

# News You Can Use

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## TRANSPORTATION

# Best Post-injury Practices for Your Drivers

**T**HE TRANSPORTATION industry is fraught with dangers, and not only from vehicle accidents.

Drivers have a lot of stresses – both mental and physical – when driving long distances, and many injuries occur during the loading and unloading process.



### Driver Dangers

- Loading and unloading cargo
- Slips, falls and strains from entering and exiting cabs
- Repetitive body stress for long periods
- Falls from loading docks
- Raising heavy truck hoods
- Handling trucking equipment
- Traffic accidents

All of the risks listed on the left are very real, but they can be amplified because drivers spend long periods of sedentary time behind the wheel. Because of this workers' compensation claims are an all too common occurrence in the trucking industry.

While you are covering your workers with workers' comp insurance, for successful claims handling, your drivers need to know their part as well if they are injured.

How they respond to an injury can greatly affect the cost and length of time they will require for treatment and how much time they may miss from work.

Meanwhile, drivers have their own responsibilities once injured.

Without following company procedures for reporting claims and while out with an injury, even a small injury can transform into a costly claim.

### 1. Understanding procedures

Many drivers are drawn to the profession for the independence and not being stuck in an office, but if they are injured they need to follow your guidelines.

It's important that drivers know to immediately inform their supervisors after sustaining a workplace injury.

In a workers' comp case, lost time can severely affect your final claim cost, so it's important that the driver get the medical attention he needs promptly.

Quickly reporting a claim is also the best way to get an accurate report.

Your drivers should know who to contact when they are injured on the road or at a site, and they should be trained to make a report right away.

Establish workplace injury reporting guidelines (such as mandatory 24-hour reporting windows) and make sure you review these rules with your drivers on a regular basis.

See 'Reintegrate' on page 2



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## HUMAN RESOURCES

# Smartphones and the Wage and Hour Dilemma

**D**O YOU EVER wonder if your non-exempt employees are sneaking a peek at work e-mail off the clock? Do they feel pressured to respond to calls and e-mails after the workday ends?

If they do, it could spell trouble for your organization.

The proliferation of smartphones has led to a rapidly rising number of lawsuits by employees claiming they were required to work uncompensated on evenings and weekends when not on the clock. The lawsuits are often class actions stemming from overtime-eligible employees using smartphones to extend their workday without those after-hours tasks being compensated.

### The class action danger

The problem for employers is that when one employee complains to the Labor Department that they are not being compensated for time working on their smartphones when away from work, the agency's investigators won't stop with the complaining employee. They also look at how many others are "similarly situated."

A single employee's complaint can turn in to a class action when other similarly situated employees are included.

Just a few minutes a day over months or years can add up if employees regularly use their phones for uncompensated work.

In the last several years, the courts have seen a flood of lawsuits in which groups of employees claim the time they spend reading and responding to e-mail should be considered work time, and therefore paid.



When employees sue, employers typically use the *de minimis* defense, but that's a dead end. Here's why:

*De minimis* means very little, perhaps just a minute or two. Just five minutes a day adds up to almost a half hour a week. There are precedent-setting court decisions that have said that even 30 minutes extra a week is not *de minimis*.

Additionally, you may not even know that some employees are checking work e-mail at home whether they're told to or not.

An employer doesn't have to require employees to answer e-mail and perform other tasks off the clock to run into trouble. Merely permitting work without counting it as compensable time, puts the employer at risk.

### What should you do?

The extension of work time made possible by smartphones and other electronic devices poses a new danger for employers.

To ensure you don't find yourself the target of a wage and hour lawsuit, you need to put in place a solid policy about non-exempt employees working on their smartphone after hours.

You should put the policy in place, communicate it to your staff in a meeting, as well as include the policy in your employee handbook.

Passing out a memo on the matter is also helpful.

Once the policy has been communicated, you must monitor and survey staff to make sure they are not breaching the rules. ❖

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## Reintegrate Drivers with Alternative, Light Work

### 2. Informing about alternative work

If possible, to help a worker get back into the swing of things, you should offer them alternative work as they heal up, as long as their treating physician approves.

