

## News You Can Use

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### WORKERS' COMP

## Fear of Firing Hampers Employees' Return to Work

**N**EW STUDIES have found that anxiety over being fired, and other newly discovered factors, can lead to longer times away from work after employees suffer industrial injuries.

The group of studies, "Predictors of Worker Outcomes", found trust in the workplace to be one of the more important predictors of how long an injured worker takes to return to the job. The findings by the Workers' Compensation Research Institute are significant and shed light on what could be a major factor in people returning to work after an injury.

The key for employers is to maintain good communication with the injured worker and make sure they understand that their job is not at risk as a result of sustaining an on-the-job injury. And obviously, firing a worker for experiencing a workplace injury is against the law.

The news may allow insurers and employers to better implement return-to-work "interventions" and get workers who are disaffected back into their regular routine, so that they don't linger too long collecting temporary disability benefits.

In conducting the studies, the WCRI asked the injured workers if they were concerned about being fired as a result of the injury. The institute found:

- Workers who were strongly concerned about being fired after the injury experienced poorer return-to-work outcomes than workers without those concerns.
- One in five workers who were concerned about being fired reported that they were not working at the time of the interview. This was double the rate observed for workers without such concerns. Among workers who were not concerned about being fired, one in 10 was not working at the time of the interview.
- Concerns about being fired were associated with a four-week increase in the average duration of disability.

In fact, other studies have found that injured employees who are afraid of losing their jobs won't report the injury and try to use their health insurance for doctor's visits to treat work injuries. And, for days off to recover from an inju-

ry they will take sick leave, vacation days or short-term disability leave.

That said, most doctor's offices will ask someone who comes in with an injury if they sustained it at work to ensure the claim goes to the employer's workers' comp provider. But scared employees may lie.

The studies also identified that the recovery from injury or illness of workers with specific "co-morbidity" medical conditions – either pre-existing conditions or those that manifested after the injury or illness – can be complicated by such conditions. Co-morbidity conditions may include hypertension, diabetes and heart problems.

The researchers found that:

- Workers with hypertension (when compared with workers without hypertension) had a three-percentage-point higher rate of not working at the time of the interview predominantly due to injury.

See 'Encourage' on page 2

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## OSHA WHISTLEBLOWING

## New Program May Spur More Retaliation Claims

FEDERAL OSHA has struck up an alliance with the National Labor Relations Board (NLRB) to allow workplace safety whistleblowers to file retaliation complaints beyond the 30-day statute of limitations under occupational health and safety law.

The surprise move came after David Michaels, assistant secretary of labor, recommended to a U.S. Senate subcommittee that the statute of limitations in the Occupational Safety and Health Act for filing a whistleblower retaliation complaint be expanded to 180 days and that the act include a private right of action.

Apparently not waiting for congressional action, OSHA has started a new program with the NLRB that would let whistleblowers pursue claims that would otherwise be time-barred.

OSHA estimates that up to 600 whistleblower claims are dismissed as untimely each year for failing to meet the statute of limitations.

Under the new program, OSHA would advise complainants who file whistleblower claims after the OSHA statute of limitations has tolled to instead contact the NLRB about filing an unfair labor practice charge. The National Labor Relations Act (NLRA) has a longer, six-month statute of limitations.

Employment law attorneys are predicting an uptick in retaliation claims for reporting workplace safety issues.

NLRB agents have been instructed to track the number of contacts received and number of charges docketed as a result of the OSHA referrals.

This agreement between the NLRB and OSHA expands on a 1975 memorandum of understanding between the two agencies on a cooperative process for handling retaliation complaints that could be filed with either agency. Under the agreement, if a complaint is filed with both agencies, enforcement actions should primarily be taken under the OSH Act, rather than under the NLRA.

There has already been a surge in retaliation complaints at OSHA. But, nearly 75% of all whistleblower complaints are either dismissed or withdrawn. Some 21% were settled and only 2% resulted in OSHA action.

