

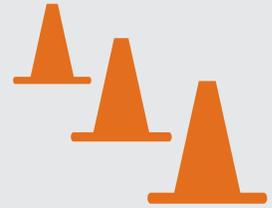
Workers' Comp & Safety News



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Prevention

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Asthma and Allergies: How Companies Can Breathe Easier

From dust mites, mold spores, cockroaches and animal dander, to cotton fibers, acid anhydrides, formaldehyde and latex, the modern workplace is a veritable minefield of substances that trigger asthma, allergies and associated workers' comp claims.

According to the Asthma and Allergy Foundation of America (AAFA), more than 200 substances found in the workplace can cause asthma. An estimated 11 million workers are exposed to these gases, vapors, and organic and inorganic dusts every year, causing 15 million lost work days, according to a 2002 study by the Centers for Disease Control (CDC). Millions more workers are exposed to substances that can cause allergic reactions and other respiratory problems. But using proper diagnoses and management, the vast majority of these expensive problems can be avoided or eliminated.

Asthma Impact

In 2006, the AAFA estimated that asthma cost business \$18 billion annually. According to the CDC study, asthma triggered:

- ★ 12.7 million doctor visits,
- ★ 1.2 million hospital outpatient visits,
- ★ 1.9 million emergency department visits,
- ★ 484,000 hospitalizations, and
- ★ 4,261 deaths.



Asthma was identified as the fourth leading cause of work absenteeism or presenteeism and caused some \$3 billion in lost productivity. Prescription drugs were the largest single direct medical expenditure at over \$5 billion. Medical costs reached an average of almost

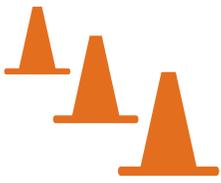
This Just In

Companies can reap significant benefits by identifying and effectively treating depressed workers, according to a recent study published in the *Journal of the American Medical Association*.

The study, funded by the National Institute of Mental Health, found that such programs yield advantages in hiring, training, productivity and salary costs that far outweigh the cost of outreach and treatment. The researchers estimated the cost of the program at \$100 to \$400 per worker, while the productivity boost from more hours worked yielded \$1,800 per employee.

The study of 604 employees found that those who received the aggressive intervention worked on average about two weeks more during the yearlong study than those who were merely advised to see their doctor or seek a mental health specialist.

More workers in the intervention group were still employed by year's end — 93 percent vs. 88 percent — allowing employers to make significant savings in hiring and training costs, the researchers said. In addition, intervention employees were almost 40 percent more likely to recover from depression during the yearlong study.



Driving the Road to Safety

A 2003 study by the National Highway and Transport Safety Administration found that the average car crash costs an employer \$16,500. When a worker has an on-the-job crash that results in an injury, it costs the employer an average of \$74,000. Costs can exceed \$500,000 when a fatality occurs. And unfortunately, occupational vehicle accidents account for one of every four worker fatalities nationwide, according to the National Bureau of Labor Statistics.

Every company is exposed to the dangers of unsafe driving – even if only in the commuter trips its employees make. However, numerous strategies and programs can significantly improve driver safety for all your employees, from the harried delivery driver to the casual commuter. According to a survey by Liberty Mutual, driver safety programs provide a return on investment of at least 3 to 1.

One of the most widely used programs is run by an alliance of OSHA (the U.S. Occupational Safety and Health Administration), the NHTSA (National Highway Traffic Safety Administration) and NETS, the Network of Employers for Traffic Safety. The program's participants include transport giants such as UPS and Amerifleet, as well as GM, Anheuser-Busch and Nationwide

Insurance.

“Our affiliations with NETS is invaluable. At UPS, we put nearly 87,000 drivers on the road every day. NETS helps us to stay current on important traffic safety issues,” says Charles Halfen, corporate fleet safety manager, UPS.

The NETS Ten Step Program

1. Senior Management Commitment & Employee Involvement – The involvement of top-level managers and employee representatives underscores the all-around importance of traffic safety.

2. Written Policies and Procedures – A clear and enforceable set of traffic safety policies is the cornerstone of the education effort. They should be disseminated widely and encouraged with incentives.

3. Driver Agreements – Adherence contracts should be signed by all employees who drive for work purposes, whether in company cars or their own vehicles.

4. Motor Vehicle Record (MVR) Checks – Companies must screen out poor drivers before they cause accidents. Check driving records prior to assigning driving duties and periodically thereafter.

5. Crash Reporting and Investigation – All crashes – even minor ones – must be reported. Establish guidelines of how to behave in the aftermath of a crash and thoroughly investigate the cause of each accident with the goal of eliminating future occurrences.

