

### **Risk Management**

Issues of worker health and safety, safety training, liability, and insurance are part of the business concept known as risk management. Risk management involves the practical concerns of identifying both hazards in the workplace and safe work practices and procedures, training employees (including student-learners) to safely complete their work assignments, ensuring that adequate protections are in place, and providing documentation that can help reduce risks for all parties. In addition, there are legal implications and liability for employers, schools, and students who participate in work-based learning activities.

### **Liability Issues**

While everyone would agree that students must be provided a safe and healthy environment in the school and at the work site, educational institutions and employers must also be protected from unnecessary liability. Students do not require special insurance for participation in typical school activities; they are already covered in the liability policy of the school or school district. However, questions of liability become more complex when students participate in work-based learning experiences, whether that includes paid work experience, job shadowing, school-sponsored enterprises, or on-the-job training for academic credit.

*Liability of Employers.* The issue of liability arises whenever any business entity has individuals on its work site. The type of liability will depend on whether the student is considered an employee or an invitee of the business. Employer exposure to liability is usually no different than that which exists relative to its employees and to the general public, such as when people are invited to visit the work site.

Students who are considered employees and whose injuries arise out of and in the scope of their job duties are subject to the exclusive remedies provided through the workers compensation benefit delivery system.

Students who are *not* considered employees but who are injured on the work site are covered under the school workers compensation policy and, under Iowa law, are prevented from filing suit against the employer.

*Liability of Educational Institutions.* Exposure to liability for educational institutions and their employees is divided between two issues: injury to the student, and injury caused by the student to another person or to property belonging to another person.

*Injury to the Student.* When a student is not being paid by a private employer, then the student is covered by the school workers compensation policy, and coverage under workers compensation is the student's exclusive remedy.

*Injuries or Damages Caused by Students.* Employers who sponsor work-based learning activities may be liable for the damages or injuries caused by students involved in school programs if students are:

- Acting on behalf of the participating business; or
- Acting with the actual or apparent authorization of the business; and
- The student is negligent; and
- That act results in injury to customers, passers-by, visitors, or the general public; or damage to the property of customers, passers-by, or the general public.

Students are not insured under the school liability policy, so it is highly unlikely that the school's own liability insurance would come into play.

### **Consent Forms**

Schools and employers may want to use "informed" consent forms to outline in detail for participants (and parents or guardians) the risks involved in the activity that students are about to perform. All parties sign the document, indicating they have read and understand the risks involved and agree not to bring a lawsuit for any harm resulting from the identified risks. Consent forms are generally upheld by courts, but they do not excuse an employer from responsibilities for its own negligence. Examples include consent forms allowing students to ride with a parent-volunteer on a field trip, or a training agreement for a teen to work as an unpaid trainee.

### **Permission Slips**

Permission slips are documents that inform parents and guardians about the nature, location, and details of an activity. Permission slips are also helpful as a form of protection to a company – a well informed parent or guardian may not be as likely to bring suit. Permission slips would be used to inform parents and guardians about student field trips and job shadowing events.

### **Liability and Workers' Compensation Insurance**

The following practices and procedures are recommended for teacher-coordinators to address insurance and liability issues, including workers' compensation.

- Consult with an attorney about the range of legal issues and their application.
- Involve insurance industry partners early in the design of work-based learning experiences.
- Address employer concerns. Create a letter to employers and potential representatives of work-based learning activities or offer a workshop and invite experts, such as attorneys and insurance agents, to answer employer questions about insurance and liability.
- Presume workers' compensation coverage is required in work-based learning components when students are considered employees.
- Confirm workers' compensation coverage with employers or their insurance carrier, who can provide a "certificate of insurance." It is recommended that a copy of the workers' compensation insurance certificate be provided to the school's insurance agent for review. When requesting such certificates, work-based learning teacher-coordinators may also ask carriers to be notified of cancellations or lapsed coverage that may result when employers don't pay premiums. Self-insured employers and members of a self-insurance group can provide copies of their authorization from the State of Iowa Insurance Commissioner (515-281-5705).
- Reduce risk factors. Whenever possible in developing career exploration, career awareness, job shadowing, or unpaid work experience activities, follow practices that reduce the likelihood of incidents which could cause injury to students and that will protect employers and schools from potential liability.

Create a written agreement specifying the purposes and limitations of the activity, including the amount of time required by the activity (limited to the time needed to achieve the desired objective) and the activities in which participants will engage. Limit risks to students by:

- Integrating safety and health training into all curricula as a component of general workplace competencies;
- Providing industry-specific safety training to students as they progress in the program;
- Providing activity-specific safety and health training to students ready to participate in the workplace learning component, either by the employer or with the employer and teacher-coordinator working together, as appropriate; and
- Documenting all training provided.

