

Workers' Comp & Safety News

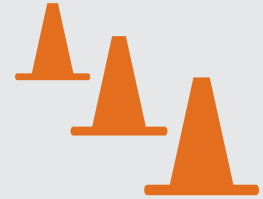


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Marijuana and Workers' Compensation

Now that marijuana use is legal in nine states, what does this mean for your workers' compensation safety program?

Twenty-two states and the District of Columbia now allow the medical use of marijuana. Colorado and Washington have also legalized its recreational use and possession. Will this send employers' zero-tolerance policies up in smoke? Jeff Burgess, Program Coordinator, Technical Assistance for Employers in Oregon's Bureau of Labor and Industries, says in a recent report, "The answer is no."

State laws "generally provide immunity from state and local criminal prosecution under certain circumstances. They do not provide employment protection, however."

Generally, employers can prohibit on-duty employees from using marijuana medicinally. Refus-



ing to hire or otherwise discriminating against those who use medical marijuana on their own time remains a gray area in most states. However, Connecticut and Arizona have passed laws specifically protecting medical marijuana users from employment discrimination.

Risk Note

Stricter rules for reporting serious workplace injuries go into effect on January 1, 2015. OSHA final rules require all employers under its jurisdiction to report serious workplace incidents. The new rule applies even to employers who are exempt from routinely keeping OSHA records due to company size or industry.

Employers have eight hours after finding out about it to report any fatality that occurs within 30 days of a work-related incident. They have 24 hours after learning of it to report any in-patient hospitalization, amputation or eye loss that occurs within 24 hours of a work-related incident.

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Should Your Safety Program Include Drug Testing?

In some states, workers' compensation insurers will discount an employer's premiums if it institutes a drug-free workplace policy and program. There's good reason for that. Studies show that when compared with non-abusers, substance-abusing employees are more likely to:

- ✱ change jobs frequently
- ✱ be late to or absent from work
- ✱ be less productive than other employees
- ✱ be involved in a workplace accident
- ✱ file a workers' compensation claim.

Research also indicates that between 10 and 20 percent of the nation's workers who die on the job test positive for alcohol or other drugs.

Employers can test for drugs at different points in the employment process — during the application process, during employment at random or regular intervals, or after an accident. It can be done for some or all workers — for example, for safety-sensitive positions only, or for all workers. Because drug testing costs money, you may choose not to use this method for assessment. However, many workers' compensation experts recommend testing all employees after an accident or near-miss to rule out the use of drugs.

If you decide to implement a drug-testing program, remember that laws designed to protect workers' civil rights could affect your workplace drug policies. These laws include the Civil Rights Act of 1964 and the Ameri-

cans with Disabilities Act (ADA) of 1990. These statutes limit how far an employer can go in investigating and disciplining employee drug use.

Federal law still classifies marijuana as a Schedule I illegal drug. In an informal opinion, the Equal Employment Opportunity Commission said "...the ADA does not protect individuals who are currently engaging in the illegal use of drugs..." However, the EEOC considers past drug addiction a protected disability, so employers should avoid questions about past addiction to illegal drugs or participation in a rehabilitation program.

Many states and U.S. territories have their own laws and regulations dictating when and how workplace drug testing should be carried out. Some also require state and local contractors to develop drug-free workplace policies similar to those under the federal Drug-Free Workplace Act. No one set of rules and regulations applies throughout the country. Some states, such as Louisiana, allow drug testing in virtually every type of business and in both the public and private sectors. Others, such as Maine, restrict who can be tested, how they can be tested, and what kinds of rehabilitation and disciplinary options can result from a positive test.

Employers can take several simple steps to avoid legal problems with their drug testing policy:

- ✱ Consult an employment lawyer whenever you introduce a new drug-free workplace policy or change an existing policy.
- ✱ Make sure your drug-free workplace pol-

Employers reporting a fatality, in-patient hospitalization, amputation or loss of an eye to OSHA: must include the following information:

- ✱ Establishment name
- ✱ Location of the work-related incident
- ✱ Time of the work-related incident
- ✱ Type of reportable event (i.e., fatality, in-patient hospitalization, amputation or loss of an eye)
- ✱ Number of employees who suffered the event
- ✱ Names of the employees who suffered the event
- ✱ Contact person and his or her phone number
- ✱ Brief description of the work-related incident

For more information on complying with your OSHA reporting requirements, please contact us.

icy clearly stipulates penalties for violations. If your policy includes drug testing, spell out exactly who will be tested, when they will be tested, and what will happen to employees who test positive.

