

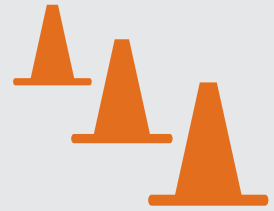
# Workers' Comp & Safety News



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## Tackling the Telecommuting Risk



An estimated 45 million Americans telecommuted in 2006, up from 41 million in 2003, according to the newsletter of [WorldatWork.org](http://WorldatWork.org). Telecommuting allows companies to save money on office space and increase productivity, while workers enjoy increased flexibility and reduced commute times. But telecommuting represents a serious challenge for risk managers, as they find themselves responsible for workers outside the controlled office environment.

The courts have yet to define the exact scope of employers' responsibility for employees who work at home. But experts in the field agree that most traditional areas of employer responsibility apply equally whether the employee is toiling away on the company's premises or working in pajamas in the comfort of a home office.

### Insurance Issues

Employers must provide telecommuters with workers' comp coverage – unless they are inde-

pendent contractors. However, companies can't simply declare someone a contractor to get out of paying workers' comp or employment taxes. The Internal Revenue Service and state tax authorities have very strict rules for what constitutes an independent contractor. (For details, see [www.irs.gov/pub/irs-pdf/p1779.pdf](http://www.irs.gov/pub/irs-pdf/p1779.pdf).)

Risk managers must also ensure that their general liability policies cover the acts of employees working from home. They should check that their policies do not include a "designated premises endorsement"

that would limit coverage to their main place of business. Similarly, they must make sure that having a dedicated home work space does not violate the employee's homeowners policy.

### Identifying the Risk

The risks of injury in a home office may be far lower than in factories, mines and mills. But telecommuters are as likely as other office workers to suffer from back injuries, repetitive strain problems and other office hazards. And they face risk of injury from fire if they

## This Just In

OSHA's new rule requires employers to provide all personal protective equipment (PPE) at no cost to the employee. Exceptions include ordinary safety-toed footwear, ordinary prescription safety eyewear, logging boots, and ordinary clothing and weather-related gear. Employers have six months from the rule's November 17, 2007 date of publication to change their existing PPE payment policies.

OSHA anticipates the rule will result in 21,000 fewer occupational injuries per year.

A survey by ComPsych Corp has found an alarming rise in "presenteeism" – employees who come to work when they are sick. Eighty-three percent of workers surveyed had at some point ignored sickness in order to work, a 6 percent increase since 2005.

A variety of factors motivated employees to come to work sick. Thirty-seven percent cited a workload that made it too difficult to take time off; 26 percent said it feels "risky" to take time off; and 21 percent wanted to save sick days for when their children were sick.

Presenteeism increases the risk of spreading viruses and the risk of accidents, because sick workers will not perform properly, often making mistakes and misjudgments.



## PPD Claims—Complexity Makes Lump-Sum Settlements Appealing

Numerous studies have shown that permanent partial disability (PPD) benefits are the largest cost component in the workers' compensation system. The complexity of claims, the different methods states use to calculate benefits, and an inherent conflict between claimants and insurers also make these one of the most difficult benefits to administer.

Faced with these challenges, the best option for managing costs is often a lump sum settlement, says Professor Peter Barth, the former executive director of the National Commission on Workmen's Compensation Laws.

### PPD Losses – Scheduled or Unscheduled?

According to the National Council on Compensation Insurance, PPD losses account for nearly 60 percent of all workers' comp benefit costs (medical plus indemnity). The organization's 2004 statistical bulletin found that, on

average, each PPD claim cost approximately \$61,000. Costs also appear to be rising dramatically. An earlier study based on 1999 data found that the average cost per claim was \$35,000.

Some injuries resulting in permanent impairment do get consistent treatment. About 43 states use a schedule to calculate compensation when certain body parts are injured. These schedules invariably include losses for injuries to the upper and lower extremities, and may also include compensation for eye and ear injuries. Many of these schedules are highly detailed, identifying different compensation levels for injuries to

different fingers, for example. The majority of schedules award benefits in terms of weekly pre-injury wages. For instance, in Virginia a worker who loses a thumb is entitled to 60 weeks of benefits equal to two-thirds of his/her average weekly wage. If the loss of the thumb is limited to the first phalanx, the benefit is reduced to 30 weeks.

State schedules generally do not cover injuries to the back, head and internal organs. Nor are most occupational illnesses, according to Barth. States use four basic approaches to evaluate payments for these unscheduled losses.

### 1. Impairment-based approach

The most common method is the impairment-based approach, used by about 20 states. Here a worker with an unscheduled PPD receives a benefit based on the degree of impairment and pre-injury wage. A medical practitioner determines the degree of impairment using a ratings guide, such as the American Medical Association's Guides to the Evaluation of Permanent Impairment. Statutes designate benefits for every degree of impairment. If the statute awards three weeks of benefits for every point of impairment, a worker who has a 20 percent impairment would get 60 weeks of benefits.

