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Joint and Several Liabilities and SIGs... What's that Mean?

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When looking into whether or not your company should enter into a Self Insured Group, (SIG), the most important issue that you should know and understand is that of Joint and Several Liability.

Businessdictionary.com defines joint and several as “together and in separation liability. In joint and several agreements, the liability for default is enforceable against all of the signatories as a group (not necessarily on a proportional or pro-rata basis), or against any one of them as an individual at the choice of the enforcing party.”

Taken in the real world, Joint and Several liability issues happen every time a group of people goes out to eat. Each person is responsible for paying the entire bill, even though they only ate a single portion of the food on the bill. So, if you go to dinner with a bunch of friends and they all duck out the back door before the bill comes, you are responsible to pay the entire bill. That is joint and several liability!

Similarly, in a general partnership, all general partners are jointly and severally liable for the obligations of the partnership.

And how does this work in the world of self-insurance or self-insured groups? Very similarly – at least in California.

Specifically, each self-insurer in California, whether an individual self-insured or a member of a group, is (to some extent) liable for the claims of other self-insurers, since they are all part of the Self-Insurer's Security Fund.

The same thing works within a SIG, where each Member of the SIG is jointly and severally liable with every other Member for all of the liabilities of the entire SIG.

Regulation Section 15479(b)(1) , that establishes what a SIG's indemnity agreement must include, states:

“An agreement under which each member of a group self-insurer agrees to assume and discharge, jointly and severally, any compensation liability under Labor Code Section 3700-3705 of any and all other employers that are parties to the group.”

Why would there need to be joint and several liability in a SIG, or between all self-insureds for that matter? It's because the claims of the groups' injured workers need to be paid! So, if a group of employers decide they want to be self-insured, then a system needs to exist to pay the claims. In a SIG, the various Members are each jointly and severally liable to pay all of the SIG's liabilities, so that the claims can be paid if the funds collected are insufficient to cover claims costs.

Therefore, the system is in place to have the other SIG Members include the liabilities of injured workers whose employers are in a SIG. The regulations require that initial contributions be made on an ongoing annual basis at a rate estimated to be sufficient to pay expected claims.



This is in addition to the SIG's security deposit (at the expected actuarial confidence level) and specific excess insurance for any claim over \$500,000. And, as previously stated, self-insurers, as a whole, are bound together through their contributions and assessments to the Security Fund. Any employee from a (private sector) self-insured employer will have their claim paid (by the Security Fund) if the self-insurer/SIG goes out of business and claims need to be paid.

Does this mean that no one should become self-insured or become a Member of a SIG? Certainly not. What it does say is that you need to make sure that SIG Members, and any other self-insurer for that matter, are properly underwritten, funded and abide by the various regulations established for self-insurance.

The best protection for SIG members who are jointly and severally liable is the fact that other members of the group have similarly agreed to meet their obligations, and have assumed joint and several liability obligations, as well. In California, the regulators are very active and are rules are rewritten every few years. This means changes in the market are captured and corrected to avoid "mischief" [as Safeway's Bill Zachry says], by those that would use loopholes in the system that can damage those they work with and the system.

And, lastly, how can someone avoid getting caught short by joint and several liability?

Good SIG managers underwrite incoming SIG Members fully and correctly, using strict underwriting guidelines, so that potentially dangerous players don't enter your SIG. (SIGs are like country clubs! They are private and you don't have to let everyone in). Speaking of this, SIG Members know and do business with each other – both as competitors and also as an industry.

So, if you think of a SIG as an industry group, the Members not only know each other, but they know who they want to do business with and who they don't trust enough to do business with. (This gut reaction is really a great measure of who should belong to a SIG.) Just like the dinner example, we know who we trust to go to dinner with and who we don't.

Joint and several liability is just one reason why choosing SIG Members is just as important as whom you invite to dinner...and who will stiff you with the bill!

