

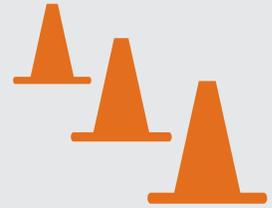
Workers' Comp & Safety News



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This Just In

Crack Dealer Denied Disability

An Ohio man has been denied permanent total disability compensation after the state supreme court ruled that his continued selling of crack cocaine amounted to employment.

The high court's decision in *State ex rel. Lynch vs. Industrial Commission of Ohio* upheld a March 1998 finding by Ohio's Industrial Commission to terminate Henry Lynch's benefits because his drug-dealing enterprise constituted "sustained remunerative employment."

Lynch suffered an industrial accident injury in 1967 and in 1997 he was indicted for possession, sale and distribution of crack. He was earning \$300 to \$500 per week, the court records state. After he pleaded guilty, the Ohio's Bureau of Workers' Compensation moved to terminate Lynch's permanent total disability compensation. Lynch argued that his activities could not be considered sustained employment because they were illegal. The Ohio Supreme Court disagreed and found that Mr. Lynch "cannot use the illegality of his pursuits as a shield," and he "exchanged labor for pay on a sustained basis."

Learning from Accidents

Unfortunately, accidents happen. But investigating them correctly allows managers to identify and correct system faults, says Dianne Tobias, the loss prevention services director at Pinnacol Assurance in Denver. She provides the following pointers on reviewing an accident.

What are the guidelines for reviewing an accident?

The main thing to keep in mind is that all injuries can be prevented. You have to investigate quickly, remain as objective as possible and ask open-ended questions. Not "Did you do this?" but "How did you perform this task?" and "When were you trained?"

Your goal is to identify the root causes so they can be corrected. It is not to assess blame. On-the-job injuries can be prevented and should never be accepted as just a cost of doing business.

Where and when should the accident review start?

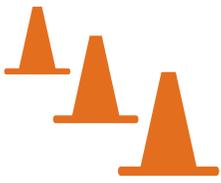
It's critical to start the review as quickly as possible because things

can change. You want to look at the scene of injury before anything has changed. It's critical to take photos and talk to witnesses quickly so that memories don't change. If witnesses talk to each other, they will have a joint view rather than individual perspective. Conduct interviews at the scene if possible, so you can get each individual's perspective. Could they see something no one else could?

What kind of questions should a review focus on?

You don't want to lead an investigation. You want to get honest and useful answers. Ask questions such as:

- ✦ When was training conducted for this job?
- ✦ What tools were being used?



Minimize Risks to Young Workers

Millions of teenagers will soon be leaving school and taking jobs either on a temporary basis or as the start of their permanent integration into the workforce. These workers can bring energy and enthusiasm to businesses. But they also present a unique set of safety and compliance challenges.

Unfortunately, keeping up with these safety and compliance requirements is not easy. Companies have to implement numerous federal regulations and a patchwork of state laws that limit their right to hire employees younger than 18. Generally, these laws place restrictions on the type of work they can do and the number of hours they can work in an effort to protect them.

Teenagers need this protection. It's not just typical teenage behavior that puts them at risk, though that also plays a factor. According to the National Institute for Occupational Safety and Health, young workers carry a greater risk of occupational injury because of their limited job knowledge, training and skill. Physically they are not fully developed and may be more susceptible to chemical and other exposures at work.

Every year, about 67 teenage workers die of work-related injuries, and NIOSH estimates that 230,000 teenagers suffer from nonfatal occupational injuries. According to the Bureau of Labor Statistics, by the year 2010 about 17.8 million youths aged 16 - 19 will be in the labor force — up from 16 million in 2000. This doesn't count youths aged 15 and younger.

Prior to hiring any worker younger than 18, you should check both federal and state labor law. State laws vary and should be checked individually.

The main federal law governing underage (and other) workers is the Fair Labor Standards

Act, which applies to virtually all employers and businesses except small farms and a few others. This law bans workers younger than 18 from performing a wide variety of hazardous jobs, including:

- ✦ manufacturing or storing explosives
- ✦ driving a motor vehicle and being an outside helper on a motor vehicle
- ✦ coal or other mining
- ✦ logging and sawmilling
- ✦ operating most power-driven equipment
- ✦ those involving any exposure to radioactive substances or ionizing radiations
- ✦ manufacturing brick, tile and related products
- ✦ operating any power-driven circular saws, band saws or guillotine shears
- ✦ wrecking, demolition or ship-breaking operations
- ✦ roofing and work performed on or near roofs, including installing or working on antennas and roof-top appliances, or
- ✦ excavation operations.