6. Vehicle Selection, Maintenance and Inspection – Make the passive and active safety features of vehicles key criteria when purchasing company vehicles. Whenever possible choose best in class vehicles. Schedule regular maintenance and safety checks. If private vehicles are used for company business, encourage employees to adopt the same policies.

7. Disciplinary Action System – The company should have a clear policy to punish and deter dangerous drivers by assigning points after the occurrence of a moving violation or preventable crash. The system should adopt a progressive discipline approach if a driver begins to develop a pattern of incidents. Define the number of violations an employee/driver can have before losing the privilege of driving for work.

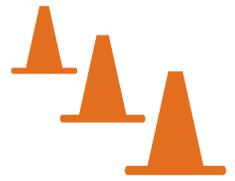
8. Reward/Incentive Program – Safe driving contributes directly to your bottom line. Recognize it with prizes, awards and incentives.

9. Driver Training/Communication – Teach and remind drivers continuously about the importance of safety. Courses should cover such issues as securing materials for transport, using seat belts, limiting use of cell phones, the danger of alcohol and drug impaired driving, driving while fatigued, aggressive driving, driving while under stress and the increased dangers facing young drivers.

10. Regulatory Compliance – Ensure compliance with highway safety regulations and clearly establish which, if any, local, state, and/or federal regulations govern your vehicles and/or drivers.

For more information on driver safety programs, please contact us. ■





Do Malingerer Tests Work?

Malingering is an age-old problem, but even the newest methods to identify false medical complaints are inconclusive. The Fake Bad Scale, the most widely used test, is backed by insurers and defense attorneys. But plaintiffs' experts argue the test is inaccurate and a recent court decision agreed.



Malingering is a medical and psychological term for an individual who fabricates or exaggerates symptoms of mental or physical disorders for financial or other gain. Malingering is not just a modern problem caused by people trying to take advantage of workers' comp laws. The Roman physician Galen reported the case of a patient who simulated colic to avoid a public meeting and also documented how a servant had feigned an injured knee to avoid accompanying his master on a long journey.

Since then, employers have been searching for reliable tests to detect malingerers. Malingering causes damage in numerous ways. First there is the cost of lost productivity. Malingerers also cost companies and their insurers billions of dollars in treatment and damages, driving up insurance costs and the costs of goods and services. Malingerers are also a strain on the medical system, wasting the time and energy of medical personnel, requiring detailed and expensive testing to rule out obscure conditions and depriving genuinely ill individuals of the care they deserve.

Because diagnosis is so difficult, there is little authoritative information on how prevalent malingering is. But a study in June 2007 in the journal *Pain Practice* estimated an incidence as high as 30 to 40 percent. This review of professional literature on malingering in chronic pain, medical disorders and mental/cognitive disorders also found that health care providers often fail to con-

sider malingering. This oversight occurs frequently, even in cases of delayed recovery involving work injuries, where there may be a significant incentive to feign or embellish symptoms or delay recovery.

Yet even the most widely used test to identify fake claimants is clouded in controversy – despite its recognition last year as an official subset of one of the most widely used personality tests, the Minnesota Multiphasic Personality Inventory (MMPI).

According to the *Wall Street Journal*, the so-called Fake Bad Scale has been used by 75 percent of neuropsychologists who regularly appear in court as expert witnesses for insurers and other defendants. Developed by psychologist Paul Lees-Haley, the test asks subjects to answer 43 true or false questions about physical symptoms and general behavior. The questions are a subset of the MMPI selected by Lees-Haley and tested on three groups – personal injury litigants he said were malingering, a group of people he asked to answer as though they were faking injury and a third group of bona fide injured litigants.

Dr. Lees-Haley concluded that his test “appears to be a promising procedure” for detecting malingerers, and posited that anyone scoring over 20 tended toward fakery, according to the *Journal*. But critics from the ranks of personal in-

jury and plaintiffs' lawyers and their allied experts note that Lees-Haley earns most of his income testifying for insurance companies and defense lawyers. They are also having increasing success in discrediting the test in court – claiming that Lees-Haley's guidelines snare an alarmingly high number of false positives. The tests also identified a disproportionately high number of women as fakes, they argue. The American Psychological Association committee on disabilities also questions the inclusion of the test in MMPI results.