In the most recent statistics available, OSHA in fiscal 2012 received 2,787 whistleblower retaliation complaints. OSHA inves-

tigates whistleblower claims filed under the Occupational Safety and Health Act and 21 other federal laws.

Employees accused their employers of retaliation after reporting OSHA workplace safety violations in 1,706 of the cases. The rest of the complaints were for retaliation for reporting a myriad of other violations, including financial wrongdoings under the Sarbanes-Oxley Act, environmental violations, and more.

The number of whistleblower retaliation cases has increased 30% from 2,158 in 2009.

The worst thing for employers is that even if the cases are eventually dismissed or withdrawn, they are a drain on resources – both time and money – as the employer must investigate the claim, deal with regulators and hire counsel to work on and defend the case.

And while even meritless cases cost money, those that result in penalties by OSHA cost even more. They can result in large monetary awards as well as judgments requiring reinstatement of the whistleblower, which can cause some disruption in the workplace. ❖



*Continued from page 1*

## Encourage Injured Employees to Return to Work

- Workers with heart problems reported an eight-percentage-point higher rate of not working at the time of interview predominantly due to injury, and had disability duration that was four weeks longer.
- Workers with diabetes had a four-percentage-point higher rate of not working at the time of the interview predominantly due to injury than workers without diabetes.

### The takeaway

Other studies have found that workers who are kept in the loop and whose employers show them they care about their recovery and eventual return to work tend to get back on the job

more quickly than those who aren't. And the danger is that the longer they are out on temporary disability, the more chance that they will become disaffected from the workforce.

The WCRI studies show that those who are afraid to lose their jobs are even more likely to become disaffected and, if you see signs of this, it's imperative that you reach out to those staff to let them know you and their co-workers are eager to see them back on the job as soon as they are able to work again.

You can do this by asking them if they have questions or concerns about their claims, and if you can help them resolve their issues. Staying engaged will go a long way towards allaying their fears of retribution. ❖

## WORKPLACE SAFETY

# Proper Lifting Yields Fewer Back Injury Claims

**B**ACK INJURIES are among the most common workplace injuries and they can be both expensive to treat and lead to life-altering physical problems that require job reassignment.

Back injuries account for 27% of all nonfatal injuries and illnesses involving days away from work. That's because the back is one of the most complex parts of our bodies, consisting of a number of muscles, bones, nerves and supporting tissue. The spine is a canal of nerves that control virtually every function of our bodies.

The back is vital to almost all of our movements so when something's amiss, it can cause pain just through movements that are routine and we would generally take for granted.

An injured back affects your ability to move your limbs, your hips, your neck and your head.

If it's not working right, you'll suffer. Injuries to the back can be very debilitating, causing a lot of pain, time away from work, and often requiring physical therapy or even surgery. Everyone whose job involves stressful lifting or awkward postures is at risk for a back injury.

To avoid or reduce the likelihood of back injuries among your employees, you should share this advice with them:

## While lifting and setting objects down:

- Don't bend over an object you are lifting. Bend your knees, squatting in front of the object to reach it.
- Lift the object slowly and carefully, using your leg and arm muscles to lift, not pulling with your back.
- Keep your head up and look straight ahead while making the lift.
- While lifting, keep the object as close to your body as possible.
- Tighten your abdominal muscles during the lift.
- If the object is too big or too heavy to lift using these techniques, consider mechanical assistance or find someone to help you.

## When reaching for objects:

- Do not reach for anything unless you know that you can lift it.
- Use a stepladder to reach objects above the height of your shoulders.
- Try to avoid making awkward stretches when reaching for an object. It can stress your

back and make you lose your balance.

- Don't stand on structures other than ladders and scaffolds to support you. If you are standing on shelving or a storage rack, for example, it could easily give way if you pull or tug on it.

## Back belts

There's a lot of controversy about using back belts to control low back injuries in workers who don't have an existing injury.

