

Proper Underwriting Plants the Seed with Landscapers

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As the weather gets warmer, thoughts turn to vegetable gardens, planting flowers and landscape improvements. When it comes to landscaping, insurers should think about more than flowers and fresh cut grass. Landscaping businesses pose some unique coverage considerations, including employee injury, pollution, underground property damage, and undisclosed operations. Landscaping businesses range from the teenager who mows your lawn to multistate franchises that offer a wide variety of lawn, shrub, and tree care, including irrigation and landscape design. According to the Census, these types of businesses represent a payroll of more than \$11 billion annually. Common characteristics of landscape businesses include operating only seasonally and high employee turnover.

Employee safety is a key concern for landscapers. Landscaping is a highly dangerous profession. The Centers for Disease Control and Prevention (CDC) report that an average of 197 landscape workers per year died from 2002 to 2006. Of course, even more were injured. The most common injuries involve bending, lifting, falls from trees, being hit by falling trees and limbs, electrocution from working near overhead power lines, environmental stress from heat and cold, cuts/amputations when operating hand and power tools, and being hit by vehicles.

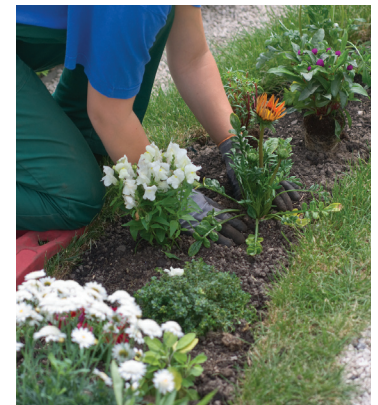
According to the Bureau of Labor Statistics the states with the highest number of landscaping employees are California, Florida, Texas, New York and Illinois. As of May 2012, there were more than 43,000 landscape employees in New York alone, and more than 1,000,000 landscape service workers in the United States as a whole. In addition, landscapers employ a large percentage of undocumented workers. Even though federal law prohibits hiring undocumented workers, The Pew Research Center reports that approximately one in four landscape workers is undocumented.



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Despite their undocumented status, these employees are still entitled to workers compensation benefits in most states. In the last 10 years, courts in 28 states, including New York, New Jersey, Louisiana, Pennsylvania and California, have ruled that all workers have a right to workers compensation regardless of their immigration status. Wyoming is one state that statutorily denies workers compensation benefits to undocumented workers. In the absence of the exclusive remedy of workers compensation, employers (and their insurance carriers) are open to potentially large lawsuits.



The Occupational Safety & Health Administration (OSHA) requires that employee training be conducted in a language and vocabulary that employees can understand. In an industry with a high percentage of workers who may not





speaking English, the language barrier can be significant. Proper training on the use of equipment and chemicals and strict adherence to safety procedures is critical. Regulatory issues also come into play. All workers who apply fertilizer and pesticide should be licensed. There are also continuing education requirements for workers to maintain these licenses.



Pollution is another concern when insuring landscapers. Pollution exposure can arise from misapplication of fertilizers and pesticides (spraying the wrong chemical, wrong plant or both) or improper disposal of the chemicals. An insurer

that does not normally offer pollution coverage may want to consider partnering with a reinsurer or specialty insurer to offer this coverage to landscapers. Noise pollution from the use of tools and equipment can also be an issue.

Other coverages can also apply. Professional liability coverage is needed for those firms that employ landscape architects or engineers. Tools and machinery represent an inland marine exposure.

Sometimes a landscaper encounters loss exposure through no fault of their own. For example, when digging up an area to be landscaped or irrigated, they may find hazardous materials that must be properly disposed of. Explosion, collapse and underground property damage (XCU) are also significant exposures for landscapers. Coverage for landscapers should be broadened to include XCU, since these are often excluded in standard general liability policies.

Arborists represent another unique exposure for insurers. According to the International Society of Arboriculture

(ISA), tree care companies derive 75 percent of their income from pruning and removing trees. Firms that prune and trim trees are highly susceptible to employee injury or death from falling limbs and trees, falls from ladders or buckets, or electrocution when working near power lines. Much of this work involves the use of chain saws. Chain saw accidents result in 40,000 to 60,000 injuries per year among all users, including arborists, landscapers, loggers, other professionals and homeowners. There are 40 to 60 fatal chain saw accidents per year.

Another key for properly underwriting a landscaping company is determining all services the business provides, including what they do “off season,” such as snow plowing. These additional business pursuits may change the acceptability of the risk. Another common business landscapers engage in is driveway and parking lot maintenance, which can include resurfacing or crack sealing with exposure to fumes and hot tar.

Landscapers must be able to provide copies of their licenses and certifications. In addition to the license requirements for applicators, there are license requirements for the business to be able to purchase chemicals, as well as for proper waste disposal and storage.

Safety is paramount. In any landscaping business, safety procedures should be documented and followed. These should include requirements for use of protective clothing and equipment, such as boots, gloves, goggles, hearing protection and helmets. Workers using chain saws should also wear protective clothing on their legs. Lack of such safety procedures can alert the underwriter to a potentially unsatisfactory risk.

Landscaping companies are certainly a business opportunity, but it is key to have a strong sense of what types of services the company performs and the risks associated with those services. Sound underwriting guidelines can mean the difference between a profitable and unprofitable book of business.

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