Light and modified duty programs, which can include clerical work and other stationary tasks, are key to lowering lost-time claim costs.

Make sure your drivers are knowledgeable about the your return-to-work policy and give their doctor all necessary forms and materials. Otherwise, the treating physician may assume that no light duty is available and deem the driver physically unfit to return to work driving.

But, if the doctor knows light duty is available, and that the driver could be doing other work like answering phones at company headquarters, for example, the driver can reintegrate into work faster.

Also, drivers must tell supervisors about any work restrictions made by their doctor so temporary duties are appropriate to the worker's injury. If an injured driver must remain homebound, the driver needs to communicate with their supervisor at least once a week to update

his progress so appropriate duties can be set up as soon as the worker is able to leave home.

### 3. Merging back on the road

When it's time for an injured driver to transition back on the job, they should provide copies of doctors' work status releases to their workers' compensation coordinator and return to work on their next scheduled shift.

Drivers must comply with all physician-requested work restrictions, both on the job and at home, to ensure that the injury improves – rather than worsens.

As the process to a full recovery continues and drivers regain control of the wheel, they should give their supervisors regular updates on the injury's progress.

If there is little or no communication with an injured driver, it will be more difficult to maintain cost control over a claim and ensure they are healing properly. ❖

Produced by Risk Media Solutions on behalf of Heffernan Insurance Brokers. This newsletter is not intended to provide legal advice, but rather perspective on recent regulatory issues, trends and standards affecting insurance, workplace safety, risk management and employee benefits. Please consult your broker or legal counsel for further information on the topics covered herein. Copyright 2015 all rights reserved.

## WORKPLACE SAFETY

# Are You Preventing the Most Common Injuries?

**T**HE FIVE leading causes of workplace injuries accounted for about 65% of workers' compensation costs in 2012, according to new research by Liberty Mutual Group Inc.

The results, published in the Liberty Mutual Research Institute for Safety's "2014 Workplace Safety Index," found that overexertion – or injuries related to lifting, pushing, pulling, holding, carrying or throwing – was the top cause of workplace injury in 2012. Overexertion injury claims cost U.S. employers \$15.1 billion that year, or 25% of all workplace injury costs, according to the study.

This index is a good tool for employers as it helps businesses understand the nature of the majority of workplace injuries. With this information in hand, you can put in place safeguards in your workplace to reduce the likelihood of injuries. ❖

## Preventing Overexertion

### When your workers handle materials:

- Have a handling plan that avoids slippery hazards and includes a destination.
- Test the load to ensure that it can be safely carried.
- If the load is too heavy, awkward or bulky to carry alone, the worker should get help.
- Use machinery or equipment, such as pushcarts, hand trucks, forklifts or hoists.
- When possible, use levers, incline planes or rollers to move loads.

### Guidelines for safe lifting:

- Get a good grip. Grasp the load firmly. Use gloves if they allow for a better grip.
- Get strong footing. Center body weight to provide a line of thrust and good balance.
- Keep it close. Grasp the load firmly and lift towards the belt buckle. Hold the load close to the body to avoid putting pressure on the back.
- Lift smoothly. Raise, carry and lower the load smoothly. Never jerk a load.
- Avoid twisting. If turning is required while lifting or carrying a load, turn the feet and body instead of twisting the back.
- Push. Push rather than pull the load.



## 10 Leading Injuries by Cost

1. *Overexertion*: Total cost in U.S.: \$15.1 billion (25.3% of all workplace injury costs).
2. *Falls on same level*: Total cost: \$9.2 billion (15.4%).
3. *Struck by object or equipment*: Total cost: \$5.3 billion (9%).
4. *Falls to lower level*: Total cost: \$5 billion (8.6%).
5. *Other exertions or bodily reactions*: Total cost: \$4.3 billion (7.2%).
6. *Roadway incidents involving motorized land vehicle*: Total cost: \$3.2 billion (5.3%).
7. *Slip or trip without fall*: Total cost: \$2.2 billion (3.6%).
8. *Caught in/compressed by equipment or objects*: Total cost: \$2.1 billion (3.5%).
9. *Repetitive motions involving micro-tasks*: Total cost: \$1.8 billion (3%).
10. *Struck against object or equipment*: Total cost: \$1.76 billion (2.9%).