According to a recent report published by the National Safety Council, available scientific data neither completely support nor dismiss the use of back belts to reduce the risk of injuries.

That said, in your workplace you should not use back belts as a substitute for a comprehensive back injury prevention program.

But, if you do want staff to use back belts, you should have a policy for how to use them. That's because many people who use back belts have a false sense of security, thinking they will protect them against lifting injuries.

They may be tempted to lift loads they wouldn't otherwise lift.

The belt should be used as support only.

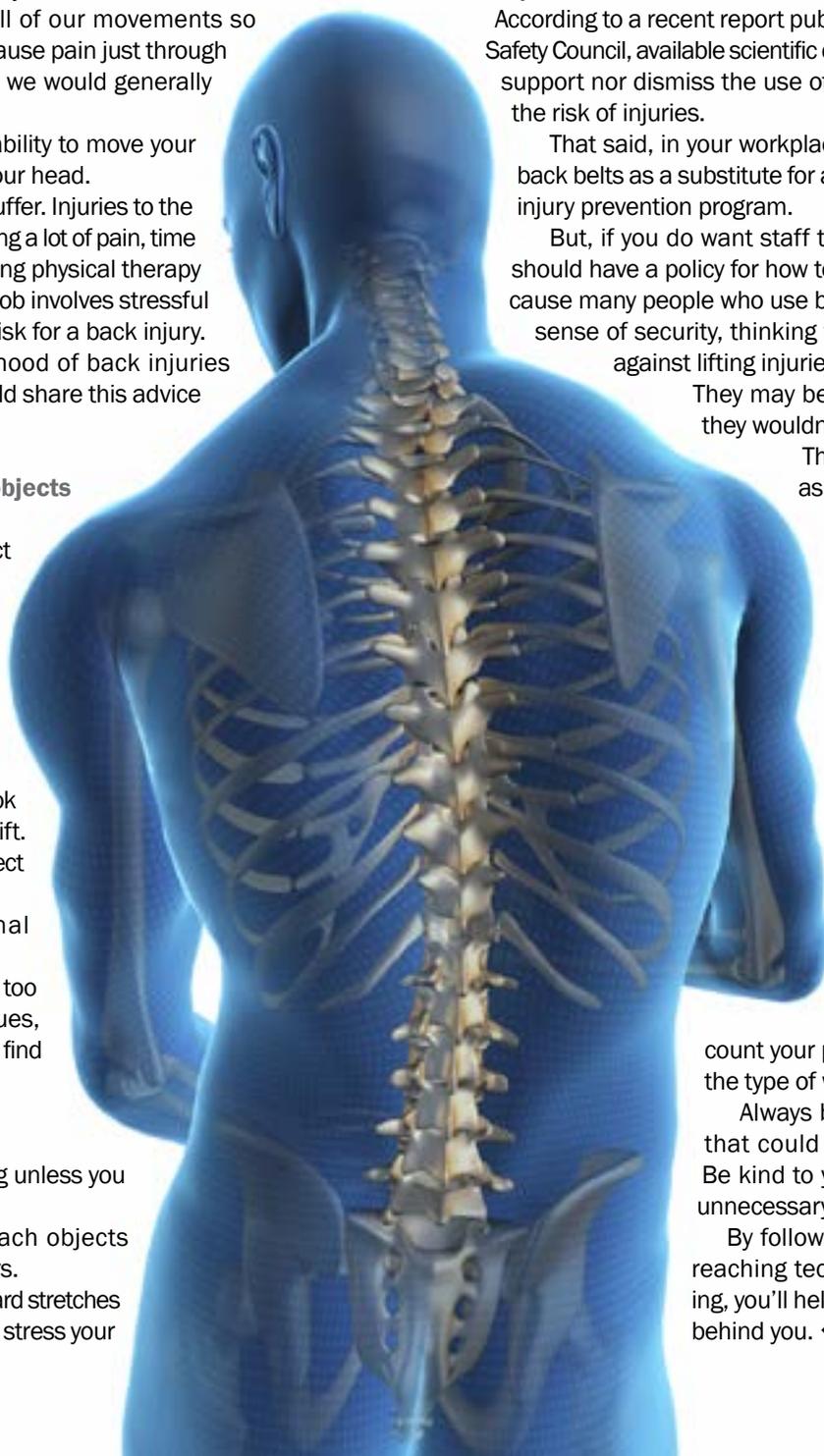
## The role of fitness

Exercise also plays an important role in keeping your back strong, healthy and flexible. A properly exercised back is less likely to be injured.

