

# Workers' Comp & Safety News

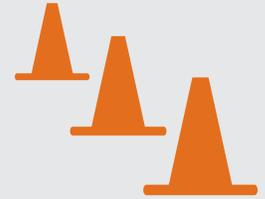


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Prevention

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## Do Your Safety Incentives Violate OSHA Regulations?

You consider your company's safety incentive program an effective way to promote safe behavior among your employees and reduce injuries. But OSHA could see the very same program as unlawful discrimination and a violation of OSHA recordkeeping regulations and whistleblower protections. Knowing the difference between lawful and unlawful incentives can help you keep an effective prevention tool while avoiding fines and other penalties.



A comedian might trip and fall during a routine for laughs. But when your employees trip and fall, it's no laughing matter. Slips, trips and falls can lead to serious injury and even death.

### Know Your Flooring

To help prevent slips, trips and falls, OSHA requires all permanent places of employment, except where domestic, mining or agricultural work only is performed, to have floors that are clean and,

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## This Just In

The 9 million-plus Americans working in the construction industry have some of the most hazardous jobs available. Construction workers face a 5 percent lifetime risk of work-related death due to injury. Falls lead the causes of fatal injury, accounting for one-third of occupational fatalities in construction, versus 15 percent in general industry.

In April, the Office of Construction Safety and Health in the National Institute of Occupational Safety and Health (NIOSH) launched a campaign to reduce falls in the construction industry. The campaign focuses on three main messages:

- 1 Contractors and workers can plan together, before every

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so far as possible, dry. They must also be free from protruding nails, splinters, holes or loose boards.

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 for cleaning work, make sure that someone from the cleaning company inspects the floors, knows how to clean them and makes sure his employees follow proper procedures.

Slip, trip and fall hazards increase on wet or snowy days, as people track water indoors. To keep your floors dry and safe 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 mops and cleaning supplies near entrances or places where water is used.
- ✱ Use hazard signs to warn employees of wet or slippery floors and other obstacles that could impede foot traffic.

### Parking Lots and Sidewalks

A high percentage of slips and falls occur in employee parking lots and on sidewalks. Rou-

tine maintenance can decrease the odds of accidents:

- ✱ Make sure that roofs and eaves have appropriate drainage so water flows away from 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.
- ✱ 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 — somewhere with good drainage and no foot traffic.

job, to work safely at heights.

- 2 Contractors must provide the right equipment for working at heights, and workers need to use that equipment.
- 3 Contractors and workers need to be trained to use the equipment and to work safely.

NIOSH offers a variety of materials to raise awareness about construction falls and to provide practical information about fall prevention. New materials will be released on a regular basis over the course of the campaign at [www.stopconstructionfalls.com](http://www.stopconstructionfalls.com).

Slip, trip and fall accidents can occur in any industry. For pointers on reducing these hazards, please see P. 4.

### Stairs and Ramps

Stairs and ramps also pose hazards. Good lighting can help reduce accidents, especially in areas with elevation changes.

- ✱ 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.
- ✱ Block off hazardous areas.

### Footwear

Proper footwear can greatly minimize slip hazards. Employees working in areas that can become wet or slippery should avoid shoes with leather or smooth soles or high heels. Closed-

toed shoes that can be laced and tightly tied with slip-resistant soles provide the best traction and safety. Employers that have workers in wet or slip-prone areas can require employees to wear non-slip footwear for work use. To ensure compliance, especially among low-wage workers, some employers will reimburse employees for this expense.

### General Safety

Routine maintenance and some simple upgrades or repairs can greatly reduce slip-and-fall hazards. Regularly check your premises for the following:

- ✱ Are aisles and passages clear and wide enough for easy passage? If not, remove clutter or obstructions.
- ✱ Can you clearly see any level changes, steps or obstructions? If not, upgrade lighting and/or install reflective safety striping.
- ✱ Are there electric cords snaking across areas where people walk? If so, additional outlets (including floor outlets) can reduce this hazard.

Any time a worker is working at a height of six feet or more above ground level (construction industry) or four feet or more (general industry), the worker needs additional protection, which is beyond the scope of this article. For more information or other recommendations on preventing slip-and-fall accidents, please contact us. ■

## Who Are Independent Medical Examiners—and How Do They Affect Workers' Compensation Claims?

The work of independent medical examiners can directly affect what you pay for a claim. Their findings may help determine whether an injury or illness is indeed work-related, or the extent of a permanent disability. Here are some pointers for working with independent medical examiners.



