



# Curry Insurance Agency

## WORKERS' COMP

# Referral Crime Ring Costs Employers Millions

**O**NE OF THE hidden cost drivers in workers' comp is fraud and while many employers feel that fraud by "injured workers" is the biggest problem, there are also vendors in the system that do their part to skim money from employers and insurers.

Law enforcement in California recently busted a fraud ring that required attorneys to pay a monthly referral fee to a company that brought the lawyers new clients and then used the same company for a number of services that were later billed to insurance companies.

Prosecutors estimate that the ring swept 33,000 unknowing injured workers into the scam and netted more than an estimated \$300 million in insurance payouts since the scheme was started in 2005.

### How the scam works

Prosecutors allege that at the center of the busted ring were two individuals – Carlos Arguello III and Edgar Gonzalez – and their company Centro Legal Internacional.

## WHAT YOU CAN DO

This kind of fraud is difficult to detect if you are an employer, as it may involve employees who are legitimately injured but have been ensnared by a fraud ring to extract the maximum amount of cash from your workers' comp insurer.

Injured workers are often unwitting participants in the scam and they fall for a pitch that they will receive a large award. Instead, often they receive less as a result of the attorney taking their share. Try to:

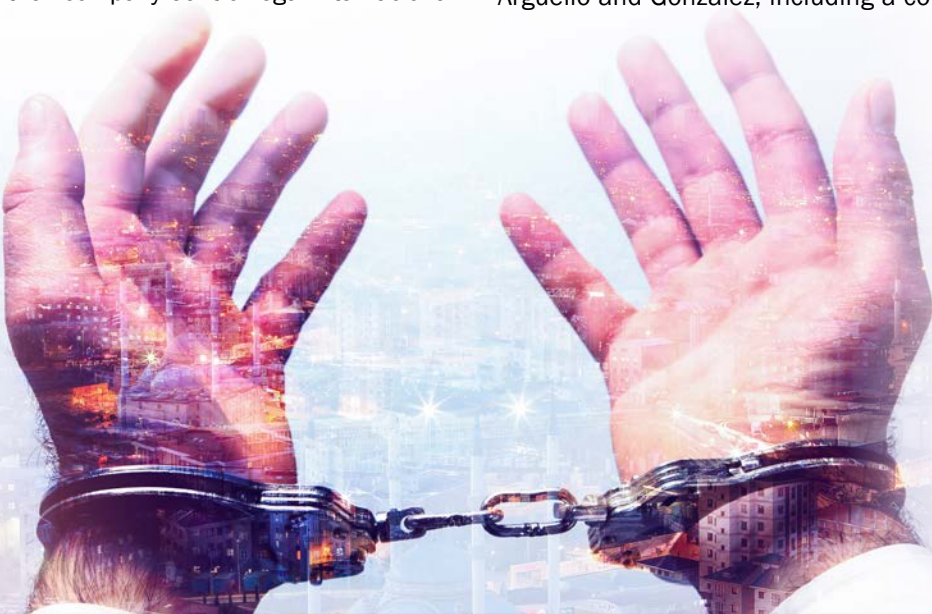
- Educate your employees on what to look for if someone approaches them about legal services for their workplace injury.
- Help employees understand how workers' compensation works and that for the best treatment they should stick with the provider network that your insurer has arranged. These physicians have the expertise to provide the appropriate care and treatment regimen for industrial injuries to help injured workers safely return to work and start earning a paycheck again.
- Help them understand that if they are being pushed to sign a contract for attorney representation they may not even need, it should raise a red flag.
- And if they are not meeting with the attorney but one of their representatives, that should also be a red flag.

Under the arrangement, the company agreed to furnish a minimum number of referrals every month to some 30 attorneys. The lawyers paid a monthly fee to Centro Legal and were also required to use the services of other companies owned by Arguello and Gonzalez, including a copy

service, and a document management and scheduling company.

Centro Legal's employees handed out fliers for free consultations and business cards

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CONTACT US



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## RULE-MAKING

# DOL Pulls Guidance on Independent Contractors

**T**HE TRUMP administration has withdrawn guidance issued by the Department of Labor under President Obama that had tightened restrictions on joint employment and independent contractors.

The move may give only the semblance of respite though, because the enabling regulations are still in place and so is established case law on the subject. The move only affects guidance that the DOL had issued to clarify regulations that were also codified during the last administration.

In other words, for now the regulations remain in place and if the administration wants to tackle those, it would have to start from scratch in the rule-making process.

### What it changed

The guidance that the DOL removed from its website did two things:

- Defined in strict terms the situations in which a worker is considered an employee under an “economic realities” test; and
- Expanded the joint employer doctrine. It did this by saying it would consider “whether, as a matter of economic reality, the employee [was] economically dependent on the potential joint employer.” This mostly concerns franchise operators and the franchising company.

