

## WORKERS' COMP

# How to Avoid Inheriting an Old Injury Claim

**O**NE OF an employer's biggest shocks is to find out that a workplace incident aggravated a pre-existing injury that was sustained at the worker's prior job.

But, there are steps you can take if you don't want to inherit a claim that someone incurred at another job, or an injury that they may risk aggravating.

Here are five tips:

### Pre-work screenings

Pre-work screenings can weed out applicants who physically cannot perform a job. You can subject them to a test to gauge their ability to perform specific physical demands of the job for which they are applying.

Screenings should especially be used for high-risk jobs, those which cost your business the most in workers' comp costs. There are two types of pre-employment screenings:

- **Pre-offer.** This screening identifies applicants who are physically able to safely complete the essential job functions of the position for which they are applying.
- **Post-offer.** This screen measures the same functions, but you can also require a medical exam. This can help you identify any disability, including if they are under doctor's orders to limit certain types of physical activity.

### Drug tests/background checks

Drug tests can determine if there is a history of drug use, and, if so, indicate the types of drugs in the system.

Background checks probe the criminal and financial records of an applicant.

If an applicant shows negative incidents on a drug or background check, they could be a candidate for future fraudulent activity.

### On-site ergonomic solutions

Utilize physical therapists or ergonomists before injuries occur to work with employees, supervisors and management to understand workflow and all job task requirements.

Those specialists can recommend optimum positions, ergonomic strategies and proper physical movements required at workstations to reduce the chances of employees sustaining musculoskeletal injuries.

### Employee education

Educate staff on how to use workers' comp legitimately and how it can be used illegitimately.

Explain the damage to the employer from malingering and fraud by illustrating how claims affect the premium your firm pays its insurer.

### Prompt injury reporting

Train employees to report any health concerns as soon as they notice any discomfort.

Injuries can develop over time in many jobs when they are executed using improper or ergonomically incorrect motions and are performed repetitively on a daily basis.

If an employee raises concerns about discomfort to a supervisor, it should be given serious attention.

That way the supervisor, the worker and inside or outside specialists can address the issue.

This can be done through observations and evaluations of the work pattern of the worker, and in comparison to those of others in the department.

The worker should also be sent for medical diagnosis or medical care to treat the discomfort before it becomes a bigger problem. ❖

## CONTACT US

### Gilroy Office

9015 Murray Ave #110  
Gilroy, CA 95020  
Phone: 408-842-2131

### Pleasant Hill Office

200 Gregory Lane, Bldg A  
Pleasant Hill, CA 94523  
Phone: 925-686-2860

### Morgan Hill Office

15005 Concord Circle  
Morgan Hill CA 95037  
Phone: 408-842-2131

License No. 0504035

## WORKPLACE INJURIES

# Early Reporting Can Cut Claims, Premium Costs

**H**OW LONG you wait to notify your workers' compensation insurer of a workplace injury can make a significant difference in the cost of that claim.

When your premium is calculated, one of the key elements that we take into account is the cost and frequency of prior claims during the past few years.

In short, by improving your organization's injury notification times, you can also positively affect the cost of the claim, which in turn can help reduce your overall workers' comp premiums going forward.

### Can early reporting truly affect the cost of a claim?

The graph to the right shows results from a National Council on Compensation Insurance study looking at the cost of a claim based on the delay between incidence and notification. Note that even as little as 2-3 weeks can begin to increase the cost of the claim by over 10%.

### Why does early reporting work?

The sooner medical treatment begins, the better the outcome.

For a workers' compensation claim, the sooner your insurer knows about an injury to one of your workers, the sooner we can start collecting information and plan for appropriate treatment options.

If medical treatment is delayed, the likelier it is that costs will mushroom both in terms of medical costs and lost time from work, which needs to be compensated.

If you notify your insurer when an injury occurs and they can arrange for the worker to begin the medical treatment, it is likely that the length or severity of their treatment program will be less.

For the injured worker, this means a shorter recovery time, better prognosis for general health and return to work outcomes, and probably a more positive attitude toward their injury and the workplace.

