

Workers' Comp & Safety News

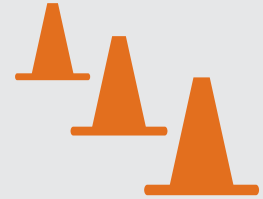


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Claims Management

June/July 2015

Volume 13 • Number 3

PTSD and Workers' Compensation

According to the National Center for Post Traumatic Stress Disorder (NCPTSD), some 7.8 percent of Americans will experience post traumatic stress disorder (PTSD) at some point in their lives. How does PTSD impact an employer's workers' compensation program?

P PTSD is a psychological syndrome that can affect a person of any age. A person can develop PTSD after living through or seeing a traumatic event, such as war, a hurricane, sexual assault, physical abuse or a bad accident. PTSD makes you feel stressed and afraid after the danger is over. It affects your life and the people around you.

PTSD can cause problems such as:

- ✱ Flashbacks, or feeling like the event is happening again
- ✱ Trouble sleeping or nightmares
- ✱ Feeling alone
- ✱ Angry outbursts
- ✱ Feeling worried, guilty or sad.



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Risk Note

June 27 is National Post-Traumatic Stress Disorder Awareness Day. Congress has recognized that post-traumatic stress disorder, or PTSD, is an important and growing problem.

According to the National Center for Post Traumatic Stress Disorder (NCPTSD), some 7.8 percent of Americans will experience PTSD at some point in their lives. You can get PTSD after living through or seeing a traumatic event, such as war, a hurricane, sexual assault, physical abuse or a bad accident.

Although natural disasters can trigger PTSD, being exposed to mass violence is more likely to lead to PTSD. The Anxiety and Depression Association of America reports that 67 percent of people exposed to mass violence have been shown to develop PTSD, a

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PTSD starts at different times for different people. Signs of PTSD may start soon after a frightening event and then continue. Other people develop new or more severe signs months or even years later. PTSD can happen to anyone, even children.

How Can PTSD Affect Your Workers' Compensation?

An employee with PTSD is more likely to suffer mental stress from a workplace incident than other employees. However, PTSD differs from other "co-morbid" conditions, such as obesity, a prior injury or seizures, which make a person more prone to accident or health problems. Unlike those other conditions, PTSD is not easily visible and often undiagnosed.

Employers take their employees as they are, past experiences and all. That doesn't mean that you have to pay for their past injuries. But if your worker has an injury that stems from work, your workers' compensation would cover it, even if he had a condition that made him more prone to injury. For example, let's say an overweight warehouse worker developed knee problems from too much bending. If he could prove the job caused his injury, your workers' compensation would have to cover the injury—even if his obesity made him more prone to joint problems. Or if a pregnant woman developed carpal tunnel syndrome, her injury might be covered, even if pregnancy increases the risk of developing carpal tunnel syndrome.

Sometimes physical trauma, such as an assault or injury, can trigger episodes of

PTSD. Sometimes they happen due to mental stimulus, such as harassment or other stressful events with no physical injury.

In some states, workers' compensation only covers mental stress claims, including PTSD, if the stress results from a physical injury. Other states will compensate so-called "mental-mental" claims. According to Thomas A. Robinson, JD, states that do not compensate for mental-mental claims, including PTSD, include Alabama, Arkansas, Connecticut, Florida, Georgia, Idaho, Kentucky, Minnesota, Montana, Nevada, New Hampshire, Ohio, Oklahoma and Wyoming. Other states might compensate these claims, but might put conditions on them. For example, some pay mental-mental claims only if they arise from an unusual or sudden mental stimulus.

(Source: "The Post-Traumatic Stress Disorder Dilemma for Workers' Compensation Claims," LexisNexis Legal Newsroom Workers Compensation Law, June 20, 2014.)

Workplace Trauma

If a traumatic or violent event happens at work, employees who suffer immediate emotional stress may have claims that would be denied under normal work conditions. Some state regulations explicitly address violence, and in other states, court rulings have established precedents for dealing with claims that stem from violent acts.

Handling a Stress Claim

If an employee files a stress or mental injury workers' compensation claim, follow your usual procedures to gather initial infor-

higher rate than those exposed to natural disasters or other types of traumatic events. The NCPTSD estimates one in three veterans who've served in war zones suffers from PTSD.