### What Is an Independent Medical Examiner?

An independent medical examiner (IME) examines and documents a claimant's medical condition. Although IMEs evaluate personal injury and disability cases, we'll limit discussion in this article to workers' compensation IMEs.

Most IMEs have expertise in some area of occupational medicine. Most IMEs are physicians, although chiropractors, dentists and physical therapists also perform some independent medical exams, depending on the nature of the injury and if state law permits. In many states, physicians do not need separate credentials to become an independent medical examiner.

Some states (such as California) require state licensing, which means physicians must pass an exam and meet continuing education requirements. The American Board of Independent Medical Examiners (ABIME) also provides optional certification and education services. It requires members to:

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- Conduct superior, independent medical examinations
- Write comprehensive, accurate reports
- Interpret relevant workers' compensation and disability law
- Provide credible, defensible testimony.

According to the ABIME, the exams provided by independent medical examiners “are an important component of workers’ compensation systems, and are also used to clarify other disability or liability associated cases. Impairment evaluations are often used to provide a more objective understanding of the impact of an injury or illness.” Medical examinations can provide more information on the causation and treatment history of a claimant’s injuries or illness. In addition to providing face-to-face evaluations, IMEs can also provide claim review services and provide expert testimony at trials.

### Managing the Independent Medical Exam Process

Either an employer or employee (or their representatives) can request an independent medical exam to provide a second opinion when a dispute about the nature, extent or cause of a work-related injury exists. Terminology varies by jurisdiction — some states call them independent medical evaluators or qualified medical evaluators. Regardless, the practitioner cannot be the claimant’s treating physician.

If your workers’ compensation insurer or administrator disagrees with the diagnosis or treatment plan of the claimant’s treating physician, it will likely request an independent medi-

cal exam. The process starts with selecting the right healthcare professional for the exam. Your claims manager will consider:

- His/her specialty. Is it appropriate to the nature of the claim? For example, you would use an oncologist to examine a plant worker claiming her cancer was caused by exposure to chemicals in the workplace, while an orthopedic surgeon would be better suited to examine a nurse with a back injury claim.
- Board certification. Is the examiner board certified in the appropriate specialty?
- Experience. Does the examiner have experience in evaluating the condition, and familiarity with the state’s workers’ compensation system?

When requesting the exam, your claims adjuster or administrator should outline the concerns with the claim and provide the IME with a list of medical questions the exam should answer. The examiner will review the patient’s medical history, employment history and any reports from occupational safety experts. He/she may also need information on the individual’s nonoccupational activities to determine whether the injury or illness has causes outside the workplace.

When selecting an IME, the adjuster should also consider how claims are decided in your state. In some states, a workers’ compensation board or commission hearing a case on the extent of a permanent partial disability might split the difference between the opinion of the treating physician and the employer’s or insurer’s

physician. That would make hiring a conservative IME advantageous. In other cases, workers’ compensation boards or commissions might discount the opinion of an overly conservative IME hired by an insurer or employer as biased, so your adjuster will want an IME with a reputation as objective.

Some states, such as California, require the employee/employer (or its insurer) to agree on one qualified medical examiner. Some allow the employer or its insurer to order as many IMEs as it’s willing to pay for, while other states limit the employer to using only one IME during the claim process.

The American Medical Association cautions physicians that, “In an IME examination, there is usually only a one-time opportunity for examination. Therefore, the IME needs to provide a complete, comprehensive, and objective description of the examinee’s condition at that time, in the context of prior health, physical and vocational capabilities, and social functioning. In contrast, the treating physician’s evaluations are based on multiple, shorter encounters over the course of time.

“Unlike the medical consultation that ends only with treatment recommendations, the IME is broader in scope. Often, the IME will answer specific questions posed by the referring source. Referring sources include insurers, attorneys, and others involved in the management of workers’ compensation, personal injury, disability cases, and other similar issues.”

For more information on the workers’ compensation claims process, please contact us. We can also provide you with safety suggestions that can help prevent claims from occurring. ■

# Do Your Safety Incentives Violate OSHA Regulations?

You consider your company's safety incentive program an effective way to promote safe behavior among your employees and reduce injuries. But OSHA could see the very same program as unlawful discrimination and a violation of OSHA recordkeeping regulations and whistleblower protections. Knowing the difference between lawful and unlawful incentives can help you keep an effective prevention tool while avoiding fines and other penalties.

