

## CORPORATE EXPOSURE: State Mandated Safety Committees



Harry P. Mirijanian

In an attempt to help companies cope with rising workers compensation costs, states have become far more active in requiring employers to strengthen their efforts to reduce employee injury potential. Arguably, some companies probably needed a legal nudge to increase their efforts.

There are approximately a dozen states that have established minimum standards to be satisfied depending upon the number of employees, workers compensation accident experience, etc. The minimum standards are rooted in historically accepted safety practices aimed at reducing injury exposures. More specifically, most of these states require the establishment of safety committees to achieve results. Typically, states require such a committee to be formed if the company has 25 or more employees, and/or if the organization has adverse loss experience—which is usually determined by reviewing the operation's workers compensation experience modifier. Simply stated, an experience modifier of 1.00 indicates that the operation is average when compared to all the other companies with a similar Standard Industry Classification (S.I.C.) Code. A modifier of less than 1.00 indicates that the company is better than average, while anything above 1.00 indicates that the company falls below the average.

Calculating an experience modifier can be cumbersome, but software programs now exist that can compute this

figure if your company does not want to rely on the regulators. The factors that can influence your experience modifier could fill another column.

In any case, depending on your modifier, the state requires various actions—the higher the modifier, the more activity required. The formation of a safety committee seems to be common through all state requirements. We will comment later on whether these committees actually produce results.

The states require that safety committees retain records of attendance and minutes of the items reviewed, review accident investigation procedures, and discuss training issues (including accident prevention and even substance abuse concerns). The committee must be equally represented by management and

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non-management personnel. We recently learned, however, of a situation confronting a company trying to satisfy the state requirements while not violating federal laws protecting union operations under the National Labor Relations Act (NLRA).

The issue developed when the union representatives required bargaining unit members on the committee. The company rejected this request, arguing that, because it was complying with state laws, there was no need for such members on the committee. Union representatives

argued that, since the committee would affect conditions covering employees represented under the collective bargaining agreement, the company was merely trying to hide behind the state law and was clearly violating NLR federal law. The court agreed that the company had dominated the safety committee and thus was in violation of NLRA regulations.

The court further ruled that the federal law pre-empts state law, and the company was ordered to have designated union representatives on the committee.

There are several legal technicalities that will determine whether you are in violation of the NLRA when formulating safety committees. The more important issue, however, is whether the safety committee itself is effective. The safety committee can conceivably provide the single most important element in the workers compensation accident reduction cycle: communication. The committee can provide a forum for open discussion of management and employee concerns and how they affect safety and health exposures. The key here is *open communication*. In the illustration we offered earlier, how much open communication do you think can take place on the safety committee when its members had to be chosen in part by the courts? If the selection of committee members cannot be accomplished without legal intervention, the company has severe labor-management problems that go beyond the scope of what a safety committee can remedy. ■

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Published as a supplement to the May 1996 issue of *Management Review*.

*Finance Forum* Editor: George Milite.  
*Forum* Group Editor: Florence Stone.  
Associate Editor: Anne Skagen  
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Graphic Artist: Jay Klampert  
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