- ✱ Make sure every employee receives and signs a written copy of your drug-free workplace policy. Verbal agreements and unsigned agreements have little legal standing.
- ✱ Make sure that you, and all your supervi-

sors, receive proper training in how to detect and respond to workplace drug and alcohol abuse.

- ✱ Maintain detailed and objective records documenting the performance problems of all your employees. Such records often provide a basis for referring workers to employee assistance programs.
- ✱ Never take disciplinary action against a worker or accuse a worker of a policy violation simply because that employee is acting impaired. Instead, try to clarify the reasons for the employee's impairment. If drug testing is a part of your workplace policy, obtain a positive test result before taking any action.
- ✱ Never accuse or confront an employee in front of co-workers. Instead, try to stage all discussions someplace private, with another manager present to serve as a witness.
- ✱ Never single out an individual employee or particular group of employees for special treatment — whether it is rehabilitation or punishment. Inconsistencies in policy enforcement may lead to discrimination charges.
- ✱ Try to get to know your employees as much as possible. This may help you more quickly identify workers who are in trouble or developing substance abuse problems.
- ✱ Most important, try to involve workers at all levels of your organization in developing and implementing your drug-free workplace policy. This will reduce misunderstandings about the reasons for a drug-free workplace program and help ensure that policies and procedures are fair to everyone.

The U.S. Department of Labor's (DOL) Working Partners for an Alcohol and Drug-Free Workplace Web site provides employers with free resources and tools to help establish and maintain drug-free workplace policies. And we recommend having a local employment attorney review your policy before implementation. For more suggestions on improving workplace safety, please contact us. ■

Independent Contractor or Not, and Why It Matters

Hiring someone on an independent contractor basis has many advantages for employers. But treating workers like independent contractors when they should be classified as employees instead can cause costly problems.



Independent contractors have many advantages for employers. Employers can hire them on a per-project basis and let them go when the project is completed. They can often hire experienced workers who want to maintain a degree of independence. And they don't have to pay benefits or workers' compensation.

Or do they? In the late 1980s and early 1990s, many companies faced

steep fines for failing to provide workers' compensation to workers who were misclassified as independent contractors, particularly in the garment and manufacturing industries. Although today most companies are more aware of the problems of misclassifying workers, problems do still arise. Misclassifying someone as an independent contractor when they should be classified as an employee

can lead to back taxes, penalties and fines. It pays to know the difference!

Generally, the degree of control you exercise over the worker determines whether he or she is an employee or independent contractor. For example, an employer usually provides a worker's materials; an independent contractor often provides his/her own. An employer sets an employee's work hours; an independent contractor usually has the right to set his/her own schedule.

The following criteria can help you determine whether a worker is an employee or an independent contractor.

Employee

- ✱ Must obey instructions concerning when or how to perform the job.
- ✱ Company provides training.
- ✱ The job is "integrated," or central to the company's operations—the more integrated, the more likely the worker will be considered an employee.
- ✱ Services must be performed by a particular person.
- ✱ Has an ongoing relationship with the company.
- ✱ Company sets the work hours.
- ✱ Company requires full-time work at its business.
- ✱ Company controls where the work is performed.
- ✱ Company determines the order in which tasks are to be done.
- ✱ Company requires oral or written reports.
- ✱ Receives payment by hour, week or month.

- ✱ Company provides tools and materials.
- ✱ Company pays travel/business expenses.
- ✱ Company can discharge a worker for reasons other than not meeting a contract's terms.
- ✱ Can usually quit without liability for failure to complete a job.

Independent Contractor

- ✱ Responsible for the outcome of the job and can determine how it is to be done.
- ✱ May be licensed by a state board; may have invested considerable sums in training.
- ✱ Can hire assistants and is responsible for their pay.
- ✱ Advertises or otherwise makes his/her services available to the general public.
- ✱ Can set his/her own work hours.
- ✱ Can work for more than one company at the same time.
- ✱ Usually paid on a per job or commission basis.
- ✱ May have made significant investment in tools.
- ✱ Can realize a profit or loss from a job.
- ✱ Liable for completing a job according to contract.

