

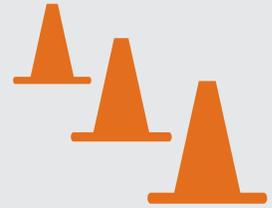
# Workers' Comp & Safety News



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## This Just In

**A recent federal appeals court decision has implications for how companies determine workers' readiness to return to work. Companies may need to reassess their physical capacity evaluations to make sure the functions tested are directly relevant to the worker's job.**

The court case concerned a Georgia-Pacific Corporation employee who had knee surgery for an injury partially related to work. The employee was tested and determined to be unable to return to work after an occupational therapist conducted tests that measured blood pressure, heart rate and breathing.

The appeals court determined that the tests were medical exams, as defined by the Equal Employment Opportunity Commission (EEOC). Medical tests are prohibited by the Americans with Disabilities Act (ADA) unless they are directly related to job function.

The case was remanded to the trial court to determine if the tests were job-related. In the meantime, companies in similar situations would be wise to make sure their return-to-work evaluations tie directly to job function.

## Successful Return-to-Work Programs

Getting an injured worker back on the job as quickly as possible makes good business sense and improves employee morale. How do you develop a successful return-to-work program? What are the pitfalls to avoid?

**A** successful return-to-work program starts with a detailed company plan that has management support and has been thoroughly discussed with employees so that they understand their role in getting well and returning to work.

Three important components of the plan should be:

- **Job descriptions and analyses for each job.** Job descriptions and analyses give doctors and insurance companies the tools to determine how soon an employee can return to work and what duties he or she will be able to do. Detailed job descriptions are especially helpful if the injured worker has become disabled, making it relatively easy to decide whether he can perform his old job – with or without accommodation.
- **A process for regular communications.** Open and regular communications among the injured worker, his supervisor, the doctor and the insurance company help keep the worker's treatment on track. When workers know they are missed and that their managers are concerned about their recovery, they maintain a



## Preventing Workers' Comp Fraud

Workers' comp fraud costs businesses anywhere from \$5 billion to \$7 billion each year. What are the warning signs to look for? How can you keep your company from being ripped off?

A woman who drove a bus for a private company in California hurt her back and went on workers' comp leave. After several months of physical therapy, it looked like she would have to go on long-term disability. The insurance company was negotiating a settlement when the employer got a tip: the woman was training for a golf tournament and giving golf lessons at a nearby course. A surveillance company was hired to video the bus driver's beautiful swing. She was nailed.

Most cases of workers' comp fraud are not that outrageous. However, some employees seem to have relatively little concern about cheating their employers. According to the National Insurance Crime Bureau (NICB), "opportunistic fraud," in which claimants pad their workers' comp claims, increased 28 percent in the first quarter of 2009. The NICB attributes the increase to the bad economy.

### Warning Signs

There are many warning signs that employees are committing workers' comp fraud. Any one sign may not indicate a problem, but if you see

several, you need to investigate. Be aware of employees who:

- Do not have a witness to their injury.
- Delay reporting the injury.
- Have discrepancies in their story.
- Are vague on details, and the details change.
- Report being injured on a Monday.
- Report an injury just prior to a layoff.
- Do not return calls.
- Cancel doctor's appointments.

### Preventing Fraud

The first place to fight workers' comp fraud is on the front line – with your employees. They need to believe that the company is committed to a safe, healthy work environment. They need to know they are receiving good training, so they can perform their jobs in a consistently safe manner.

Next, you need to make sure your employees understand the role of workers' comp insurance and that it represents a significant cost to the company. Employees need to understand that the claims costs are ultimately paid by the company. These expenses affect profits and can

contribute to cost-cutting measures, especially in a tough economy.

Finally, employees need to know that workers' comp fraud is a felony (in most states), and that you will prosecute any employees who try to defraud the company.

You might want to cite some local statistics. For instance, last year California district attorneys convicted 527 people of workers' comp fraud. The typical sentence was a few days in county jail, plus many hours of community service, several years of probation, a civil fine and restitution of funds.

Employees need to know that it doesn't pay to commit workers' comp fraud. If they are caught, it's a felony, it's embarrassing and they have to repay the money.

### Investigating Fraud

Many insurance companies now use sophisticated software to detect fraud as soon as the first notice of loss is filed. When that happens, your carrier may call you before you call them.

