The Insurance Broker – Employer Relationship

The relationship between the insurance broker and the employer is often overlooked in the management of a workers’ compensation program. (Employer as used in this article is any business that has employees subject to the workers’ compensation statutes of their state). An understanding of the role and responsibilities of your insurance broker will make your interactions more productive and will strengthen your workers’ compensation insurance program.

The insurance broker acts in a fiduciary role for the employer. The employer is entrusting the broker with protection of the financial assets of the employer, through the selection and obtainment of the workers’ compensation insurance. While the broker is acting on the behalf of the employer, the broker’s actions are subject to the control and consent of the employer.

The broker is acting as an agent of the employer. [The technical differences between an insurance broker and an insurance agent would be a separate blog, but for simplicity of this blog, an insurance broker is an insurance agent, but also performs a broader range of services for the clients than an insurance agent only would provide]. The agency relationship of the insurance broker from a textbook analysis includes:

* Acting on behalf of the employer
* Acting with the consent of the employer
* Acting under the guidance and control of the employer
* Acting as the fiduciary of the employer

**Acting on Behalf of the Employer:**

The insurance broker’s primary duty is acting in the best interest of the employer. In most situations the broker’s and the employer’s interest align and this is simple for the broker to do. However, there are situations where what is in the best interest of the employer does not benefit the broker as much as a conflicting interest. For example, Insurance Company A has lower insurance rates but also pay only a 10% commission to the insurance broker. Insurance Company B has insurance rates that are only 5% higher than Insurance Company A, but Insurance Company pays a 15% commission to the insurance broker. The ethical broker will act on what is in the best interest of the employer, even if it is not the most beneficial approach for the broker.

**Acting with the Consent of the Employer:**

The insurance broker’s primary purpose is to represent the employer to the insurer(s). In order to do this, the broker must have the consent and authority given by the employer. Without the employer’s consent to act on the employer’s behalf, the broker is powerless to provide any services or benefits to the employer. In several jurisdictions, insurance brokers require a written authorization from the employer to act as their agent/insurance broker.

**Acting Under the Guidance and Control of the Employer:**

The employer is responsible for guiding and controlling the actions of the insurance broker. By this, we mean the employer instructs the insurance broker on the type of coverage (workers’ compensation) that is needed, the date the insurance coverage is needed, the type and number of employees to be insured, and the amount of payroll on which to base the workers’ compensation premium. The broker has the duty to obey the instructions of the employer in obtaining insurance within the perimeters of the instructions provided by the employer.

The professional insurance broker will carefully follow the instructions of the employer, but will also provide assistance and guidance to the employer when the employer’s directions to the broker are not in the employer’s best interest.

**Acting as the Fiduciary of the Employer:**

The broker, acting as a fiduciary of the employer, is responsible for protecting the financial well-being of the employer. Often employers think this means only finding the best price for insurance coverage. This can be short sighted. The fiduciary responsibility of the broker is to recommend the best financial protection of the employer assets both for the short term and for the long term.

If Insurance Company X has a lower initial price, but the broker knows Company X provides horrible claim service which results in employees being off work longer than necessary, causing more administrative headaches for the employer, and resulting in higher than normal claim cost, Insurance Company X would be a bad recommendation by the broker. If Insurance Company Y has a slightly higher price, but provides excellent service and lower than average claim cost, the insurance broker would be violating his/her fiduciary responsibility to the employer if he/she recommends Insurance Company X without fully explaining and discussing his/her knowledge of both Company X and Y.

**A Degree of Care:**

The insurance broker has the duty and obligation to put the best interest of the employer first and should demonstrate a standard of care that shows the employer that the broker puts the customer first. This does not mean the broker should do what is impractical or impossible. If the broker sees that an instruction of the employer cannot be met, the broker should advise the employer of the reason(s) the instruction is not followed.

It should be noted that the broker often will act in what he/she believes is in the employer’s best interest in areas that have not been discussed with the employer. When an employer finds a broker who takes the initiative to act and provide a benefit to the employer without the employer having requested it, the employer should recognize the broker is a good bet for a long-term relationship.