

WORKPLACE SAFETY

Cal/OSHA Heat Illness Campaign Focuses on Water

WITH SUMMER approaching with its accompanying heat, Cal/OSHA is getting an early start on spreading the word about the dangers of heat illness.

This year, the agency is focusing on the importance of regular water breaks for outdoor workers in its “Stopping for Water Keeps You Going” campaign. That slogan relates to the first part of its main heat illness prevention slogan: “Water, Rest, Shade.”

Cal/OSHA also stresses that training for workers and supervisors on the signs and symptoms of heat illness and ensuring emergency response procedures are in place are crucial to protecting outdoor workers.

One of the most dangerous times of the year for outdoor workers is when the colder spring conditions start giving way to increasingly hotter conditions. At that time, it’s important that employees can get properly acclimated to the heat.

The lack of proper acclimation played a role in two of the three confirmed work-related heat illness fatalities in California in 2012, both in construction.

If you have outdoor workers, Cal/OSHA requires you to:

- **Keep them hydrated** – Provide enough fresh water so that each employee can drink at least one quart an hour. And instead of employ-

ees gulping down large quantities once in a while, instruct them to drink smaller amounts often. Water must be fresh, pure and “suitably cool,” according to Cal/OSHA. It must be “as close to the employee as is practicable, given the working conditions and layout of the worksite.”

- **Provide shade** – Cal/OSHA regulations require that you provide shade so workers can take a cool-down rest for at least five minutes. Employers should encourage workers to take cool-down breaks and emphasize that they should not wait until they feel ill to start cooling down. It could be too late by then.

Shade must be open to the air or ventilated/cooled, and must be large enough to accommodate at least 25% of the employees on the shift at any one time. They must be able to “sit in a normal posture fully in the shade without having to be in physical contact with each other.”

- **Provide training** – All outdoor employees and supervisors should receive heat illness prevention training on:

- Environmental and personal risk factors for heat illness.
- Your procedures for complying with the requirements of the heat illness prevention standard.
- The different types of heat illness and common signs and symptoms.

- The importance of frequent consumption of small amounts of water, up to four cups per hour.

- The importance of acclimation.
- The importance of employees immediately reporting to the employer when they feel symptoms of heat illness.

- Your procedures for responding to symptoms of possible heat illness, including emergency medical services.

- Your procedures for contacting emergency medical services and transporting employees.

- Your procedures for providing clear and precise directions to the worksite to emergency responders.

- **Put it in writing** – Employers of outdoor workers must develop, in writing, effective procedures for complying with the heat illness standard.

Cal/OSHA has an excellent guide available on its website on heat illness prevention.

You can find it [here](#). ❖

CONTACT US



If you have a question about any of the articles in this newsletter or coverage questions, contact your broker at one of our offices.

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STAY HYDRATED: Don't forget to provide a fresh supply of "suitably cool" drinking water for your outdoor workers.

WORKERS' COMP

Car Crashes a Leading Cause of High-severity Claims

TRAFFIC ACCIDENTS continue to be one of the leading causes of high-severity workers' comp claims, according to new research.

The National Council on Compensation Insurance found in a study released in January 2013 that the cost of workers' comp claims for accidents involving motor vehicles with multiple claims was 250% more than the average for all workplace accidents that had more than one claim.

The study also found large differences between the cost of claims involving large trucks and passenger cars, as well as a reduction in the number of accidents during economic recessions.

The research followed up on findings from a similar NCCI undertaking in 2006, which found that even the clerical classification had surprisingly high exposure to traffic accidents.

In this updated report, the council extended its analysis by adding several years of data.

The study found:

- The same decline in motor vehicle fatalities, and in injuries overall and in the workplace, observed in the 2006 study has continued.
- The decrease in motor vehicle fatalities and injuries that the first study noted in prior recessions was much more pronounced during the recent "Great Recession."
- That is, the rate of decline tends to increase during recessions, particularly for accidents involving large trucks. Consider that between December 2007 and June 2009, the number of vehicle miles nationally traveled declined by 2.5%.
- The decrease is a result of several factors, including fewer people driving to work due to higher unemployment; fewer truck shipments due to the decline in consumer spending; and more people carpooling and not driving far for vacations.
- While the frequency of truck fatalities is now very similar to the frequency of passenger vehicle fatalities, the frequency of non-fatal injuries is higher for passenger vehicles.
- Motor vehicle accidents are more likely to result in multiple claims, and claims costs are higher for claims from multiple-claim events.
- Motor vehicle accidents are more severe than the average workers' compensation claim.
- Motor vehicle accidents affect a diverse range of occupations other than just truckers.
- Neck injuries are among the top diagnoses.
- The duration of motor vehicle accident claims is more than a third longer than the average claim.
- There is a significant amount of subrogation in workers' comp traffic accident claims, with such claims accounting for more than half of all claims with subrogation.
- Motor vehicle claims are three times as likely to involve a claimant attorney compared with all claims.
- Distracted driving continues to be a leading cause of accidents and near-accidents. ❖

Safe-driving rules for your staff

ENCOURAGE your staff to drive safely and abide by the company safety rules you establish.

