

# Workers' Comp & Safety News



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## OSHA Update

Rules and regulations promulgated by OSHA, the Occupational Safety & Health Administration, affect employers all over the country. Here are a few new developments you should be aware of.

### Electronic Submission of Injury and Illness Data

Starting in 2017, certain employers must electronically submit injury and illness data that they already record on their OSHA Injury and Illness forms. The new reporting requirements will be phased in over two years:

**Establishments with 250 or more employees in industries covered by the recordkeeping regulation** must submit information from their 2016 Form 300A by July 1, 2017. These employers



## This Just In

**M**edical experts don't often agree when assessing a claimant for disability benefits, according to a study published recently in the *British Medical Journal*. In the study, a group of European and Canadian researchers reviewed 23 studies to determine how often medical experts agreed on evaluations of a claimant's disability. In 63 percent, medical experts "reached only low to moderate agreement in their judgement of the same claimant for disability benefits." A high level of variability indicates disagreement on the degree of a claimant's disability.

The study examined 23 studies conducted between 1992-2016 from 12 countries. Studies

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will be required to submit information from all 2017 forms (300A, 300, and 301) by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2.

**Establishments with 20-249 employees in certain high-risk industries** must submit information from their 2016 Form 300A by July 1, 2017, and their 2017 Form 300A by July 1, 2018. Beginning in 2019 and every year thereafter, the information must be submitted by March 2. To find out whether your industry is high risk, go to <http://bit.ly/2kHMS5i>.

OSHA will provide a secure website that offers three options for data submission. First, users will be able to manually enter data into a webform. Second, users will be able to upload a CSV file to process single or multiple establishments at the same time. Last, users of automated recordkeeping systems will have the ability to transmit data electronically via an API (application programming interface). The site is scheduled to go live in February 2017.

Analysis of this data will enable OSHA to use its enforcement and compliance assistance resources more efficiently. Some of the data will also be posted to the OSHA website. OSHA believes that public disclosure will encourage employers to improve workplace safety and provide valuable information to workers, job seekers, customers, researchers and the general public.

### Recordkeeping an “Ongoing Obligation”

OSHA is amending its recordkeeping regulations to clarify that employers have an ongoing obligation to keep records of a recordable injury or illness; the duty does not expire just because the employer failed to create the necessary records when first required to do so.

OSHA adopted the amendments in response to a decision of the United States Court of Appeals for the District of Columbia Circuit in a 2012 court case, *AKM L.L.C. v. Secretary of Labor (Volks)*. The Court of Appeals rejected OSHA's attempt to fine Volks Constructors for failing to properly record certain workplace injuries and maintain its injury log more than six months after the last unrecorded injury occurred. OSHA agreed that its recordkeeping regulations were not clear but disagreed on the ruling. This final rule is designed to clarify the regulations in advance of possible future federal court litigation that could further develop the law on the statutory issues addressed in the D.C. Circuit's decision.

### Fines to Increase

The Inflation Adjustment Act and its amendments require federal agencies to make annual adjustments to fines and penalties for inflation. For the 2017 annual adjustment, OSHA multiplied the most recent penalty amount for each applicable penalty

reviewed included those carried out in an insurance setting, with medical experts assessing claimants for work disability benefits, and in a research setting, where evaluation of patients took place outside of actual assessments, for example, for rehabilitation.

Where medical experts had a higher degree of agreement, they were more likely to use a standardized approach to guide their evaluation of a disability.

The takeaway? Since judgments can vary, having standards by which to evaluate disability can ensure consistency in claims handling, which can help you avoid disputes and better predict your costs.



by the multiplier, 1.01636, and rounded to the nearest dollar. For penalties assessed after January 13, 2017, whose associated violations occurred after November 2, 2015, the higher penalty amounts outlined in this rule will apply. The table below shows the penalty amounts that apply: ■

# 15-Point Checklist for Your Account Service Instructions

It's not you, it's me. The instructions you give your insurance carrier and broker can determine how effectively they handle your claims.

by Michael B. Stack

Often one of the first reactions when workers' compensation costs spike is to look at changing the insurance carrier. Sometimes this is appropriate, but before you pull the trigger, consider the following: The insurer may not be meeting expectations because neither the client nor the broker clearly communicated expectations.

