

# Workers' Comp & Safety News



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Prevention

October/November 2011

Volume 9 • Number 5

## Preventing Hearing Loss

In our last issue (August 2011), we discussed the threat of noise-induced hearing loss (NIHL) in the workplace. In this issue, we'll discuss some of the action steps employers can take to reduce the threat of NIHL.

Approximately 15 percent of Americans between the ages of 20 and 69 — or 26 million Americans—have high frequency hearing loss that may have been caused by exposure to loud sounds or noise at work or in leisure activities.

NIHL is 100 percent preventable. NIOSH recommends hearing loss prevention programs for all workplaces with hazardous levels of noise. These programs should include noise assessments, engineering

controls, audiometric monitoring of workers' hearing, appropriate use of hearing protectors, worker education, recordkeeping and program evaluation.

### First Line of Defense: Assessment

You can use various kinds of instrumentation and measurement methods to determine noise levels. The most common measurements are area surveys, dosimetry and engineering surveys.

In an area survey, you use a sound level meter to identify areas where employees' exposures to environmental noise are above hazardous levels. You can use the results to create a "noise map" that measures for different areas of the workplace.

If your area survey reveals areas where more thorough exposure monitoring may be needed, dosimetry can help. Dosimetry involves the use of body-worn instruments (dosimeters) to monitor a worker's

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## This Just In

In September, OSHA issued instructions to provide guidance to OSHA field representatives responding to a workplace violence case, and to help Area Offices assist employers experiencing a workplace violence incident.

Workplace homicide remains one of the four most frequent work-related causes of death. The Bureau of Labor Statistics' Census of Fatal Occupational Injuries shows an average of 590 homicides a year from 2000 through 2009. Workplace homicides remained the number one cause of workplace death for women in 2009.

Research has identified factors that may increase the risk of violence at worksites. These include working with the public or volatile, unstable people. Working alone or in isolated areas may also contribute to the potential for violence. Handling money

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noise exposure over the work shift. Monitoring results for one employee can also represent the exposures of other workers in the area who have similar noise exposures.

Engineering surveys typically employ more sophisticated acoustical equipment in addition to sound level meters. These may include octave-band analyzers and sound level recorders, which furnish information on the frequency/intensity composition of the noise emitted by machinery or other sound sources in various modes of operation. These measurements can help you assess options for applying engineering controls.

Sound surveys should be performed periodically, so developing in-house expertise could prove cost-effective. Having the equipment and trained staff on hand will allow you to schedule sound level checks annually, whenever production machinery is added or changed, or when changes in work processes have the potential for affecting noise levels.

### Second Line of Defense: Engineering and Administrative Controls

Put simply, engineering and administrative controls do one of two things: 1) remove the worker or 2) remove the hazard.

Sometimes you may be able to move a worker away from a noise hazard, or you may be able to rotate personnel or tasks to keep any individual worker's exposure below damaging levels. When you can't do this, you'll need an engineering control.

Engineering controls reduce noise and/or vibrations at the source or interrupt the noise path to reduce the noise level at the employee's

ear (excluding hearing protection devices).

Common examples of engineering controls include:

- 1 Installing a muffler.
- 2 Erecting acoustical enclosures and barriers.
- 3 Installing sound-absorbing material.
- 4 Installing vibration mounts and providing proper lubrication.

### Third Line of Defense: Hearing Protection Devices

Using hearing protection devices (HPDs), such as noise-reducing earplugs or earmuffs, can prevent NIHL when noise control measures are infeasible, or until they are installed. Making sure that these devices are worn effectively requires continuous attention on the part of supervisors and noise-exposed employees.

- 1 Make hearing protectors available to all employees whose daily average noise exposures are 85 dB or above. (NIOSH recommends requiring HPD use if noises equal or exceed 85 dB regardless of exposure time.)
- 2 Allow employees to select from a variety of appropriate protectors and ensure they fit well, with special attention to comfort.
- 3 Give employees thorough training on how to use, clean and maintain their HPD. Require each user to demonstrate that he or she understands how to use and care for the protector and document results.
- 4 If employees use disposable hearing protectors, keep replacements readily available.