A good set of rules, drawn up by Fed-OSHA and which should be in writing for your employees, is:

- Wear a seat belt at all times – driver and passenger(s).
- Be well-rested before driving.
- Avoid taking medications that make you drowsy.
- Set a realistic goal for the number of miles that you can drive safely each day.
- Do not use a cell phone while driving, unless you are wearing a hands-free device. Do not send text messages.
- Avoid distractions, such as adjusting the radio or other controls, eating or drinking.
- Continually search the roadway to be alert to situations requiring quick action.
- Stop about every two hours for a break. Get out of the vehicle to stretch, take a walk, and get refreshed.
- Keep your cool in traffic!
- Be patient and courteous to other drivers.
- Do not take other drivers' actions personally.
- Reduce your stress by planning your route ahead of time (bring maps and directions), allowing plenty of travel time, and avoiding crowded roadways and busy driving times like rush hours.



LEGAL ENVIRONMENT

Litigation and Regulatory Investigations Mount

U.S. COMPANIES dealt with more litigation, while regulatory investigations reached a five-year high last year, according to a new survey.

After a one-year decline, litigation rose to 2010 levels as businesses initiated and faced more lawsuits in 2012 than they had done in 2011.

Labor and employment disputes and contract litigation led the way, according to Fulbright & Jaworski L.L.P.'s "9th Annual Litigation Trends Survey."

The survey found that the rate of companies retaining outside counsel to help deal with regulatory investigations jumped to 60% in 2012 from the prior year, reflecting the increasingly difficult regulatory environment companies find themselves in.

The results of the survey should serve as a warning to employers to make sure they have appropriate policies in place to reduce the likelihood of litigation from the inside and to comply with local and federal labor and discrimination laws, as well as privacy protection laws.

Respondents predicted that litigation and regulatory actions would not abate this year, with 92% expecting the number of legal disputes their companies would face to rise or stay the same in the next 12 months.

The lawsuits companies face are not just filed by individuals and employees, but also by other businesses. While the previous year's survey found 48% of all companies had initiated lawsuits, the latest survey showed 60% of respondents becoming plaintiffs in the last 12 months.

More offense meant more defence. In the 12 months leading up to the previous survey, 27% of U.S. companies had faced more than 20 lawsuits. In the 12 months leading up to this year's survey, 32% of U.S. companies had faced more than 20 suits.

Also, worries over whistleblower allegations continue as the number of complaints made remained high during the past 12 months – particularly among larger companies.

There has also been a noticeable increase in personal injury disputes, particularly for mid-size and larger companies in real estate, retail, manufacturing and energy.

Some survey highlights include:

- About one-third of all respondents in the previous year's survey reported having spent more time addressing regulatory investigative requests in the past three years. That had increased to 42% in this survey, with nearly 30% of all respondents predicting an increase in the coming year.
- The previous year's survey found that rates of internal investigations had risen. The latest survey revealed 42% of U.S. companies retained counsel for one or more internal investigations in the past 12 months.
- Twenty-six percent of respondents reported being subject to allegations by a whistleblower.
- The most common outcome of a whistleblower allegation was an internal investigation (said 78% of respondents subject to whistleblower allegations). The second-most common outcome was a regulatory investigation (44% of respondents against whom allegations were made).
- As unemployment edges downward, labor and employment



AGAINST THE WIND: *Regulatory and legal threats continue pelting businesses. Make sure you are protected.*

litigation is easing. Across all areas – from race discrimination to retaliation suits – businesses reported fall-offs in litigation, with the most pronounced drop in wage and hour disputes. While the prior year's survey showed 25% of firms reporting an increase in this type of litigation over the prior 12 months, the most recent survey showed that rate was down to 12%.