### **Workers' Compensation Law and Work-based Learning**

In the following pages, Robert E. Jester, President of Jester Insurance Services and Managing Agent for the Iowa Association of School Boards Insurance Programs, summarizes some effects of state legislation and potential insurance ramifications for schools, employers, and students in Iowa's work-based learning programs.

#### *Legislation Summary*

Ever since work-based learning programs first came on the scene, one of the first questions asked by many people concerned possible injuries to student participants. Before the Chapter 85.20 (SF 361) amendment, students injured in a work-based learning setting could potentially file for workers' compensation from a private employer, particularly if they were being paid for their work activities. Unfortunately, they could also file a tort action against various parties, including the school district, the school board, school employees, and others.

Chapter 85.20 clarifies this situation by specifying that students injured in work-based learning programs, where they are being paid by a private employer, will be able to recover workers' compensation claims from that private employer, just like any other employee. If they are not being paid for such work, workers' compensation still applies, but it is paid for under the school's workers' compensation policy. The receiving school district pays the workers' compensation claim for students participating under open enrollment.

With the passage of the SF 361 amendment to Chapter 85.20, an injured student is entitled to collect *only* workers' compensation benefits. They may not pursue any other kind of liability claim against either the private employer or the school district and its employees. By eliminating the potential of costly litigation, this legislation should help to foster the growth of work-based learning programs and the safety of students involved.

#### *Insurance Issues Related to Work-based Learning Initiatives*

As work-based learning opportunities in Iowa expand, so do insurance concerns for both schools and employers who agree to accept students in a variety of work situations. Some of the more important insurance ramifications are outlined below.

##### For Schools

###### *A: Student Injuries and Workers' Compensation*

Ever since work-based learning initiatives were first conceived, the most important questions have always concerned potential injury to students. Certainly, when we take students out of traditional classroom settings and expose them to hazards typical of the workplace, we introduce a whole new level of problems that are not common in schools.

The recourse for students injured in work-based learning experiences was clarified in Iowa Code Sections 85.20 and 258.00. Workers' compensation is now the exclusive remedy for students injured in the course of work-based learning activities. The legislation establishes that students participating in work-based learning initiatives are entitled to at least the state minimum weekly benefit amount for disability benefits.

At present, there is no initial premium impact on the school's workers' compensation policy from this legislation. Since students are not being paid a salary, payroll records of the school will not impact any dollar amounts for work-based learning activities. Any losses that occur, however, will become a part of an individual school claim record and, thus, would have an impact on future experience modifications, which are based on total claims.

### *B: General Liability Insurance*

Each school has liability insurance that remains in place to protect the school for claims arising out of a work-based learning program that may not be addressed by Chapter 85.20. However, we feel that the Chapter 85.20 will dramatically reduce the amount of legal activity that schools will encounter.

### *C: Automobile Insurance*

Transportation risk may also be an issue. If schools transport students to a work-based learning site in school vehicles, then the school's own automobile insurance provides liability protection, as it normally does. If students drive their own vehicles to places of employment, then each student is responsible for having his or her own liability insurance. It is unlikely that the school's insurance would become involved in the event of an accident any more than it does when a student drives to school on a daily basis. If students become involved in an automobile accident, injured parties could theoretically bring action against the school district for some degree of vicarious liability, but that is covered by the school's insurance program as a non-owned automobile liability claim.

## For Employers

### *A: Workers' Compensation*

As outlined above, Iowa law now provides that students injured while participating in work-based learning settings are covered under workers' compensation. If students are paid by the employer, their injuries will now be covered under the employer's workers' compensation policy, just like any other employee. The cost impact to the employer is twofold. First, the additional staff on the payroll means a larger insurance premium. The second potential impact is generated by potential claims that may occur, since any workers' compensation claim can have an impact on the total calculations.

### *B: General Liability*

Because Chapter 85.20 makes workers' compensation the exclusive remedy for students injured in work-based learning programs, their personal or legal representatives, dependents, and next of kin, employer liability risk is significantly reduced, regardless of whether students are covered under the

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employer's workers' compensation policy or that of the school.

Students working for and paid by private employers are considered employees for purposes of liability insurance, becoming an insured under the employer's liability policy, assuming that the policy has been extended to cover employees in general. Non-paid students may pose some additional complications, since many General Liability policies do not automatically cover volunteers and other non-employee groups. Employers would continue to be protected by the General Liability policy for any vicarious liability due to acts of students or volunteers. Care should be taken in assigning students to operate certain machinery and equipment, particularly large heavy construction equipment where the potential for injury or damage is high, or where violation of state or federal child labor laws is possible.