**and valuables, providing services and care, and working where alcohol is served may also increase the likelihood. Additionally, time of day and location of work, such as working late at night or in areas with high crime rates, are also risk factors that should be considered when addressing workplace violence.**

**Like other safety problems, violence can be avoided or minimized if employers take appropriate precautions. For assistance in developing workplace safety programs, please contact us.**

### Fourth Line of Defense: Monitoring and Follow-up

- 1 Do workers complain that protectors interfere with their ability to do their jobs? Are these complaints followed promptly with counseling, noise control or other measures?
- 2 Have any employees developed ear infections or irritations from HPDs? Are any employees unable to wear HPDs because of medical conditions? Have these conditions been treated promptly and successfully?
- 3 Is the effectiveness of the hearing protector program evaluated regularly?
- 4 Have at-the-ear protection levels been evaluated to ensure that protection has been adequately balanced according to anticipated ambient noise levels?
- 5 Provide annual or more frequent hearing tests for employees who have been identified as being exposed to hazardous noise levels. Keep record of results and take corrective actions where needed.

For more information on reducing work-related hearing loss, please contact us. ■

# Understanding Permanent Partial Disability Claims

Permanent partial disability claims can prove the most frustrating type of claim for employers, claims managers and injured workers. They also account for more than half of all cases and cost a median of more than \$32,000 (2002 data). Many permanent partial disability cases take years to resolve; in some states, a significant fraction were not closed more than three years after the injury date.

**I**n the case of workers' compensation death or temporary disability claims, benefits have a clear rationale: to replace a portion of a worker's lost earnings. The reason for permanent partial disability benefits is sometimes less clear, as is the best method of determining benefits.

Each state has a different manner of assessing disability and resulting compensation. About 43 jurisdictions use a schedule—a list of body parts covered and the benefits paid for their loss, such as the loss of a finger. Schedules usually include upper and lower extremities and eyes. Most state schedules also include the loss of hearing in one or both ears, while a few include additional losses, such as an internal organ or a testicle. The schedules separately identify the individual fingers or toes or differentiate between the loss of a dominant or nondominant hand. The majority of states that use a schedule tie the benefits to the worker's pre-injury wage, so the weekly benefit amount is derived as a fraction of the worker's earnings.

Permanently disabling spinal injuries are typically not scheduled, nor are injuries to internal organs, head injuries, and occupational diseases. For unscheduled conditions, methods of determining benefits generally fall into one of these four categories:

- ✦ **Impairment-Based Approach.** This is the most common approach, used by about 19 states, to compensate for an unscheduled permanent partial disability. In approximately 14 of those states, the worker with an unscheduled permanent partial disability receives a benefit based entirely on the degree of impairment. Any future earnings losses of the worker are not considered.
- ✦ **Loss-of-Earning-Capacity Approach.** Roughly 13 states use this approach to determine the permanent partial disability benefit for an



unscheduled impairment. This approach links the benefit to the worker's ability to earn or to compete in the labor market; in other words, it uses a forecast of the economic impact the impairment will have on the worker.

✱ **Wage-Loss Approach.** In the 10 or so states that use this method, benefits are paid for the actual or ongoing losses that a worker incurs. In some states, the permanent partial disability benefit begins after it has been determined the worker has achieved maximum medical improvement. In states that use this approach, permanent disability benefits can simply be the extension of temporary disability benefits until the disabled worker returns to employment.

✱ **Bifurcated Approach.** In nine jurisdictions, the benefit for a permanent disability depends on the worker's employment status at the time that the worker's condition is assessed, after the condition has stabilized. If the worker has returned to employment with earnings at or near the pre-injury level, the benefit is based on the degree of impairment. If the worker has not returned to employment, or has returned but at lower wages than before the injury, the benefit is based on the degree of lost earning capacity.

Permanent partial disability claims are one of the most challenging types to administer. For more assistance in managing open claims to ensure they are paid accurately and in accordance with the law, please contact us. ■

*Primary source: U.S. Social Security Administration*

## Review Your Policy to Save Money!

Reviewing your workers' compensation policy immediately after receipt can help you save money and avoid coverage gaps and problems later. What should you look for? Terminology might vary slightly from state to state and insurer to insurer, but this article describes many of the terms you should look for.



**T**he declarations page of your workers' compensation policy provides some basic yet vital information on your policy. Even if you never look at another part of your policy, you should review the declarations page. It identifies the insured and your location. It also identifies

the insurer, type of policy, policy number and effective date, coverages included and (most important to most policyholders!) provides information on premiums.

✓ Check your organization's **name** and **address** on the policy. They should match your orga-

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nization's legal name and address exactly to avoid potential coverage problems.

- ✓ If this is a renewal policy, the **policy number** should match the number on your old policy.
- ✓ Check the **effective date** to ensure you won't have a gap in coverage after your old policy expires.

