

# Workers' Comp & Safety News



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## Could Your Company Outing Lead to Comp Claims?

Company picnics, outings and outdoor team-building exercises can help employers build camaraderie and cooperation among employees. But whenever you mix employees and recreation, injuries can occur. When are they compensable?

**W**orkers' compensation generally covers all employee injuries or illnesses that stem from work-related activities. OSHA guidelines consider an employee's injury or illness a recordable workplace incident if it results from an event or exposure in the "work environment." Naturally, the "work environment" includes employer's premises. OSHA also includes

in its definition "other locations where one or more employees are working or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of his or her work."

OSHA lists several exceptions to the work-related injury rule, including injuries or illnesses that "...result solely from voluntary



participation in a...recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball."

Often, attendance and participation at company parties, outings and other events with a social

## This Just In

**O**SHA will be increasing efforts to protect temporary workers. New statistics on 2011 workplace fatalities show that 12 percent occurred among contractors. Of these, Hispanic/Latino contractors accounted for 28 percent of fatalities among contractors, well above their 16 percent share of the overall fatal work injury total for the year.

In April, OSHA directed field inspectors to assess whether employers who use temporary workers are complying with their responsibilities under the Occupational Safety and Health Act. Inspectors will use a newly created code to denote when temporary workers are exposed to safety and health violations. They will also assess whether

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aspect can fall into a gray area. Is participation truly voluntary, or is it expected—and therefore job-related? The answer could hinge on a few factors:

- Did the event occur during regular working hours?
- Did it occur on company premises?
- Is attendance expected or strongly encouraged?
- Does the employer pay the entire cost?
- Were clients or prospects present?
- Was any kind of training conducted at the event?

If you answered yes to any of these questions, your event may be considered work-related. Any employee illnesses or injuries caused by participating could fall under the workers' compensation bargain, unless states have specific rules otherwise.

Workers' compensation statutes of some states—including Connecticut, Illinois, Maine, Massachusetts, Montana, New Jersey, North Dakota and Virginia—specifically exclude coverage for injuries resulting from voluntary participation in a recreational activity. Even if the employer sponsors an activity, if participation is voluntary and not directly related to an employee's job, any resulting injuries will not be compensable.

Other states, including California, Colorado, Michigan, New York, Oregon and Texas, specify that injuries arising out of voluntary participation in recreational activities are not compensable, even if the employer pays some of the costs. However, if the employer directly

or indirectly requires participation and gains substantially from the activity, then it could be considered work-related.

The following action steps can help you avoid workers' compensation liability for a company outing, picnic or party:

- 1 Hold the event outside regular working hours.
- 2 If possible, hold the event off-premises.
- 3 Events should be infrequent—a Friday “happy hour” that becomes a regular, weekly event could be seen as obligatory or expected.
- 4 Look for volunteers to plan the event, rather than appointing someone.
- 5 If you will be serving alcohol, consider hiring a licensed caterer or bartender, and make sure he/she has liability coverage. Having a cash bar rather than an open bar could further minimize your exposure to claims if someone gets injured, or injures someone else, after drinking.
- 6 At the event, do not cajole employees into participating in any games or events. Participation should be completely voluntary.

If you plan a team-building event, off-site training session, party involving clients or other event that will benefit the organization, it will likely be considered work-related for the employees involved, and your workers' compensation coverage will apply. Get your risk manager and/or workers' compensation

temporary workers received required training in a language and vocabulary they could understand.

Dr. David Michaels, assistant secretary of labor for occupational safety and health, said thousands of workplace fatalities occur each year due to preventable hazards. “Many of those killed and injured are temporary workers who often perform the most dangerous jobs, have limited English proficiency and are not receiving the training and protective measures required,” he said.

OSHA has begun working with the American Staffing Association and employers that use staffing agencies to promote practices to protect temporary workers from job hazards.

insurance broker involved in planning them. He or she can point out potential safety and liability exposures and help you avoid them. For more information, please contact us. ■



## Why Stress Is a Safety Problem

Short-lived or infrequent episodes of stress pose little risk. But when stressful situations go unresolved, the body is kept in a constant state of activation, which increases the rate of wear and tear to biological systems. Ultimately, fatigue or damage results, and the ability of the body to repair and defend itself can become seriously compromised. As a result, the risk of injury or disease escalates.—NIOSH

**W**e all know that continuous exposure to stress damages health. NIOSH, the National Institute of Occupational Safety and Health, reports that it also creates increased risk of injury at work.