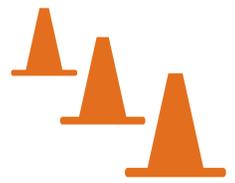
Insurers also hire outside investigators to conduct legal surveillance of suspected cheats. They use GPS, night-vision lenses and other high-tech electronics to record workers doing strenuous physical activities or working a second job.

In the case of the bus driver who gave golf lessons, Patty Kotze, managing partner at Diversified Risk Management in Downey, Calif., handled the surveillance. She signed up for lessons and then made sure her teacher demonstrated how to properly swing the club. "I had to take several lessons," Kotze said. "You have to be able to prove that the suspect's agility was not a one-day fluke – that she was able to play golf every day."

Some investigators also comb through Internet sites such as Facebook to track the activities of suspects. They use "Web crawlers" that track all references to a person – more thoroughly than a Google search. Some employees brag online about their insurance scams. Others simply provide information that leads to surveillance.

According to Kotze, it is important to understand privacy issues when doing a Web search. "It's not ethical to become someone's Facebook friend and then investigate their activities," Kotze said.

If you suspect fraud, contact our agency or your workers' comp carrier as soon as possible. The insurance company will take the lead in investigating, but will need your continuing help. ■



## RETURN-TO-WORK—continued from Page 1



more positive attitude and tend to return to work more quickly.

• **Return-to-work agreement.** Using an agreement that clearly states the responsibilities of

the employer and the injured worker will help employees understand what they need to do if they are injured. Both the employer and employee should sign the agreement.

### Pitfalls to Avoid

Return-to-work programs can be a minefield of problems due to the variety of rules and regulations that apply, including the Americans with Disabilities Amendment Act of 2008 (ADAA), the Family Medical Leave Act (FMLA) and various state workers' compensation laws.

**ADA issues:** ADAA significantly expanded the definition of disabilities under the Americans with Disabilities Act (ADA), so employers should expect more injured workers to be classified as disabled when they return to work. For instance, "physical impairment," a key part of the ADA definition of disability, now includes major

life activities such as having difficulty in walking, standing, bending and lifting.

Workers with injuries that result in any of those impairments are considered disabled and require reasonable accommodation to perform their jobs. The workers are also usually eligible to receive a workers' compensation disability settlement.

**FLMA rules:** An injured employee may choose to go on unpaid leave, rather than participate in an early return-to-work program. Under FMLA rules, the employer must accept the leave, and the employee retains the right to have her job back after returning from FMLA. (The good news is that the company can usually stop making the workers' comp indemnity payments during the leave.)

**Long employee absence:** When companies are not able to develop a light-duty schedule for an injured worker, the worker stays at home until ready to resume his old job. The longer he stays home, the higher the chance he will mangle, finding physical reasons to further delay his return. Immediately after a worker is injured, his manager should use the worker's job analysis to identify those duties he may be able to perform

while he recovers. A return-to-work plan should allow him to perform as many of his normal tasks as possible, while augmenting them with other work that will not affect his injury.

**Insufficient budget:** Some companies make the mistake of not adequately funding return-to-work programs. Good programs have costs. Someone has to manage the program, and you might have to hire extra employees to do part of the injured worker's job. However, return-to-work programs actually save money because employees are back at work sooner. Savings also come from:

- Lowering the odds of expensive litigation.
- Reducing claims reserves.
- Reducing the injury's impact on the company's workers' comp experience modification and insurance rates.

**Difficulties in following mandatory medical exams:** Companies need to follow strict guidelines for medical exams that are used to release employees back to work – for both full-time and light-duty assignments.

If you would like advice on how to develop a successful return-to-work program, give us a call.



## SLIPS AND FALLS—continued from Page 4



– somewhere with good drainage and no foot traffic.

- Block off hazardous areas.

### Inside the Building

Winter weather also increases the odds of an employee slipping and falling once she is inside her workplace. Floors inside entrances tend to be wet, and non-slip mats can become saturated with water, reducing their effectiveness.

Steps to follow on wet or snowy days:

- Check entry mats and runners regularly to make sure they are not saturated. Replace or wet-vacuum them, using a grounded adapter.
- Consider installing mats that lie flush with the floor and have a receptacle to catch water.
- Keep supplies nearby to mop wet spots.

- Use hazard signs to warn employees of slippery floors.

### Know Your Flooring

Some floors are safe when dry but become very slippery when wet. Other floors become more slippery as they age. Most floors become more slippery if they are not regularly cleaned, so avoid letting dirt and grease build up.

