

Workers' Comp & Safety News



The Art
of Hospitality

Hospitality Insurance Specialist:

- Custom Tailored Insurance Programs
- Loss Control and Risk Management
- Safety Compliance and Training

13950 Cerritos Corporate Drive, Suite A • Cerritos, CA 90703
800-466-8951 • 800-494-6829 fax
www.petrarisksolutions.com • Lic# 0817715



Rehabilitation

February/March 2018

Volume 16 • Number 1

Three Important Rehab Trends to Watch

New techniques and technologies are providing alternatives for rehabilitation.



1. Pain Therapy Alternatives

The problem of opioid addiction has prompted the workers' comp industry to focus on alternative pain therapies, including physical therapy, chiropractic, exercise, yoga and even "mindfulness" therapies, such as meditation and cognitive

behavioral therapy. Since these therapies are typically outside mainstream medicine, they don't fit the preconceptions of most patients, who expect the immediate relief they would get from a drug. It's easier to persuade new claimants and younger people to accept these approaches.

But there are other challenges. An injured worker may have an attorney supporting his or her resistance to follow a less traditional path to recovery. And too often medical providers themselves don't buy into alternatives either.

Taking an advocacy approach can help em-

This Just In...

The National Council on Compensation Insurance Inc. reports that the combined ratio for workers' compensation insurance, which was 94% in 2016, will likely be the same or possibly lower for 2017. The workers' comp market has posted combined ratios of less than 100% only three other times since 1990, according to NCCI.

The combined ratio is the sum of insurance company losses plus underwriting expenses divided by earned premiums:

$$\text{Combined Ratio} = \frac{\text{Losses} + \text{Underwriting Expenses}}{\text{Earned Premiums}}$$

Improvements in safety due to workplace automation and jobsite training contributed to the drop in combined ratio. NCCI also cited state reforms and resulting cost decreases

continued on next page

continued on next page

ployers overcome employee resistance to alternative therapies. This means the injured employee, the employer and the physician need to understand the long-term harmful consequences of automatically turning to opioids for pain relief, according to Beth Wood, a Kansas City senior claims costs control consultant.

“You have to develop trust and have conversations,” Ms. Wood told *Business Insurance* magazine. “When it comes to alternative therapies and motivating the worker, the relationship between the employee and the employer is paramount. [You need to build] rapport with the employee, and when you have that going on, the employee is motivated for recovery and discussing alternative treatments.”

2. Your Words Matter

The physician’s choice of words for dealing with patients and their medical condition — sometimes referred to as bedside manner — can shape a patient’s perceptions of pain. Attendees at a workers’ comp conference in California were advised not to say “getting you back to work,” but rather “getting your life back to normal.” Instead of referring to “your injury,” the audience was told to call it “your recovery process.” It’s not “How’s your pain?” but “How’s your progress?”

Putting a positive spin on medical matters can really make a difference, according to Dr. Jennifer Christian, president and chief medical officer at Wayland, Massachusetts-based Webility Corp. “[There are] people who have relatively moderate conditions who end up

creeping toward catastrophe. A lot of it has to do with words,” Dr. Christian told *Business Insurance*.

For example, an MRI may reveal an issue that is mild and really doesn’t warrant surgery. However, when the doctor delivers the results, it’s often presented as the “bad news” and soon the remedy becomes way out of proportion to the problem.

“[Their] perception of pain is not accurate,” Michael Rosenthal, an assistant professor in the Doctor of Physical Therapy Program with San Diego State University, told *Business Insurance*. “When patients start having pain outside of the proportion that we expect, [they] may need a little more than reassurance and simple education ... others may need more advanced psychological informed rehabilitation.”

“What we say [and] how we say it ... words can reassure or frighten. [Words] can build trust or confidence. ... They can empower or undermine. Your words are either going to establish yourself as someone helpful, or create distance,” according to Dr. Christian.

3. Tele-Rehab

You’ve heard of telemedicine. Now there’s tele-rehab. Instead of visiting a rehabilitation facility, the patient goes online to view exercise demos, get instruction sheets, provide feedback and obtain direct consultation with specialists.

Convenience is a big factor. People can access their therapy session with a desktop or mobile device from anywhere, usually at any

es, such as recent California legislation that addressed workers’ comp fraud and pharmacy fraud.

