

# Workers' Comp & Safety News



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## This Just In . . .

**H**uman resource professionals rank substance abuse and drug addiction among the most serious workplace problems facing U.S. employers, according to a survey for the Hazelden Foundation, a Minnesota-based nonprofit drug treatment provider. Although 67 percent of HR professionals expressed concern about this problem, fewer than one-quarter of companies (22 percent) “openly and proactively” deal with it. According to *Workforce Management* magazine’s online edition, “The survey of 1,000 HR professionals revealed that, while many companies provide employee assistance benefits, few addicted workers are being referred for treatment, mostly because of their reluctance to talk about it and HR’s discomfort in raising the issue.”

## Making the Workplace Fatigue-Safe

In the hustle and bustle of modern life, one of the first things people give up is sleep.

**S**ometimes the reason is family pressure — a single mom raising three kids and working two jobs. Sometimes it can be workplace pressure — a project that must be finished, or a delivery that must be made.

But whatever the cause of workplace fatigue, in today’s 24/7 world it can be one of the most serious risks a business faces.

### Fatigue costs

According to Clockwork Consultants, a UK-based company that helps enterprises manage fatigue risk, fatigue has dire consequences in both the short and long term. Fatigued employees are three times more likely to have an accident at work — not

to mention make poor business decisions, the firm claims.

Those who work shifts also have long-term health consequences, including a 40 percent increased risk of heart disease, peptic ulcers and other gastrointestinal problems.

A recent study in the *Journal of Occupational and Environmental Medicine* found that nearly 40 percent of U.S. workers experience fatigue — a problem that costs employers billions in lost productivity.

Led by Judith Ricci, Sc.D., M.S., of Caremark Rx Inc., the study said that of the nearly 29,000 employed adults interviewed, 38 percent said they had experienced “low levels of energy,

poor sleep or a feeling of fatigue” during the previous two weeks. Total lost productive time averaged 5.6 hours per week for workers with fatigue, compared to 3.3 hours for their counterparts without fatigue.

Even when they were working, workers with fatigue symptoms had much lower rates of productivity than their sprightly counterparts — mainly due to low concentration and increased time needed to accomplish tasks.

The study also found that fatigue was more common in women than men, in workers less than 50 years old and in white workers compared with African-Americans. Workers with “high-control” jobs — relatively well-paid jobs with decision-making responsibility — also reported higher



FATIGUE—continued on Page 3



# The Do's and Don'ts of Pre-employment Testing

The task of finding the right employees is the most crucial, and some might say, the most difficult challenge any business faces. Pre-employment testing and evaluation can help you find the right employees — but there are strict rules about what is legal, and strong guidelines about what methods are effective.

## Testing applicants

The most basic task of pre-employment testing is to screen out unsuitable applicants.

Tests can include skills tests, aptitude tests, psychological tests, personality tests, honesty tests, medical tests and drug tests.

State and federal law impose numerous restrictions on what you can do, notes human

resources consultant Nicole Webber. “These restrictions are often vague and open to contradictory interpretations,” she says, and recommends each business seeks expert advice. But as a general rule, tests must be fair, consistent, non-discriminatory and strictly related to the tasks involved to perform the job satisfactorily.

Failure to adhere to these guidelines is likely to lead to discrimination lawsuits when an employer decides not to offer someone employment on the basis of their pre-employment screening results.

## Drug tests

Drug tests are highly effective in detecting employee drug use. Drug testing guidelines and processes are established and regulated by the Substance Abuse and Mental Health Services Administration, or SAMHSA. They require that companies that use professional drivers, specified safety-sensitive transportation and/or oil and gas-related occupations, and certain federal employers, test them for the presence of certain drugs. These test classes were established decades ago and include five specific drug groups. However, they do not account for current drug usage patterns. For example, the tests do not include semi-synthetic opioids, such as oxycodone, oxycodone, hydrocodone, hydrocodone, etc.

## Medical checks

Medical tests are an important tool to find out whether a person has the physical abilities needed to do the job, and whether medical conditions such as repetitive strain injuries and musculoskeletal disorders will prevent candidates from performing the job satisfactorily.

But the Americans with Disabilities Act prohibits an employer from asking disability-related questions or requiring applicants to take a medical examination unless it has first made a concrete job offer. Even then the employer can only request medical examinations if it requires those same exams of all employees entering the type of position offered, and the information is kept confidential and separate from the regular employee files.