We get our employees as they are. As more veterans return to the civilian world, employers are more likely to see the effects of PTSD. Under certain instances, PTSD could be covered by your workers' compensation policy. Please see the article in this issue for more information.

mation. With a stress claim, the employee's overall mental health and his or her personal life may become relevant. This is a sensitive area that your workers' compensation insurer should handle.

Whether an employee's stress is caused by workplace problems or personal ones, his or her performance at work may suffer. Stressed-out office employees lose effectiveness, and workers become more prone to injuries when they feel tired or stressed, leading to more bodily injury claims, lost time and higher comp rates.

One EAP provider, ESI, reports that 20 percent of employees have a major personal problem that results in an average of three weeks of lost productivity every year. An employee assistance program (EAP) can help workers deal with emotional and psychological problems that affect work performance and increase the chances of accidents and injuries. For more information on EAPs and handling stress claims, please contact us. ■

Intern-al Affairs

With the jobless rate for people ages 20 to 24 still higher than 10 percent, many college students might be willing to trade their time for an unpaid learning experience. But there is a legal difference between an employee and an intern. Knowing the difference can help you avoid breaking the law.

Does workers' compensation apply to interns? That depends.

Some states specifically exclude interns from coverage under their workers' compensation statutes. In states that are silent on the issue, workers' compensation boards and courts will often decide an intern's status based on his/her contributions to the organization. Whether you call workers employees or interns, their duties and what they gain from the position are what matters. If your intern qualifies as an employee, workers' compensation might apply.

Employee = Paid. Intern = Unpaid (maybe)

So what separates an intern from an employee? A legitimate internship is primarily a learning experience for the intern, not an opportunity for employers to gain cheap or temporary labor. The U.S. Department of Labor lists the circumstances under which an intern can work at a for-profit organization's internship or training program for no pay:

1 The internship, even though it includes



- 2** The internship experience is for the benefit of the intern;
- 3** The intern does not displace regular em-

ployees, but works under close supervision of existing staff;

- 4** The employer that provides the training derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded;

- 5 The intern is not necessarily entitled to a job at the conclusion of the internship, and
- 6 The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If the internship meets all of the criteria above, an employment relationship does not exist under the Fair Labor Standards Act (FLSA). Unpaid internships in the public sector and for non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible. Some employers (or schools) pay interns a stipend for living expenses or lodging during their internship. As long as the internship is a training position or otherwise meets the Department of Labor's standards of a bona fide internship, a stipend will not count as wages and does not create an employment relationship.

If your intern is paid minimum wage or more, or if the job is primarily for the benefit of the employer, then beware...your intern could meet the legal definition of employee. The FLSA requires all employees to receive the benefits of employment, including at least minimum wage and other job protections, such as workers' compensation.

State workers' compensation laws generally require employers to provide workers' compensation coverage to any employee. However, if your organization is a nonprofit or governmental department, you might have interns that qualify as volunteers. Workers'

compensation policies automatically cover employees; they might not cover volunteers. Buying volunteer accident coverage would cover a volunteer's medical expenses if he or she was injured on the job.

Since interns are often young and relatively inexperienced, they have a higher potential for injury. To avoid problems, make sure the education they receive includes basic safety training.

What Other Laws Apply to Interns?

Federal job discrimination laws that apply to employees and job applicants would not apply to individuals whose positions meet the Department of Labor's criteria for unpaid internships. These people are not considered employees, so federal employment laws would not apply. However, employers should know that some states, including Oregon and New York, have laws that specifically protect interns from job-related harassment and discrimination.

If your paid interns qualify as regular employees, federal and state non-discrimination laws in hiring and supervision will apply. As a matter of good business sense, though, employers should avoid discriminatory actions against unpaid interns as well as employees.

Any employment relationship can create risk exposures. If you have any "nontraditional" employees, such as interns, volunteers or leased employees, make sure you have the appropriate insurance coverage. For more information, please contact us. ■

Employers' Liability

Workers' comp policies usually include a special section for employers' liability. What additional coverages does it provide and why do you need them?

Your workers' compensation policy covers the costs associated with an employee's work-related injury or occupational disease. It pays for the worker's medical costs, rehabilitation costs, lost wages and any settlement for permanent disability.

