

**EXPLORING INCREMENTAL
RISK MANAGEMENT OPPORTUNITIES
WITHIN A TRIBAL ENTERPRISE**



S3 MANAGEMENT GROUP, LLC

Risk Management and The Tribal Treasury



Do you know the “leaks”, and do you have a plan?

S3 Management Background

- Strategic HR Risk Management
 - Unemployment
 - Employee Health Benefits (2014)
- Since our inception, we have served more than 70 tribal employers representing an estimated more than 30,000 employees and \$800M in payroll
- Typical client savings between \$10,000 and \$1M+ per year



Did you know...

Unemployment Compensation became a responsibility for employers as part of the Social Security Act of 1935

but

Unlike Social Security, Unemployment is an employer risk that can actually be managed and controlled

Which is important to know because

The average employer's unemployment liabilities have more than doubled since the economic downturn of 2008.

(*Existing clients with original liabilities ranging from \$10,000 - \$3M per year.)

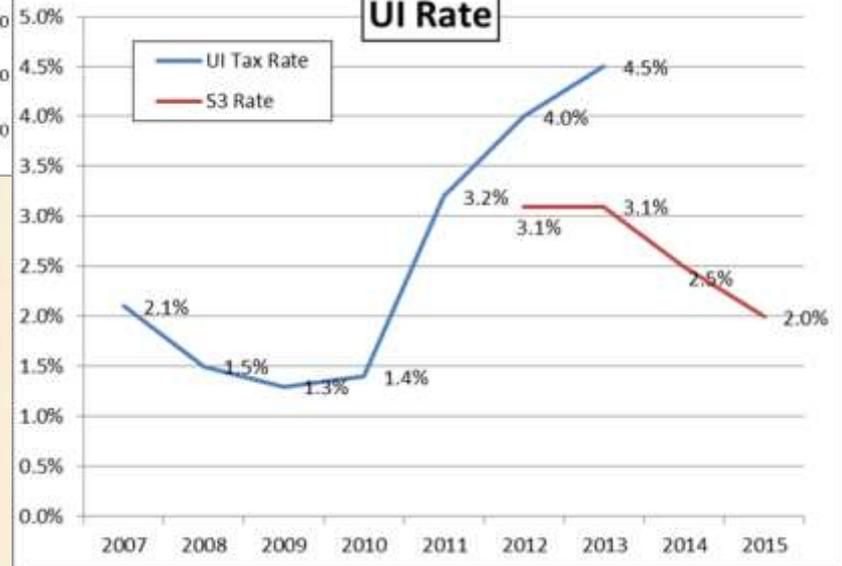
...and this can be corrected...

Unemployment as a Business Risk?

