

# Loss Control Strategies for DOWNSIZING

*by Larry L. Hansen*

**W**hen companies make the difficult decision to downsize or close facilities, they face a range of potential problems, from sharp increases in workers' compensation claims to a hostile public response. It is the risk manager's job to identify the critical issues and address them with a detailed and thorough plan to ensure that any negative aspects are minimized.

The best way to begin the loss control effort is to scrutinize the fundamental reasons for the downsizing. Before starting to work on your strategy, pose the following questions:

*Is closure absolutely necessary? Are there acceptable alternatives?* It is critical that senior management address these questions early in the process, as they will be raised by the affected groups (government, community, vendors and labor) once public disclosure is made. All of the organization's alternatives (e.g., give-backs, wage restructuring, benefit redesign, cost reduction strategies, debt restructuring, leveraged buyouts and employee ownership options) should be explored and evaluated in advance.

*Exactly why are we doing this?* This might sound simplistic, but it is extremely important. In cases of facility shutdown, the extent of certain employer obligations (e.g., the duty to bargain in good faith under the National Labor Relations Act) are directly

related to the expressed reason for the closure. These reasons and the resulting legal obligations need to be fully considered, and official positions established, before any public announcements are made.

## **The Team**

Once these issues have been considered, and as far in advance of formal disclosure as possible, the risk manager should assemble a team of senior managers from the operations, finance, human resources, loss control, claims, medical and legal departments. This group should meet with representatives from the insurance carrier and third party claims administrator to establish communications, assess site-specific exposures and define common objectives. Keep in mind that a comprehensive workers' compensation loss mitigation strategy requires a partnership between your company and the carrier or claims administrator.

## **The Strategy**

When the team is set, it's time to address specific concerns in five key areas:

### *Claims Management*

To streamline communications, focus on issues and enable a quick response to any circumstance, the carrier/TPA should designate claim handlers, field adjusters and examiners. They should also be active in reviewing and resolving all open claims before the closure announcement is made.

The employer should review all indemnity cases with the carrier/TPA and pursue aggressive return-to-work and modified duty possibilities. They should also develop and communicate a clear policy on workers' comp benefits that supports legitimate claims but pursues any abuses of the system.

Finally, the employer should appoint a shutdown claims coordinator to oversee all communications and organize records for long-term claim management. This will involve centralizing workers' comp records; assembling employment and payroll records; locating employee medical or injury tests and histories (under the supervision of the medical staff); maintaining and filing employee health records as required by state or federal regulations; and assembling descriptions of all affected positions.

#### *Medical Management*

It can be helpful to engage the services of a corporate medical director/consultant to strengthen medical and disability management and coordinate the screening and outplacement process. The medical director will perform exit health examinations of displaced employees to track exposures and baselines (if previously established); supervise displaced worker medical records; and liaise with providers on treatment and claim activity. Finally, quality photographs of all separating employees can be useful in possible workers' comp hearings, litigation or claim surveillance.

#### *Loss Control*

Assemble the following documentation required by regulators or for

## **Develop and communicate a clear policy on workers' comp benefits that supports legitimate claims but pursues abuses.**

defense and/or litigation of suspect workers' comp claims:

- employee training records
- safety inspection and accident investigation reports (including response and remedial actions)
- equipment maintenance files and inspection records (lift trucks, machinery, etc.)
- ventilation and air-handling systems records and maintenance histories
- air-sampling reports
- noise-level surveys
- inventory of workplace chemicals

It's useful to videotape the work environment to document key jobs and functional requirements before making the announcement. In addition, conduct an occupational health/industrial hygiene assessment to establish or update baselines concerning noise, air quality, chemical-handling exposure and controls, and other pertinent factors.

Finally, to strengthen internal accident reporting, investigation and documentation procedures:

- reemphasize an immediate report-of-injury policy
- designate accident/incident report personnel on all shifts

- train all supervisors and managers in injury response procedures
- conduct in-depth accident investigation reports (with photographs)
- obtain an employee incident report (description of incident and cause)
- obtain witness statements
- complete a nurse's incident interview
- review all documentation by the claim coordinator to screen for red flags worthy of close claim administration
- require use of nonconfirming wording—i.e., "Employee alleges . . ."—on all first report of injury forms to preserve claim options where warranted.

#### *Site Security*

In the often emotional aftermath of an announcement, or if a closing is rumored, security can be a major concern. Video monitoring equipment should be placed in critical and remote areas of the facility; security lighting should be upgraded; and security personnel should be hired.

Review emergency plans, provide refresher training to key personnel and strengthen the organization's communications with emergency response services.

Inspect all emergency apparatus and protection, alarm and notification systems (hoses, portable extinguishers, sprinkler system control valves, yard valves, etc.).

#### *Human Resources*

Handling the human aspect of a downsizing or closure is essential and challenging. Every effort should be made to make the

transition easier for those affected. To minimize adversarial aspects of the relationship between labor and management, supervisors should be trained in interpersonal and listening skills and the building of a supportive, compassionate environment.

Create programs that support displaced employees in developing or updating employment skills and finding new positions quickly. Options offered to employees can include placement in other facilities within the organization or with competitors; retraining, and assistance with job-seeking skills.

Fair severance benefits will help discourage workers' comp claims. There are several types of programs that can create a positive environment during the transition phase. Employees that work through the duration of the closure can be awarded loyalty bonuses and accident- and injury-free operations can also be rewarded. The extension of medical coverage or reimbursement of health plan deductibles can discourage the channeling of incidents to workers' comp.

### The Test

Once these strategic issues have been addressed, the proposed plans should be tested to ensure they are operationally sound and support the organization's long-term goals and financial objectives. This screening process can also separate actions based on emotion from those based on fact, thus ensuring that the proposed strategies serve the organization's best interests. To that end, submit the plan to the following questions:

#### *Does it . . .*

- comply with applicable laws, statutes and regulations? Key considerations in this review include the National Labor Relations Act, Worker Adjustment and Retraining Act, the Employment Retirement Income Security Act of 1974 (ERISA), state and federal "right to know" and employee access to medical record requirements (OSHA and state labor law)
- minimize the company's exposure to legal liabilities over the long term?
- maintain required productivity for the duration of the closing?
- protect the company's image and reputation in the community?
- achieve defined objectives in a timely, cost-effective manner?

- provide fair severance, support and outplacement assistance to displaced employees?
- minimize negative impact on market share and revenue flow?
- minimize risk of physical harm to the site, personnel, property and equipment?
- create a disincentive to fraudulent workers' comp claim activity?
- present a fair but firm corporate benefits/rights posture?

If the answers to these questions are all positive, the plan is well-conceived. However, it's important to announce the downsizing or closure—and the plan—in a way that makes the necessity and the strategy clear to employees and the public. Emphasize facts, fairness and compassion. Designate spokespersons to present the company's position in an honest, positive way.

There's no getting around some of the difficulties involved in shutting down a facility, but a strategy that encompasses the aspects we've detailed will lessen the potential negatives reactions and impacts, and protect your company's assets, image and employees.