Employers can use the results of the medical exam to rescind the job offer if the employer has a reasonable belief that an employee's ability to perform essential job functions will be impaired by a medical condition or that the employee will pose a direct threat to the safety of others due to a medical condition.

An employer cannot refuse to employ a person whose medical examination discloses a disability/impairment that has no bearing on their ability to do the job. In specifying the reasonable requirements of a particular job, employers should consider the inherent requirements of the task, namely those that are essential to the position, rather than merely ones it may wish to impose.

A non-discriminatory pre-employment medical test should relate specifically to the reasonable requirements of the job and should identify the specific physical capacities needed. Employers should also make provision for reasonable ways of accommodating people with disabilities or impairments. This means that they must provide any facilities or services reasonably required by applicants with disabilities/impairments and to assess the results of the test in conjunction with these facilities or services.

## Personality, aptitude and basic skill tests

The rules of discrimination and job relevance are equally applicable to pre-employment tests for personality, aptitude and basic skills, says Josh Millet, CEO of Criteria Corp., which offers online tests geared for small and medium-sized businesses.

“The most important rule of employee testing





FATIGUE—continued from Page 1

rates of fatigue than their colleagues.

The study estimated that fatigue costs U.S. employers more than \$136 billion per year in health-related lost productivity — \$101 billion more than for workers without fatigue. Eighty-four percent of the costs were related to reduced performance while at work, rather than outright absences.

### Fighting the fatigue factor

But well managed workplace policies can drastically reduce the incidence and cost of employee fatigue risk, according to Peter Johansson,

a risk engineer at Zurich Financial Services.

Johansson notes that insurers increasingly grade organizations for fatigue factor during the underwriting process. He advocates the use of what he calls a ‘fatigue-risk triangle’ to mitigate the risk.

The triangle features three basic components, which can combine to create a potentially high-risk situation:

- ✱ the length and timing of hours worked
- ✱ inadequate sleep
- ✱ the presence of fatigue-related hazards.

Any one of these is in itself a danger – but when two or more of these factors combine, the result can quickly become catastrophic, Johansson says.

Organizations should adopt a variety of methods to make themselves “fatigue safe.” The most common include:

- ✱ Special training to help workers understand their personal levels of fatigue
- ✱ Committees to oversee fatigue management programs
- ✱ Use of fatigue models to investigate fatigue-related accidents
- ✱ Development of “fatigue safe” work schedules
- ✱ Development of fatigue risk management policies and procedures
- ✱ Implementation of compliance systems.

Johansson says that the adoption of just one of these strategies will not prove effective in beating workplace fatigue.

He says that for safety-critical systems in

high-hazard industries such as transport, manufacturing, mining and healthcare, at least three levels of protection are required to give adequate protection. This is the minimum level of caution required from other components of critical systems. For example, aircraft control systems typically have two levels of redundancy to protect against failure of the primary control system.

Every business can also take commonsense actions to reduce the risk of fatigue by developing suitable workplace conditions. Fatigue is increased by dim lighting or other limited visual conditions (e.g., due to weather), high temperatures, high noise, high comfort, tasks that must be sustained for long periods of time, and monotonous work tasks. Eliminating such conditions and providing environments that have good lighting, comfortable temperatures and reasonable noise levels quickly pay for themselves in reduced risk, according to a study by the Canadian Centre of Occupational Health and Safety (COHS). If possible, work tasks should provide a variety of interest and tasks should change throughout the shift, the COHS recommends.

No less important are the hours expected from workers. Many safety-critical occupations have strict rules about how long a worker can stay on the job and how long breaks must be. Productivity experts recommend similar guidelines for most jobs.

If extended hours/overtime are common, managers should calculate the time required for the commute home, meal preparation, eating and socializing with family when calculating employees’ work shifts. Workplaces may also provide on-site accommodations, prepared meals for workers and facilities where employees can take a nap when they are tired.

For more suggestions on reducing fatigue in the workplace, please call us. ■

TESTING—continued from Page 2

– for legal defensibility and effectiveness — is to use tests that are job-related,” says Millet. “Companies need to do a thorough job requirement analysis. If you use tests that are not job-related, you are measuring skills that aren’t required for the job.”

The Internet has made such tests both more effective and easier to administer — doing away with the need for brigades of consultants to draw up relevant parameters. Vendors such as Criteria

now use online tools to analyze job requirements, administer the tests and provide immediate results.