The declarations page also lists coverages included in your policy. Most workers' compensation policies have two parts: workers' compensation insurance (Part 1) and employer's liability (Part 2). Workers' compensation insurance covers your obligation to provide medical care and lost-time payments to injured workers, as required by state law. Unlike other types of insurance, workers' comp will cover you to the full extent of your liability, with no limits.

- ✓ Although optional, most employers will want to ensure their policy includes **employer's liability insurance** (Part 2). This covers the employer for an employee's work-related bodily injury or illness claims that are not covered by state law. It can also cover suits from third parties related to your employee's work injury. This can include a spouse's suit for loss of consortium or third-party's suit seeking relief from liability for your employee's injury. For example, if your employee sued a manufacturer for injuries resulting from malfunctioning safety equipment, the manufacturer might then turn around and sue your organization, alleging your failure to maintain caused or contributed to the injury. Employer's liability insurance has dollar limits.
- ✓ Employers with workers in other states will want to check their policy for **other states coverage**. Verify that all states in which you do business are listed; otherwise you might have to pay a workers' comp claim out of pocket.

A four-digit **numerical code** found on the declarations page indicates the category of work performed by your employees, or their **occupational classification**. Most states use the occupational classification system devised by NCCI, the National Council on Compensation Insurance, but California, New Jersey, New York, Delaware and Pennsylvania have their own systems.

- ✓ Check your **occupational classification code**. This code reflects the relative injury risk faced by your workers and determines the workers' compensation rate you'll pay. An incorrect code could lead to overpayment or underpayment. Underpayment can prove painful later: if an audit reveals the error, you could face a large bill for premiums owed.

Your policy also shows other figures relating to your policy premium, including "**premium basis**," "**base rate**" and "**interim billing rate**."

- ✓ The **premium basis** equals an estimate of the annual payroll for employees covered by the policy. A payroll estimate that's too high could mean you pay too much for your coverage; an estimate that's too low could cause you to receive a bill for premiums owed after audit.

The **base rate** signifies the rate the insurer charges to cover employees in your occupational class, before any discounts or rate modifications, per \$100 of payroll. The interim billing rate reflects any adjustments to this rate for experience or discounts; it could be higher or lower than the base rate. The insurer will multiply your premium basis (or payroll) by this rate to calculate your final estimated premium for the year. The insurer will ask for a deposit premium for the policy period and minimum payment. At your final billing, the insurer will use actual reported payroll and final audit to calculate your rates and premium discount.

- ✓ Compare your **base rate** and **interim billing rate** to those on your last policy. Are they similar? If not, ask your insurer for an explanation. Perhaps an increase or drop in the frequency or severity of accidents at your worksite caused a change in your experience modification. Or perhaps the insurer changed rates for your entire occupational class because of new statistical information. We can help you determine the reason for any changes.
- ✓ If cash flow is a concern, you can ask your insurer to pay a smaller **deposit premium** and make monthly payments.

We can help you review your policy and work with you to control your workers' compensation costs. Please call us for more information.



## Employee Complaints Lead to OSHA Inspections

**M**ore than one-fifth (21 percent) of OSHA inspections stem from employee complaints, according to Safety/News Alert. The publication lists the top ten industries with workplace complaints to OSHA in fiscal years 2009 and 2010, along with the number of complaints:

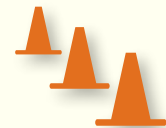
- 1 Roofing, Siding, & Sheet Metal Work, 904
- 2 United States Postal Service, 466
- 3 General Contractors, Non-residential Buildings Other Than Industrial Buildings, 414
- 4 Special Trade Contractors, Not Elsewhere Classified, 273
- 5 General Contractors Residential Buildings, Other Than Single-Family, 252
- 6 Eating Places, 232
- 7 Masonry, Stone Setting & Other Stone Work, 224
- 8 Fabricated Metal Products, Not Elsewhere Classified, 207
- 9 General Warehousing & Storage, 205, and
- 10 Excavation Work, 198.

Employees and their representatives have the right to file a complaint and request an OSHA inspection of their workplace if they believe a serious safety or health hazard exists or their employer is

not following OSHA standards. Further, the OSH Act gives complainants the right to request that their names not be revealed to their employers.

OSHA takes complaints from employees and their representatives seriously. Furthermore, "whistleblower laws" protect employees from firing, demotion, transfer or any other form of discrimination for filing a complaint or using other OSHA rights. OSHA typically recommends that employees try to resolve matters internally before resorting to a complaint, however. For more information on complying with sometimes complex OSHA rules and regulations, please contact us. ■

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