The issue came to a head last year in *Davidson v. Hadel*, a case in which the plaintiff claimed he had been seriously injured after being rear-ended by a gasoline tanker. The defense counsel relied on the result of the Fake Bad Scale to persuade the jury he was malingering. However, Judge Sam Pendino refused to allow the results of the test to be submitted to the jury, saying that there is “no hard medical science to support the use of this scale to predict truthfulness.” The jury found that the plaintiff suffered permanent injury from the crash and awarded him \$1.4 million.

So the jury is out on the Fake Bad Scale for now. Until it gains more of a track record, the criteria listed on the next page may help you to determine whether an employee is malingering.

MALINGERERS—continued on Page 4





\$5,000 per patient and represented 2.5 times as much as for workers without a history of asthma. For asthmatic employees with disability claims, the figures were much worse. They

cost employers almost three times as much as other disability claimants —\$14,827 vs. \$5,280, according to a 2002 article in the *Journal of Allergy and Clinical Immunology*.

Asthma and allergies can hit any business, and any occupation within that business. But according to the CDC, some of the worst cases occur in general merchandise stores, food stores, the furniture and lumber industries, banking, schools, trucking, warehousing and metal industries. Some of these sectors have no obvious exposures to dangerous substances — asthma can easily be caused by something as innocuous as poor indoor environmental quality. That helps explain why computer operators and financial record processors had the highest prevalence of asthma in the CDC study.

Asthma Prevention

There's no single strategy to prevent asthma. But a good place to start is in getting the proper diagnosis. Consult a medical professional who specializes in asthma to determine whether the asthma symptoms are an irritant reaction or the much more serious allergic reaction. Armed with that information, an industrial hygienist can help you identify the source of the irritant. An industrial hygienist can also help redesign

your workspace or manufacturing processes to eliminate some of the irritants.

Often the simplest prevention steps yield the greatest results:

- ✦ Get workers to keep their work areas uncluttered and, if appropriate, have them dust and use HEPA-type tabletop air purifiers. Alternatively, if dust is a pervasive problem, hire a cleaning crew to regularly maintain your premises. Ensure they use nontoxic, non-irritating cleaners.
- ✦ Give workers dust masks or, even better, fully enclosed respirators.
- ✦ Check that the air exchange system in your building is functioning properly.
- ✦ If the source of the asthmatic reaction has been identified, move affected workers to different parts of the building, especially in severe cases where staying in contact with the substance can be life-threatening.

In some cases it may pay to use asthma disease management vendors who define, evaluate and measure health care quality, and who will educate workers on dealing with asthma. In work-related asthma cases, your workers' compensation carrier might recommend one. But if your company contracts directly, make sure the vendor is accredited with an agency such as the NCQA (National Committee for Quality Assurance), URAC (Utilization Review Accreditation Commission) or the JCAHO (Joint Commission on Accreditation of Healthcare Organizations). ■

Warning Signs for Malingerers

Employers can keep a lookout for numerous warning signs that a worker is feigning a malady. The more warning signs present, the greater the likelihood of malingering.

- ✦ Financial pressure on claimant
- ✦ History of addiction
- ✦ Dramatic or atypical presentation of complaint
- ✦ Evidence of overtreatment for minor problems
- ✦ Claimed injuries result from suspicious accident
- ✦ Vague and inconsistent details, although plausible on the surface
- ✦ Marked discrepancy between the person's claimed symptoms and the medical findings
- ✦ Lack of cooperation with medical evaluation
- ✦ Noncompliance with prescribed treatment

Stifling Summer Puts Focus on Heat Illness Prevention

Record high temperatures this summer have underscored the need for companies to be vigilant about their heat illness prevention programs. "Whenever temperatures start to rise into the high 90s and above, it's time to pay close attention to the effects of the heat on employees who don't work in air-conditioned environments—particularly those who engage in physical or strenuous activity," says Len Welsh, head of Cal/OSHA.

California's four-step heat illness prevention program is one of the most widely adopted in the country.

It emphasizes:

1. Training – Train all employees and supervisors about heat illness prevention. They should know the warning signs of dehydration, which include cramping, dizziness,

fatigue and seizures. They should also be taught to monitor their coworkers and inform supervisors immediately if something appears amiss.

2. Water – Provide enough fresh water so that each employee can drink at least one quart per hour, and encourage them to do so.

3. Shade – Provide access to shade for at least five minutes to each employee that states the need for a recovery period.

4. Planning – Develop and implement a written plan for minimizing heat illness

Remember that it's not only outdoor workers who are threatened by heat stress. High temperature and humidity indoors can be just as debilitating. Look out for places with limited air movement and ventilation, or with malfunctioning cooling systems, especially when employees are involved in physically demanding activities. ■