

# Workers' Comp & Safety News



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## Cut Costs by Managing Double Dipping

Workers' compensation pays injured workers only a portion of their pre-injury salary while they recuperate. And there's a good reason for that—if an injured worker receives as much for staying at home, why return to work?

In most states, workers' compensation benefits replace two-thirds of a totally disabled worker's pretax earnings, subject to a maximum. This gap gives employees incentive to return to full-time, productive work.

### Why Is Double-Dipping a Problem?

Keep in mind that employees receive workers' compensation benefits tax-free, and they also save on commuting and other work-related costs. When a worker receives other benefits due to their disability (called double dipping), their total benefits can approach or even exceed their pre-disability earnings. This gives them little incentive to return to full-time productive work.



## Risk Note

### OSHA's Top Ten for 2013

Every year, OSHA releases a list of its top ten most frequently cited violations of workplace safety and health codes. The list for 2013 follows:

- 1 Fall protection (C)
- 2 Hazard communication
- 3 Scaffolding (C)
- 4 Respiratory protection
- 5 Electrical: wiring
- 6 Powered industrial trucks
- 7 Ladders (C)
- 8 Lockout/tagout
- 9 Electrical: systems design
- 10 Machine guarding

C = Construction standard; applies to construction businesses

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## What Employers Should Look for

Employers will want to ensure that an injured or ill employee receives the benefits due him or her, without becoming overinsured. Fortunately for employers, most health and disability insurance programs, including Social Security disability, have coordination of benefits provisions. These provisions prevent overinsurance by reducing the benefits the policy will pay by amounts the claimant receives from other sources, including workers' compensation.

Possible sources of overinsurance include the following:

**Group long-term disability policies:** The typical disability policy provides a monthly benefit equaling 60 percent of the employee's pre-disability wages, subject to a maximum. When coupled with workers' compensation lost-time benefits, total monthly benefits could exceed a disabled worker's pre-disability earnings. If your organization offers group disability income benefits, make sure your plan includes a coordination of benefits provision. Most (but not all) individual disability policies also contain coordination of benefits provisions. Most also discourage malingering by requiring an insured to accept "any gainful employment" he/she is "reasonably suited to" by education and experience after a certain period, such as two years, or forfeiting benefits.

**Social Security disability insurance (SSDI):** Social Security pays disability benefits only for total and permanent disability. Totally disabled workers can receive benefits under both SSDI and workers' compensation, but Social Security will reduce the amount of any ben-

efits paid by amounts received from workers' compensation. The combined total of workers' compensation and SSDI benefits cannot exceed 80 percent of the worker's average current earnings.

**Unemployment benefits:** Each state has different criteria to determine eligibility for unemployment benefits. Some require an employee to be able and available to work to receive benefits, which would exclude anyone out on work-related disability. Others will pay unemployment benefits to workers receiving workers' compensation benefits under certain circumstances. If your state allows this, your organization should offer all injured workers transitional jobs that take into account their physical limitations. Workers who refuse these jobs will likely be deemed ineligible for unemployment benefits.

**Sick leave:** Take a look at the structure of your sick leave program. Many employers allow employees to use sick leave, vacation leave and personal leave to supplement their workers' compensation benefits. You'll want to ensure these plan documents contain wording that prohibit a worker who is claiming workers' compensation benefits from receiving more than his/her pre-disability pay.

**Short-term disability:** Ideally, your organization's short-term disability benefits should kick in after a worker exhausts any available paid sick leave to prevent overlapping benefits.

**Auto insurance:** Personal auto policies often contain personal injury protection (PIP). In most states this coverage is optional, but some

**OSHA publishes this list so employers can find and fix recognized hazards before OSHA shows up for an inspection. OSHA standards apply to any employer, defined as a "person engaged in a business affecting commerce who has employees," including religious groups to the extent that they employ workers for secular purposes. They do not apply to employees of federal or state governments. OSHA standards also do not apply to:**

- ✦ Self-employed persons;
- ✦ Farms at which only immediate members of the farm employer's family are employed; and
- ✦ Working conditions regulated by other federal agencies under other federal statutes.

**We can help you ensure your workplace meets applicable OSHA standards; please contact us for information.**

states require it. Also known as no-fault coverage, PIP pays for the insured's medical bills, loss of income and other costs related to an auto accident, regardless of who is at fault. Some states allow an insured to claim PIP benefits even if workers' compensation covers the claim. If you have workers in these states, you might be able to deduct PIP benefits from workers' compensation benefits. Your workers' compensation insurer's claims department will know the applicable laws.

## Other Sources of Income for Injured Workers

**Lawsuits:** Workers' compensation law does not allow workers to sue their employers for workplace injuries. However, they can sue a third party (someone besides the employer or a co-worker) who causes or contributes to their injury—for example, the manufacturer of a defective piece of equipment that causes injury.