This means workers’ comp rates should be flat or slightly lower in 2018. At the same time, the economy is doing well and payrolls are often higher, so net premiums may be higher than last year for many employers. Also, even though overall rates may be lower, premiums for certain employers may be higher because of poor experience, as reflected in the firm’s experience modification factor.

For a fresh perspective on your workers’ comp situation in this market, please give us a call.

time of day. Live videoconferencing is also a possibility.

A recent white paper by MedRisk touts the benefits of the concept for offering “greater patient compliance, smoother care coordination among clinicians, a more flexible rehabilitation timeline, and cost and time savings for key stakeholders.” <https://tinyurl.com/yc6dj6fx>

Again, like the other alternate therapy approaches discussed in this article, adoption has been spotty because it’s new. However, Michelle Despres, vice president and national product leader at workers’ compensation firm One Call, thinks leveraging technology like this is inevitable.

“This will be a no brainer for the younger group, but I do think we can’t discount the older population either. Anyone who embraces technology and possibly leads a busy life [will appreciate tele-rehab],” Despres told *Insurance Journal*. ■

Workers' Compensation and the Teleworker

As telecommuting increases your obligation to compensate employees for work-related injuries does not decrease.

An increasing number of employees are teleworkers these days.

- ✦ 50 percent of the US workforce holds a job that is compatible with at least partial telework and approximately 20-25 percent of the workforce teleworks at some frequency
- ✦ 80 percent to 90 percent of the US workforce says they would like to telework at least part time. Two to three days a week seems to be the sweet spot that allows for a balance of concentrative work (at home) and collaborative work (at the office). <http://globalworkplaceanalytics.com/telecommuting-statistics>.

The research organization also says that companies around the globe are revamping their operations based on the fact that employees are now mobile. Studies repeatedly show they are not at their desk 50-60 percent of the time.

In another survey, an overwhelming majority (86 percent) of teleworkers reported being more productive, with lower stress levels and a better balance between work



and home life. Employers that allow telecommuting enjoy increased employee loyalty and lower costs.

Why You Still Need Workers' Comp

Despite the benefits, telecommuting does have some drawbacks. Although the risk of injury in a home office may be far lower than in factories, mines and mills, teleworkers are as likely as other office workers to suffer from back injuries and repetitive strain problems.

They also face other office hazards, such as trip-and-fall accidents, along with risk of injury from fire if they lack an adequate electrical system, or if they don't have a smoke detector or fire extinguisher nearby.

Your obligation to compensate employees for work-related injuries and illnesses applies no matter where they work. Those who permanently work abroad might have coverage under other laws. In Texas, employers don't need to carry workers' comp insurance, but

state law limits the liability of an employer who carries it or who self-insures. Nonsubscribers lose several key legal defenses and can face high damage awards if an injured employee can prove in court that the employer was negligent in any way.

Employers cannot simply declare someone an independent contractor to get out of paying workers' comp or employment taxes. The Internal Revenue Service and state tax authorities have very strict rules for what constitutes an independent contractor. For details, see <https://www.irs.gov/pub/irs-pdf/p1779.pdf>

Identifying the Risk

Requiring inspections of teleworkers' home offices seems intrusive, and may actually increase an employer's liability if an injury later occurs. However, you can require employees to self-certify the safety of their workspaces. The U.S. Office of Personnel Management offers a sample self-certification safety checklist for home-based teleworkers, to be completed by the teleworker, at <https://archive.opm.gov/wrkfam/telecomm/selfcert.htm>.

Many teleworkers also face a risk of repetitive stress injuries (RSIs) due to heavy computer use. Although you have no legal obligation to provide ergonomic training or equipment, it's a good idea. RSIs can be painful and disabling, causing lost time and productivity. Providing properly fitted equipment and training can protect your valued employees at relatively low cost.

Work-Related or Not?

In a review of the literature conducted for the Virginia Department of Transportation, researcher Ken Winter concluded, "The most common legal liability [associated with telecommuting] seems to stem from workers' compensation concerns and the fact that it is often unclear precisely when teleworkers are working, when are they preparing to work, and when they have temporarily stopped working." When a teleworker has an injury at home, how do you determine whether it was work-related or not?

