



Oil Patch Quarterly

Exclusive Program Managed by Sisk & Company

Second Quarter 2011

INSURANCE NOTES

Supervisor's Evaluation; Employer May Be Liable

When a supervisor, acting with unlawful bias, recommends to higher management that an adverse employment action be taken against an employee, and higher management acts on that recommendation without any proven bias, should the employer be held liable for unlawful discrimination?

In a recent case, the U.S. Supreme Court ruled that an employer is liable for unlawful discrimination if it acts on a biased supervisor's recommendation, notwithstanding higher management's innocence in the decision-making. (*Staub v. Proctor Hospital*, No. 09-400 - Mar. 1, 2011). Fundamentally, the Court decided that, in such cases, the biased supervisor is the proximate cause of the adverse employment action, and the employer is liable for the supervisor's action.

Training supervisors is always a first step. But for further protection, Sisk & Company can offer your business Employment Practices Liability insurance coverage. The low price for a policy like this is a small cost compared to hiring an attorney and defending this type of claim. You have worked hard to build your business; call 303-831-7100 and ask for Mike, Dave or Tom to get information on how to protect it.

Severe Summer Weather – Driving In a Vehicle

Recent news stories have shown us the impact of severe weather, so there is little that needs to be said about the damage these storms cause. However, when your crews are traveling to job sites or returning to the yard, do they know what to do if severe weather strikes? Have you covered this information in your emergency plans?

Vehicles can be death traps in tornadoes, because they are easily tossed and destroyed. The safest choice is to leave the vehicle for sturdy shelter if at all possible. If parking the vehicle and sheltering in a building is not an option then it is recommended that a person lie flat in a low spot, as far from the road as possible (to avoid flying vehicles).

In open country, a good option is to escape if the tornado is far away. *If the traffic allows, and the tornado is distant*, you probably have time to drive out of its path. Watch the tornado closely for a few seconds comparing it to a fixed object in the foreground (such as a tree, pole, or other landmark). If it appears to be moving to your right or left, then it is not moving toward you. If the tornado appears to stay in the same place but it growing larger, then it is headed right at you; and you must take shelter away from the vehicle.

There are several reasons why a highway overpass is not a good shelter in a tornado.

1. The higher off the ground a person goes, the greater the possibility of being struck by flying debris, and wind speeds are actually greater than at ground level. Even a small pebble or a pop can traveling at 100 mph can cause injury.
2. The channeling of wind forced through the underside of an overpass will accelerate the wind flow. So winds could actually be stronger under the overpass than on open ground.
3. Parking under an overpass causes bottlenecks on highways. The bottlenecks stop the flow of traffic, including the passage of emergency vehicles. Also, visibility can be greatly reduced in heavy rain, potentially causing a major chain-reaction collision as oncoming traffic can't see the traffic jam in front of them.

Visit www.petrodocs.com for more detailed information on emergency plans and preparedness, or call Dan Klimek at 303-831-7100 if you have questions.



LESSONS LEARNED

Do Not Hire Your Next Workers' Compensation Claim

The injured worker was hired by an MSEA member company and 3 days later he reported a back injury. The injury occurred when the employee was climbing over a cattle guard railing and he jumped down, he then claimed he felt lower back pain. The first report of injury was filed and the employer expressed concerns due to the employee having had a pre existing condition.

The injured worker had 2 prior surgeries from a car accident in 1990. The injured worker's application stated he had worked for UPS for the prior 2 ½ years, but on research after the claim was filed; it was found he had been collecting Workers' Compensation for most of that 2 ½ year period for a shoulder / neck condition. The injury with UPS was reported in the first month of employment.

Potential Cost for this Case

(remember employee worked for 3 days)

Fifty-two weeks of loss wages due to injured worker's complaints that everything hurts. Reserve is set using the AWW of \$810.67 (max rate) for 20 weeks or \$42,155 and whole person impairment of 10% or \$42,803 (there is no apportionment because prior surgeries were not work related). Plus a medical reserve of \$15,000 for evaluation, office visits, diagnostic testing, and

*Continued on next column
Work Comp – Lessons Learned*

Work Comp – Lessons Learned – *continued from column at left*

physical therapy, etc. The Injured worker's history documents delayed recovery, so this medical is likely to increase.