It is important to know your floors and how to maintain them. Employees need to be trained to use the proper cleaning solutions. If you use contractors, make sure that someone from the cleaning company inspects the floors, knows how to clean them and makes sure his employees follow proper procedures.

### Educate Your Employees

Back to the receptionist who is running

through the parking lot: she may reach her car safely, but later she slips on ice in her driveway at home. If she is injured, there is no workers' comp liability, but her injury will cost the company money.

According to a National Safety Council survey, businesses are recognizing the value of keeping their employees safe, both on and off the job. Among 1,300 businesses of varying size that have implemented off-the-job safety programs, 58 percent reported reductions in injuries occurring outside of work.

It pays to encourage your employees to wear sensible shoes, to slow down and to pay attention to where they walk during inclement weather – whether they are going to work or to the grocery store. ■



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# Preventing Slips and Falls

Slip-and-fall accidents are a leading cause of workers' comp injuries, and winter weather increases the risks. What can you do to keep your employees as safe as possible?



It's 4:30 p.m. on a cold, wet December day. It's already dark outside, and the rain is turning to snow. The wind is blowing, and clusters of wet, dead leaves swirl in the parking lot and accumulate along the curb. Ice is beginning to form on utility covers and in cracks of the sidewalk. Your office receptionist steps outside, carrying a large bag of holiday gifts. She surveys the situation, then dashes to her car in her two-inch heels. What could go wrong?

That scenario has so many hazards that it's a miracle if the receptionist gets to her car without slipping. Yet it's a typical winter day.

Slip, trip and fall accidents in the workplace are responsible for 18 percent of injuries and 15 percent of deaths. In winter months the odds of slipping on snow or ice – or even on just a wet surface – increase dramatically.

## Parking Lots and Sidewalks

A high percentage of slips and falls occur in

employee parking lots and on sidewalks. Stairs and ramps are also hazardous. Good lighting is very important in the winter, especially in areas with elevation changes.

Routine maintenance can decrease the odds of accidents:

- Make sure that roofs and eaves have appropriate drainage so water flows away from public walkways.
- Inspect and repair cracked or uneven paving in parking lots and on sidewalks. Irregularities of ¼" to ½" are large enough to trip on.
- Inspect and clean storm drains to make sure water will flow freely; the openings on grates should be one inch or less.
- Check that utility covers lie flush.
- Use contrasting colors to highlight speed bumps, utility covers and drains.
- Install handrails on stairs, 30 to 34 inches above the leading edge of the stair treads.

- Use slip-resistant paint to coat walkways and ramps that may become slippery.
- Regularly sweep parking lots and walkways to eliminate leaves and other debris.

If you live in a snowy climate:

- Assign snow removal and ice-melting duties to specific staff and make sure they are trained and understand their responsibilities.
- If you hire a vendor for snow removal, require clear performance commitments. Also require proof of general liability insurance and ask to be added as a "named insured" on the vendor's policy.
- When possible, complete snow and ice removal each day prior to the start of business.
- Create a log to monitor snow removal work.
- Find an appropriate area to pile excess snow

SLIPS AND FALLS—continued on Page 3

## Holiday Cheer and Workers' Comp

Holiday parties are an engrained tradition for American business. They are also notorious for being cauldrons of bad behavior, especially when liquor is served. In addition to causing headaches for human resources, the revelry can have implications for workers' comp.

Holiday events are generally considered to be company functions, regardless of where they are held and whether or not attendance is mandatory. A slip-and-fall on the dance floor Friday night can be a workers' comp claim on Monday morning.

If an employee drinks at a holiday party and then has an accident driving home, workers' comp can become an issue. In most states, liability falls on the driver who consumed the alcohol, rather than the person or company that provided it. However, in some court cases companies have been found liable for workers' comp claims because the company could not prove that alcohol was the cause of the employee's auto accident.

It is also important to recognize that alcoholism is

a disability, but it does not protect an employee from being terminated if her behavior while intoxicated is unacceptable.

If alcohol will be served at your company party, it pays to coordinate with HR on holiday party tips such as:

- Before the party remind employees about moderation and about drinking and driving.
- Encourage employees to find designated drivers.
- Hire a bartender. Do not use employees or have a self-service bar.
- Use drink tickets to limit consumption.
- Make drinking incidental to the event, not the focus.
- Intervene with anyone who has had too much to drink.
- Plan to pay cab fare for intoxicated employees.

Here's to moderation and a happy holiday. ■