



# Curry Insurance Agency

## WORKERS' COMP

# How to Avoid Inheriting an Old Injury Claim

**O**NE OF an employer's biggest shocks is to find out that a workplace incident aggravated a pre-existing injury that was sustained at the worker's prior job.

Fortunately, there are steps you can take if you don't want to inherit a claim that someone incurred at another job, or an injury that they may risk aggravating while working for you.

Here are five ways to reduce the chances of incurring such claims to begin with:

### Pre-work screenings

Pre-work screenings can weed out applicants who physically cannot perform a job. You can subject them to a test to gauge their ability to perform specific physical demands of the job for which they are applying.

Screenings should especially be used for high-risk jobs, those which cost your business the most in workers' comp costs. There are two types of pre-employment screenings:

- **Pre-offer.** This screening identifies applicants who are physically able to safely complete the essential job functions of the position for which they are applying.
- **Post-offer.** This screen measures the same functions, but you can also require a medical exam. This can help you identify any disability, including if they are under doctor's orders to limit certain types of physical activity.

### Drug tests/background checks

Drug tests can determine if there is a history of drug use, and, if so, indicate the types of drugs in the system.

Background checks probe the criminal and financial records of an applicant.

If an applicant shows negative incidents on a drug or background check, he or she could be a candidate for future fraudulent activity.

### On-site ergonomic solutions

Utilize physical therapists or ergonomists before injuries occur to work with employees, supervisors and management to understand workflow and all job task requirements.

Those specialists can recommend optimum positions, ergonomic strategies and proper physical movements required at workstations to reduce the chances of employees sustaining musculoskeletal injuries.

### Employee education

Educate employees on how to use workers' comp legitimately and how it can be used illegitimately.

Explain the damage to the employer from malingering and fraud by illustrating how claims affect the premium employers pay.

Information also should be shared about

penalties and fines that could be incurred with fraudulent claims.

Educating employees regularly can reduce the chances of fraud.

### Prompt injury reporting

Train employees to report any health concerns as soon as they notice any discomfort.

Injuries can develop over time in many jobs when they are executed using improper or ergonomically incorrect motions.

If an employee raises concerns about discomfort to a supervisor, it should be given serious attention.

That way the supervisor, the worker and inside or outside specialists can address the issue.

This can be done through observations and evaluations of the work pattern of the worker, and in comparison to those of others in the department.

The worker should also be sent for medical diagnosis or medical care to treat the discomfort before it becomes a bigger problem. ❖

CONTACT  
US



If you have any questions regarding any of these articles or have a coverage question, please call us at:

### ISU Curry Insurance Agency

489 E. Colorado  
Pasadena, CA 91101  
Phone: 626-449-3870  
Fax: 626 449-5268  
License No. : 0588757

## PROPERTY RISK

# Protecting Your Business from Threat of Wildfire

**A**S WILDFIRES RAGE in California and elsewhere in tinder-dry areas of the US, now more than ever you need to make sure that your business is protected from the threat.

Whether you own or operate an apartment complex, store, office, restaurant or other retail establishment, the steps you take now will reduce the risk of costly repairs or rebuilding if a wildfire strikes.

If you are in one of the many tinder-dry areas this year, you need to be prepared to deal with a fire and keep your business operating.

### Surroundings most important

The goal of an effective wildfire protection plan is to keep the fire from coming dangerously close to any structure on the property.

Inspect the premises around your building to see if there is anything around or attached to a structure that can be a potential wick that could allow the fire to come dangerously close to your premises.

Storage buildings, trash bins, equipment and other combustible items can allow fire to reach the building. If possible, relocate these at least 30 feet from the business and other structures on the property.

Relocate propane tanks at least 30 feet away from the building and other structures on the property. If relocation is not an option, create a 10-foot zone around a tank using low-combustible materials such as rock, gravel mulch or irrigated lawn.

### Exterior structure

Choose noncombustible building materials when rebuilding or renovating, and particularly if you are choosing new siding for your structure. You should also consider these most important flashpoints and conduits for fires:

- **Roofing** – Choose a Class A fire-rated roof covering, and keep the roof and gutters clear of debris. Businesses that share a roof are particularly vulnerable if the entire building is not well maintained.
- **Vents** – Attic and crawl space vents can be entry points for wind-driven embers. Cover with 1/8-inch metal mesh screens.
- **Attachments** – Awnings, decks, patios and porches also can act as a wick, bringing flames to the building. Even if you have noncombustible siding like stucco, a burning deck or other ignited combustible items close to the wall will provide a direct flame exposure to the doors, windows or sliding glass doors.
- **Windows** – Radiant heat from a wildfire can break single-pane windows. You should install dual-pane windows with tempered glass for increased protection.