Unlike the workers' compensation system, the tort system allows an injured person who prevails in a lawsuit to receive compensation for pain and suffering, property damage, loss of monetary support, loss of consortium, disfigurement and sometimes punitive damages, in addition to lost time.

When an employee collects tort damages or other settlements in addition to workers' compensation payments, the employer's insurer or the employer has the right to "subrogate," or claim a credit against any settlement or recovery received. Subrogation prevents an injured worker from collecting for the same injury twice; it also helps lower workers' compensation costs.

**Other employment:** We've all heard the stories of employees collecting workers' compensation disability benefits who get caught working under the table in physically demanding jobs. This sort of behavior goes beyond double dipping and constitutes fraud. If you suspect workers' compensation fraud, contact your insurer's fraud department.

We can help design benefits under workers' compensation and other benefits to encourage, rather than discourage, injured employees to return to work. Please contact us for more information. ■

## Preventing Back Injuries

The human spine can do many things. It can bend and twist in a variety of ways. It supports the entire trunk and protects the spinal column. And most people don't pay it much attention—until something goes wrong.

**I**n 2012, back problems topped the causes of occupational illnesses and injuries requiring days away from work. Sprains, strains, tears and soreness of the back accounted for more than one-fifth (20.5 percent) of all lost-time illnesses and injuries. And while national statistics don't exist, these injuries account for more than a quarter of workers' compensation costs in California.

Back injuries can also be costly. Recent data specifically for back injury costs were not available, but Centers for Disease Control data indicate that during 2005, lost work time due to sprains, strains and fractures of the torso cost nearly \$7.3 billion. The cost of medical treatments for these conditions for people ages 18 to 65 reached nearly \$2 billion that year. Since work can cause or contribute to many of these injuries, no doubt workers' compensation bears many of these costs.

### Types of Back Injuries

Muscle strains are the least serious but most common source of back pain, resulting from stretched or torn muscles. When a person does a sudden or unfamiliar movement, the muscles



are more likely to suffer damage than ligaments or tendons. Straining becomes even more likely if the muscle:

- ✱ lacks strength
- ✱ is tight and tense
- ✱ is fatigued from repetitive motion or from holding a position too long, such as sitting all day.

Tendons are tissues that connect muscle to bone. Twisting or pulling these tissues can also cause a strain. Strains can happen suddenly or develop over time.

Sprains are typically more serious than strains. They occur when ligaments, the tissues that connect bones at a joint, become stretched or torn. Falling, twisting or getting hit can all cause a sprain. Symptoms include pain, swelling, bruising, and being unable to move the joint. Sprains typically happen suddenly; the injured person might feel a pop or tear when the strain occurs.

At first, treatment of both sprains and strains usually involves resting the injured area, icing it, wearing a bandage or device that compresses the area, and medicines. Later treatment might include exercise and physical therapy.

Disk injuries are among the most serious and painful of back injuries. The disks that serve as cushions between the vertebrae can slip or even rupture, irritating nearby nerves. Treatments include rest, pain and anti-inflammatory medicines, physical therapy, and sometimes surgery.

### Preventing Back Injuries

Back injuries are painful, disruptive to work and life and can lead to costly surgery. Employers should try to avoid back injuries whenever possible. Strategies include:

**1** Examine ergonomic factors. If back injuries occur frequently at your workplace, maybe it's time look at ergonomics, or the science of fitting a job to a person, rather than the other way around. Ergonomics helps lessen muscle fatigue, increases productivity and reduces the number and severity of work-related musculoskeletal disorders. It involves looking at the entire job environment, par-

ticularly the interaction of human body and equipment used to perform a job's essential tasks. Sometimes simple ergonomic improvements, such as adjusting a workstation's height, can yield dramatic results. At other times, avoiding injuries will require a dramatic redesign of a workspace, equipment or task. An ergonomist or industrial hygienist can help you look at problem areas in your workplace.

- 2** Reconsider back braces. If your workers rely on back braces when lifting, you might want to consult with a physician who specializes in occupational injuries, or a physical therapist. Some studies have found that back braces do not prevent injury and may in fact contribute to injuries, by giving workers wearing them a false sense of security.
- 3** Conduct training. You've no doubt heard it before, but there are proper and improper ways to lift. Monitor your employees whose jobs require lifting and provide regular refresher trainings.
- 4** Promote fitness. Strengthening the muscles of the abdomen, back and thighs can help prevent back injuries by providing better support to the spine. Overweight and sedentary people have a higher risk of back injury than their fitter counterparts. Fitter employees will not only cost you less in group medical expenses, they could also cost you less in workers' compensation payments.

We can help you evaluate your injury claims and suggest ways to minimize future claims. For more information, please contact us. ■

## Don't Touch that Dial! The Dangers of Distracted Driving

Each day in the United States, more than 9 people are killed and more than 1,060 people are injured in crashes that are reported to involve a distracted driver, reports the U.S. Centers for Disease Control. The biggest culprit? Cell phones.