Requiring set hours may be a solution. Injuries that occur in this time period are assumed to be work-related, others are not. However, flexibility is one of the chief benefits of telecommuting. If you don't want to set up rigid schedules for teleworkers, you can separate a teleworker's work time from personal time by using some kind of log-in system. Teleworkers can call in to the office when beginning and ending their day, log in to the company's network, use a logging device on their own computer or manually record their working hours.

It's also important that employees who work from home have a designated work space and a defined scope of activities. Details like these will help confine potential workers comp injuries to certain functions, places and times.

If a work injury does occur at home, make sure teleworkers know what to do and stress the importance of prompt reporting.

We can help you minimize the risks posed by telecommuting employees. For more information, please contact us. ■

The Six Types of OSHA Violations and Their Penalties

As conscientious as you and your company may be about federal OSHA compliance and keeping employees safe, you may need to undergo an OSHA inspection.

There are six types of violations you could be cited for:

De Minimus

These violations do not have a monetary penalty because they do not impact health or safety. They are merely listed in the case inspection file. A ladder with rungs spaced 13 rather than 12 inches apart would be an example of a de minimus violation.

Other-than-Serious

Such violations do not impose an immediate threat but are in recognition of a flaw in your OSHA compliance, such as not storing materials properly, poor recordkeeping or not posting required notices in work areas. Inspectors have a lot of latitude in the amount of the fine they can impose. Much

depends on the attitude and cooperation of the business, but penalties can go from nothing to \$12,500 per violation.

Serious

These violations impact safety and are perceived to pose a significant risk of death or injury.

Even when unintended, the business is expected to have foreseen the hazard. Failure to make employees wear hard hats or wear steel-toed shoes where hazards exist are examples. Inspectors must assess \$12,500 for each violation, though the size of the penalty can be modified depending on previous history, company size and level of cooperation.

Willful Violations

This is the most serious kind of violation. Employers who show an intentional or careless disregard for safety will be cited up to \$125,000. If there was a fatality involved, the violations become a criminal matter and fines are a minimum of \$250,000 for an individual/\$500,000 for a corporation. There is also possible jail time of six months. Using scaffolding that has proven to be faulty in other instances could be an example of a willful violation.

Repeated Violations

If the company has already been issued a citation for the same violation within the



last three years, the penalty is \$125,000 — unless the prior violation is under appeal. The repeat violation does not have to be at the original location; it can be at a different location. Thus, it's important to communicate with all locations when OSHA violations occur.

Failure to Abate

If the company does not abate the problem it's been cited for by the due date, it may be assessed a penalty of \$7,000 per day it is in violation.

If you have concerns about a scheduled OSHA inspection or the results of a completed one, please give us a call. ■

Simple Steps to Reduce Telecommuting- Related Risks

Both employers and employees have responsibilities to prevent workplace injuries.



Employers' Responsibilities:

- 1 Provide clear job descriptions, goals and reporting procedures for your telecommuting employees.
- 2 Ensure your workers' compensation coverage applies to telecommuters. For example, if you have out-of-state teleworkers, make sure you have "other states" coverage.
- 3 Verify that the organization's general liability policy applies to the acts of telecommuters.
- 4 Provide workers with the right equipment and support.
- 5 Offer training and guidelines for efficient teleworking.
- 6 Ensure your employees know what to do in the event of a work-related injury and how to report a claim. Stress the importance of early reporting.
- 7 If your workers' compensation insurer has a network of preferred providers, make sure your telecommuting employees have a list of nearby providers and their contact information.

Employees' Responsibilities:

- 1 Provide work space with ergonomically correct chair, desk and computer equipment.
- 2 Complete a safety checklist certifying the space is free from hazards. This checklist is not legally binding, but details management expectations and, if signed, assumes employee compliance.
- 3 Verify that having a home work space will not violate the terms of their homeowners insurance policy, community CC&Rs or local ordinances.
- 4 Immediately report any work-related accident to the supervisor with all medical documentation related to the accident. If the employer's workers' compensation claims manager or insurer deems an inspection necessary, the employee agrees to cooperate with the inspector. ■



The information presented and conclusions within are based upon our best judgment and analysis. It is not guaranteed information and does not necessarily reflect all available data. Web addresses are current at time of publication but subject to change. This material may not be quoted or reproduced in any form without publisher's permission. All rights reserved. ©2018 Smarts Publishing. Tel. 877-762-7877. <http://smartspublishing.com>. 30% total recycled fiber. Printed in the U.S. on U.S.-manufactured paper.

