

# Workers' Comp & Safety News



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## Triage: Improved Response Can Save Costs

When an injury occurs at your worksite, your first responsibility is to ensure your employee receives prompt and proper treatment based on the severity of the injury. Triage systems can help.

In some cases, your injured employee's supervisor or in-house first aider might not be able to accurately assess what level of care an injured or ill employee needs. You wouldn't

want someone to think that the injury isn't serious enough to go through an emergency room wait and delay important medical treatment. On the other hand, going to the local emergency room

or urgent care facility for minor medical treatment can get expensive. In addition, your employee and accompanying supervisor can experience an incredibly long wait while other, more seriously injured or ill patients are taken first.

So what other options do employers have? Triage systems use specially trained nurses who can provide immediate assessments and treatment options, no matter what time of day or night. They can help employers obtain the appropriate level of care for injured employees, and reduce costs for that care.

## This Just In

Daylight Savings Time (DST) begins on Sunday, March 10 at 2 a.m. Although losing an hour of sleep might not seem significant, many studies have reported increased accidents on the Monday after DST begins.

"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 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



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With telephone or online triage, when an injury occurs, the patient, first responder or the patient's supervisor places a phone call that accesses a 24/7 network of triage nurses. The nurses are trained in clinical algorithms designed by physicians and nurses experienced in occupational health and emergency medicine. The on-duty nurse gathers information related to the injury. Some systems offer translation services, if needed. Through the use of the software and professional judgment, the nurse can recommend first-line treatment for the patient and set up referrals, as needed. Some systems now use web cameras as well, so the nurse or medical provider can see the patient and provide an even more accurate diagnosis and treatment plan.

In addition to ensuring proper treatment, triage systems can help employers with their injury reporting and documentation tasks. Using information from the injured employee or supervisor, the on-call nurse can complete required forms. The system can generate an online report sent directly to the employer's safety, human resource or risk management person for workers' compensation and OSHA 300 log filing. Everyone who needs to know of the injury is in the communication loop almost immediately.

One study has shown that employers utilizing this type of triage system have reduced workers' compensation claim costs by 30 percent by reducing unnecessary trips to the emergency room and time away from work. Using this system has also reduced unnecessary and unsubstantiated claims.

Triage systems can also assist in return-to-work process, by recommending light-duty or modified tasks appropriate for the worker's condition. And employers don't have to change insurance carriers or third-party administrators to utilize this service and technology.

Is telephone triage right for you? Only you can judge that. But as technology continues to develop, the opportunities will only increase for ensuring employees get prompt medical care coupled with a balanced cost-saving program. For more information on this and other cost-control strategies, please call us. ■

other days. This resulted in an additional 2,649 lost work days.

Other studies have found a "significant increase" in fatal traffic accidents 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.



# When Rights and Safety Collide

The Americans with Disabilities Act and its amendments give disabled workers certain legal rights. But sometimes those rights seem to conflict with the employer's need to maintain a safe workplace. How can you maintain a safe and efficient working environment that also respects all employees and their needs?

**M**ost employers strive to accommodate employees with disabilities. However, when safety becomes an issue, employers can be confused about which regulations apply and what actions to take.

## Applicable Laws

The Americans with Disabilities Act (ADA) of 1970 and the ADA Amendments Act of 2008 prohibit discrimination against qualified people with disabilities in businesses with 15 or more

people. The ADA defines a disabled person as one who has a physical or mental impairment that substantially limits one or more major life activities. The ADA also covers people who have the appearance of being impaired.

The U.S. Equal Employment Opportunity Commission, which enforces the ADA, defines a qualified person as someone who can perform the essential functions of a given job – with or without accommodation. “Reasonable accommodation” can include:

- ✦ Making existing facilities readily accessible and usable for the disabled person
- ✦ Restructuring the job, modifying the work schedule or assigning to another job
- ✦ Buying or modifying equipment
- ✦ Adjusting exams or training materials
- ✦ Providing qualified readers or interpreters.

