



# Oil Patch Quarterly

Exclusive Program Managed by Sisk & Company

Third Quarter 2010

## INSURANCE NOTES

### Sisk Sells All Lines of Coverage

Sisk & Company is well known for the MSEA and the fantastic program that gives safety minded companies upfront discounts on workers' compensation insurance as well as the opportunity to earn dividends for good safety performance.

Since we rolled out the MSEA Health Insurance Initiative, many MSEA members have found that their MSEA membership can also help them get excellent pricing on health insurance, including the opportunity to earn dividends as well.

But what about other insurance needs? At Sisk & Company our staff can provide you with all types of commercial insurance coverage. We use the best companies in the various markets. We have arrangements with companies that provide specialty risk products and work with London based insurance syndicates if your risk requires that.

Sisk & Company should be considered your "one stop shop" when looking at insurance. Call 303-831-7100, and ask for Tom Sisk, Todd Heiserman, Mike Eastop or Dave Tacha. They will be more than happy to review your needs and recommend the appropriate insurance coverage.

### Using Lessons Learned to Improve Safety Performance

Safety professionals always emphasize the importance of accident investigation. We talk about getting the details of what happened and filing the first report of injury with the insurance company within 24 hours. We then talk about looking for the cause, and then implementing corrective action. This process is easy to outline, but actually very hard to do.

When a supervisor is told about an injury, what is a typical reaction? Most of the time I would guess it is not, "Thank you for reporting the accident". Rather the supervisor wants to know how badly the employee was injured and frequently the focus shifts to the things that must get done, (sending employee to designated provider, filling out designated provider selection form, filing the first report of injury, looking at OSHA recordability, etc.). So what about the preventive action part of the accident investigation?

When we look at what caused the accident we should look at both surface causes (equipment, procedures, training, etc.) and underlying causes (If defective equipment was used, why?; If a procedure was not followed, why?; If a person was not trained, why not?; Did the person who assigned the work, know the injured worker was not trained? --- I think you get the picture).

After all the facts are known and the corrective action has been implemented, these accidents and the lessons learned should be used as safety meeting topics or included in your employee training program. It is likely that a procedure or work rule has been violated many times before an injury occurs. Anything you can do to share the lessons learned from accidents your employees have had can make a strong impression on other employees.

While experience is a great teacher, we also recommend researching outside resources such as *Fatality Assessment and Control Evaluation (FACE) Program* by NIOSH or accident investigation summaries by the Chemical Safety Board. These can provide lessons learned for training without having your employees suffer the injury or your business suffer the loss.

Contact Dan Klimek, at 303-831-7100 or [dklimek@tjsisk.com](mailto:dklimek@tjsisk.com) if you want to discuss this further.



## LESSONS LEARNED

### WC Covers Lost Wages

#### The Case:

The injured worker had worked for the employer for 5 years and was injured while manually moving equipment. On the day of the injury, a coworker bumped a cabinet causing it to tip over. The injured worker positioned himself to catch the cabinet and as he caught the cabinet, his wrist bent backward. The employer filed a first report of injury and did not have any questions or concerns regarding the claim. The worker required surgery to the wrist / hand. He missed 3 shifts from work so no lost time was due or paid by Pinnacol. However, the employer elected to pay the worker for 3 lost shifts out of the worker's sick leave.

The injured worker eventually missed additional time adding up to 14 days. Pinnacol then paid the worker for the first three days; the employer requested that the worker reimburse the company for the days that had been paid out of the sick leave. The worker hired an attorney who set the claim for hearing. The judge ordered the employer to restore the leave and did not allow the employer to recovery the 3 days they paid.

#### Lesson Learned:

If an employee misses 3 shifts or less there is no legal requirement for any party to pay the lost time. If the employer elects to pay the lost time they cannot force the worker to repay the money for the time off, nor can the employer deduct the time off from the sick leave benefit.

### More U.S. Employers Using Background Checks

Results of a recent survey reported in Occupational Health and Safety magazine that employment background checks have become an integral part of the hiring process and will only increase in use. At Sisk & Company we have seen a similar trend as companies realize that the time spent upfront to get the right person for the job makes a huge difference in loss prevention and safety.

When making employment selection decisions, an applicant's interview performance, education, experience, job fit assessment results, and other qualifications need to be considered as well as his/her background screening results.

After a conditional job offer is made, an employer may ask an applicant about their prior workers' compensation history, hospitalizations, non-work related injuries, medications, and other items of medical history. *(Due to the complexity of employment rules, consult an attorney or other professional.)* In addition, the employer can verify the information given by the applicant by means of reference and other background checks. If an applicant has been dishonest with the potential employer, the conditional job offer can be withdrawn. The offer can also be withdrawn if the employer can show, with objective evidence, that the prospective employee cannot perform one or more of the essential functions of the job; that the applicant will create a direct and substantial threat to themselves or others which cannot be reduced to an acceptable level or eliminated by a reasonable accommodation; or that the accommodation requested by the applicant will create an undue hardship or will not work.

Post offer tests can be as simple as a medical questionnaire, or as thorough as a complete medical examination, drug and alcohol screen, psychological testing and functional testing. Some programs are set up to identify pre-existing conditions and to confirm that the new hire is an appropriate match for the job. Depending on the degree of screening used, the price will vary, but feedback I have received is that employers find the cost small in comparison to the benefit.