According to NIOSH, exposure to stressful working conditions (called job stressors) can have a direct influence on worker safety and health. NIOSH defines job stress as the harmful physical and emotional responses that occur when the requirements of the job do not match the capabilities, resources, or needs of the worker. It cites the following as possible causes of job stress:

- ❑ **Task Design.** Heavy workload, infrequent rest breaks, long work hours and shiftwork; hectic and routine tasks that have little inherent meaning, do not utilize workers' skills, and provide little sense of control.
- ❑ **Management Style.** Lack of participation by workers in decision-making, poor communication in the organization, lack of family-friendly policies.
- ❑ **Interpersonal Relationships.** Poor social environment and lack of support or help



from coworkers and supervisors.

- ❑ **Work Roles.** Conflicting or uncertain job expectations, too much responsibility, too many “hats to wear.”
- ❑ **Career Concerns.** Job insecurity and lack of opportunity for growth, advancement, or promotion; rapid changes for which workers are unprepared.
- ❑ **Environmental Conditions.** Unpleasant or dangerous physical conditions such as crowding, noise, air pollution or ergonomic problems.

Exposure to stress sets off our natural “fight or flight” reaction. The nervous system is

aroused and hormones are released to sharpen the senses, quicken the pulse, deepen respiration, and tense the muscles. While this reaction serves an important function in protecting us from immediate danger, long-term exposure to stress can lead to health problems.

Stress-related conditions that could affect your workers' compensation claims include:

- ❑ **Musculoskeletal Disorders**  
On the basis of research by NIOSH and many other organizations, it is widely believed that job stress increases the risk for development of back and upper-extremity musculoskeletal disorders.
- ❑ **Psychological Disorders**

Several studies suggest that differences in rates of mental health problems (such as depression and burnout) for various occupations are due partly to differences in job stress levels. (Economic and lifestyle differences between occupations may also contribute to some of these problems.)

#### Workplace Injury

Although more study is needed, there is a growing concern that stressful working conditions interfere with safe work practices and set the stage for injuries at work.

#### What About Stress Itself? Is it Compensable?

Although the conditions that stress can cause may be compensable, many states specifically exclude mental stress claims from coverage under workers' compensation. In many states, such as Connecticut and Indiana, workers' comp regulations state that emotional stress must result from a physical injury. Other states, such as Oregon, take a middle ground—a job must be extremely stressful to be covered by workers' comp. In these states, the claimant must clearly prove the job caused the stress. In California, regulations dictate that the job must account for at least 51 percent of the stress in order to be covered.

At least one state, Montana, categorically excludes emotional or mental stress as a legitimate workers' comp claim. Some states, such as New York, exclude any stress claim that arises from lawful business pressure, i.e., long hours. However, court cases in New York, Pennsylvania and elsewhere have overruled the regulations and awarded damages for unusually stressful situations.

#### What Can Employers Do to Reduce or Minimize Job-Related Stress?

Individuals under stress often display several symptoms. Managers and supervisors can use these as early warning signals of job-related stress:

- Headache
- Sleep disturbances
- Difficulty in concentrating
- Short temper
- Upset stomach
- Job dissatisfaction
- Low morale.

Factors that can help to reduce the effects of stressful working conditions include the following:

- Balance between work and family or personal life
- A support network of friends and coworkers
- A relaxed and positive outlook.

Employee assistance programs (EAPs) can help workers under job-related stress address their problems and find a better work/life balance. A quality EAP can provide counseling and referrals on a broad range of subjects, including personal problems such as substance abuse, financial problems and family conflicts that can also affect job performance. For more information on controlling workplace stress and other factors that can influence safety and productivity, please contact us. ■

## Fatigue: The Silent Epidemic

A study published in the *Journal of Occupational and Environmental Medicine* found that nearly 40 percent of U.S. workers experience fatigue. Why should employers care?

**W**orker fatigue can lead to lost productivity. Total lost productive time averaged 5.6 hours per week for workers with fatigue, compared to 3.3 hours for their counterparts without fatigue. Even when they were working, workers with fatigue symptoms had much lower rates of productivity than their sprightly counterparts—mainly due to low concentration and increased time needed to accomplish tasks.