Samples of typical endorsements for the General Liability policy that can be used to add coverage for all volunteers, including students, appear below.

### C: *Automobile / Vehicle Insurance*

Under standard automobile insurance, the vehicle owner has the right to allow any other person to operate his or her vehicle. With the owner's permission, the driver – whether an employee or not – becomes an insured under the employer's automobile policy. The same principle applies to students in the work-based learning setting who may operate vehicles owned by employers: they are automatically covered under the employer's automobile insurance policy. Care should be taken in permitting this kind of automobile usage, however, particularly with trucks and other heavy equipment. Most employers will probably not want to grant driving privileges to students still in their teens, where the basic risk is higher than with more experienced drivers. If such driving is deemed advisable, however, employers should verify students' driver's license and motor vehicle driving record before authorization. Employers should also keep in mind the legal requirements of the commercial driving license, which may place special restrictions on the use of any commercial vehicle over a certain size.

Common Transportation Types	Liability Coverage
<input type="checkbox"/> School transports students on school bus	<input type="checkbox"/> School bus insurance
<input type="checkbox"/> Employer provides van to transport student- learner employees	<input type="checkbox"/> Employer's insurance
<input type="checkbox"/> Students use public transportation	<input type="checkbox"/> Public Transit Authority insurance
<input type="checkbox"/> Students drive own vehicles	<input type="checkbox"/> Students' personal vehicle insurance

In all cases, parents of secondary school students should sign transportation agreements before students are permitted to travel to and from work sites. When

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students drive personal vehicles, conditions of transportation should be reviewed and defined. Typically, they include:

- Verifying student driver's license and insurance coverage;
- Limiting transportation to student driver (no passengers); and
- Limiting transportation for the sole purpose of getting to and from the work site.

Jester recommends removing this section so as to not convey responsibility.

### *D: Crime Insurance*

Employers should think carefully before assigning students to jobs involving the handling of money and other financial assets. If students are not paid by the employer, they may not be considered insured under a Fidelity Bond. Therefore, no coverage would exist if students take money or other employer assets. In certain circumstances, the Fidelity Bond may be modified, but it would require agreement of the insurance underwriter and the potential payment of additional premium. Careful consideration should be given to the assignment of students to any sensitive job classifications. A sample endorsement for including volunteer workers under a fidelity bond is included in these materials.

This brief summary of the major insurance ramifications surrounding work-based learning activities is not intended to be an exhaustive examination of every conceivable risk and related insurance coverage. Each employer is encouraged to regularly review this document and any general issues with their insurance advisor.

## Sample Endorsements

### *Sample Endorsement 1*

*THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.*

#### **ADDITIONAL INSURED - VOLUNTEER WORKERS**

This endorsement modifies insurance provided under the following:

#### **Commercial General Liability Coverage Part**

Section II – Who Is An Insured is amended to include as an insured any person(s) who are volunteer worker(s) for you, but only while acting at the direction of, and within the scope of their duties for you. However, none of these volunteer worker(s) are insureds for:

1. "Bodily injury" or "personal and advertising injury":
  - a. To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to your other volunteer worker(s) or to your "employees" arising out of and in the course of their duties for you;
  - b. To the spouse, child, parent, brother or sister of your volunteer worker(s) or your "employees" as a consequence of Paragraph 1.a. above;
  - c. For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs 1.a. or b. above; or
  - d. Arising out of his or her providing or failing to provide professional health care services.

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2. "Property damage" to property:
  - a. Owned, occupied, or used by,
  - b. Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your other volunteer workers, your "employees", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

Commercial General Liability – CG 20 21 07 98  
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**(Copy of an ISO endorsement)**

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### *Sample Endorsement 2*

***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.***

#### **INCLUDE VOLUNTEER WORKERS AS EMPLOYEES**

This endorsement applies to the CRIME GENERAL PROVISIONS FORM and all Crime Coverage Forms forming part of the Policy.

#### **PROVISIONS:**

"Employee" also includes any non-compensated natural person:

1. Other than one who is a fund solicitor, while performing services for you that, are usual to the duties of an "employee", or
2. While acting as fund solicitor during fund raising campaigns.

Form CR1022 Ed. 1-86

**(Copy of an ISO endorsement)**

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#### **For More Information...**

Iowa Division of Workers' Compensation  
515-281-5387  
800-JOB-IOWA (800-562-4692) toll-free  
<http://www.iowaworkcomp.gov/>

Iowa Insurance Division  
515-281-5705  
877-955-1212 toll-free  
<http://www.iid.state.ia.us/>