

Emerging Risks and Insurance Coverage for the JATC/AJATC

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Risks to the JATC

- ▶ Cyber Risks
- ▶ EEOC Risk
 - ▶ Sexual Harassment
 - ▶ Discrimination
- ▶ DOL Risk
- ▶ Other Lawsuits
- ▶ Injury to Apprentices and Employees
- ▶ Property Damage

Why do you need Cyber Security Insurance

- To protect your electronic assets
- No different that protecting buildings and other assets except exposure to a loss is growing faster than you are building buildings
- Cyber Security Insurance covers the JATC in event of a direct loss, legal liability and consequential loss due to a breach in network or computer security from inside or outside the JATC. Provides cover for both first and third parties.
- <http://map.norsecorp.com/#/>

Cyber Liability Basic Risks

- Coverage has many names in the industry but basic risk is the same:
 1. JATC "mishandles" personal data resulting in regulatory requirements to notify and monitor for some period of time the impact on those individual affected by the "breach"; or
 2. JATC is hacked and the information is stolen resulting in regulatory requirements to notify and monitor for some period of time the impact on those individual affected by the "breach" plus any potential liability resulting from the hackers stealing the data

What is Protected

- Personally Identifiable Information (PII): It is the combination of a person's first name (or initial) and last name plus one or more of the following:
 - ✓ Social Security Number
 - ✓ Driver's License Number
 - ✓ State ID Number
 - ✓ Account Number
 - ✓ Credit or Debit Card Number
 - ✓ Account Passwords or PINS or other access codes

Threats to a JATC

- Internal Threats:
 - ✓ Rogue employee who was fired and wants to "hurt" The JATC
 - ✓ "Idealist" who wants to "change" the JATC policies by disrupting normal operations
 - ✓ Accidental or careless staff who loose the data in either paper format or electronic via a lost laptop
- External Threats:
 - ✓ Outside vendor or business associate with access to JATC data who steals personal data sources
 - ✓ Organized crime - both foreign and domestic
 - ✓ Hackers or "Hacktivists" who do it "to change the world"

Threats to a JATC

- **Technology:**
 - ✓ Viruses, SQL Injections, etc
 - ✓ Structural vulnerability to your network
 - ✓ Employee use of Social Media / networking "opening the door" for hackers to enter your network
 - ✓ Remote teaching putting strain on the security of your internal network firewalls
 - ✓ Phishing
 - ✓ Social Engineering

- **"Old School":**
 - ✓ Dumpster diving for discarded papers that are not shredded
 - ✓ Loss or theft of a laptop with personal data on it

Threats to a JATC

- **Regulatory/Legal:**
 - ✓ 48 states now have breach notification laws
 - ✓ There are Federal notification laws as well
 - ✓ Many breaches do not develop into identifiable theft but the notification and tracking requirement is very expensive to the JATC
 - ✓ JATC have to be careful with HIPAA information

Examples

- **Pubic School: August 2013**
 - ✓ 21,054 student files: ID numbers, name, age and a photo, sent families automated phone calls and letters
 - ✓ A vendor that makes student ID cards lost a stick drive with the records
- **Regional Organization : May 2017**
 - ✓ 4,000 employees and former employees notified by letter
 - ✓ Compromised personal information when employee inadvertently uploaded all the information from a stick drive to a church website
- **JATC with "included coverage": April 2016**
 - ✓ Phishing loss that was covered but entailed notification costs which were not covered
- **Non-Profit \$50k wire transfer fraud via Social engineering**
 - ✓ Email from vendor spoofed
 - ✓ Employee of non-profit transferred money as per usual but the "new" account
 - ✓ \$50k lost NO COVERAGE

Cost of a Cyber Incident

- **Ponemon Institute - 2013 Cost of a Data Breach Study**
 - ✓ Studied breaches in 277 companies in nine countries over ten month in 2012
 - ✓ Average Cost per Record in US \$188, second highest to Germany
 - ✓ Significantly lower per record
 - Education : \$111
- **If you had 1000 apprentice records(Past and present) released**
 - ✓ On your own, based on above cost projections, cost is \$111,000 from the JATC trust accounts.

