

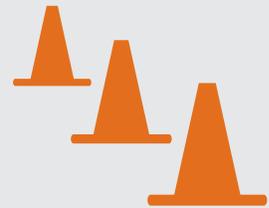
Workers' Comp & Safety News



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Reducing Exposures from Van Pools

Done properly, van pooling can help employees save money

and stress and enhances your company's reputation as a responsible employer. However, employers considering a van pool program will want to structure their program to minimize their liability exposures.

In 2007, 11 percent of U.S. employers operated or sponsored van pools for their employees, according to the TransitCenter, a New York nonprofit. Since then, rising fuel prices, longer commutes and interest in reducing greenhouse gases have spurred interest in van pooling.

Some van pool programs are employee-run, with employees using their own cars. The employer might facilitate the van pool by helping employees living in the same area contact each other and help in planning commute routes. This type of arrangement might involve the least risk for the employer, as most states

exempt commuting from workers' compensation coverage under the "coming and going" rule. (See sidebar on P. 4 for more information.) However, you might want to remind participating employees that the employer's auto liability coverage does not apply and that participants who drive will need a valid driver's license, current registration and inspection on their car and personal auto insurance with appropriate limits for bodily injury and physical damage.

When the employer owns and operates the vans, it takes on auto liability exposures. It might also face additional workers' compensation exposures, depending on state statute or case law. Accord-

ing to a November 2008 article in *Workforce Management* (Van Pools Cut Costs, But Increase Some Risks, by Nick Whitfield, www.workforcemanagement.com), many employers deal with this by contracting with an outside vendor to operate their van pools. This type of arrangement can help transfer auto liability from the employer to the van pool operator. Additionally, some states, such as California, specifically exempt employers from liability for van pools they create in response to government-mandated trip reduction or pollution-reduction programs.

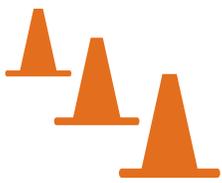
If you're considering implementing a van pool, please contact

This Just In

Workplace injuries are most likely to occur in the trunk of the body, which includes the back and shoulders, according to the Bureau of Labor Statistics. In fact, one out of every five workplace injuries involves the back.

Back injuries are painful and costly. In 2007 (the last year for which complete data are available), nearly 250,000 workers suffered lost time due to a work-related back injury, losing a median of seven work days. The National Institute for Occupational Safety estimates injuries of the back cost an estimated \$20 billion to \$50 billion a year.

Most back and shoulder injuries are caused by overexertion in lifting or repetitive motion. However, in 2002, NIOSH also concluded that back belts, commonly used to prevent back injuries, are ineffective. Training employees to lift properly and developing ergonomic solutions to repetitive tasks can be more effective. We also suggest pre-employment screening for any position that will require lifting. For information on how to screen prospective employees without running afoul of discrimination and privacy laws, please contact us.



Subrogation and Your Workers' Compensation Costs

When an employee injured on the job successfully sues a third party in addition to collecting workers' compensation, the employer's workers' compensation insurer may be able to "subrogate" the claim. As dictionary.com defines it, subrogation is "to substitute (one person) for another with reference to a claim or right."



When a work-related injury occurs, the employer's workers' compensation has the responsibility of paying for the injured workers' medical treatment and lost time. But what happens if a third party (someone besides the employer or a co-worker) causes or contributes to the injury? Examples include work-related auto accidents caused by a third party's negligence, injuries caused or contributed to by another company's faulty product, or injuries caused by the malpractice of a doctor or healthcare provider treating a work-related injury.

Unlike the workers' compensation system, the tort system allows an injured person who prevails in a lawsuit to receive compensation for

lost wages (past, present and future), pain and suffering, property damage, loss of monetary support, loss of consortium, disfigurement and sometimes punitive damages.