The initial total reserve for this claim is set at \$99,958; with a high potential for the cost to increase due to a prolonged recovery and continued complaints of pain. This one claim would cause this company's loss ratio to exceed 50 % for the policy period and that will result in a negative experience mod for 3 years.

Steps to take to avoid a claim like this one:

When hiring an employee **you hire "as is"**. So, it would be helpful to complete a post job offer physical or functional capacities assessment and more complete reference checks (including past workers' compensation claims). *Note: Sisk/MSEA can provide the name of businesses that specialize in doing the post offer assessments. Please call Dan Klimek at 303-831-7100 to discuss further.*

Factors that would reduce cost of claim:

If a thorough background check would have been conducted, the MESA member would have discovered that for most of the 2 years with UPS the individual was off work collecting Workers' Compensation. It is unlikely the individual would have been hired. The result would have been no claim, no reserve and no effective on loss ratio, loss days from work, etc.

If a the MSEA member would have made a conditional job offer pending the outcome of the functional capacities assessment and scar check, it is likely that the individual would have been found not fit for the position. The employer could then rescind the job offer and the individual would not have been hired.

Other factors that would mitigate costs:

New employee orientation – we always recommend that new employees receive a documented orientation. General safety rules are one topic that needs to be covered. The employee should sign a statement acknowledging he/she has read and understands the rules and will follow them.

These rules should include general work conditions and touch on "do not jump, run, etc". When an injury like this occurs and the employer can point to a safety rule violation, Pinnacol can apply a 50% reduction in indemnity. In the above case, that reduction would result in a reserve of \$42,480 for indemnity and \$15,000 for medical or a total reserve for the claim of **\$57,480** rather than the **\$99,958** as stated above.

For more information on some basic safety program practices, and the opportunity to lower your workers' compensation premium by 5%, call Dan Klimek at 303-831-7100. Dan can provide you with information and sample programs for earning the Colorado Cost Containment discount.



Sudden Cardiac Arrest & Early Defibrillation

Sudden cardiac arrest (SCA) is a condition in which suddenly and unexpectedly the heart stops beating due to a malfunction in the heart's electrical system. The most common arrhythmia is ventricular fibrillation (VF). When in VF, the heart's rhythm is so chaotic (called "fibrillating") that the heart merely quivers, and is unable to pump blood to the body and brain. Once a heart has entered VF, sudden cardiac arrest occurs. A victim in SCA first loses his or her pulse, then consciousness, and finally the ability to breathe. But all of this happens quickly - in a matter of seconds. Without immediate treatment from a defibrillator, 90-95 percent of SCA victims will die.

Here are a few statistics regarding SCA:

- 250,000 Americans die each year from SCA
- EMS teams take 6-12 minutes to arrive during the best conditions, defibrillation needs to occur within 3-5 minutes
- When defibrillation is given within 3 minutes, 74% of victims survive

Automated External Defibrillator (AED):

An AED is a small, portable device that analyzes the heart's rhythm and prompts the user to deliver a defibrillation shock if the AED determines one is needed. Once turned on, the AED guides the user through each step of the defibrillation process by

providing voice and/or visual prompts. AEDs are specially designed for easy use by a layperson with minimal AED training.

Once an AED is turned on, it provides prompts to guide the user through the process. The first step instructs the user to connect the AED to the victim via the adhesive electrodes (pads) placed on the chest. The AED then analyzes the victim's heart rhythm through the electrodes. It then determines if a shock is "needed".

If a shock is needed, the AED will prompt the user to press the button that delivers the shock. The responder will then be prompted to administer CPR for approximately 2 minutes while the AED re-analyzes the heart rhythm to determine if more shocks are needed.