## Falls

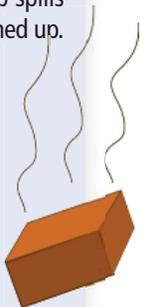
### To avoid injuries:

- Maintain a workplace free of clutter and assign staff to make sure the work area is tidy.
- Eliminate wet or slippery surfaces if possible. Clean up spills immediately and make others aware of spills until cleaned up.
- Avoid creating obstacles in aisles and walkways.
- Ensure that you have proper lighting in all areas.
- Make sure workers have the proper shoes.

## Struck by objects

### A few ways to reduce struck-by injuries are:

- Wear hardhats to avoid being injured by falling objects.
- Stack materials properly to prevent sliding, falling or collapse.
- Always wear proper PPE. This includes safety glasses, goggles and face shields, to name a few.
- Don't work under cranes, hoists or heavy machinery while it's being operated.
- To avoid incidents with vehicles, workers should wear seat belts, check vehicles thoroughly and wear visible clothing.



## WORKPLACE LIABILITY

# Beware of the ACA Whistleblower Complaint

**B**Y NOW you should be aware of the various penalties that can be levied against employers for not providing health insurance to their full-time employees once the employer mandate takes full effect.

But are you aware of another liability contained in the Affordable Care Act – the whistleblower complaint?

The task of investigating whistleblower complaints is the responsibility of the federal Occupational Safety and Health Administration.

Employees that feel they've been wronged in terms of the ACA have 180 days to file an administrative complaint with the OSHA Whistleblower Directorate.

So far there have been no Department of Labor (DOL) administrative tribunals for an ACA whistleblower complaint. That's not surprising since the employer mandate has partly taken effect only this year for employers with 100 or more full-time or full-time equivalent employees.

While there have been no tribunals, the OSHA has received one complaint that was thrown out. Nonetheless, the case could be a reflection of what a complaint might look like in the future, after the employer mandate is fully implemented.

### The case:

A woman employed as a "dual employee" by the Housing Authority of Columbus, GA, filed an ACA whistleblower complaint in August 2014.

She alleged that she was terminated in January 2014 – four months after she'd refused to sign and acknowledge that she understood "and agreed" with the terms of the company's policy on health coverage for employees.

Those were laid out in a letter she'd received in September 2013, which stated that dual employees were ineligible for participation in the employer's group health insurance plan and that only regular, full-time employees were eligible.

She said that after she had refused to sign, she received her first unsatisfactory performance evaluation and a significantly lower annual bonus based on the unsatisfactory review.

She alleged that adverse employment actions were the result of her refusal to accept the terms.

OSHA dismissed the complaint, on the grounds that it was filed too late – more than 180 days following the date of termination.

The woman appealed the decision to the DOL Office of Administrative Law, claiming that her complaint was timely because she had attempted, unsuccessfully, to file complaints

## New Rule Book

THE ACA bars an employer from discharging, discriminating or retaliating against any employee because they have:

1. Received a tax credit or a subsidy for buying health coverage on a public exchange;
2. Provided, caused to be provided, or are about to provide or cause to be provided to the employer, the federal government or the state attorney general, information regarding a violation of Title I of the ACA;
3. Testified or are about to testify in a proceeding concerning an ACA violation. Or if they assisted or participated, or are about to assist or participate, in such a proceeding.
4. Objected to, or refused to participate in, any activity, policy, practice or assigned task that the employee reasonably believes was in violation of any provision of the ACA.



within the 180-day statute of limitations with other federal agencies.

But the administrative law judge threw out the complaint, saying the employer could not be held liable for retaliation prior to the effective date of the employer mandate.

### The takeaway:

The case illustrates the most likely scenario under which an employee may gain ACA whistleblower protection after this year.

Other whistleblower complaints likely to surface in 2016 would concern complaints of adverse employment actions taken after an employer receives notice that one or more of its employees qualified for a tax credit or a subsidy for purchasing health benefits through a public exchange.

However, all employee complaints must be filed within 180 days of an adverse employment action. ❖



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