Your physician, company medical personnel or other health care provider can recommend the best exercises for you, taking into account your physical condition and the type of work you do.

Always be alert for situations that could cause a back injury. Be kind to your back. Don't take unnecessary chances.

By following proper lifting and reaching techniques and exercising, you'll help keep back problems behind you. ❖



## EMPLOYEE ISSUES

# The Triple Regulatory and Litigation Threat

**W**ITH HEAVY fines and the threat of lawsuits hanging over their heads, employers already know they have to walk a fine line when managing their employees.

But in the last four years, thanks to increased regulatory action as well as new regulations and laws, there's been a serious uptick in litigation and enforcement in three areas: wage and hour litigation, family medical and disability leave and labor and recruitment.

### 1. Wage and hour litigation

During the past half decade, there has been a surge in wage and hour litigation. Much to the dismay of business owners, their employees - with help from their attorneys - have had great success in suing and winning large lawsuits against all types of companies of all sizes in a plethora of industries.

With more complaints landing on its doorstep, the Wage and Hour Division of the U.S. Department of Labor in 2013 requested a budget increase of \$6.4 million to support the addition of 57 investigators to enforce a variety of laws.

The Labor Department has also been very successful in securing settlements from employers. In fiscal year 2011, the DOL recovered \$225 million in back-wages for employees, up 28% from fiscal year 2010, and the largest amount collected in a single year in the division's history.

With the stakes high, your HR manager needs to be regularly reviewing company policies, procedures as well as actions to head potential litigation off at the pass.

If they identify an area where an employee may have been shorted, it's your duty to acknowledge the mistake and rectify it by making them whole.

### 2. Workers want their time off

The Americans with Disabilities Act, the Family Medical and Leave Act, and other state and federal leave laws have very specific rules for employees to take time off for illnesses, vacations, taking care of sick family members, and more.

And recently both laws have been greatly expanded to include more protected classes for disabilities and more reasons employees can take time off from work to care for family members.

While the laws are usually quite straightforward, employees continue suing their employers in record numbers.

Your HR manager should make sure that your paid time off and disability and family leave policies are in sync with both federal and California laws.

### 3. EEOC and NLRB on the prowl

The Equal Employment Opportunity Commission has been stringently enforcing its "Strategic Enforcement Plan," which focuses on six areas of priority:

- Eliminating barriers in recruitment and hiring
- Protecting immigrant, migrant and other vulnerable workers

- Addressing emerging and developing issues
- Enforcing equal pay laws
- Preserving access to the legal system
- Preventing harassment in the workplace

Also, you may know the National Labor Relations Board for its protection of union rights and rights of employees to unionize. But during the last few years, with the advent of social media and its accompanying employee vs. employer rants on social media, the NLRB has also been aggressively cracking down on employers who restrict their employee's right to free speech.

While limiting what your employees post about the company may help your business from a public relations standpoint, it can also create new legal problems.

The NLRB has issued guidance on numerous occasions on at what point employers cross the line when they try to curtail commentary by employers on their social media pages.

All of these issues are major pitfalls for employers.

To avoid falling into the litigation or regulatory trap, you should review and update your employee handbook regularly and consult with a legal professional to ensure that your company policies are in compliance with state and federal law. ❖



**Insurance can cover costs associated with lawsuits stemming from these issues. We can find the right coverage for you. Call us today!**

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