“It’s a fast-growing market,” Millet says. “Five to ten years ago it was mostly Fortune 500 companies performing these tests. Now smaller and smaller companies are doing them.”

For more information on pre-employment testing and other methods of preventing claims, please call us. ■





## Red Flags for Workers' Comp Fraud

Private eye Greg Lepore has spent decades investigating workers' comp claims. Here he offers ten scenarios that should alert managers to potential fraud.

"The vast majority of workers' comp claims are legitimate," says Lepore, of the California-based investigations firm Lepore Associates. "But the small proportion of dishonest claims cost businesses billions of dollars every year."

There is great controversy about exactly how much workers' comp fraud costs busi-

nesses. Industry estimates put the figure at over \$5 billion a year, while workers' advocates claim that the incidence of fraud amounts to between 1 to 2 percent of claims.

No one wants to deny legitimate compensation for workers injured on the job. But the following scenarios should raise the suspicions of responsible managers, helping businesses save unnecessary costs and ensuring that legitimate claims are properly compensated.

- 1. Lack of prompt reporting:** Injured employees will generally report a claim on a timely basis. Late reporting in and of itself is not necessarily a cause for alarm, but ought to be a signal to review the claim a little more closely.
- 2. Sketchy details or changing stories:** Most claimants can recall the details of their injury. If the claimant seems to be fuzzy on the details, gives vague responses to questions, or changes pertinent information, keep digging.
- 3. No witnesses:** Not every claim has a witness and the absence of a witness should not be used solely to determine fraud. However, if many of the other signs are present, it will be hard to dismiss the lack of a witness.
- 4. New employee:** Statistically, the newer the employee is, the more likely the claim is fraudulent, especially if other red flags appear.
- 5. Monday claims:** If the injury allegedly occurred on Friday, usually late in the day, but did not get reported until Monday, there is reason to suspect there might be a little more going on than meets the eye.

**6. Disgruntled employee:** A disgruntled employee is more likely to place fraudulent claims than an employee with high job satisfaction.

**7. Financial hardship at home:** Workers' compensation benefits are sometimes seen as a way out of a tight financial situation at home.

**8. Employee is difficult to contact:** Persistent avoidance often means the claimant has something to hide.

**9. Missed medical appointments:** When employees are truly injured, they want to get better and will make sure to attend all necessary medical appointments. Missing appointments is another reason to suspect fraud.

**10. Employee engages in activity that is not consistent with the injury sustained:** If your employee reported a back injury but he still turns out for the local softball team, there is a good reason to suspect fraud.

None of these red flags are by themselves proof that the claim is fraudulent. But they should encourage responsible managers to contact the relevant state workers' compensation board and insurance carrier to find out how to proceed. Many firms specialize in investigating workers' comp fraud, but Lepore generally advises clients to keep away from cloak-and-dagger surveillance techniques. "It's incredibly difficult to catch someone red-handed," he says. "Using intensive interview sessions and asking relevant questions is far more effective and costs a lot less." ■

## It's much easier to prevent workers' comp fraud than to catch it after it happens.

Here are some key strategies to minimize the chances for fraud:

- Hire wisely: Employers should make sure new hires have the skills and the character they want in their employees. Conduct background checks on applicants and verify references.
- Focus on safety. Making the workplace safer reduces the chance of accidents and the opportunity for someone to fake an injury.
- Develop a return-to-work policy. Tell job candidates that if they get injured on the job, the company will work with the doctor to help them return to work as soon as medically reasonable.
- Publicize your workers' compensation policy to all your employees, and provide them with updates at least once a year.
- Educate, don't threaten. Explain that workers' compensation fraud hurts everyone, not just the insurance carrier. Let employ-

ees know that fraudulent claims can force employers to decrease benefits, lay off employees or go out of business.

- Adopt a zero-tolerance policy. Make it clear that fraud can carry serious consequences, including termination and prosecution.
- Stay in touch. Keep regular contact with employees who are off work due to an injury. Document each contact or attempted contact. Injured workers who are difficult to contact or who are belligerent may be committing workers' compensation fraud.
- Display fraud awareness posters and the National Insurance Crime Bureau's hotline number.
- Develop a healthy work environment. Minimize repetitive tasks; give workers time to move around and exercise. Show concern for their well-being.
- Pay attention to employee complaints and concerns about their working conditions. The strongest predictor of fraud is a chronically disgruntled work force.