UI Liabilities vs. Taxable Wages

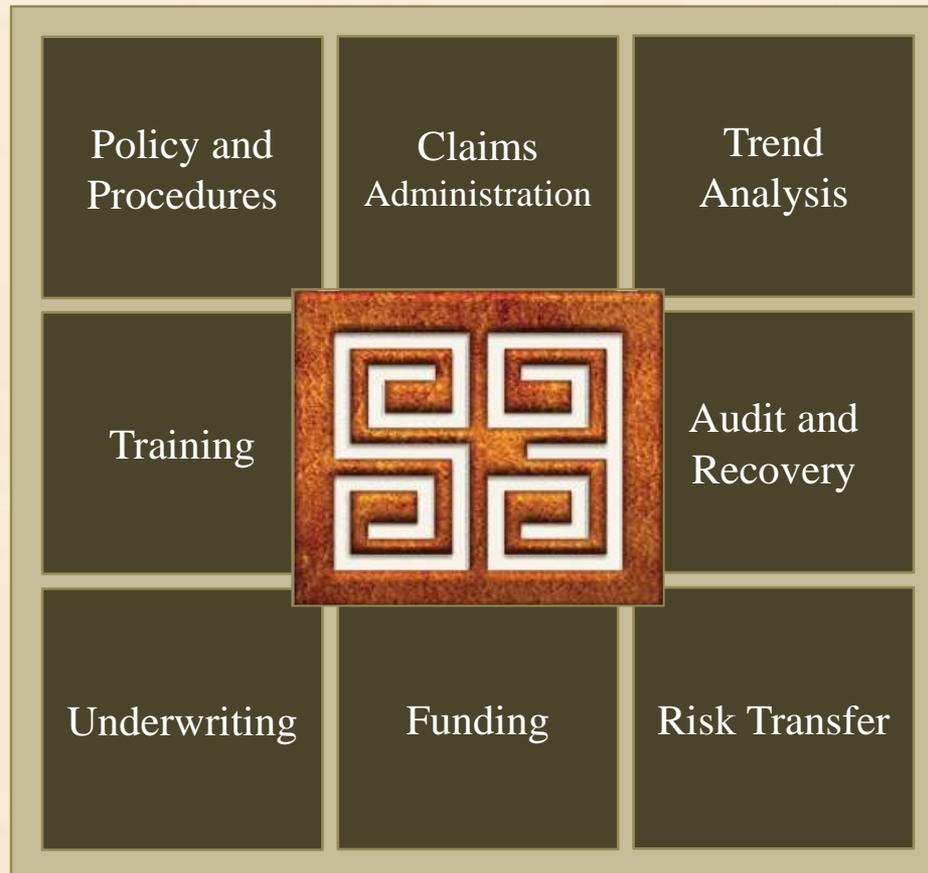


UI Rate

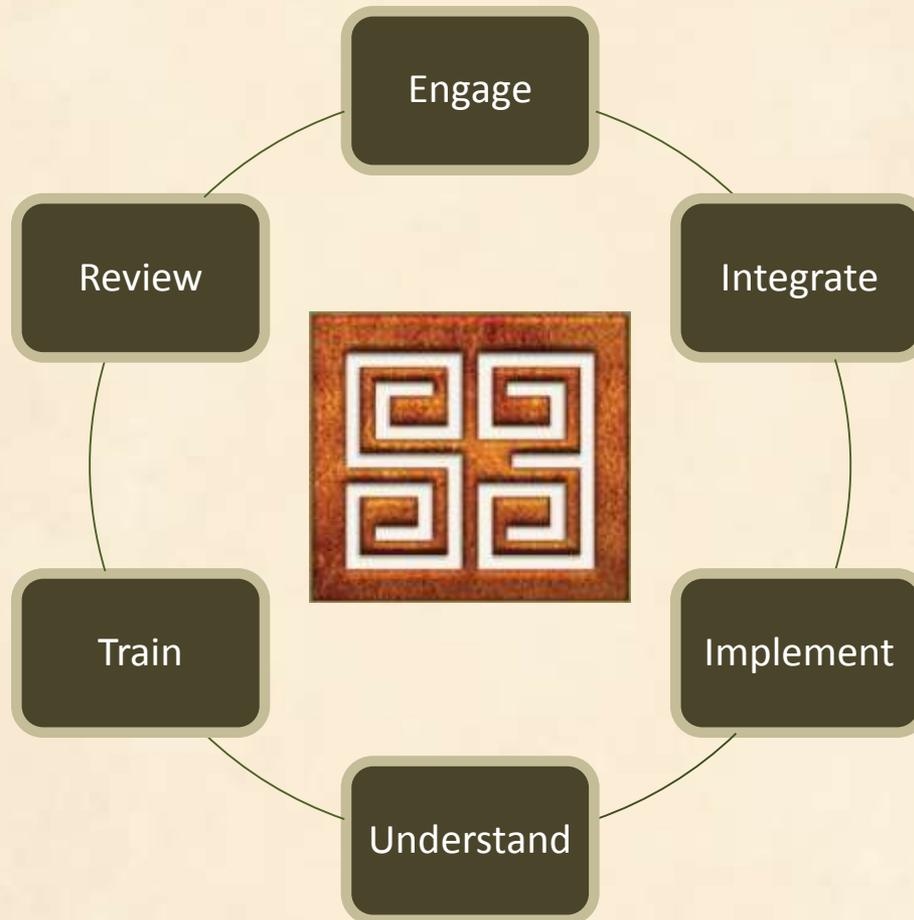


Unemployment Risk Management

Core Elements to Success



Unemployment Risk Management Process





Risk Assessment

(oversimplified, but a good starting point...)

- Does your organization follow a progressive discipline process?
- Is the Human Resource Department actively involved throughout the disciplinary action process?
- Is and HR Representative consulted prior to a termination or a change in job status?
- Are all employee counseling sessions and warning documented?
- Does your organization designate a primary contact for claim notifications?
- Is it the current practice of HR to respond to all unemployment claims *and* within a timely manner?