However, the federal Occupational Safety and Health (OSH) Act obligates the employer to provide a safe workplace by furnishing “... each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” If an employee's disability could cause harm to himself or another in the workplace,

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employers need to assess whether he or she can safely perform a job with reasonable accommodation.

Some specific situations employers could encounter include:

**Chronic Conditions:** The ADA protects people with chronic physical conditions that limit their life activities. For example, Steve drives a delivery truck. When his supervisor sees him sleeping between deliveries, Steve discloses that he has sleep apnea, an ADA-protected impairment that causes people to fall asleep without warning. His employer becomes concerned that Steve poses a safety threat because he may fall asleep at the wheel. The company requests medical tests. If tests reveal Steve's condition could threaten safety, the company needs to explore whether it can reasonably accommodate Steve's needs while maintaining safety standards. Perhaps Steve can be reassigned to a desk job.

**Communicable Diseases:** The ADA defines AIDS and HIV infection as disabilities, and employees with those conditions require accommodation. People who are perceived to have AIDS or HIV are also protected. When Mary, suffering liver damage from hepatitis A, applies for work at a computer company, she is not required to disclose her disability. However, if she wants reasonable accommodation in her work schedule in order to get treatment, she will need to disclose her condition so her employer can accommodate her.

If Mary were to apply for a job at a restaurant, her disability would disqualify her, based on Food & Drug Administration regulations regarding communicable diseases. It is unlikely

that the restaurant could offer reasonable accommodation.

**Mental Disorders:** Mental disorders can also be a protected disability. Employers need to recognize that many mental illnesses do not cause safety issues. According to Rebecca Speer, a principal of Speer Associates, an employment law consulting firm in San Francisco, employers should not let their own prejudices influence their perceptions. "If you happen to know that an employee has a diagnosed mental disorder, don't speculate on his impairment," Speer said.

If an employee seems to be acting unsafely, your first step is to define the essential job functions so you can evaluate the employee's actions within that context. Then Speer recommends talking to the worker and engaging in a legally compliant, interactive process that enables the employer to evaluate whether the employee suffers from a disability covered by the ADA and, if so, whether the employer can and should provide accommodations that would enable the employee to safely perform the essential functions of the job.

If an employee with a mental illness is angry or aggressive, you may need to turn to a psychologist who specializes in assessing employees for safety risks. The ADA provides protection to employees with mental disorders, but does not require a business to retain an employee who demonstrates a credible threat of violence. In that situation, it would be prudent to also consult with an employment law attorney before terminating someone who has a known mental disability and demonstrates disruptive behavior. For more information on accommodating disabled employees, please contact us. ■

## Workplace Injuries—What Are the Odds?

Do you know that your odds of winning the lottery do not change based on the number of tickets purchased? You are playing the odds based on your number selection, not on the number of players participating. Safety works in somewhat the same way. It doesn't matter how many employees might "forget" to use safety equipment without suffering consequences. All it takes is one employee to forget at the wrong time.

A few years ago, there was a lottery jackpot of \$145+ million dollars. Statisticians claimed that there was a 1 in 80 million chance of one person selecting all of the right numbers. They described it this way: A 1:80,000,000 odds of winning would be equal to a person walking out of the house on a clear, sunny day and be-

ing struck by lightning, then being struck by lightning again while standing in the same place.

Those are pretty slim odds. But as slim as the odds were, there were four (not just one) winners who chose all the right numbers and split the pot four ways.

What are employees' odds of getting injured when they don't wear the correct protective equipment to perform a task? What are their odds of getting injured when they skip a step in the procedures to save time or because you believe that step just isn't significant enough to worry about doing it? What are the odds?

As highly unlikely as it was for one person, let alone four at the same time, to hit the jackpot, it happened. And people are injured every day because they play the odds and lose. What are the odds of an employee going blind because you look the other way when he doesn't wear a face shield? What are the odds of a fuel cylinder exploding because someone didn't bleed the regulator when they were through using it?