There are many sources for businesses to purchase AED's. One company I recently contacted offers a nice program if you are interested in adding AED's to your first aid equipment. If interested in learning more about AED's, I invite you to contact:

Mike Windemuller at AED Authority --- 303.906.2493
mike.windemuller@aedauthority.com
www.aedauthority.com

Or call Dan Klimek at 303-831-7100 to discuss the benefit of having AED's available.



OSHA NEWS

New Web Tool Helps Employers Understand OSHA Recordkeeping Rules

OSHA has a new Web tool that helps employers understand their responsibilities to report and record work-related injuries and illnesses.

The interactive tool asks questions to help determine whether an injury or illness is work-related, whether it needs to be recorded and which provisions of the regulations apply. The website address is:

<http://www.dol.gov/elaws/OSHARecordkeeping.htm>

The OSHA Recordkeeping Advisor is intended to help determine:

- Whether an injury or illness (or related event) is work-related
- Whether an event or exposure at home or on travel is work-related
- Whether an exception applies to the injury or illness
- Whether a work-related injury or illness needs to be recorded
- Which provisions of the regulations apply when recording a work-related case



Sisk & Company Announces Updates to MSEA Webpage

Using the web is such a common practice these days that it is hard to picture running a business, doing research or making purchases without using this tool. It is in the spirit of providing resources to our clients that we have updated the Mountain States Energy Alliance (MSEA) website by adding more functionality and easier navigation. If you have not visited www.gomsea.org recently, you need to take a few minutes to check out the website.

The website has a new look. Since the MSEA is the largest consortium of oil and gas contractors in the Rocky Mountain Region dedicated to improving safety conditions in the oil patch, we have added more services to help you improve your safety performance.

Registration for events and seminars is easier to complete. Past issues of the MSEA newsletter, *Oil Patch Quarterly*, are available on the webpage. The newest feature is the role out of the "Dan the Safety Man" videos. These videos are being released every month to 6 weeks and the full video with downloadable presentation is available via www.petrodocs.com.

We encourage you to check out these sites to access the information and services provided by Sisk & Company:

www.tjsisk.com www.gomsea.org www.petrodocs.com

NOTES FROM DAN

A recent claim trend we are seeing with MSEA member companies is that a former employee files a workers' compensation claim after they have left the member company's employment. These claims are difficult to manage and expensive for a variety of reasons.

First, by the time the "employer" learns of the claim, there is likely no history of an event on file and nothing documented that helps uphold the denial of the claim. Secondly, these claims are filed directly with the State and at times the former employee has retained counsel. Both of these factors increase the reserve on the claim and also make it more likely that impairment will be awarded.

I do not have a surefire recommendation on what an employer can do that will always provide a positive defense in front of an ALJ. Some records that have helped Pinnacol and the companies uphold the denial of these claims are:

- Have the employee sign a daily time ticket and have them check or initial that they have completed the workday without injury or have reported any injury or incident that did occur.
- When an employee resigns (some of these claims have been filed by employees that voluntarily resigned), have the employee sign a statement that they have reported any injury that has occurred while working for you.

At the next MSEA quarterly safety meetings (August 9th and 18th) we would like to discuss your ideas on how we can stop this from happening. You can always call me at 303-831-7100 to share ideas you have.

Contact Information

The Mountain States Energy Alliance (MSEA) is a not for profit association dedicated to helping members create a safer work environment in the oil and gas industry. The MSEA offers an exclusive workers' compensation program underwritten by Pinnacol Assurance for its members. MSEA members receive a 4% discount on their workers' compensation premium and may also qualify for a dividend payment based on favorable loss experience of the group. To see if your company qualifies for the program or for more information about the MSEA program contact one of the following.

Mike Eastop
Dave Tacha
Tom Sisk

For benefit information contact:
Todd Heiserman

The following websites provide excellent insurance and safety information:

www.tjsisk.com
www.gomsea.org
www.petrodocs.com

If you have questions or comments about this newsletter, contact:

Dan Klimek
Loss Control and Safety Manager
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