RISK★TEX

INTERAGENCY COMMUNICATION FROM THE STATE OFFICE *of* RISK MANAGEMENT ★ FEB. 2010

SORM
STATE OFFICE *of* RISK MANAGEMENT

HIGH PERFORMER

SORM was named a "High Performer" by the Commissioner of Workers' Compensation and the Texas Department of Insurance (TDI) on the 2009 Performance Based Oversight (PBO) assessment of workers' compensation insurance carriers.

The PBO assessment evaluates a carrier's performance in timeliness of processing medical bills, initiating temporary income benefits, and submitting electronic data.

Being named a High Performer means SORM achieved a score above 95 percent on the appropriate measures.

The PBO asessment is mandated by HB 7 of the 79th Legislative Session.

For more information about the PBO, please visit TDI's Division of Workers' Compensation's website at www.tdi.state.tx.us/wc/pbo/pbo.html.

Keeping drivers safe

By Molly McKenna

Traffic accidents are the leading cause of work-related fatalities in the United States. The Bureau of Labor Statistics reports that occupational-related accidents result in approximately 5,000 deaths a year. Transportation accidents account for 40 percent of the total work-related deaths, the leading cause of occupational fatalities.

Similar statistics hold true in Texas, where transportation incidents continue to be the leading cause of fatalities. Texas recorded 457 work-related fatalities in 2008. A total of 137 highway incidents resulted in a fatal occupational injury, which is 30 percent of all fatal work injuries and the leading cause of such fatal injuries. In 2008, motor vehicle operators experienced the largest number of fatalities, 104 incidents, which was a 30 percent increase from 2007, according to the Texas Department of Insurance, Division of Workers' Compensation.

Motor vehicle accidents have high costs associated with them in a sense that occupational injuries may be severe and vehicle damage may result in high costs. An analysis of SORM's worker's compensation data reveals that motor vehicle accidents are the fourth leading cause of workers' compensation claims, with the highest costs in FY '08 and FY '09.

Promoting Driver Safety

SORM suggests state agencies approach occupational driving as they would other on-the-job health and safety risks. This includes implementing a driver safety program for all employees who operate a state vehicle, rental vehicle, or personal vehicle associated with agency business. Such a program should include defensive driving education, maintenance programs for all agency-owned or leased vehicles,

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Online notary training

By Sam Lawrence

SORM now offers an online training video for State of Texas employees who are notaries.

The online video allows state employees to receive notary training via their own computer by logging on to the SORM website. The video was provided by the Secretary of State's office and altered to fit the needs for state employees. The Secretary of State's video discusses the need for a bond. However, state employees are not required to obtain a bond. SORM's online notary training video has been edited to reflect this difference.

Screenshot of the online notary training video

Since September 2002, state employees designated by a state agency to be notaries public are not required to purchase a notary bond. All other notary regulations must be followed. The state already provides defense and indemnification to state employees for damages, attorney's fees, and court costs adjudged against them when the damages are based on an act or omission in the course and scope of the person's employment (Civil Practice and Remedies Code, Section 104.001).

The SORM website also includes a section titled "Notary Public Information of State Employees" (www.sorm.state.tx.us/Notary/intro.htm) that includes general information state employees need to know about being a notary.

SORM processes the paper work for State of Texas employees who are applying for new or renewed notary public commissions without a bond. For information about applying for appointment as a notary public without a bond, please go to www.sorm.state.tx.us/Risk_Management/Bonds_and_Insurance/notary_forms.php.

The new online notary video replaces SORM's classroom training. To access the video and for information about additional SORM training, please go to www.sorm.state.tx.us/Training/Courses/CrseList05.php.

Sam Lawrence is an information specialist in the Agency Outreach and Training section.

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Evaluating risks

SORM's REPS program helps with identification

By Joe Deering

Once risks have been identified in a state agency, the next step in the risk management process is to evaluate the risks. SORM uses the Risk Evaluation and Planning System (REPS) to assist agencies in identifying risks. Evaluating these risks can be a very complex process involving considerable guesswork, even for the most experienced risk manager.

To evaluate a risk, one must determine the probability of loss by:

- frequency;
- severity;
- variation; and
- impact.

Frequency is merely a measure of how often a particular type of loss will occur. Generally, smaller losses are apt to occur more frequently and larger losses less frequently. Therefore, when considering the degree of risk involved, severity, which is the amount of loss that is apt to be sustained, must also be considered. To predict future losses, prior occurrences should be reviewed to determine how often losses of a certain type have taken place and the cost range of those losses.