**D**istracted driving is driving while doing another activity that takes your attention away from driving. Distracted driving can increase the chance of a motor vehicle crash.

There are three main types of distraction:

- ✱ **Visual:** taking your eyes off the road;
- ✱ **Manual:** taking your hands off the wheel; and
- ✱ **Cognitive:** taking your mind off driving.

Talking on a cell phone and texting are the two biggest distracted-driving culprits. Distracted driving can also stem from other activities, such as eating, talking with passengers, and using in-vehicle technologies, such as GPS. There are other, less obvious forms of distractions,

including daydreaming or dealing with strong emotions. While any of these distractions can endanger the driver and others, texting while driving is especially dangerous because it combines all three types of distraction.

Although death and injury statistics show a significant risk, they may not state the true size of the problem, since the identification of distraction and its role in a crash can be very difficult to determine using only police-reported data.

### What Employers Can Do

Distracted driving is an obvious safety risk for any employee who drives while on the clock. Some of the steps employers can take to reduce the risk of distracted driving include:

- 1 Visit the website of the Network of Employers for Traffic Safety (NETS) at [www.trafficsafety.org](http://www.trafficsafety.org) for suggestions on how you can raise employee awareness of the problem of distracted driving.
- 2 Restrict or ban the use of technology, particularly texting, while driving for work. The U.S. government website, <http://www.distraction.gov/content/get-involved/employers.html> has a sample policy employers can copy and adapt to their own use.
- 3 Know your state laws. See <http://www.distraction.gov/content/get-the-facts/state-laws.html> for a list of states that ban hand-held devices and/or texting while driving. Make sure your employees know the laws—and penalties—as well.
- 4 Create a safety culture. Make it clear to em-

ployees that you expect they will NOT talk or text on their cell phones while driving on company time or in company vehicles. Ensure that there are no negative consequences for employees who wait for a safe opportunity to take or return a call or text.

- 5 Have employees sign a contract that says they will not violate the organization's ban on texting and driving. Include a provision to advise employees that if a crash occurs, the employer has the right to subpoena the employee's phone records, and if he/she was using a cell phone when the crash occurred, the crash will be considered preventable and the driver will assume all financial responsi-

bility.

- 6 Conduct informal observational surveys of cell phone use at the entrances and exits of your company. Publicize the results to reinforce your distracted driving policy. Provide small incentives such as coupons, music download cards, special privileges like a free day of parking, etc. to employees observed driving distraction-free.
- 7 Give us a call to discuss other ways to improve safety for your employees who drive for work. ■



## Test Your Workers' Compensation Knowledge

**H**ow much do you know about workers' compensation? The following questions will test your knowledge, and maybe give you a few facts you hadn't known before.

1. Workers' compensation is a no-fault system. True or false?

True. Workers' compensation is a no-fault system. In the workers' compensation bargain, injured workers give up their right to sue their employer for work-related injuries in exchange for guaranteed medical and lost-time benefits.

2. ERISA, a federal law, governs workers' compensation benefits. True or false?

False. Workers' compensation is governed by state statutes. Every state has a workers' compensation division that administers workers' compensation law within its borders. On the positive side, state-level governance allows states to tailor workers' compensation laws and benefits to their own needs—rules, pro-

grams and benefits that might work for a largely urban state like Delaware, for example, might not fit the needs of a more rural, agricultural state like Nebraska. On the other hand, state-based regulation can make administering workers' compensation programs more challenging for employers with multistate operations.

3. To control workers' compensation medical costs, we should consider a workers' compensation policy that requires employee cost-sharing (copayments and deductibles), just like in our medical plan. True or false?

False. Workers' compensation must provide first-dollar coverage of work-related illnesses and injuries, so you cannot require employees to pay a copayment or deductible. This can create challenges for employers, since employees (and their physicians) have little incentive to control medical treatment costs.

4. In 2012, private industry employers had a total of how many injuries involv-

ing days away from work? A. 2.2 million B. 98,000 C. 5.7 million D. 905,690

The correct answer is D, 905,690, for an incidence rate of 102 cases per 10,000 full-time workers.

5. In 2011, how much did U.S. employers pay in total workers' compensation benefits (medical care and wage replacement)? A. \$60.2 billion B. \$327 billion C. \$1.2 trillion D. \$6.2 billion

The correct answer is A, \$60.2 billion. The National Association of Social Insurance, a nonprofit research organization, reports that medical care spending reached \$29.9 billion and wage replacement benefits cost \$30.3 billion in 2011, for a total of \$60.2 billion. Total costs to employers rose by 7.1 percent to \$77.1 billion.

To learn more about what goes into workers' compensation costs and how you can control them, please contact us.



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