Under now-withdrawn Jan. 20, 2016 guidance, joint employment can be “horizontal” or “vertical”:

**Horizontal employment:** When an employee is employed by two or more “technically separate but related or overlapping employers,” such

as separate restaurants that share economic ties.

**Vertical employment:** Staffing agency arrangements or similar operations where the “employee of the intermediary employer is also employed by another employer.”

The guidance said factors to be considered under the test include:

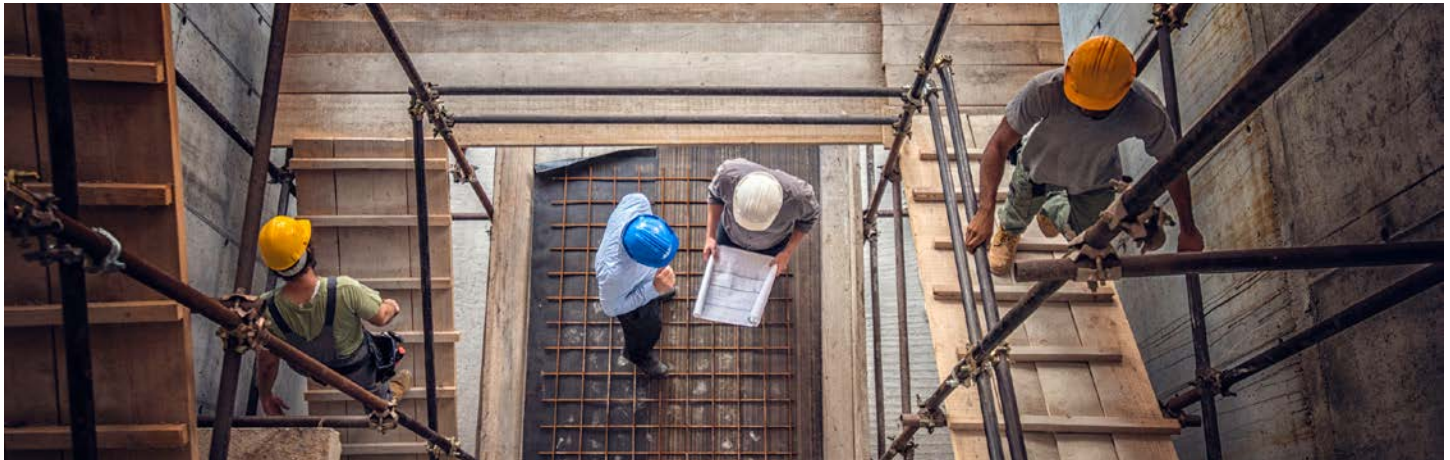
- The extent to which work performance is an integral part of the employer’s business.
- Workers’ opportunity for profit or loss depending on their managerial skills.
- The extent of the investments of the employer and the worker.
- Whether the work requires special skills and initiatives.
- How permanent the relationship is.
- The degree of control exercised or retained by the employee.

### How it affects employers

Courts have been using this guidance when considering cases centering on independent contractors and rescinding the guidance may not have an impact on future litigation.

Also, many states have adopted their own version of the regulations which will typically supersede the Federal rules since they are most likely to be applied locally.

However, going forward, investigations into complaints made to the Fair Labor Standards Board that touch on these issues would likely no longer rely on the repealed language when determining whether action should be taken against an employer. ❖



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## ‘Cappers’ Lured Injured Workers into Hiring Lawyers

in predominantly Hispanic neighborhoods, swap meets and in burgs along the U.S.-Mexico border.

Centro Legal also bought ads in Spanish-language publications and set up websites to attract would-be clients, offering them a “free consultation” online or through a toll-free number.

Once someone called and gave their information, the company sent an agent to the person’s home within 48 hours to get signatures on documents as well as attorney retainer agreements, prosecutors say.

### The fallout

While it’s not illegal for attorneys to advertise their services for representing injured workers, it is illegal under state law to pay for referrals.

Ten attorneys and six other individuals have been charged for their alleged roles. Among the charges are felonies including conspiring to refer clients for compensation, referring patients with reckless disregard for the commission of fraud, and insurance fraud. ❖

## WORKPLACE SAFETY

# Creating a Strong Safety Program for Fleet Drivers

**W**HILE MOST businesses with an automotive or trucking fleet focus on safety, few businesses are actually monitoring their drivers to make sure they are adhering to the company's rules, a new study has found.

Many companies only pull reports on their drivers' records on an annual basis, which means they miss important developments like a DUI or a few moving violations that will increase the cost of insuring them.