Also, open windows can be entry points for embers. Educate tenants and employees about the importance of closing all windows before evacuating if fires draw near.

### Other considerations

- Have plenty of fire extinguishers on location, and get them inspected regularly.
- Back up important documents that could be destroyed.
- Have an evacuation plan in place to safely exit the building in case of a wildfire.
- Practice your evacuation plan, so each employee will know how to exit the building calmly and safely.
- Follow local smoke detector and sprinkler system ordinances.
- Have flashlights and extra batteries available in case your business loses electricity. ❖

## YOUR BUSINESS'S DANGER ZONES

**Tend to the surroundings of your premises by using the following three-zone approach:**

**Zone 1 (0-5 feet):** Rock or gravel mulch and low-growing plants or lawns are good choices for this zone. Avoid combustible structures or materials in this area.

**Zone 2 (5-30 feet):** Vegetation island. Low tree branches should be pruned. Remove shrubs.

**Zone 3 (30-100 feet):** Keep tidy. Thin out vegetation between trees. Remove shrubs. Don't let tree canopies touch.



## RISK MANAGEMENT

## Compliance Can Avert ADA Lawsuits by Employees

**D**URING THE last eight years since the Americans with Disabilities Act Amendments Act (ADAAA) was enacted, the landscape for employers has changed dramatically.

The odds of being sued have increased significantly and the onus is now on employers to engage in an interactive process with an employee who claims to be disabled or one that you, as an employer, consider to be disabled.

The original Americans with Disabilities Act has been in effect for 25 years, but the ADAAA shifted the emphasis from whether an employee has a qualifying disability to the interactive process and the efforts employers take to explore reasonable accommodation with employees. That is where the focus remains today.

The employment law firm of Foley and Lardner LLP, in a recent blog post, recommends the following whenever an employee mentions a potential disability or the circumstances suggest a potential need for accommodation:

### 1. Majority of people have a 'disability'



The law firm recommends working from the position that if an employee begins talking about a mental health or physical condition affecting their ability to work, you should consider approaching the issue from the perspective that they potentially have a disability.

Better than to ignore what you're hearing.

Many recent precedent-setting lawsuits have hinged on employers starting the interactive process too late

or ignoring employees' requests for accommodation.

And some courts have ruled that even if the employer "perceives" that the employee is disabled, they may have an obligation to consider accommodation.

In other words, it's better to start interacting with the employee than shutting down the process before it has a chance to start.

### 2. Process matters as much as the result

Under the ADAAA, the focus is on the interactive process with the end goal of identifying how the employer can reasonably accommodate the employee or job applicant so that they can do their job.

The process must be conducted in good faith and thoroughly with the legitimate goal of identifying a reasonable accommodation. Courts have increasingly viewed this process as crucial, and almost as important as the end goal.

### 3. Truly engage in the process

You'll need to back up your interactive process with proof that you were engaged in it.

Even when it may be clear to you that you won't be able to accommodate someone, you should still show that you tried to find a solution that would work.

Foley and Lardner recommend that you at least:

- Communicate with the employee and show that you either

reached agreement on the restrictions or obtained supporting medical documentation.

- Show that you explored with the employee and their supervisor the possible reassignment of non-essential tasks.

- Show you assessed the employee's qualifications and looked at every open job for which they qualified to assess a potential transfer.

- Show you had a final conference with the employee before concluding reasonable accommodation was not possible.

Make sure that you have a clear record of the interactive process. The more you can back up your efforts of trying to identify a reasonable accommodation, the more likely it will be that a court would view your efforts favorably and that you made good-faith steps in arriving at your conclusion.

"As we counselors love to say – document everything, including the thought process leading up to all conclusions reached, and the fact that you did not reach the final conclusion until after completing all steps in the process," the law firm wrote in its blog.

### 4. No cookie-cutter approach

While many employers want to consistently perform the same kinds of steps from situation to situation, it is equally important to take each accommodation inquiry and each employee's unique circumstances on their own merits.

It's unlikely that multiple employees will have the same limitations and medical diagnoses, restrictions and prognoses regarding the various essential functions of the job.

Because of this, there is no single approach to accommodation, and your approach to the interactive process should allow for flexibility.

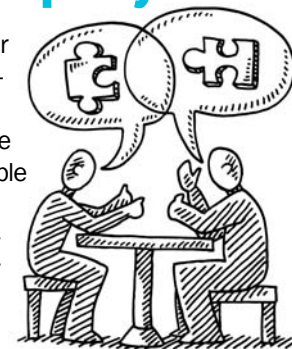
### 5. Don't forget the FMLA and workers' comp

Often there is some overlap between the ADA and other legal frameworks like the Family Medical Leave Act and workers' compensation insurance.