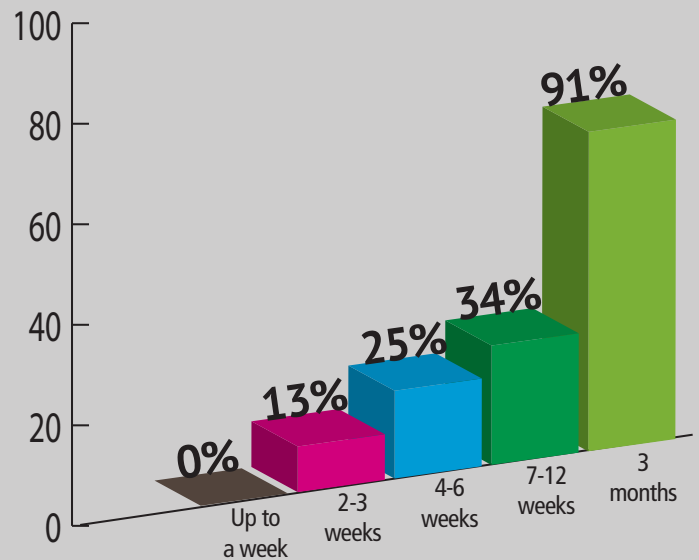
For you as the employer, this translates to less money allocated to covering wages and treatment for the injured worker, and less disruption to your workplace to cover the injured worker's duties. ❖

## Claims Reporting Tips

- Develop internal procedures for reporting injuries. Ensure that your staff know the importance of reporting injuries immediately and that they are aware of your reporting procedures.
- Don't question employees' integrity when they report an injury.
- Familiarize yourself with the regulatory and legal requirements in relation to reporting workplace injuries.
- Report a claim immediately after learning about it.
- Encourage safe work practices and ensure that employees are aware of and practice proper safety techniques.
- If an injured worker still has partial capacity for work, you should try to provide interim alternate duties while they heal up. This can have a positive impact on potential disability levels, and on the premium impact of lost time.

## Delayed Reporting is Expensive

Average increase in claims costs



## Check Subcontractors' Insurance Policies

DID YOU know you can be held liable under your own workers' comp policy should an employee of a subcontractors be injured? Courts have on numerous occasions said you are.

Many times an injured worker may even be a third or fourth level contractor, but if none of your subcontractors are carrying workers' comp, you may see the claim hit your own policy.

This scenario is even more likely if the main contractor has substantial control over the sub's employees. courts have ruled.

Courts generally start with the subcontractor whose employee was injured and move up the chain until they find a valid workers' comp policy.

Protect yourself by requiring your subcontractors to have a certificate of insurance. But don't stop there; you should call the insurance carrier to see if the certificate is valid.

In California you can check with the State Contractors Licensing Board to see if your sub has workers' compensation coverage. ❖



Produced by Risk Media Solutions on behalf of Pacific Diversified Insurance Services, Inc.. This newsletter is not intended to provide legal advice, but rather perspective on recent regulatory issues, trends and standards affecting insurance, workplace safety, risk management and employee benefits. Please consult your broker or legal counsel for further information on the topics covered herein. Copyright 2015 all rights reserved.

## PROPERTY RISK

# Protecting Your Business from Threat of Wildfire

**A**S WILDFIRES RAGE in California and elsewhere in tinder-dry areas of the US, now more than ever you need to make sure that your business is protected from the threat.

Whether you own or operate an apartment complex, store, office, restaurant or other retail establishment, the steps you take now will reduce the risk of costly repairs or rebuilding if a wildfire strikes.

If you are in one of the many tinder-dry areas this year, you need to be prepared to deal with a fire and keep your business operating.

### Surroundings most important

The goal of an effective wildfire protection plan is to keep the fire from coming dangerously close to any structure on the property.

Inspect the premises around your building to see if there is anything around or attached to a structure that can be a potential wick that could allow the fire to come dangerously close to your premises.

Storage buildings, trash bins, equipment and other combustible items can allow fire to reach the building. If possible, relocate these at least 30 feet from the business and other structures on the property.

Relocate propane tanks at least 30 feet away from the building and other structures on the property. If relocation is not an option, create a 10-foot zone around a tank using low-combustible materials such as rock, gravel mulch or irrigated lawn.