If you're still unsure whether a worker qualifies as an independent contractor, you can request a ruling from your state department of labor or employment. For information on classifying employees for workers' compensation purposes, please contact us. ■

The Importance of Housekeeping

The U.S. Department of Labor reports that slips, trips and falls make up the majority of general industry accidents. They account for 25 percent of all reported claims per year. More than 17 percent of all disabling occupational injuries result from falls. A good housekeeping program can help prevent many of these incidents.

The U.S. Centers for Disease Control reports that the number one cause of slip, trip and fall (STF) injuries is "contaminants on the floor." In layman's terms, that simply means floors that are wet or dirty. Keeping floors clean and hazard-free requires a good housekeeping program. Here are some basic steps to start yours.

Put it in writing.

A written housekeeping program can help ensure the quality and consistency of housekeeping procedures. Provide a copy to all employees, and they should know where to find additional copies.

The program should describe:

- ✱ How to immediately contact the housekeeping department (if you have one)
- ✱ Where and how cleaning materials and

products are stored

- ✱ When to use wet floor signs and barriers and where signs are stored
- ✱ When specific areas of the facility should be cleaned
- ✱ What cleaning methods are appropriate for different areas and surfaces.

Keep floors clean and dry.

- ✱ Encourage workers to cover, clean or report spills promptly.
- ✱ Give employees easy access to products to clean, cover and highlight a spill. Place spill pads, paper towel holders and pop-up-tent wet floor signs in convenient locations throughout the facility.
- ✱ If you have housekeeping staff available during business hours, provide them with pagers and post the number in various places.
- ✱ Place water-absorbent walk-off mats where water, ice or soap may drip onto the floor. This includes near entrances, sinks and water fountains.

Use the right kind of mats.

Mats should:

- ✱ Have beveled edges and a slip-resistant backing.
- ✱ Be large enough so people will take several foot-steps over the mat. If there is water around or beyond the mat, it means the mat is not large enough and/or is saturated and needs to be replaced.
- ✱ Not move when on the floor. If needed, secure mats to prevent them from moving.
- ✱ Be replaced in the proper position. If needed, use tape or other markings to show employees where mats belong.

Use proper cleaning procedures for floors.

Research has shown that a two-step mopping process is better than damp-mopping. In the two-step process, 1) cleaning solution is applied on a section of the floor with a dripping mop, and 2) after a few minutes, the cleaning solution is removed with a wrung mop, before the solution dries.

Make sure the cleaning product can be used on common floor contaminants. You'll also want to make sure cleaning products are mixed according to manufacturer's directions. Certain cleaning products, such as ammonia and bleach, can cause toxic fumes if combined.



Although a cleaning program might not seem as exciting or important as other injury prevention programs, it can make the difference between a slip, trip or fall accident...or a safe workplace. For more information on preventing injuries, please contact us. ■

The Benefits of Structured Settlements

Once a worker suffers an occupational injury while working for you, he or she becomes your responsibility for life. If the injury recurs or flares up, the employer remains responsible for providing the necessary medical treatment. This holds true even years after a relatively minor accident.

Some workers' compensation claims remain open for years, or even decades. Using a structured settlement can help both your organization and the injured employee move forward.

Under a structured settlement, proceeds of the court settlement go to the plaintiff in the form of periodic payments, including scheduled lump sum payments. Payments can last for a year, for the claimant's lifetime, or somewhere in between.

When an organization and employee agree to a structured settlement, they will generally use a structured settlement broker. An experienced broker can help you negotiate the terms of the agreement and arrange funding. Structured settlements gen-

erally are funded by a single-premium annuity contract held by the employer.

Structured settlements offer the following advantages:

- * They release employers from future obligations. Both the employer and employee can move on.
- * They provide a continuing stream of income to injury victims. This minimizes the risk that injured workers will spend away their claims proceeds and run out of money.
- * They can provide injured workers a tax-free source of income.
- * They typically prohibit the claimant from assigning or transferring his/her rights to receive future payments. This helps prevent fraud, embezzlement and running out of funds.

For more information on using structured settlements, please contact us. ■

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