Commercial Risk Advisor

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Trends Driving Social Inflation

Social inflation refers to the rising costs of insurance claims that are a result of societal trends. As the insurance market changes, it's important for businesses to understand what's currently driving social inflation. Doing so not only provides you with a better understanding of the issues that affect your insurance costs, but it can also help you take proactive steps to protect your business in the face of litigation.

The following are common trends influencing social inflation:

1. **Litigation funding**—In the past, the steep cost of attorney fees would often scare plaintiffs away from taking a claim to trial. But, through litigation funding, most or all of the costs associated with litigation are covered by a third party, which has increased the volume of cases being pursued.
2. **Tort reform**—Tort reform refers to laws that are designed to reduce litigation. Specifically, tort reforms are used to prevent frivolous lawsuits and preserve laws that prevent abusive practices against businesses. However, in recent years, states have modified tort reforms or challenged them as unconstitutional. Should tort reform continue to erode, there could be fewer restrictions on punitive and noneconomic damages, statutes of limitations and contingency fees—all of which can drive up the cost of claims and exacerbate social inflation.
3. **Plaintiff-friendly legal decisions and large jury rewards**—The overall public sentiment toward large businesses and corporations is deteriorating, and anti-corporate culture is more prevalent than ever. This has had a considerable impact on how businesses are perceived by a jury in court, and organizations are held to a high standard for issues related to the way they conduct their business. Compounding this issue, there's an increasing public perception that businesses—particularly large, well-funded ones—can afford the cost of any damages. This means juries are likely to have fewer reservations when it comes to prosecuting companies to the fullest extent of the law.

Social inflation can introduce a level of uncertainty when it comes to your risk management and claims prevention practices. To ensure your business is ready for any issues that may arise, contact LaPorte today.

Important Definitions

Essential terms and conditions of employment means wages, benefits, hours of work, hiring, discharge, discipline, supervision and direction.

Substantial direct and immediate control means direct and immediate control that has a regular or continuous consequential effect on an essential term or condition of employment of another employer's employees. Such control is not "substantial" if only exercised on a sporadic, isolated or de minimis basis.

NLRB Issues New Joint-employer Final Rule

On Feb. 25, 2020, the National Labor Relations Board (NLRB) announced a new joint-employer final rule, which goes into effect April 27, 2020, and applies to labor issues related to the National Labor Relations Act. Specifically, the NLRB is changing the standard it uses to determine whether employers are considered joint employers. As such, it's important for employers to understand what joint-employment situations are and what the final rule entails.

Joint Employment
Joint-employment situations can happen when two or more employers share personnel hiring, supervision and management practices. Whether joint employment is by design or unintentional, joint employers are equally:

- Required to bargain with the union that represents jointly employed workers
- Liable for unfair labor practices committed by other joint employers
- Subject to union picketing or other economic pressure if there is a labor dispute

The New NLRB Joint-employer Standard
Under the final rule, the NLRB is abandoning its decision in *Browning-Ferris Industries of California, Inc.* to return to the previous standard of "substantial direct and immediate control" over essential terms and conditions of employment of another employer's employees.

The NLRB's new standard follows the U.S. Department of Labor's new joint-employment determination test under the Fair Labor Standards Act. Both focus on the amount of control an employer exerts over the employment relationship.

Employers should review the final rule and determine whether they are in joint-employment relationships based on the updated standard. Employers in these relationships should also determine whether the other joint employers in the relationship are in compliance with labor and employment laws.