In fact, 70% of companies with fleets do not even monitor their drivers and 60% don't have a safety program in place, according to the study by SambaSafety, a firm that provides background screening and driver safety records for companies.

The key to having a successful driver safety program in place requires management buy-in and a company-wide culture focused on safety that encompasses not only a company's fleet drivers, but also anybody in the operation that may drive their personal vehicles on occasional company business.

SambaSafety recommends:

**Motivating staff to be safer** – The company advises against just issuing warnings like “slow down” and “put away the phone,” and instead focusing on what's at stake if they don't. Instead of numbers and checklists, make a presentation that lets them think in terms of their well-being, or even loss of life, for the best response.

**Providing strong safety leadership** – Creating a safety culture requires leadership to model the behaviors that all employees should adopt.

**Not just focusing on fleet drivers** – Any employees that use their vehicles for work must also be part of the training and they should know that you expect the same safe behavior of anybody you employ that drives.

Drive home the point that an employer can be responsible for anything that happens when employees are conducting company business, even if they are running to the office supply store for you.

**Being consistent** – Just because you have a safety policy, it may not be enough to get you off the hook if one of your drivers causes an accident. Companies can be held responsible if they do not have proactive intervention policies and detailed documentation.

**Using data to your advantage** – Collecting data on your employees' driving habits can greatly improve your ability to make sure you have a safe fleet of drivers. And the best way to do that is through continuous driver monitoring.

“The right data can help employers accurately reward those who are doing well, too, and securely keep up with disciplinary actions toward those who are missing the mark,” SambaSafety says in its report.

Do you have a strong safety policy for your drivers? The company recommends that you ask the following of your safety program:

- Was the policy established with input from key stakeholders?
- Has it been clearly communicated to all employees?
- Does it tie in to company goals and mission?
- Do you provide your employees with regular reminders and updates about your company's safety policies?
- Is there complete buy-in from top management?
- Is the policy uniformly enforced?
- Is there a fair, diverse, professional board for incident review?
- Is data properly used to increase compliance?
- Is it time for an update? ❖



## VIOLENCE AT WORK

# Responding to an Active Shooter in the Workplace

**W**ORKPLACE MURDERS rose by 2% in 2015 from the year prior to 417 people killed, according to the Bureau of Labor Statistics – and shootings in particular jumped by 15%.

The issue employers are faced with is that despite all of their efforts to protect their workers from industrial injuries, stopping a murder is not a normal part of their risk management process.

Besides the threat to your personnel and customers, companies that do not take threatening behavior seriously may also end up being sued for negligence by the families of victims.

For every person killed in a workplace homicide, there are thousands more who have been victims of some other type of workplace violence. OSHA estimates that more than 2 million Americans are victims of such violence every year.

There are certain factors that may contribute to an increased level of risk for workplace violence, including:

- Working at night
- Working in an area with a high crime rate
- Working in an establishment where alcohol is served
- Working in a health care establishment or a facility that treats individuals with mental problems
- Working in a facility that handles money

However, those factors don't always come into play. Other issues include:

- A worker who feels sidelined or abused may snap and go on a rampage.
- An employee's personal dispute outside of work can result in another party entering the workplace to exact revenge.
- A fired worker returns to their workplace with a weapon with intent to kill. ❖



**POLICE LINE DO NOT CROSS**

## OSHA Recommendations

- Put in place a zero-tolerance policy towards workplace violence against or by employees.
- Establish a workplace violence prevention program that includes investigating and addressing workplace violence promptly.
- Establish an emergency action plan.
- Teach employees how to recognize, avoid and diffuse potentially violent situations by hosting a personal safety training program.
- Alert supervisors to any concerns about safety or security and urge all employees to report all incidents immediately.
- Educate employees on what conduct is not acceptable and what to do if they witness or are the victim of workplace violence.
- Install video surveillance and alarm systems and minimize access by outsiders through ID badges, electronic keys or guards.
- If you are a retailer handling cash, provide drop safes to limit the amount of cash on hand.
- If employees have to walk into or leave your facility at night, set up a buddy system so that they can be escorted.

## Teach Employees How to Respond

Security experts recommend:

- Don't hide under your desk.
- If an employee sees a threat developing, they should inform all of their co-workers and try to escape the facility. Employees should not wait for others to follow.
- Employees should not try to gather their possessions before leaving. The point is to get out of harm's way quickly.
- Employees should run if they have a clear path to exit the facility.
- If no clear path out of the building exists, they should find a safe place like a room that they can lock from the inside. If there is no lock, block the door with furniture to make it difficult to open.
- If they find a safe place to hide, they should turn the ringer off on their phone.
- If law enforcement officers are outside, employees should show they are not armed and follow their instructions.
- If there is no escape, try to distract the assailant by throwing things at them or using something in the workplace as a weapon.