- About a quarter of firms across surveyed industries listed discrimination as the area with the greatest increase in the past 12 months. When asked which area would see the greatest increase in the next 12 months, over one-third of all companies again listed discrimination.
- Nearly one-third of all respondents encountered issues involving privacy and/or data protection in disputes or investigations in the past 12 months. Most of the issues concerned data collection from company and employees' personal equipment. Companies were also concerned about using third-party vendors to collect and process data.
- About one-fifth of all companies had to preserve or collect data from an employee's personal social media account in connection with a dispute or investigation.
- The prior year's survey found that while 91% of U.S. companies permitted employees to conduct business on mobile devices, only 30% had to preserve or collect data from those devices for a litigation or investigation. The latest survey revealed that gap had narrowed, with 41% of U.S. companies having had to preserve or collect data from an employee's mobile device for a dispute.

What steps can you take to protect your business? Besides putting strong policies in place to reduce the chance of litigation or regulatory actions, you should also discuss with your Vitas Insurance Agency broker these various risks and how you can benefit from added insurance protection. ❖

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HEALTH CARE EXCHANGES

Health Application Form a Whopping 21 Pages

IN MARCH the Obama Administration released its draft form for applying for benefits under the Patient Protection and Affordable Care Act (PPACA) – and in short, it’s massive.

For a three-person family, the draft application form is 21 pages long and even the online version has 21 steps, including some sections with additional questions.

Health pundits have pointed out that the complexity of the process could thwart one of the main intentions of the law – providing health insurance to the masses – by chasing away the people it was meant to serve.

The government estimates the paper application form should take 45 minutes to complete, but health care professionals are questioning that estimate.

In the preamble to the draft form, it states that applicants will need the following:

- Social Security numbers (or document numbers for any legal immigrants who need insurance)
- Birth dates
- Employer and income information for everyone in the applicant’s family (for example, from pay stubs or Forms W-2, Wage and Tax Statements)
- Policy numbers for any current health insurance, and
- Information about any job-related health insurance available to your family

But the application form contains other questions to determine eligibility for government subsidized health coverage. It asks:

- If the applicant wants help paying for medical bills from the last three months
- If the applicant was ever in foster care
- If the applicant has a parent living outside the home
- If the applicant lost employer-supported health benefits in the last three months
- If the applicant is a U.S. citizen, and
- Income amount

Checking identity, income and citizenship is supposed to happen in real time, for those applying online.

All of those questions are part of the first step, which is designed to assess if the applicant qualifies for financial assistance. The PPACA is means-tested, with lower-income people getting the most generous help to pay premiums.

Once an applicant has finished the section assessing eligibility for assistance, they must move to the next part of choosing a health plan, which will require additional steps, plus a basic understanding of insurance jargon. The application is a crucial part of the health care reform as the law requires virtually all Americans to carry health insurance start-

ing in 2014, although most will just keep the coverage they now have through their jobs, Medicare or Medicaid.

Drafts of the paper application form and a 60-page description of the online version were quietly posted online by the Health and Human Services Department, seeking feedback from industry and consumer groups. Those materials, along with a recent HHS presentation to insurers, run counter to the vision of simplicity promoted by administration officials.

The HHS estimates that it will take 30 minutes to complete the online application, on average. If you need a break, or have to gather supporting documents, you can save your work and come back later.

The application is designed to vet the middle-class individuals who are eligible for tax credits to help pay for private insurance plans, while low-income individuals will be steered to safety-net programs like Medicaid. The HHS estimates it will receive more than 4.3 million applications for financial assistance in 2014, with online applications accounting for about 80% of them. Because families can apply together, the government estimates 16 million people will be served.

Near-instantaneous online verification?

One positive about the new application system is that those who apply online are supposed to be able to get near-instantaneous verification of their identity, income, and citizenship or immigration status.

An online government clearinghouse called the Data Services Hub will access Social Security Administration records for birth information, the IRS for income data and Homeland Security for immigration status.

Also, despite the complexity, the new system could still end up being simpler than the current process many individuals go through to secure coverage.

For example, applicants won’t have to fill out a medical questionnaire, although they do have to answer whether they have a disability.

Under the law, even if they are disabled, they can still get coverage for the same premium a healthy person of their same age would typically pay.

On the other hand, if an applicant’s household income has changed in the past year and they want help paying their premiums, they will have extra work to contend with.

They will be applying for assistance in part based on their expected income in 2014, but the latest tax return the IRS will have on file will be for 2012. So, if that person has secured a better-paying job, lost their job or their spouse got a job or was laid off, more information will be required.

And if anyone in the applicant’s household is offered health insurance on the job but does not take it, they should be prepared for more questions, such as “What’s the name of the lowest cost self-only health plan the employee listed above could enroll in at this job?”

HHS spokeswoman Erin Shields Britt said in a statement the application is a work in progress, “being refined thanks to public input.”

A copy of the draft can be found [here](#). ❖