Reasons a JATC does not have Cyber Insurance

- Your budgets are tight and will remain tight for the foreseeable future
 - ✓ They are tight and it will cost more money but as you will see shortly, very affordable - approximately one loss every 15 years payback
 - ✓ Will cover not only current records (students, employees, & applicants) but will also cover historical records retained by the JATC
- Never had a claim involving a breach - at least you don't think you have had one
 - ✓ Not a liability issue as much as an internal cost issue if you have a breach and need to comply with the law
 - ✓ Buying the expertise on how to handle a breach
- Your IT folks assure you the JATC's firewalls are sound and present no risk of penetration
 - ✓ Not an IT / Firewall issue - it is a mishandle issue

Reasons a JATC does not have Cyber Insurance

- I think we already have coverage somewhere else
 - ✓ Excluded under ISO policy forms for all Insurance EXCEPT Cyber
 - ✓ Intent is not to provide the coverage but excludes on some of the larger liability exposures
- New coverage being pushed by carriers but really no losses out there
 - ✓ We've shown you some examples of actual losses
 - ✓ Last year we saw more Cyber claims than we did Fiduciary claims- Every JATC has Fiduciary Liability Insurance

Reasons a JATC does not have Cyber Insurance

- The exposure is here to stay
 - ✓ Computers and mobile devices that store personal information about your employees and your students are an integral part of your JATC
 - ✓ Accidental loss of, or criminal appropriation of, that personal information will continue to happen whether you have good firewall protection or not
 - ✓ Attacks are getting more frequent and more sophisticated
 - ✓ Accidents are getting more frequent as we ask staff to do more in a day than ever before

EEOC, Sexual Harassment, and Discrimination

- ▶ EEOC complaints and Discrimination
 - ▶ Application Process
 - ▶ On the job
 - ▶ Instruction
 - ▶ Removal from program
- ▶ Sexual Harassment
 - ▶ Apprentices
 - ▶ Employee
 - ▶ Outside vendors

EEOC and Discrimination Examples

- ▶ Applicant is denied acceptance into JATC, claims it is due to being in a protected class(discrimination based on age, sex, race, or sexual orientation)
 - ▶ EEOC investigates finds application and interview process is discriminatory
 - ▶ Finds JATC does not represent or attempt to recruit to match demographics
 - ▶ Fines and personal injury losses due to findings are paid
 - ▶ Cost \$450,000 including attorney fees.
- ▶ Apprentice is removed from program and files EEOC complaint due to protected class. EEOC does not pursue investigation but issues letter for Apprentice to sue on their own
 - ▶ Apprentice sues JATC for wrongful Termination
 - ▶ \$38,000 in attorney's costs to adjudicate.

Sexual Harassment Examples

- ▶ Training Director has relationship with employee, relationship goes south
 - ▶ Employee sues for harassment claims
 - ▶ Has emails texts promising raises and requesting sexual favors along with photographs
 - ▶ \$500,000 loss
- ▶ Apprentice is sexually harassed on job site and tells an Instructor
 - ▶ JATC takes no action to prevent further harassment
 - ▶ JATC is sued along with Contractor
 - ▶ \$183,000 loss with \$60,000 being paid by JATC
- ▶ Apprentice is harassed by fellow apprentice(s)
 - ▶ JATC investigates by having a meeting with all parties
 - ▶ Victim does not pursue at that time
 - ▶ Later sues as harassment continues
 - ▶ Loss of \$120,000

EEOC, Discrimination, and Sexual harassment facts

- ▶ More Claims filed by the JATC fall in this category than any other
- ▶ Average attorney cost for a settlement(no court) between \$25k-\$50k
 - ▶ For those that go to court average is between \$60K-\$120k
- ▶ Most claims end up with no wrong doing by JATC BUT still cost 15k min and up to 140k just in Attorney costs
- ▶ Proper procedures and FOLLOWING those procedures keep costs low
- ▶ EEOC *generally* only gets involved if they can find SYSTEMATIC wide spread cause.

Employment Practices Liability(EPLI)

- ▶ This covers the JATC in the event of actual or alleged
 - ▶ Discrimination based on Race, Sex, or Age
 - ▶ Sexual harassment
 - ▶ Workplace harassment
 - ▶ Violation of any federal, state, or local Civil rights laws
 - ▶ Wrongful termination of employee
 - ▶ Employment related retaliation
 - ▶ Employment related wrongful discipline
 - ▶ Breach of any employment contract
 - ▶ Failure to promote

EPLI (Cont.)