Just as importantly, fatigue can lead to accidents. According to Clockwork Consultants, a UK-based company that helps enterprises manage fatigue risk, fatigued employees are also three times more likely to have an accident at work.

#### How Fatigue Affects Safety

Why are fatigued employees more likely to be involved in accidents? An article in the *New York Times* described the longest sleep-restric-



tion study, conducted by researchers at the Sleep and Chronobiology Laboratory at the Hospital at University of Pennsylvania. Researchers measured subjects' response to sleeplessness while performing a psychomotor vigilance task, or PVT. This repetitive task (pressing a space bar when a flash of numbers appears on a computer screen) measures subjects' attentiveness and allows researchers to accurately measure their response to different levels of sleep deprivation.

The study found that subjects who had eight hours of sleep nightly over the 14-day study performed well, with hardly any attention lapses or cognitive declines. In subjects who had four or six hours of sleep nightly, performance declined steadily over the course of the study. Members of both groups did steadily worse on memory tests as the study progressed, and a significant number of even those who had gotten six hours of sleep nightly were falling asleep on task.

The moral? Individuals vary in their tolerance to sleeplessness, but workers who are consistently getting less than eight hours of sound sleep per night could be working at less than peak attention and more accident-prone.

### Fighting the Fatigue Factor

Workplace policies can drastically reduce the incidence and cost of employee fatigue risk. You can't control what employees do off-hours, but you can control the hours they work. Many safety-critical occupations have strict rules about how long a worker can stay on the job and how long breaks must be. Productivity experts recommend similar guidelines for most jobs. If extended hours/overtime are common, managers should calculate the time required for the commute home, meal preparation, eating and socializing with family when

calculating employees' work shifts. Workplaces may also provide on-site accommodations, prepared meals for workers and facilities where employees can take a nap when they are tired.

Proper working conditions can also reduce the risk of fatigue. Fatigue is increased by dim lighting or other limited visual conditions (e.g., due to weather), high temperatures, high noise, high comfort, tasks that must be sustained for long periods of time, and monotonous work tasks. Eliminating such conditions and providing environments that have good lighting, comfortable temperatures and reasonable noise levels quickly pay for themselves in reduced risk, according to a study by the Canadian Centre of Occupational Health and Safety (COHS).

If possible, work tasks should also provide a variety of interest and tasks should change throughout the shift, the COHS recommends.

Organizations should adopt a variety of methods to make themselves "fatigue safe." The most common include:

Organizations should adopt a variety of methods to make themselves "fatigue safe." The most common include:

- Special training to help workers understand their personal levels of fatigue
- Development of "fatigue safe" work schedules, including compliance with any applicable regulations
- Development of fatigue risk management policies and procedures
- Use of fatigue models to investigate fatigue-related accidents
- Committees to oversee fatigue management programs.

For more suggestions on reducing fatigue in the workplace, please call us. ■



## Recognizing Fatigue

**F**atigue is a feeling of tiredness, exhaustion or lack of energy. Fatigue diminishes alertness, slows reactions, impairs decision-making abilities and reduces productivity.

No accurate measures of fatigue exist, so how can you tell if a worker is becoming dangerously fatigued?

Work Safe Alberta, a public/private initiative to reduce injuries and improve safety, lists these physical signs and symptoms of fatigue:

- Tiredness
- Sleepiness, including falling asleep against the individual's will (micro sleeps)
- Irritability
- Depression
- Giddiness
- Loss of appetite
- Digestive problems
- An increased susceptibility to illness

Fatigue has many causes. It can result from physical or mental exertion, lack of sleep, stress, depression, use of certain medications or alcohol. It can also result from a physical condition or illness, such as anemia, heart disease, diabetes or thyroid disease.

What should you do if you notice symptoms of fatigue in one of your workers? Asking about his/her health could violate privacy. However, if the worker has been involved in accidents, near-misses or his/her productivity has suffered, you can use those as reasons to bring up fatigue as a possible cause. When workers with regular daytime shifts experience fatigue for two weeks or longer, they may need to see a doctor.

When shift workers experience fatigue, it could be time to re-examine your scheduling practices. Are workers getting enough time between shifts to recuperate? Do night workers have frequent rest breaks? Have you optimized night-time working conditions to minimize sleepiness?

For more suggestions on minimizing fatigue and other safety problems, please contact us. ■

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