Many states add other restrictions. For instance, in California no-one under 18 is allowed to handle, serve or sell alcohol; operate meat slicers, or work as an outside helper on a motor vehicle. Californian workers under the age of 16 may not wash cars, load or unload trucks, work on a ladder or scaffold or work after 9 p.m.

The Labor Occupational Health Program at

the University of California, Berkeley has performed extensive research into mitigating the dangers facing young workers. The program's experts list a number of best practices from the field that help keep youngsters safe.

- ✓ Assign a mentor: A California zoo assigns each new teen worker a “buddy” or mentor. This can even be a more experienced teen worker who answers questions, helps give hands-on training and offers safety tips.
- ✓ Role-playing: A retail clothing chain with many young employees uses role-playing regularly at monthly safety meetings. Young workers enact specific health and safety problems and develop solutions.

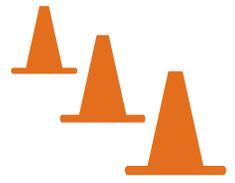
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List of state labor department offices:
www.dol.gov/esa/contacts/state_of.htm

National Institute of Occupational Safety and Health (NIOSH), young worker safety and health information:
www.cdc.gov/niosh/topics/youth/

California Resource Network for Young Workers' Health and Safety:
www.youngworkers.org

Department of Labor pocket guide on youth employment:
<http://youthrules.dol.gov/pdf/brochures/YouthRulesBrochure.pdf>



Keeping Tabs on Record-Keeping

Every employer covered by the Occupational Safety and Health Administration (OSHA) who has more than 10 employees must maintain specific records of job-related injuries and illnesses. There are exceptions for employers in certain low-hazard industries in the retail, finance, insurance, real estate and service sectors.

The basic safety record-keeping form is the OSHA Form 300, an injury/illness log, which has a separate line entry for each recordable injury or illness. Employers must record every case that results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. Employers must also consider a case to meet the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

Filing Form 300s can be arduous, but it's worthwhile. The information recorded on the form helps employers, employees and compliance officers analyze the safety and health environment and provides statistical information, such as data for the Bureau of Labor Statistics' (BLS) Annual Survey.

Each year, the employer must conspicuously post in the workplace an OSHA Form 300A, which includes a summary of the previous year's work-related injuries and illnesses. Employers must also record on the OSHA Form 301 individual incident reports that provide added detail about each specific recordable injury or illness.

Employers must keep the log and summary for five years following the year to which they pertain. But employers do not have to send the completed forms to OSHA unless specifically asked to do so.

Brian Zaidman, a safety research analyst for the Minnesota Department of Labor, provides these handy tips for safety record-keeping.

Be organized: Use the electronic form to keep your information organized and legible. This version offers more room for text and makes it easier to train others to keep the log and to prepare the annual summary.

Be selective: The log should include only those cases meeting the recordability criteria. Many workplace incidents may look like recordable injuries, but don't meet the criteria. For example, a work-related rash that can be treated with a nonprescription ointment and that does not result in any job restrictions or time away from work is not a recordable case.

Be accurate: Record a case only in the year in which the injury or illness first occurred, even if it results in days away from work the following year.

Classify: Each recordable case must be classified according to the most serious outcome for that case. Only one classification is permitted. The order of case seriousness is: death, days away from work, job transfer or restriction, and other recordable cases. A nonfatal case with only one day away from work must be classified as a days

away from work case, even if the injury also results in 150 days of job restriction.

Count: For cases with days away from work and days of job transfer or restriction, count calendar days, not just scheduled workdays or days the business is open. Begin counting days on the day after the injury occurred or the illness began.

Be thorough: Provide a thorough description of each case, including specific information that safety directors and safety committee members can use to improve workplace safety. Describe the worker's activity, what happened, the part of the body that was affected and how it was affected.

Use the log: Post the annual summary in the workplace, share it with management and workers, compare it to others in your industry, and use the statistics to identify the most common types of injuries for your industry and your establishment.

For more information on accident record-keeping, please contact us. ■



- ✱ How often is the task done?
- ✱ How often had the injured worker done the task?

If human error is clearly the cause, is an accident review still needed?

Even if human error caused the accident, you have to find why the error occurred. More often than not, you will find there is a system fault. If I was trying to trim a 12-foot hedge and took two 8-foot ladders to stack them, that would be human error; the system error would be not having better tools.

If you don't assign fault, how can you fix the problem?

If you find a manager is corner-cutting, you will usually find a lack of management accountability. If a manager is accountable for safety performance, merit increases should reflect that. If I know going in that I'm accountable for the safety of my team, there shouldn't be a problem. If an employee is breaking safety rules, ask whether the rules are being enforced consistently.