Variation is the difference between what we expect the losses to be and the actual losses that are experienced. It is this variation of actual from predicted loss experience that gives a risk manager the greatest problems. Variations from the norm are predictable; the predictability of those variations becomes much more accurate when larger numbers of exposure units are examined.

When surveying exposures to risk and considering prior loss experience as an indication of probable future, the agency's actual loss experience cannot be emphasized too strongly. The fact that an agency does not experience a fire in the office during the past five years does not mean that it will not have a fire next year. Nor does that fact that all previous fires have been confined to wastebaskets mean that all future fires will be confined to wastebaskets. However, a high frequency of small losses may be an indication of carelessness or even poor management. Often, the size of loss is pure chance, and frequency will often result in increased severity.

While risks are commonly evaluated in terms of frequency, severity, and variation, the possible impact of a loss is also an important consideration. Most agencies would be able to handle the loss of a portable computer valued at $500 as an ordinary operating expense. However, a $5,000 loss might strain the budget, in some cases severely. The impact that a particular occurrence will have on an agency will vary depending on a number of factors.

It is important to recognize the impact is not determined merely by the size of a loss and/or the size of the agency. To gauge the impact of a loss, a number of other factors, such as availability of funds to replace the loss, the availability of securing alternate equipment or facilities, and what the impact will be on the agency's critical operations, must be considered.

When dealing with risks involving damage to or destruction of property, it is common to consider severity and impact in terms of maximum possible loss (the worst that could happen) or maximum probable loss (the worst that is likely to happen). Usually, maximum probable loss is a more realistic measure, but this can be very difficult to determine when large, highly valued properties are involved. It is often difficult to determine the extent to which a particular property would burn or be damaged by a peril such as fire or flood, but it can also be extremely difficult to determine the extent to which the agency's operations will be interrupted or the extra expenditures that would be required to conduct operations at another location.

Evaluation of liability risks is much more difficult. For the most part, the amount of a liability claim is a matter of pure chance, although smaller losses do occur more frequently than larger losses. A vehicle backing over a tricycle is a comparatively insignificant incident if no child is on the tricycle. The driver of a car may be responsible for millions of dollars of damage if he/she collides with a gasoline tanker on a city street and the tanker explodes.

SORM's REPS system helps risk managers identify many potential risks that exist within an agency and also provides the mechanism for evaluating these risks. Ultimately, the proper approach for the handling of risks is close cooperation of those within the agency and a sincere interest in attempting to identify and evaluate risks.

Joe Deering is a risk management specialist in the Risk Assessment and Loss Prevention division.