The data received from post offer testing can be used to avoid workers' compensation claims or, at a minimum, to apportion the employer's liability. The organizations Sisk & Company are familiar with provide post offer screens that are ADA compliant. They will work with you to set up a program that meets your needs, and meets the legal requirements. If you have questions, call Dan Klimek at 303-831-7100 for more information. Dan can put you in touch with several providers of these services.

## OSHA Changing Policy to Improve Outreach Training Program

OSHA has revised its *Outreach Training Program Guidelines* to require authorized trainers to limit courses to a maximum of 7.5 hours per day. This means that all 10-hour courses must be taught over a minimum of two days and 30-hour courses over a minimum of four days. Reducing the length of classroom instruction helps ensure that workers retain important information that may prevent injuries, illnesses and death.

Prior to this change, OSHA had no requirements for how long these classes should last each day. OSHA became concerned that students might miss some essential safety and health training if their attention were to fade while being required to sit through 10 hours of instruction in one day. Another concern was that training courses presented over compressed timeframes of one to three days were not meeting 10- and 30-hour program time requirements. This concern became evident after OSHA reviewed several fraud cases that involved issues with the length of training.

The Outreach Training Program provides workers with an overview of OSHA and training on how to identify, avoid and prevent workplace hazards.

Students who successfully complete 10- and 30-hour courses in general, construction and maritime industries and disaster site response receive certification cards and can take an additional course to become authorized trainers.

The Outreach Training Programs Guidelines are available at:

[https://www.osha.gov/dte/outreach/construction\\_generalindustry/guidelines.html](https://www.osha.gov/dte/outreach/construction_generalindustry/guidelines.html)

### MSEA Offers SafeLand Training

Since May of this year the MSEA has been offering SafeLand training to MSEA clients. During May, June and July, we offered multiple classes each week. Since then we have been offering the classes based on the need of the MSEA member companies.

If your crews need SafeLand training, give Dan Klimek a call. He will discuss options and at that point start the process of setting up a class for you.

We have a very competitive pricing structure that runs from no charge to \$100.00 per attendee. Call for details. Dan Klimek 303-831-7100.

## OSHA NEWS

### OSHA Updates Penalties for Violations

OSHA is implementing administrative changes to its penalty calculation system. Many of the agency's current penalty adjustment factors have been in place since the early 1970's, resulting in penalties which are often too low to have an adequate deterrent effect. Administrative penalty adjustments will therefore be made to several factors which impact the final penalty issued to employers.

A brief description of the penalty adjustment factors most likely to impact MSEA members include:

**History Reduction** - The time frame for considering an employer's history of violations will expand from three years to five. An employer who has been inspected by OSHA within the previous five years and has not been issued any serious, willful, repeat, or failure-to-abate citations will receive a 10 percent reduction for history.

**History Increase** - An employer that has been cited by OSHA for any high gravity serious, willful, repeat or failure-to-abate violation within the previous five years will receive a 10 percent increase in their penalty, up to the statutory maximum. Employers who have not been inspected and those who have received citations for serious violations that were not high gravity will receive neither a reduction nor an increase for history.

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## **OSHA Penalties - Continued from Page 3**

**Repeat Violations** - The time period for considering the classification of repeated violations will be increased from three to five years.

**Size Reduction** - OSHA will be amending its penalty reduction structure based on the size of employers, allowing for a penalty reduction between 10 and 40 percent for those with less than 250 employees. No size reduction will be applied for employers with 251 or more employees.

**Good Faith** - The current good faith procedures in the Field Operations Manual will be retained. A penalty reduction is permitted in recognition of an employer's effort to implement an effective workplace safety and health program. Employers must have a safety and health program in place to get any good faith reduction. Good faith reductions are not allowed in the cases of high gravity serious, willful, repeat, or failure-to-abate violations.

For more information visit the OSHA Website:  
<https://www.osha.gov/dep/administrative-penalty.html>



**OSHA Record Keeping** --- As we approach the end of the 2010 calendar year, remember to keep your OSHA 300 logs and associated documentation up to date. The OSHA 300 logs must be updated within 7 calendar days of receiving information that a recordable injury or illness has occurred. I have recently seen articles discussing huge fines given to companies that have intentionally “fudged” their OSHA logs. Your emphasis needs to be on preventing injuries, not on technicalities that might impact how you record the incident. Guidance is available at the OSHA web site or by contacting an OSHA Compliance Assistance Specialist at 303.844.5285 (ask for Todd or Megan) <https://www.osha.gov/recordkeeping/index.html>

**Fire Safety** --- National Fire Prevention Week has its roots in the Great Chicago fire, which occurred on October 9, 1871. But even today, fire and fire safety are concerns. Each year, fires take lives and burn numerous structures resulting in enormous impacts on families, communities, businesses and the environment.

As an employer it is important that you have a fire prevention plan and a fire emergency plan (a plan to address all likely emergencies is required). After the plan(s) are written, then training must be done and documented. Looking at potential emergencies, developing plans and conducting the training will raise awareness and can be an effective step in preventing emergencies from happening.

Contact me if you have questions about either of these items – 303-831-7100.

## **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 Pinnacle 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](http://www.tjsisk.com)  
[www.gomsea.org](http://www.gomsea.org)  
[www.petrodocs.com](http://www.petrodocs.com)

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

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