- ▶ Third Party coverage for:
 - ▶ Wrongful failure to employ
 - ▶ Sexual harassment
 - ▶ Discrimination
 - ▶ Violation of any federal, state or local civil rights laws

This applies to applicants, vendors, visitors and any other persons interacting with the JATC or those representing the JATC

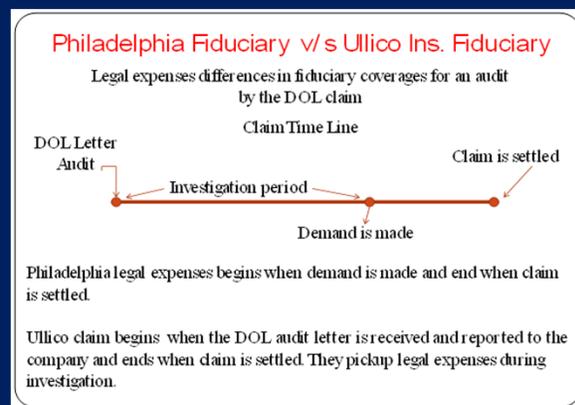
DOL RISK-Fiduciary Liability

- ▶ Fiduciary Liability includes any negligent act, error, or omission and the breach of responsibilities, duties or obligations by a fiduciary
- ▶ Who is a Fiduciary? Anyone who exercises authority or control over the management, administration of a plan, disposition of assets or provides investment advice to a benefit program as required by ERISA.
- ▶ ERISA broadly defines "employee benefit plans" as any one plan, fund or program established or maintained for the purpose of providing to its participants or beneficiaries employee benefits. So the JATC trust named in the policy is a qualifying benefit plan

Fiduciary Liability (Cont.)

- ▶ This includes any loss due to fines or penalties imposed under Section 502(i) and (l) of ERISA
- ▶ Elimination of Recourse prevents the company from subrogating against an insured trustee whose unintentional error causes a loss.
 - ▶ This covers the JATC board and prevents the insurance company from recovering any funds from a loss from the Trustee personally
 - ▶ It must be paid by the individual trustees!
- ▶ Doesn't cover losses for failure or omission by the Insured to obtain or maintain insurance or bonding for the JATC trust fund.

Fiduciary "GAP" coverage



Other Lawsuits

- ▶ Instructor Liability
 - ▶ EX:Apprentice is injured on the Job and claims he was taught wrong by JATC
- ▶ Slander or Libel
 - ▶ Information from a committee meeting is shared in conversation that affects an apprentice
- ▶ Copywrite or trademark infringement
 - ▶ Instructor uses handouts that are an entire book, without paying
- ▶ Any actual or alleged error, omission, misstatement, misleading statement, neglect or breach of duty by the committee or JATC employees

Apprentice or Employee Injury

- ▶ Apprentice injury on the Job Site
 - ▶ Covered by the Contractors Workers Compensation
 - ▶ JATC is NOT responsible
- ▶ Apprentice injury at the JATC
 - ▶ There must be negligence on the JATC part
 - ▶ Can be picked up two ways by GL
 - ▶ Med-pay
 - ▶ GL limits
- ▶ Employee injury
 - ▶ JATC Workers comp insurance
 - ▶ JATC MUST cover contract employees(1099) unless they have purchased their own WC

Property Damage including Theft

- ▶ Building damage
 - ▶ Look for Replacement cost
 - ▶ Must insure to at least 80% of replacement cost value
- ▶ Contents
 - ▶ Same as building
 - ▶ MUST include replacement cost of DONATED materials and tools etc
 - ▶ Covers machines rented or leased to JATC per contract(copy machines, water coolers, vending machines)
- ▶ Special coverage for Flood and Earthquake/earth movement(sinkholes) purchased separately

Questions?



I thought of a Question later. Who do I ask?

- ▶ Jared Burrell
 - ▶ Jburrell@grimesins.com
 - ▶ 770-623-2944 (Office, I'm not there 50% of the time)
 - ▶ 770-570-9534 (Cell After hours/not in office)
- ▶ Melissa Garrett
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 - ▶ 770-623-8650 Main Office line
 - ▶ 770-623-2938 (Direct line)