### Exterior structure

Choose noncombustible building materials when rebuilding or renovating, and particularly if you are choosing new siding for your structure. You should also consider these most important flashpoints and conduits for fires:

- **Roofing** – Choose a Class A fire-rated roof covering, and keep the roof and gutters clear of debris. Businesses that share a roof are particularly vulnerable if the entire building is not well maintained.
- **Vents** – Attic and crawl space vents are vulnerable entry points for wind-driven embers. Cover with 1/8-inch metal mesh screens.
- **Attachments** – Awnings, decks, patios and porches also can act as a wick, bringing flames to the building. Even if you have noncombustible siding like stucco, a burning deck or other ignited combustible items close to the wall will provide a direct flame exposure to the doors, windows or sliding glass doors.
- **Windows** – Radiant heat from a wildfire can break single-pane windows. You should install dual-pane windows with tempered glass for increased protection.

Also, open windows can be entry points for embers. Educate tenants and employees about the importance of closing all windows before evacuating if fires draw near.

### Other considerations

- Have plenty of fire extinguishers on location, and get them inspected regularly.
- Back up important documents that could be destroyed.
- Have an evacuation plan in place to safely exit the building.
- Practice your evacuation plan, so each employee will know how to exit the building calmly and safely.
- Follow local smoke detector and sprinkler system ordinances.
- Have flashlights and extra batteries available in case your business loses electricity. ❖

## YOUR BUSINESS'S DANGER ZONES

**Tend to the surroundings of your premises by using the following three-zone approach:**

**Zone 1 (0-5 feet):** Rock or gravel mulch and low-growing plants or lawns are good choices for this zone. Avoid combustible structures or materials in this area.

**Zone 2 (5-30 feet):** Vegetation island. Low tree branches should be pruned. Remove shrubs.

**Zone 3 (30-100 feet):** Keep tidy. Thin out vegetation between trees. Remove shrubs. Don't let tree canopies touch.



## HUMAN RESOURCES RISK

# Independent Contractor Classification Clarified

**O**N JULY 15, the U.S. Department of Labor (DOL) issued an administrator’s interpretation regarding the application of the Fair Labor Standards Act with respect to the misclassification of workers as independent contractors.

The new interpretation is required reading for any business that uses independent contractors to any degree – often or seldom. It’s also important as the government continues to crack down on companies that misclassify their employees as independent contractors, most recently evidenced by the decision that Uber drivers are employees, and not independent contractors.

The interpretation came after a ruling by the California Labor Commissioner’s Office that a driver for the ride-hailing service should be classified as an employee, not an independent contractor. The ruling ordered Uber to reimburse a driver \$4,152.20 in expenses and other costs for the roughly eight weeks she worked as an Uber driver last year.

The changes are not so dramatic, however, and the interpretation should give employers a good roadmap to use when designating employees.

Despite the last item on the list opposite, covering the degree of control the employer exerts over an independent contractor, the DOL actually de-emphasized it repeatedly in the interpretation. Up until this interpretation, degree of control had been a central part of assessing whether a contractor actually is an employee.

That said, because the agency is downplaying this now, it means that employers could be in for a few surprises and time will tell what factors are taking more precedence.

Ultimately, the goal of the “economic realities test” is to determine whether a worker is economically dependent on the employer

(and is therefore an employee), or is really in business for him or herself (and is therefore an independent contractor). This new document should be your guidepost if you currently are using independent contractors or plan to classify someone as an independent contractor in the future. ❖

## DOL’s Interpretation

Some of the main points in the interpretation are:

- It is the DOL’s unequivocal opinion that “most workers are employees,” under the Fair Labor Standards Act.
- It fully embraces the “economic realities” test (explained below) as the DOL’s preferred approach to determining whether a worker is an employee or a contractor.
- It downplays the significance of an employer’s exertion of control over the tasks performed by the worker.
- It reinforces the DOL’s pattern over the last several years of aggressively examining the classification of workers as contractors.

The “economic realities” test includes the following factors:

- The extent to which the work performed is an integral part of the employer’s business;
- The worker’s opportunity for profit or loss depending on his or her managerial skill;
- The extent of the relative investments of the employer and the worker;
- Whether the work performed requires special skills and initiative;
- The permanency of the relationship; and
- The degree of control exercised or retained by the employer.