When an employee collects tort damages or other settlements in addition to workers' compensation payments, the employer's insurer or the employer has the right to "subrogate," or claim a credit against any settlement or recovery received. Subrogation prevents an injured worker from collecting for the same injury twice; it also helps lower workers' compensation costs. If the employee chooses not to sue a third party that might have caused or contributed to his/her injuries, the employer or the employer's insurer can sue this party to recover any claims it paid to the injured worker. *Black's Law Dictionary* calls

this kind of subrogation "...the right to step into the shoes of the party whom they compensate and sue any party whom the compensated party could have sued."

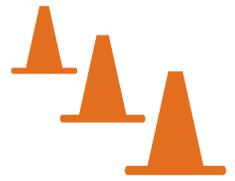
Laws governing workers' compensation subrogation vary from state to state. Some states are "first dollar states," which give employers priority in recouping their costs out of any verdict or settlement. Some states also allow the employer to recover any increase in workers' compensation premiums due to the injury. Other states require the full rehabilitation of the worker, or that the employee be "made whole," before the employer or insurer recover any of their costs.

If third-party negligence might have played a role in one of your workers' compensation claims, your claims coordinator can help increase the chances of a successful subrogation by thoroughly documenting the accident or injury. This includes interviewing the victim and any witnesses, photographing the accident scene immediately following the accident and saving any evidence. If your insurer declines to subrogate, or if you self-insure for workers' compensation, we strongly recommend hiring an attorney with expertise in this area to help you with the subrogation process.

Waiver of subrogation

Most workers' compensation contracts include subrogation provisions that give the insurer the right to recover claims paid from anyone liable for an injury covered by the policy. However, in some instances an insured might not want an insurer to go after a third party for recovery of a claim. This can happen when the injury takes place on a client's premises, or when the insured has a contract with a general contractor or government entity that requires the insured's carrier to waive its subrogation rights.

Insureds can ask their workers' compensation underwriter to add a "waiver of subrogation" provision to their policy, which will waive the insurer's rights to pursue recovery from a third party. Expect to pay an extra premium if your policy includes this provision.



Don't Slip Up When It Comes to Safety

When a comedian slips and falls in a routine, it's funny. When your employees slip and fall on the job, it's anything but. Slip and fall accidents cause approximately 18 percent of injuries and 15 percent of all accidental deaths in the workplace—more accidental workplace fatalities than any other cause except for motor vehicle accidents.

Slip and fall accidents can occur in any industry, but the Occupational Safety and Health Administration (OSHA) considers restaurants, hotels, health-care facilities and retail businesses high-risk. Construction workers are particularly vulnerable to serious injury from slip-and-fall accidents—slips and falls lead all causes of workplace fatality in the construction industry. Because construction workers face such specific slip-and-fall hazards, construction businesses need industry-specific fall protection programs designed for the particular hazards faced by their employees.

All other businesses should take precautions to prevent slip-and-fall accidents. To reduce the possibility of accidents at your workplace, take a look at the following problem areas:

Footwear:

Require employees to wear slip-resistant footwear in manufacturing areas or on surfaces that may become wet. Employers may also want to provide non-slip shoe covers for employees to wear when they perform tasks that may create wet or greasy floors.

Floor surfaces:

- Check flooring for irregularities or changes in level that could cause tripping. Ridges or irregularities of ¼" to ½" are large enough to cause tripping.
- Install slip-resistant rugs and mats in areas that may become wet, such as entryways, restrooms and kitchens. Periodically check to

make sure mats and rugs remain in place, and install "grippers" or tack them down if necessary.

- Where wet processes are used, provide drainage and false floors, platforms, mats or other means to provide workers with dry standing places.
- Where floors may become greasy (as in restaurant kitchens), use no-skid floor surfaces, such as rubber treading, paint with grit or no-skid waxes to minimize the risk of slipping.
- After wiping up a spill or floor washing, place warning signs around the area.

Passages:

- Keep passageways and walkways free of clutter and crowding. Remember disabled employees and visitors—passageways should be wide enough for a person in a wheelchair to turn around in.
- Ensure projections, including mechanical equipment, don't intrude into walkways. Consider the needs of people of various heights.
- Mark entrances, exits and stairwells.

Guardrails/barriers:

- Ensure stairwells and holes in the floor or wall are appropriately guarded and marked with signs or yellow warning strips. Guardrails should meet OSHA and local safety and health standards.