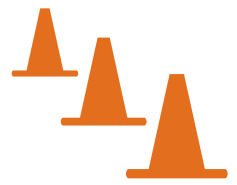
The two main faults with this system are that it awards benefits even if the worker has had no reduction in earning capacity. According to Barth, the approach is also "vulnerable to the 'dueling doc syndrome,' where the claimant's medical evaluator assesses a higher level of impairment than the insurer's expert."

### 2. Loss of earnings approach

This method, used by about 13 states, links the benefit to the worker's ability to earn or compete in the labor market. The parties must reach an agreement on what the worker's future earnings will be compared to what they would have been without the injury. While this appears to be the fairest approach, the challenge of reaching an accurate prediction is often overwhelming, says Barth. "The parties might find it quicker and simpler to settle," he says, saying the clogged dispute resolution system increases the likelihood of settlement.

### 3. Wage loss approach

Used by about 10 states, this method attempts to compensate for the actual and ongoing



losses that workers incur as a result of their PPD. However, it is notoriously difficult to administer because of the difficulty in determining how and why a worker's earnings have been affected. Is unemployment or a lower-paid job due to the injury or to market conditions, worker motivation or pre-existing conditions? This approach can also induce some beneficiaries to postpone their return to employment.

#### 4. Bifurcated approach

Employed by nine states, this pays the worker for a degree of impairment if he or she has returned to work at a pre-injury earnings level. If the worker is unemployed or earning significantly less, a loss of earnings approach is adopted. This method can provide a financial incentive to the employer to reemploy the worker, and also allows for lower compensation costs in many cases.

#### Lump Sum Settlements

Barth says that given the complexity of PPD cases, both insurers and claimants often prefer settlements. "Insurers prefer to close claims with such agreements rather than delay achieving certainty," he says. "Workers appear to prefer to take their benefits in a lump sum and put the compensation process behind them."

For more information on handling PPD and other difficult workers' compensation claims, please contact us. ■

lack an adequate electrical system, or if they don't have a smoke detector or fire extinguisher nearby.

Many employment experts offer guidelines for safe and healthy home-office set ups, including standards to assure that the telecommuter's home office is safe and ergonomically friendly. However, a survey by the American Management Association found that only 7 percent of teleworkers had been formally trained to work outside their normal office environment. Fewer than half had the necessary equipment to conduct business from home, and they complained that they lacked adequate technical support when working at home.

#### Providing Solutions

Jacqueline Jones, a labor and employment attorney, encourages employers to formulate a policy reflecting their expectations for telecommuters. "The policy should provide clear outlines as to when the employee is considered to be working as opposed to personal time," Jones explains. "Employers should also inspect the home-office work site and ensure work-office standards are met."

Determining the extent of such supervision can be tricky, notes employment attorney James E. Pocius. If an employer exerts control over home working conditions, the employer probably will be responsible if an accident occurs at home. But if the employer does not exert control, dangerous home conditions might result in employer liability if an accident occurs, since courts traditionally take a broad view of employees' rights to workers' compensation.

#### Case Study

Financial giant Merrill Lynch & Co. attempts to finesse this potential problem with a detailed training program for potential telecommuters. Telecommuters and their managers attend training programs on topics such as how to communicate with the home office and how to plan ergonomically correct workplaces. Each employee also spends two weeks in a telecommuting simulation lab at the company. The company supplies the computers and the teleworkers purchase their own office furniture. The company also requires workers to verify that telecommuting will not violate terms of their homeowner's insurance. The company inspects home work spaces for safety and productivity and the company requires all telecommuters to go to the office at least once a week. So far the company has not had a single telecommuting-related workers' compensation claim.

#### The following rules can help your company minimize telecommuting-related risk exposures:

1. Ensure telecommuters have workers' comp coverage.
2. Verify that the company's general liability policy applies to the acts of telecommuters.
3. Check that home work space does not violate the telecommuter's homeowners insurance policy.
4. Offer training and guidelines for efficient teleworking.
5. Provide workers with the right equipment and support. ■

more than \$20 billion per year in workers' compensation costs. A more recent figure by the National Council on Compensation Insurance estimated workers' compensation costs at \$80 billion a year – not counting other factors such as lost productivity.

#### Prevention vs. Cure

There is no known cure for RSIs. Even where surgery is necessary (as in some cases of carpal tunnel

syndrome), patients seldom recover full pre-injury function. However, many preventive measures can minimize the impact of RSIs, says Deborah Quilter, who consults for companies across the country and runs the Web site RSIhelp.com.

No screening test can reliably identify those with a higher risk of developing an RSI, so employers must apply preventive measures broadly to reduce their exposure. These methods fall into two categories – ergonomic design and technique, and

individual work and exercise practices.