Are accident reviews cost-effective?

It's always better to identify the cause of an accident and fix it once rather than having to deal with a series of problems. Employees are a company's most valuable asset — look at the investment in payroll alone, not counting training, benefits and the like. Each employee is a valuable asset; if that asset is damaged, it makes sense to find out why. You'd do it for a piece of equipment.

How do insurers view accident reviews?

If you can identify the root causes of an accident and take corrective actions, this shows your insurance carrier that you have been proactive. The review process should cover not just the specific incident, but other cases that might stem from the same cause. So if you discover an accident was caused by not having the right equipment, look at other tasks to check that workers have the right equipment.

How far up the chain of command should the review go?

Every review should go to the top. Every good safety program has top management involved — they are the ones who model and support the program through action and budgeting.

What is an interesting case you have worked on?

An employee had a piece of equipment discharge into his face. Initially, the employee was embarrassed—he never should have pointed it at himself. But when I started asking questions I found out that employee had been asked to do a task he had never done before, that no one thought was difficult — but no one had ever stopped to think about what had to be done. He never had the right equipment. He never had training. He took another piece of equipment and modified it. When he started the operation, the equipment jammed and he turned to look at it and then it discharged.

It's the unusual task — something that has never been done before — that people don't think about enough. You need a job safety

analysis that breaks each job down into specific tasks, the individual hazards and the control measures for those hazards.

For assistance in setting up an accident review program, please contact us. ■



YOUNG WORKERS—continued from Page 2

- ✓ Age by color: A convenience store chain outfits young employees with different colored uniforms based on age. This lets the supervisors know at a glance who is not allowed to operate the electric meat slicer.
- ✓ Track hours: A fast food chain employing some 8,000 young workers in five states developed a computerized tracking system to ensure that teens aren't scheduled for too many hours during school weeks.
- ✓ Add responsibility: A major grocery chain includes teen workers on the committee that conducts safety inspections, reviews employee injuries and makes suggestions for prevention. ■

State Laws Are Stricter

At least 26 states and territories have their own safety/health agencies with OSHA-approved state plans, which may have slightly different requirements. Under OSHA rules, the state plans must meet or exceed federal recordkeeping requirements. The following states have approved state plans:

Alaska: www.osha.gov/dcsp/osp/stateprogs/alaska.html
 Arizona: www.osha.gov/dcsp/osp/stateprogs/arizona.html
 California: www.osha.gov/dcsp/osp/stateprogs/california.html
 Connecticut: www.osha.gov/dcsp/osp/stateprogs/connecticut.html
 Hawaii: www.osha.gov/dcsp/osp/stateprogs/hawaii.html
 Indiana: www.osha.gov/dcsp/osp/stateprogs/indiana.html
 Iowa: www.osha.gov/dcsp/osp/stateprogs/iowa.html
 Kentucky: www.osha.gov/dcsp/osp/stateprogs/kentucky.html
 Maryland: www.osha.gov/dcsp/osp/stateprogs/maryland.html
 Michigan: www.osha.gov/dcsp/osp/stateprogs/michigan.html
 Minnesota: www.osha.gov/dcsp/osp/stateprogs/minnesota.html
 Nevada: www.osha.gov/dcsp/osp/stateprogs/nevada.html

New Jersey: www.osha.gov/dcsp/osp/stateprogs/new_jersey.html
 New Mexico: www.osha.gov/dcsp/osp/stateprogs/new_mexico.html
 New York: www.osha.gov/dcsp/osp/stateprogs/new_york.html
 North Carolina: www.osha.gov/dcsp/osp/stateprogs/north_carolina.html
 Puerto Rico: www.osha.gov/dcsp/osp/stateprogs/puerto_rico.html
 South Carolina: www.osha.gov/dcsp/osp/stateprogs/south_carolina.html
 Tennessee: www.osha.gov/dcsp/osp/stateprogs/tennessee.html
 Utah: www.osha.gov/dcsp/osp/stateprogs/utah.html
 Vermont: www.osha.gov/dcsp/osp/stateprogs/vermont.html
 Virgin Islands: www.osha.gov/dcsp/osp/stateprogs/virgin_islands.html
 Virginia: www.osha.gov/dcsp/osp/stateprogs/virginia.html
 Washington: www.osha.gov/dcsp/osp/stateprogs/washington.html
 Wyoming: www.osha.gov/dcsp/osp/stateprogs/wyoming.html

NOTE: The Connecticut, New Jersey, New York and Virgin Islands plans cover public sector (state & local government) employment only. ■