The answer can often lie in improved Account Servicing Instructions (ASI). Every insurer and third-party administrator distributes its standard account servicing instructions to its field offices and adjusters. The ASI governs settlement authority, selection of attorneys, reporting, reserves, subrogation, investigation and virtually all aspects of claim handling.

## 15-Point Checklist for Your Account Service Instructions

### 1 Settlement Authority

- ✦ Who has settlement authority? The company or the insurer?

### 2 Selection of Counsel

- ✦ Do you select your own legal counsel?
- ✦ What type of legal counsel does your company utilize?

### 3 Reporting

- ✦ How often do you receive status reports for open claims from your insurer? Over 30, 60 or 90 days?

### 4 Reserves

- ✦ Does the insurer provide a written explanation each time reserves are raised over \$10,000 or more?
- ✦ Do reserves set take into consideration the company's aggressive return-to-work program probably resulting in lower wage loss?

### 5 Dedicated Adjuster

- ✦ How many adjusters are dedicated to processing company files in each office?

### 6 Payment/Review of Legal Bills

- ✦ Do you receive bills for legal service?

### 7 Investigations

- ✦ How do you request investigations?

### 8 Structured Settlements

- ✦ Do you consider structured settlements for all cases over \$20,000?

### 9 Subrogation

- ✦ Are all cases reviewed for subrogation potential?
- ✦ Who closes a file and waives subrogation recovery?

Adjuster



Review



Referral



Counsel



Reporting



- ✦ Do you want to be consulted before a lien is waived or compromised?

### 10 Workers' Compensation

- ✦ Do you receive copies of payments being made on each open file?
- ✦ Do you review checks or a list all payments made for accuracy?

**11 Referral to Physician Consultant**

- ☀ How are outside vendor services activated and coordinated?
- ☀ Are all medical records sent to the physician consultant before an independent medical examination is conducted?

**12 Medical Bill Review**

- ☀ Who audits medical bills for your open claims?
- ☀ How and when are medical bills audited?
- ☀ Who will audit the hospital bills? What level of hospital bills are audited?
- ☀ Do you decide if medical case management is warranted?
- ☀ Is there immediate and automatic referral of complex lost-time cases to medical case management

**13 Utilization Review**

- ☀ How do you decide which bills and services will be reviewed?
- ☀ Who have you retained to provide this service?

**14 Referral to Vocational Rehabilitation**

- ☀ Who decides if vocational rehabilitation is warranted?
- ☀ Do you automatically refer complex lost-time cases to vocational rehabilitation?
- ☀ Will reports be sent to your company?

**15 Alternative Dispute Resolution/Mediation**

- ☀ Is alternative dispute resolution considered on all claims for all lines? ■

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# Beyond Fitbits: How Wearable Tech Can Increase Safety

Dictionary.com defines wearable computers as “miniature electronic devices that are worn by the bearer under, with or on top of clothing.” You might be thinking of futuristic devices such as Google Glass, but many safety “wearables” are much simpler and more common. Here’s a peek at a few technologies that are improving safety.

## Sensors

For years, x-ray technicians and other professionals who work with x-rays and other harmful radiation have worn radiation meters, or dosimeters, which detect the levels of radiation they are exposed to. Sensor devices can detect other harmful exposures as well, and most will warn the wearer if exposure levels approach a danger point. Sensor devices with occupational safety uses include:

- ☀ Sound level meters. Useful for workers in the entertainment industry, construction, manufacturing and more. Detects sound levels that could damage human hearing.
- ☀ Pressure sensors. Pressure sensors can detect when a load will exceed a shelf’s capacity and warn a forklift operator before collapse occurs.
- ☀ Temperature monitors. As you’d guess, a temperature monitor detects

ambient temperature and warns a worker (such as someone working in a refrigerated warehouse or cold room) when exposure to cold reaches a certain predetermined level.

- ☀ Fitbits. Yes, the ubiquitous Fitbit that people wear to track their steps also has health and safety applications. Certain models of Fitbits and other fitness trackers will prompt the wearer when it’s time to move, in addition to tracking movements. Remaining sedentary for too long can affect attention, as well as health.
- ☀ Sleep detectors. Various devices can sense when a wearer is becoming sleepy or falling asleep and sound a warning. Some devices fit over the ear or attach to a hat and detect when a driver’s head is drooping, likely indicating he or she is nodding off. However, by the time that happens, the car might already be veering into another lane.