Article VII agencies profile

Business, economic development employers have low IFR

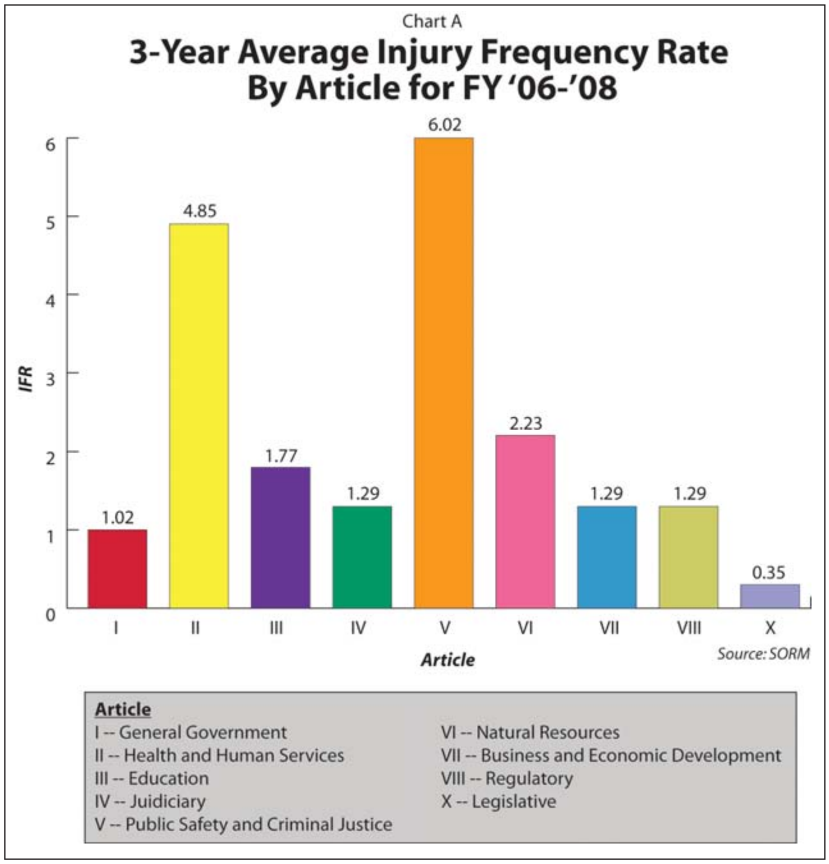

Chart B
3-Year Average (FY '06-'08) Loss Amounts by Cause of Injury

Fall/Slip Injury	$106,106.98	63.3%
Strain, Injury By	$40,771.62	24.3%
Caught In/Between	$11,028.85	6.6%
Struck, Injured By	$6,349.26	3.8%
Miscellaneous Causes	$1,376.33	0.8%
Striking, Against/Stepping On	$831.84	0.5%
Cut, Puncture, Scrape, Injured By	$453.39	0.3%
Burns/Scalds - Heat/Exposure	$411.43	0.2%
Motor Vehicle	$339.80	0.2%
Grand Total	**$167,669.50**	**100.0%**

By Sam Arant

In this issue of *Risk-Tex*, SORM will focus on the state agencies within Article VII – Business and Economic Development.

Article VII client agencies employed 3,428 full-time equivalents (FTEs) in 2008 or approximately 2 percent of the state agency workforce. As the title of the article suggests, agencies within Article VII provide a wide variety of business and economic development services to the citizens and employers of the State of Texas. The agencies that make up Article VII are:

- Texas Workforce Commission;
- Texas Department of Housing and Community Affairs;
- Texas Department of Rural Community Affairs; and
- Texas Lottery Commission.

Taken as a group, the management and program portions of Article VII agencies share the same general exposures to loss as other office-based environments. The field staff, however, operates broad-based programs that include auditing, investigating, and driving activities.

Employees at the business and economic development agencies range from program specialists, accountants, purchasers, lawyers, and executive administrators. Article VII agencies have a comparable rate of injuries to Article IV (judiciary) and Article VIII (regulatory) agencies as seen in Chart A.

The three-year average (FY '06-'08) cause and cost of injuries for Article VII agencies is contained in Chart B. The primary causes of injury to Article VII agencies are fall/slip, strain injuries (lifting), and motor vehicle. These major causes of injuries are indicative of Article VII employees who work primarily in office environments and agency employees who travel on agency business. This trend is in alignment with observations by SORM's risk management specialists, who also note that the cost of injuries would be higher for the business and economic development agencies if

(See "Review," page 5)

Safety for state agency drivers

(Continued from page 1)

and an annual review of an employee's driving records for those employees on the agency's approved drivers list. If applicable, a comprehensive driver safety program should be a key element in an agency's risk management program.

SORM highly recommends state agencies utilize defensive driving programs because they teach drivers how to take precautions that go above-and-beyond what is required by existing traffic laws. In a typical course, drivers learn the essentials of defensive driving, how and why various collisions occur, and what measures can be taken to prevent accidents. Defensive driving courses should be taken on a biennial basis. SORM offers a free Driving Safety course for employees of state agencies. Check the online calendar (www.sorm.state.tx.us/Training/Courses/Calndr07. php) for course dates.

Texas state agencies that own or lease one or more vehicles should have a Fleet Safety Program. State agencies are required to follow the guidelines of the State Vehicle Fleet Management Plan (www.window.state.tx.us/supportserv/prog/vfleet/2003StatePlan.pdf), administered by the Comptroller of Public Accounts. A comprehensive fleet safety program includes procedures to systematically prevent, reduce, and control accidents. Elements of the program include: exposure identification; program supervision; a fleet safety policy; training; vehicle operation and maintenance; authorized driver record review; and accident and loss reporting. For more guidelines about a fleet safety program, see SORM's online Risk Management for Texas State Agencies guidelines, Volume II, Section II, Fleet Safety Program (www.sorm.state.tx.us/RMTSA_Guidelines/Volume_Two/221.php).

Another good reference for agencies is the December 2007 *Risk-Tex* article focusing on the do's and don'ts when state agency employees rent vehicles (www.sorm.state.tx.us/Publications/risk_tex/07/Dec/rental.php).