For example, if an employee cannot return at the expiration of FMLA leave for his or her own serious health condition, the employer runs a serious risk of terminating the employee without first conducting an independent ADA analysis and assessing whether additional leave or moving them into a different position conforming with their restrictions is a reasonable accommodation.

The same applies after an employee receives a permanent and stationary workers' compensation diagnosis with restrictions that preclude maintaining him or her in the same position.

State workers' compensation requirements may not require an employer to take further steps in such a circumstance, but the ADA does. ❖



## WORKPLACE INJURIES

# Early Reporting Can Cut Claims, Premium Costs

**H**OW LONG you wait to notify your workers' compensation insurer of a workplace injury can make a significant difference in the cost of that claim.

When your premium is calculated, one of the key elements that we take into account is the cost and frequency of prior claims during the past few years.

In short, by improving your organization's injury notification times, you can also positively affect the cost of the claim, which in turn can help reduce your overall workers' comp premiums going forward.

### Can early reporting really affect the cost of a claim?

The graph to the right shows results from a National Council on Compensation Insurance study looking at the cost of a claim based on the delay between incidence and notification. Note that even as little as 2-3 weeks can begin to increase the cost of the claim by over 10%.

### Why does early reporting work?

The sooner medical treatment begins, the better the outcome.

For a workers' compensation claim, the sooner your insurer knows about an injury to one of your workers, the sooner we can start collecting information and plan for appropriate treatment options.

If medical treatment is delayed, the likelier it is that costs will mushroom both in terms of medical costs and lost time from work, which needs to be compensated.

If you notify your insurer when an injury occurs and they can arrange for the worker to begin the medical treatment, it is likely that the length or severity of their treatment program will be less.

For the injured worker, this means a shorter recovery time, better prognosis for general health and return to work outcomes, and probably a more positive attitude toward their injury and the workplace.

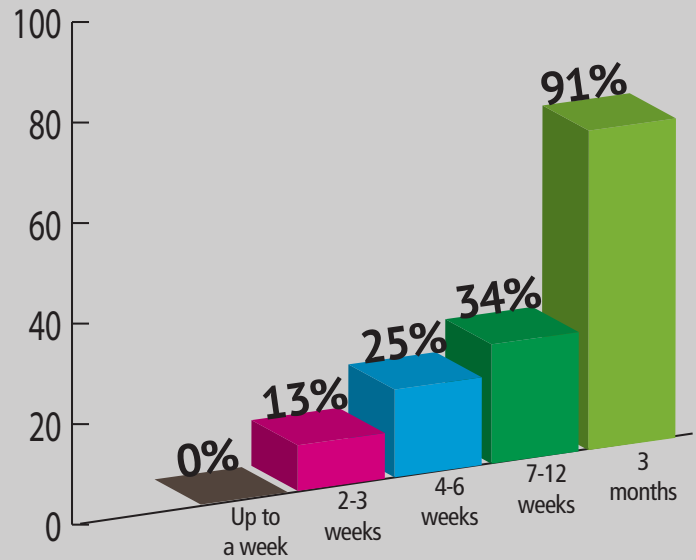
For you as the employer, this translates to less money allocated to covering wages and treatment for the injured worker, and less disruption to your workplace to cover the injured worker's duties. ❖

## Claims Reporting Tips

- Develop internal procedures for reporting injuries. Ensure that your staff know the importance of reporting injuries immediately and that they are aware of your reporting procedures.
- Don't question employees' integrity when they report an injury.
- Familiarize yourself with the regulatory and legal requirements in relation to reporting workplace injuries.
- Report a claim immediately after learning about it.
- Encourage safe work practices and ensure that employees are aware of and practice proper safety techniques.
- If an injured worker still has partial capacity for work, you should try to provide interim alternate duties while they heal up. This can have a positive impact on potential disability levels, and on the premium impact of lost time.

## Delayed Reporting is Expensive

Average increase in claims costs



## Check Subcontractors' Insurance Policies

DID YOU know you can be held liable under your own workers' comp policy should an employee of a subcontractors be injured? Courts have on numerous occasions said you are.

Many times an injured worker may even be a third of fourth level contractor, but if none of your subcontractors are carrying workers' comp, you may see the claim hit your own policy.

This scenario is even more likely if the main contractor has substantial control over the sub's employees. courts have ruled.

Courts generally start with the sub whose employee was injured and move up the chain until they find a valid workers' comp policy.

Protect yourself by requiring your subcontractors to have a certificate of insurance. But don't stop there; you should call the insurance carrier to see if the certificate is valid.

You can check also with the State Contractors Licensing Board to see if your subcontractor has workers' comp coverage. ❖



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