The fundamental premise of workers' comp is that employers agree to take responsibility for work-related injuries whether or not the injury was the employer's fault. In return, the employee gives up his or her right to sue for damages. Workers' comp is designed to be "no-fault" and the "exclusive remedy" for work-related illness and injury. Nonetheless, over the years employees have sued for damages, some of which fall outside of workers' comp coverage.

The employers' liability section of the workers' comp policy adds coverage for these types of claims. Without this coverage, employers would have a significant coverage gap, because commercial general liability policies specifically exclude coverage for work-related injury and disease.

Employers' liability is a common law or tort liability, and insurance companies handle those types of claims in the same way they adjust general liability claims, including managing and paying for defense.

Since states do not require employers' liability insurance, you do not have it unless your workers' compensation policy explicitly states it includes this coverage in a separate section. Unlike workers' comp, employers' liability has a defined limit of liability, starting at \$100,000 per injury.

When Coverage Applies

Insurance authority IRMI cites several examples of when employers' liability coverage applies:

Wrongful death: The family of a deceased worker may file a common-law claim seeking damages in addition to the death benefit paid by workers' comp.

Consequential bodily injury: A family member may file a lawsuit for his or her own injury (for instance, a heart attack) that was caused by learning about or dealing with the injured employee.

Loss of consortium: The spouse of an injured worker may sue for loss of consortium, which means the spouse has lost the services — such as sexual relations or the ability to do household chores — of his or her spouse. Damages can be awarded even if the spouse is receiving disability payments.

Third-party liability: If an employee is injured while using equipment that malfunctioned, he or she may sue the manufacturer of the equipment for negligence. The manu-

facturer may in turn sue the employee's company to recover damages. Depending on the specifics of the claim, either the employers' liability or a general liability policy can provide coverage.

Employees excluded from workers' comp:

In some states, seasonal and temporary workers can be excluded from workers' comp. In other states some small employers do not have to buy comp. In those situations, an employers' liability policy can provide protection from employee lawsuits for bodily injury and illness.

Monopolistic States

In states that have monopolistic state workers' comp funds (North Dakota, Ohio, Washington and Wyoming), employers need to purchase a separate employers' liability policy. Organizations headquartered in other states but that have offices in these states need to buy an endorsement to their employers' liability policy to avoid having a coverage gap for employees in those states.

Not Employment Practices Liability

Employers' liability should not be con-

fused with employment practices liability (EPL) insurance, which protects companies from employee claims that their legal rights have been violated. EPL protects an organization when employees file claims for wrongful



termination, sexual harassment and discrimination. It does not cover bodily injury.

Some employers that have not bought EPL insurance attempt to use their employers' liability to provide coverage for EPL claims. According to IRMI, they have not been successful in most cases. Even when states define workers' comp "injury" to include mental injury, the broader workers' compensation definition does not necessarily transfer to the employers' liability portion of the policy.

If you have any questions about your employers' liability coverage — and how it complements your workers' comp coverage — please give us a call. ■

Safety Quiz for Office Workers

Although office workers face few life-threatening injuries, they can suffer from work-related repetitive strain disorders and other ergonomic injuries. The following quiz can help you spot ergonomic problems before they lead to injury.

- 1 I have to look up to see my computer screen when seated.
- 2 I can read text on my screen without leaning my head, neck or trunk backward or forward.
- 3 I see glare on my computer screen.
- 4 My mouse or trackball fits my hand well and is easy to operate.
- 5 I need to stretch my arms to reach my keyboard and/or input device (mouse or trackball).
- 6 My elbows are bent, forearms parallel to the floor, when I type or use the mouse.
- 7 My wrists rest on a rounded, padded wrist rest OR I can type comfortably, keeping my wrists straight, without a wrist rest.

- 8 Any documents I need to look at while typing are resting flat on my desk.
- 9 I use a headset when I need to use the telephone and computer at the same time.
- 10 I can sit close to the keyboard, with feet flat on the floor, while working at my computer.

If your employees answered “yes” or “not applicable” to Questions 2, 4, 6, 7, 9 and 10, and “no or “not applicable” to Questions 1, 3, 5 and 8, congratulations! You have a very ergonomics-friendly workplace and your office workers will likely experience few problems with work-related musculoskeletal disorders or eye-strain. Any “no” answers on Questions 2, 4, 5, 7, 9 or 10 indicate problems. Most can be corrected easily—please contact us for more information. ■

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