Primary Areas of Risk Reduction within a Tribal Business

- Organization Policy & Procedure
 - Progressive Discipline – Identifying potential areas of risk within your organization and reducing risk with training and internal corrective action
 - Point System Attendance Policies - understanding the final incident and how it affects your claim
 - FMLA Leave – clear and identifiable communication process for medical leave reduces employer risk. Employer can show misconduct if an employee fails to return to work after being released by a doctor or fails to turn in paperwork in a timely manner.
 - Job Performance vs. Misconduct
- Statutorily Eligible Claims
 - Managing allowed/disallowed claims – those statutorily eligible but unable to collect benefits until able to seek and accept work. Knowing when employees are available to seek an accept work for an opportunity to fill a position and reduce unemployment costs.
- Managing At-Will Terminations
- Training
 - Manager/Supervisor training on Progressive Discipline and Employee Relations



A Few Key Considerations

- “At-Will” Terminations
- Lack of Progressive Discipline
- Documentation Issues

At-Will Terminations

Unemployment Benefits are available to individuals who have become unemployed due to no fault of their own.

At-Will Termination = downsizing, reorganization

Termination for Cause = behavior, attendance, violation of policy

At-will Terminations:

- Makes the employer liable for paying unemployment
- Employee collects a reward for bad behavior
- Create an adverse working environment for employees



What is Progressive Discipline?

- Discipline that includes a series of increasingly severe penalties for repeated offenses
- Each related event triggers a more severe response
- Each step more strongly encourages the employee to modify his or her behavior
- Allows management to clearly state its expectations and hold the employee accountable to expectations, with known consequences for failing to meet them



Progressive Discipline Best Practices

- Three Step Process
 - Counseling and Verbal Warning
 - Written Warning
 - Final Written Warning
- Documentation should be provided to HR within 5 days
- Management must obtain the concurrence of Human Resources **prior to** any action resulting in probation, suspension, demotion or discharge
- Failure to consult with Human Resources may result in disciplinary action

JOB PERFORMANCE VS. MISCONDUCT

Conduct/Behavior Problem

Employee refuses to work

- Example: Insubordination
- Violates the standards of company conduct
- Corrective action - Progressive Discipline (Verbal warning, written reprimand, etc.)

Performance Issue

Employee lacks ability to do assigned work (Incompetence)

- Example: Typist makes excessive typing errors
- Does not meet requirements of performance standards
- Corrective action - Performance Management Practices

- Document employee training
- Provide additional training
- Administer performance improvement plan

JOB PERFORMANCE VS. MISCONDUCT

Job Performance



- Employer is liable for unemployment benefits
- Employer is responsible for the hiring and training of the employee
- Inability to one's job **is not** considered willful misconduct

Misconduct (Burden of Proof)



- Employee has demonstrated the ability to do the job and fails to do correctly in spite of warnings from the employer
- Job performance deteriorated substantially and employee was disciplined
- Employee was notified if performance did not improve, their job was in jeopardy
- Incident triggering termination was not an honest mistake or simple accident

PERFORMANCE IMPROVEMENT OR CORRECTIVE ACTION?



PIP STEPS

Step 1: **Statement of Unacceptable Performance:**

Identify critical elements under which the employee's performance is unsatisfactory and specific examples of the deficiencies.

Step 2: **Performance Improvement Plan Timeframe:**

Identify specific period of time the employee is being given an opportunity to demonstrate acceptable performance

Step 3: **Description of Acceptable Level of Performance:**

State the improvements that are expected.

Step 4: **Statement of Assistance:**

State what you, as the supervisor will do and what special training (if appropriate) will be given to assist the employee to improve

Step 5: **Consequences of failing to improve to an Acceptable Level:**

State that if the employee's performance does not improve to a minimally successful level, the employee may be separated from his/her position

Documentation: Tactics for Excellence

- Clearly document in detail, the events that led to the disciplinary action and details of the action itself , focusing on the single reason for separation
- Maintain active HR involvement
- Disciplinary action should conform to established personnel policy and practices
- There should be a reasonable proximity in time between the alleged incident and the date of discharge. (A delay of termination may create a basis for exception)
- Verify the action does not represent an isolated instance of poor judgment or carelessness
- Clearly distinguish between Job Performance vs. Misconduct
- Remember that a justifiable reason to terminate DOES NOT automatically disqualify them from benefit eligibility



Unemployment Risk Management Is it For You?

- Generally relevant for Tribal Employers with:
 - ❖ 500-4000+ employees
 - ❖ Tax rate > 1.0%; claims > \$50,000/yr
 - ❖ Multiple tribal enterprises
- S3 Risk Assessments (no cost): August-November
- S3 Program Enrollment (optional): Q4, 2014

S3 Management Group

Risk Management Programs



*Thank you
For the opportunity to serve*

Jared Smith, Chief Executive Officer

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