Stairways:

Are your stairways safe? At a minimum they should...

- Be at least 22 inches wide
- Have landing platforms at least 30 inches long
- Have angles between 50 and less than 30 degrees
- Have risers of uniform height from top to bottom
- Have slip-resistant tread surfaces
- Have securely fastened handrails, located between 30 and 34 inches above the leading edge of the stair treads
- Be well-lit and clear of obstructions.

Other hazards to beware in stairways include busy floor patterns, distracting views and poor maintenance. You may also want to check with your local building department for current codes, which may be stricter than OSHA's.

Contracting companies, manufacturing companies and those whose employees use ladders, scaffolds, risers or platforms have special safety needs. For more information on protecting your workers from slip and fall accidents, please call us. ■

The Penny Test

You might be surprised how small an irregularity on a floor's surface can cause a trip. To see if a change in surface height could pose a tripping hazard, Chubb Insurance suggests stacking pennies next to the change in level. If the stack exceeds five pennies, your chances of a slip and fall occurring increases.



Stretching Your Prevention Dollars

Stretching can improve overall health—which might prevent injuries and speed recovery.

Done properly, stretching can...

- Increase the length of muscles and tendons. This can extend range of movement, which increases the distance limbs can move before damage occurs to tendons and muscles.
- Reduce fatigue. Injuries are more likely to occur when muscles are tight, fatigued or depleted of energy. Stretching increases blood circulation, which can improve energy and prevent fatigue, which is often caused by buildup of waste products (such as lactic acid) in the muscles.
- Correct imbalances in the body that can lead to injury. For example, an employee with a tight shoulder might unconsciously favor that shoulder, leading to an overuse injury on the other side.
- Improve posture. Years of poor posture can weaken the spine and abdominal muscles that support the back, which may contribute to back pain and injury.
- Help prevent repetitive strain injuries (RSIs). A NIOSH (National Institute of Occupational Science and Health) paper reported that "...chronic disorders result from the cumulative effects of repeated 'microtraumas' manifested as small to moderate increments in discomfort during work." One study found that taking "microbreaks" helped prevent these "microtraumas."



VAN POOL—continued from Page 1



us. We can help you evaluate your workers' compensation and other exposures and help you develop an appropriate risk management strategy.

The "Coming and Going Rule"

Workers' compensation covers injuries that workers suffer as a result of their employment. In general, state laws except coverage for injuries employees receive while commuting to and from work, considering that the employee's personal time. However, exceptions exist to this "coming and going rule" where your workers' compensation would apply.

Generally, these exceptions are for:

1. Employees who have no office or other fixed place of work, such as traveling salespeople or traveling nurses who

report from home to their clients' place of business;

2. Employees whose employment contract includes transportation to and from work;
3. Employees who are traveling away from home for an extended time; workers' compensation may cover even injuries they receive while off duty;
4. Employees who are doing an errand on behalf of the employer during their commute.

Even outside the confines of the coming and going exception, some gray areas of coverage exist. For example, some employees have been awarded workers' compensation benefits after punching out if they are injured while still on the employer's premises.

If you're uncertain whether an employee's injury falls under your workers' compensation policy, please contact us for advice. ■

To control workers' compensation costs, consider implementing a stretching program during work hours. A stretching program conducted daily, during working hours, will benefit more workers—not just those likely to exercise on their own.

To get the most out of your program, tailor it to the needs of your employees.

A predominantly white collar workforce will benefit from a stretching program that emphasizes posture and keeping the upper body, arms, wrists and hands flexible, while manufacturing workers or service workers might have

a greater need to stretch and strengthen the muscles supporting their backs to help them lift and move heavy objects without injury.

If your budget and space permit, you could invest in an entire gym set-up. However, some inexpensive equipment, such as stability balls and resistance bands, can greatly enhance a stretching program. A qualified health professional, such as an occupational health specialist, physical therapist, certified sports trainer or sports physician, can help you set up a program that will best meet the needs of your employees—and your budget.