**O**SHA regards the ability to report injuries or illnesses without fear of retaliation as "crucial to protecting worker safety and health." Without that right, "Employees do not learn of and correct dangerous conditions that have resulted in injuries, and injured employees may not receive the proper medical attention or the workers' compensation benefits."

Earlier this year, OSHA released a memorandum to compliance officers and whistleblower investigative staff that outlined "employer practices that can discourage employee reports of injuries and violate section 11(c), or other whistleblower statutes."

According to the memo, certain incentive programs discourage the reporting of injuries and encourage discrimination against workers who report injuries. These include:

- 1 Taking disciplinary action against all employees who are injured on the job, regardless of circumstances. Reporting an injury is always a protected activity, and OSHA views discipline against an employee who reports an injury as a direct violation of whistleblower statutes.
- 2 Taking disciplinary action against an employee who violates an employer rule about the time or manner for reporting injuries

and illnesses. OSHA recognizes that employers have a legitimate interest in establishing procedures for receiving and responding to reports of injuries. However, such procedures must be reasonable and may not unduly burden the employee's right and ability to report. For example, the rules cannot penalize workers who do not realize immediately that their injuries are serious enough to report, or even that they are injured at all.

- 3 Disciplining an injured employee because the injury resulted from his/her violation of a safety rule. OSHA encourages legitimate workplace safety rules to eliminate or reduce workplace hazards and prevent injuries. In some cases, however, an employer may use a work rule as a pretext for discrimination against a worker who reports an injury. OSHA will investigate these situations carefully, looking at whether the employer monitors for compliance with the work rule in the absence of injury and whether it consistently disciplines employees who violate the work rule in the absence of an injury. Enforcing a rule more stringently against injured employees



than noninjured employees may suggest that the rule is a pretext for discrimination against an injured employee.

- 4 Creating a program that unintentionally or intentionally incentivizes employees to not report injuries. For example, an employer might enter all employees who have not been injured in the previous year in a drawing to win a prize, or a team of employees might be awarded a bonus if no one from the team is injured over some period of time. Such programs might be well-intentioned efforts to encourage workers to use safe practices. However, there are better ways to encourage safe work practices.

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## Acceptable Safety Incentives

A safety incentive program structured to recognize and reward positive behaviors, rather than punishing negative ones, is less likely to draw the wrath of OSHA. Suggestions include:

- ✱ providing tee shirts to workers serving on safety and health committees

- ✱ offering rewards for suggesting ways to strengthen safety and health
- ✱ throwing a recognition party at the successful completion of company-wide safety and health training.

For more suggestions on structuring a safety program and complying with OSHA rules and guidelines, please contact us. ■

## Recession Affects Workers' Comp Industry; Worst Over?

Earlier this year, Dennis C. Mealy, FCAS, MAAA, chief actuary at the National Council on Compensation Insurance, Inc. presented his annual "state of the line" report on the workers' compensation insurance industry in the U.S. for 2011. Mealy reported that the industry, "...because of its direct connection to employment and the labor markets, has been the property/casualty [insurance] line most significantly impacted by the Great Recession."

### Negative news included:

- ✱ Premiums decreased more than 25 percent from 2006-2010.
- ✱ Combined ratio increased 20 percent during the same period. This formula, Combined Ratio = [Incurred Losses + Expenses]/ Earned Premium, indicates an insurer's underwriting profits or loss. Any figure under 100 indicates claims costs were lower than premiums; the

difference is the underwriting profit. Figures over 100 indicate underwriting loss. In 2011, the industrywide combined ratio remained unchanged from 2010 at 115. (Combined ratio does not take into account insurers' investment earnings, which can mean the difference between profitability and loss.)

- ✱ During 2010, claim frequency increased for the first time in 13 years; this was the first significant increase since the 1980s.

While the Great Recession has had significant negative effects on the workers' compensation industry, signs of improvement are appearing:

- ✱ During 2011, workers' compensation premium for private carriers increased 8 percent.
- ✱ Premiums in the residual market increased about 13 percent in 2011. The residual workers' compensation market provides coverage

for groups that find coverage in the standard market too expensive or that are rejected by standard insurers.

- ✱ Lost-time claim frequency declined 1 percent in 2011.
- ✱ Investment gains remained strong in 2011, at 14 percent of premium, higher than the average industry rate of return of 11.6 percent from 2001-2010.

The report considered figures for the entire workers' compensation insurance industry; individual insurers' results vary greatly. Please know that when we place your coverage, we look for the best combination of insurer strength, service and cost. To discuss how the economic climate and other factors might affect your workers' compensation costs, please contact us. ■

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