gerard adds you should take your time filling out the application accurately. Your insurance brokers can offer advice on creating a safe workplace culture, finding discount programs, or saving money. But they need to know the full story." **RS&G**

Workers' Comp Stats

New York-based commercial insurance company, AmTrust Financial, tracked workers' compensation claims from 84,006 restaurant industry clients between 2013 to 2017. Overall, the numbers show that claim losses are on a decline across the industry, which spells good news for cost-conscious operators. AmTrust Financial data tells operators a lot about the types of injuries that occur at work and the best ways to prevent employees from getting injured on the job

While cuts and scrapes account for one-third of workers compensation claims, these tend not to be expensive injuries. Slip and fall incidents were 4.5 more costly, with nearly \$200 million in paid losses in the five-year period analyzed.

AmTrust Financial also found that injured employees were out of work for an average of 30 days after an incident. At the higher end of this time frame were motor vehicle accidents (47 days) and strain injuries (35 days). Strain injuries that are common in the restaurant industry include wrist and hand injuries from repetitive movements and trunk and back injuries from improper lifting and carrying techniques. Strike (caused by hitting the body with or against an object) injuries (25 days) and burns (17.5 days) led to the lowest amounts of time off work.

Cafes account for more lost time than other concepts. While you might expect burns from boiling water to predominate, the most common injuries in a cafe setting are strike injuries, slip and falls, and strains. As this example shows, assuming that a beverage-heavy concept like a cafe faces lower risk isn't the case.

Seasonally, injuries tend to spike during the summer months. In these months, many restaurants staff up for higher seasonal demand. Seasonal hires tend to have less experience in the industry. In the rush to hire and train for the busy season, safe working practices can be overlooked. Don't assume a new employee knows safe workplace practices. It can be an expensive mistake if new employees are frequently injured on the job.

Any time workers are injured, your restaurant is impacted. You're down a person until the injured worker returns. This leaves the rest of the team to pick up slack at a time when many restaurants are already understaffed.

Since your claims history directly affects your workers' compensation premium, workers' comp claims drive up your premium at the time of renewal. Depending on the severity and number of claims, a history of workplace incidents can add up significantly.