Since there are living (and dead) examples of people losing the odds, the better question is, "Is the value of my co-workers' lives so little as to make it OK to play the odds?" It only takes one split second. Don't risk compromising your employees' safety, quality of life or life itself to play the odds. Don't let them take the shortcut or skip the step in the procedure. Don't ignore the use of personal protective equipment. Don't risk a life to play the odds.



## The Odds of Dying

What are your odds of death by a particular event? The following statistics (2008) from the National Safety Council ([www.nsc.org](http://www.nsc.org)) show the odds of dying within a lifetime from certain selected causes.

- ✱ Motor vehicle incidents: 1 in 98
- ✱ Unintentional poisoning by and exposure to noxious substances 1: in 126
- ✱ Falls: 1 in 163
- ✱ Assault by firearm: 1 in 321
- ✱ Car occupant: 1 in 368
- ✱ Pedestrian: 1 in 701
- ✱ Accidental drowning and submersion: 1 in 1,103
- ✱ Exposure to smoke, fire, and flames: 1 in 1,344
- ✱ Air and space transport incidents: 1 in 7,178
- ✱ Exposure to electric current, radiation, temperature, and pressure: 1 in 12,420
- ✱ Exposure to excessive natural heat: 1 in 13,217
- ✱ Contact with hornets, wasps, and bees: 1 in 79,842
- ✱ Lightning: 1 in 134,906
- ✱ Bitten or struck by dog: 1 in 144,899
- ✱ Flood: 1 in 558,896

*Source: National Safety Council estimates based on data from National Center for Health Statistics*

Many of these statistics indicate the odds of dying from external factors that you have no control over. But when you are at work, you can greatly improve the odds for life by taking control of the work environment and ensuring employees perform the job the right way every time. Beat the odds — make the right choices when it comes to being safe at work and at home. ■

## Workers' Compensation and Immigration

**H**ow does immigration status affect an employee's rights to workers' compensation benefits?

U.S. Office of Immigration Statistics estimated the "unauthorized population" at 10.8 million in 2010. Although federal law, the Immigration Reform and Control Act of 1986, controls immigrants' right to enter and work in the country, laws of the state of employment, which govern workers' compensation, determine whether they can receive benefits for work-related illness or injury.

According to the Nolo Legal Encyclopedia ([www.nolo.com](http://www.nolo.com)), "Some states — including Arizona, California, Florida, Montana, Nevada, New York, Texas, and Utah — expressly cover undocumented workers in their workers' compensation statutes." These states protect undocumented workers for reasons both humanitarian and practical. Excluding undocumented workers from workers' compensation and other employment laws could encourage employers to hire illegal workers to reduce employment costs.

For example, the California Department of Industrial Relations, which enforces workplace health and safety laws, specifically mentions illegal workers. "All California workers — whether or not they are legally authorized to work in the United States — are protected by state laws regulating wages

and working conditions."

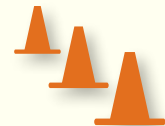
Other states, such as Idaho and Wyoming, expressly exclude illegal workers from workers' compensation benefits. Idaho's statute reads, "Benefits shall not be payable on the basis of services performed by an alien unless the alien was lawfully admitted for permanent residence at the time such services were performed..."

In states where the law does not mention an employee's legal work status, some courts have decided in favor of awarding benefits.

Undocumented workers can create claims-handling challenges. Lack of a valid Social Security number, lack of a checking account and fear of dealing with authority figures can complicate claims payments. A worker's legal status can also make it impossible to receive other workers' compensation benefits, such as vocational rehabilitation or light-duty work.

To avoid this situation, always verify an applicant's documents carefully before hiring. And remember your business could be liable if a contractor or subcontractor is uninsured. Ask any business that provides workers to your worksite to provide documentation of workers' compensation and liability insurance. For information, please contact us. ■

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