Molly McKenna is a risk management specialist in the Risk Assessment and Loss Prevention division.

Review of Article VII agencies

(Continued from page 4

these agencies did not have strong workplace and driving safety programs.

A lower loss ratio is also reflected in the three-year average workers' compensation costs found in Chart C. Article VII agencies had a 62 percent less average workers' compensation payments value for FY '06-'08 than the average for all agencies during this same time frame. The only category of reported losses to SORM by Article VII agencies that was above the three-year average of state agencies losses was property insurance claims. The property insurance claims were the result of Hurricane Ike damages to property. All other loss categories values were less than or equal to average losses encountered at all state agencies during FY '06-'08.

Chart C
3-Year Average (FY06-08) Losses by Category and FTE

Loss Category	All Agencies	Article VII Agencies	$ Difference	% Difference
Workers' Compensation Payments	$256.56	$96.33	($160.23)	-62%
Property Insurance Claims	$43.21	$73.39	$30.18	70%
Lost, Damaged, Destroyed Property	$81.76	$16.80	($64.96)	-80%
Total Losses	**$381.53**	**$186.52**	**($195.01)**	**-51%**

Taken all together, Article VII agencies experienced 51 percent less dollar losses per FTE than the average for all agencies over the FY '06-'08 period.

In conclusion, Article VII agencies sustain a lower frequency of injuries, a lower cost of workplace injuries, and a lower number of casualty claims when compared to other state agencies. A proactive approach to identifying potential risks, along with a willingness to emphasize loss prevention and control, contributes to a positive risk management culture found in Article VII agencies.

For questions or comments, please contact Sam Arant at (512) 936-2926 or at samuel.arant@sorm.state.tx.us.

Sam Arant is the deputy director of the Risk Assessment and Loss Prevention division.

Claims Corner

SIF reimbursements expand

By Gordon Leff

The Texas Labor Code and Department of Workers' Compensation Rules contain provisions that protect carriers, including SORM, from overpayments due to decisions, orders, or medical opinions that are later overturned or modified by final decision or order. If this occurs, SORM requests reimbursement from the Subsequent Injury Fund (SIF). Once SORM submits the request, staff continually monitors the file for receipt of the refund.

The fund is a concept that some states feel has outlived its usefulness. Most states adopted SIFs after World War II to ease employers' minds about hiring injured veterans. In Texas, the fund's intent was modified to provide an offset to carriers for pre-existing compensable permanent disability through reimbursement from the SIF. At least 20 states have recently abolished their Subsequent (Second) Injury Funds. Texas, the only state without a mandatory compensation law, has gone in the other direction. In July 2002, it was expanded.

Sec. 408.042 addresses average weekly wage (AWW) for part-time employees or employees with multiple employment. As part of HB 2600, carriers are instructed to add the AWW of an injured worker's part-time employment to the AWW of the full-time employment. The combination can result in increased income benefits payments, though never higher than the maximum compensation rate. The rule also establishes the entitlement of carriers to apply for and receive reimbursement from the SIF for the amount of income and death benefits paid based on wages from employment other than the employment during which the compensable injury occurred. In other words, SORM can recover payments made based on the second employment, and that reimbursement comes from the SIF, on at least an annual basis.

The SIF is funded by death income benefits (DIBs) owed because of the death of an employee with no legal heirs. DIBs that would have been paid to the heirs is paid into the SIF. Additionally, if legal heirs lose their eligibility for DIBs before 360 weeks have been paid out, the balance of 360 weeks of DIBs is owed to the SIF. In fact, this is Texas' sole means of financing its Second Injury Fund, outside of a maintenance tax that has never been imposed. This led to underfunding in the past, creating a substantial barrier to actual recovery. Making it harder yet, the state has enumerated steps that must be followed in order to collect from the SIF and generated a priority list for payments. The payments under Sec. 408.042 (arising from multiple employments) are the lowest priority on the list.

SORM has successfully put this rule to the test and received reimbursement. Staff will continue to vigorously attempt to recover all funds that SORM is entitled to recoup under the Act and apply those funds against payments made to the individual claim. If claims coordinators and employer representatives become aware of any second or part-time employment by injured employees, please inform a SORM adjuster as soon as possible. This will not always lead to additional income benefits, but it must be explored. If SORM is required by law to pay additional income benefits, staff will calculate those payments and pursue the proper reimbursement.

Gordon Leff is interim director of the Claims Operations division.

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Texas Government Code Section 441.1035