Newer technologies focus on a driver's eyes and will sound an alarm when they close; however, wearing glasses, sunglasses and glare can interfere with the sensors. Other anti-sleep technologies use sensors to measure electrodermal activity (electrical impulses through the skin) and alarm when activity indicates a drop in alertness.

One of the simplest and cheapest—though not necessarily most effective—devices is to use a “blue light” smartphone app. When a user keeps the phone in view, the blue light on the screen acts as a stimulant and, theoretically at least, prevents the driver from falling asleep.

**Respirators:** Respirators protect workers against insufficient oxygen environments, harmful dusts, fogs, smokes, mists, gases, vapors, and sprays. These hazards may cause cancer, lung impairment, diseases, or death. Two types of respirators exist: ones that provide clean, breathable air for low-oxygen or extremely hazardous atmospheres, and ones that filter ambient air for particles, vapors and other harmful substances. You must choose the right type of respirator for the situation, and it must also fit the wearer properly. For tips on respirator fit, please contact us.

**GPS Tracking Devices:** GPS devices have many occupational uses. In addition to helping drivers find their way, they can protect workers from hazards. Employers whose employees have hazardous material exposures can link GPS devices to databases of known hazard locations; devices can warn employees when they get too close.

**Clothing/Environmental Control:** Clothing has gone high-tech too. From battery-

health and fitness levels decline. Devices that screen for gait and mobility impairment can produce a falls risk score and identify those at risk.

**Google Glass:** Finally, Google Glass... Google Glass and similar technologies use an embedded computer to project images on eyeglass lenses. Although Google Glass is not yet available to the general public, it has the potential to provide hands-free access to information that people such as first responders need in the field.

When it comes to safety, though, sometimes the simplest solutions make the most difference...see the next bullet point!

**Lights:** Having inadequate lighting contributes to many accidents. Whether a worker needs more light to see to safely complete a task or whether others need more light to see a worker who's on the road, there's a wearable that



operated socks to shirts and hats with cooling devices, wearable devices can protect workers from excessive heat or cold.

**Fall Detectors:** You've heard the ads: “I've fallen and I can't get up!” Fall detectors have been marketed to seniors for years, but they also have workplace applications. Falls occur more frequently in older adults when their

will help. Headlamps and clip-on lights for helmets can help on both counts; reflective vests and other gear help increase visibility.

If your workplace has safety challenges, please contact us for a review and solutions.



# Daylight Savings Safety

**T**his year, Daylight Savings Time (DST) begins on Sunday, March 12. Most states switch to DST at 2 a.m., although some do not change their clocks.

Although losing an hour of sleep might not seem significant, many studies have reported increased accidents on the Monday after DST begins. The classic study by Stanley Coren, a researcher at the University of British Columbia, published in 1996, found that traffic accidents increased to a statistically significant degree one week after the shift to Daylight Savings Time. People lose an hour of sleep then, affecting their attention. Conversely, accidents decreased the week after the switch to Standard Time, when they (theoretically) gain an hour of sleep. According to Coren, "The loss of merely one hour of sleep can increase the risk of traffic accidents. It is likely that the effects are due to sleep loss rather than a nonspecific disruption in circadian rhythm, since gaining an additional hour of sleep at the fall time shift seems to decrease the risk of accidents."

"One hour of lost sleep may not seem like a lot. But our findings suggest it could have an impact on people's ability to stay alert on the job and prevent serious injuries," said Christopher Barnes, PhD, co-author of a study published in the *Journal of Applied Psychology* (September 2009). The study examined mining accidents over a period of 24 years and found an average of 3.6 more injuries on the Mondays following the switch to daylight saving time compared to other days. This resulted in an additional 2,649 lost work days.

Other studies have found a "significant increase" in fatal traffic ac-



cidents on the Monday immediately following the spring shift to DST. Drowsiness due to lost sleep undoubtedly contributes. The National Highway Traffic Safety Administration reports drowsy driving was a factor in 2.2 to 2.6 percent of fatal crashes annually between 2005 and 2009.

When scheduling drivers and hazardous tasks for the Monday following DST, employers will want to take drowsiness into account. For other suggestions on reducing fatigue-related accidents, please contact us. ■



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