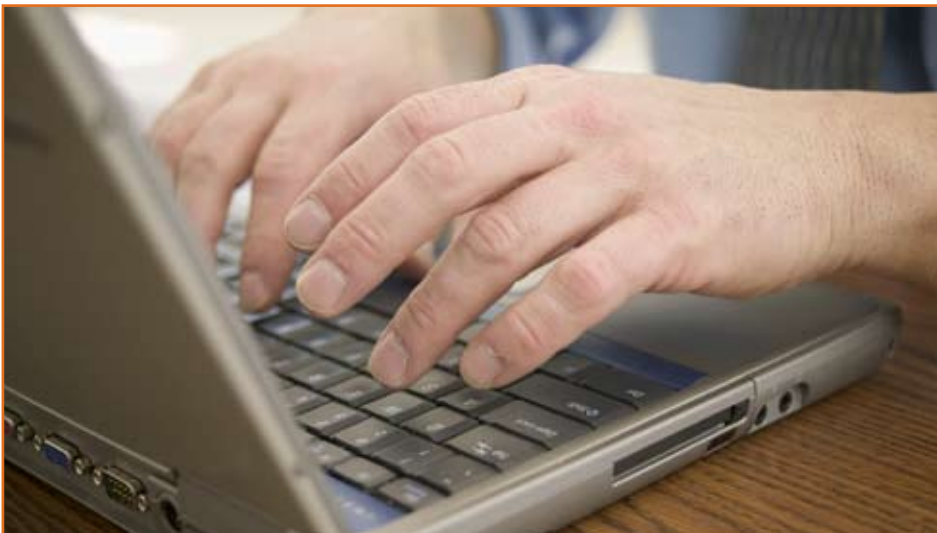
Many insurers or third-party administrators provide safety evaluations, where they can recommend ergonomic improvements specific to your workplace, along with other ways to reduce the incidence and severity of RSIs. Please contact us for more information. ■





# Repetitive Strain Injuries — How to Prevent the Silent Scourge

Repetitive strain injuries (RSIs) and related musculo-skeletal disorders cost employers an estimated \$80 billion dollars a year—not counting lost productivity. They're costly for employees, too—62 percent of people with musculoskeletal disorders report some degree of limitation on activity, compared with 14 percent of the population at large. No wonder, then, that many employers want to reduce the incidence of RSIs.



In simple medical terms, a repetitive strain injury (RSI), or cumulative trauma disorder (CTD), stems from prolonged repetitive, forceful or awkward movements. This results in damage to muscles, tendons and nerves, which can cause pain, weakness, numbness or impairment of motor control.

Repetitive strain injuries can affect workers in any job that requires prolonged and repetitive movements. Carpal tunnel syndrome, which affects the wrists and hands, is one of the most common RSIs, but RSIs can affect more than just hands and wrists. For example, poor posture can lead to severe neck and back injuries. Staring at a computer screen can lead to eye strain. And repetitive reaching for a mouse can lead to arm and neck strain as well as spinal asymmetry.

## RSI losses

A report in November 2007 by the Bureau of Labor Statistics estimated that repetitive strain injuries and related musculoskeletal disorders accounted for 30 percent of the injuries and illnesses with days away from work. An earlier survey by the National Institute for Occupational Safety and Health (NIOSH) found that these disorders affect 7 percent of the population and account for 14 percent of physician visits and 19 percent of hospital stays. And the effects of RSIs linger—62 percent of the persons with musculoskeletal disorders report some degree of limitation on activity, compared with 14 percent of the population at large.

Evidence also suggests that RSIs are vastly under-reported. A study in the *Journal of Occupational and Environmental Medicine* found that the incidence of work-related injuries may be underestimated by as much as 68 percent.

Back in the mid-1990s, a nationwide survey by the NIOSH estimated that such injuries contributed

*INJURIES—continued on Page 3*

## Steps that can reduce the incidence/severity of RSIs:

**1. Ergonomics:** For office/clerical workers, highly adjustable workstations allow workers the safest possible posture. Workstations should allow workers to position the keyboard above their thighs, with an adjacent mouse and a monitor located 15-20 inches directly in front of the eyes.

**2. Exercise/training:** Simply supplying the proper equipment cannot guarantee RSI immunity. Many companies offer training on correct work practices. For office workers, this includes keeping wrists straight, avoiding finger strain, taking five minute breaks from typing every half hour and practicing exercises to relieve the pressure on vulnerable joints and muscles.

**3. Wellness:** Wellness might also reduce the incidence or severity of RSIs. A Canadian study, published in the April 2007 issue of *Arthritis Care & Research*, found that “an active lifestyle during leisure time was associated with a lower prevalence of work-related upper-body RSIs...after adjustment for work physical demands and other [factors].” Even workers whose leisure-time

activities involve a high upper-body load did not have an increased risk of RSI.

Other studies have found that smoking and obesity increase the risk of RSI, along with other factors, such as the physical demands of the job, gender (females are more likely to suffer RSIs) and age. Interestingly, the risk of RSI decreases in those over age 50, possibly because they tend to work in less physically demanding jobs.

**4. Early treatment:** Recognizing the early symptoms of RSI and taking corrective action while the injury is still treatable can allow a worker to return to full functionality. Any delay could lead to a chronic condition that could prevent workers from resuming previous tasks.

By teaching employees to recognize the early signs of RSIs and encouraging them to report them, you can make ergonomic improvements in. An industrial hygienist can help you evaluate work situations and recommend corrective actions. ■