Behavioral Safety Programs Help Employers Cut Workers’ Compensation Costs
by Sheena Harrison - Business Insurance

Private and public sector employers are implementing behavior-based safety programs in their workplaces to cut workers compensation costs, using feedback and reinforcement to encourage safer work habits of their employees.

Behavioral safety programs, a decades-old regimen to reduce workplace injuries, are finding greater success when employees and top company executives participate in the effort.

Contemporary programs focus on a “conversation rather than observation” approach, in which employees can give feedback to managers and are not blamed solely for a company’s safety concerns, said Robert Pater, managing director and founder of Strategic Safety Associates Inc. in Portland, Ore.

They also allow employees to voluntarily participate in observations and safety conversations. That combined with a commitment by top executives to provide safe facilities and equipment for employees can help companies see the greatest success, he said.

“The best implementations are not only top-down driven; they have significant input and buy-in from employees and supervisors,” Mr. Pater said.

Workplace safety experts say such programs work best when used as one tool in a series of safety protocols rather than a stand-alone cure for all safety challenges. The most effective programs engage workers in safer behaviors that prevent accidents.

Companies should use behavioral safety programs to improve employee adherence to safety rules, and to measure whether they provide resources and infrastructure that allow employees to work safely, Mr. Pater said.

To me, the most important thing is that leaders look at themselves and they start acknowledging, “Where is my part in this?” Mr. Pater said.

Daniel J. Moran, a behavioral psychologist and Joliet, Ill.-based senior vice president of Quality Safety Edge Inc., said his company estimated behavioral safety programs can reduce injury rates by more than 30% on average in the first year and by more than 90% by their eighth year.

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On March 22, 2013, Oregon OSHA issued a letter delaying the enforcement of new provisions to the Confined Spaces standard. The new provisions were to take effect April 1, 2013, however, it was decided to delay enforcement of these provisions until September 1, 2013.

From OSHA’s letter, reasons for the delay involve:

“Several individuals have raised concerns in recent weeks as a result of unexpected delays in finalizing the Oregon OSHA directive on the New Confined Space standard (as well as related training and other guidance materials). In response to the issues, Oregon OSHA is delaying enforcement of the new provisions of the rule until September 1, 2013. This will allow at least three months (and probably four) between the completion of the directive and the enforcement of the new provisions of the rule.

Between April 1, 2013 and September 1, 2013, violations of the Confined Space rule will be cited only if the conditions would have also represented violations of the previous rule.”

The letter has been posted on Oregon OSHA’s website www.orosha.org and can be found with this link Confined_space_rule_delayed_eff_date.pdf

If you have any questions call our office at 503-968-6300 and speak with your Risk Management Consultant.

Notice of Injury Claims
by Claims Department - Empire Pacific Risk Management, Inc.

When does an employer have notice of a workers’ compensation claim? This is an important consideration because the date the employer has knowledge of a workers’ compensation claim, not the date the insurance carrier learns about the claim from the employer, triggers the insurer's duty to process the claim within 60 days. Any delay in passing along notice of a workers’ compensation claim to Empire Pacific can significantly compromise our ability to conduct a thorough investigation and make an informed decision to accept or deny the claim. Thus, it is important to identify what sort of information puts an employer on notice of a workers’ compensation claim.

Let’s start with the obvious—A completed 801 form or 827 form and other written request for workers’ compensation benefits from the worker or someone on the worker’s behalf, all constitute a workers’ compensation claim. This is how the vast majority of claims are reported. The duty to process a written request for compensation within 60 days of receipt is non-discretionary.

An employer’s knowledge of a “compensable” injury, whether obtained through a written report or verbally, satisfies the legal definition of a claim. The distinction between knowledge of an injury and notice of a workers’ compensation claim, therefore, hinges on the difference between an injury and a “compensable” injury.

A “compensable injury” is defined as an accidental injury arising out of the course of employment that requires medical services or results in disability. An employer’s knowledge that an employee hurt themselves at work, standing alone, does not amount to notice of a workers’ compensation claim. The critical question is whether the employer is aware that the on-the-job injury resulted in disability and/or the
need for medical treatment. For example, if a supervisor witnesses a worker twist his ankle, fall down, immediately get up and walk away, it is safe to say the employer has knowledge of an injury, but not notice of a workers’ compensation claim. If that same worker limps over to his supervisor after the fall and asks to go home early because his ankle hurts, the employer probably has notice of a claim. If the worker gets up and asks to leave work in order to see a doctor for ankle pain, the employer definitely has notice of a claim and the 60-day deadline to process the claim starts to run from that date.

A workers’ compensation claim does not need to be submitted in writing. The allowance of verbal claims is something new following the recent Court of Appeals decision in Godfrey v. Fred Meyer. Oregon law stated that notice of an accident “shall be in writing and shall apprise the employer where, and how” an on-the-job injury occurred. An employee’s failure to provide written notice within certain time frames previously acted as a bar to future workers’ compensation benefits. This is no longer the case following the Godfrey decision. The Oregon Court of Appeals essentially has abolished the requirement that notice of an accident be provided to the employer in writing. Verbal reports are sufficient if given to the employer within 90 days of the work injury, or within one year of the work injury if the employer had actual knowledge of the injury within 90 days.

The line between an employer’s knowledge of an on-the-job injury versus notice of a workers’ compensation claim has become increasingly blurred since the Godfrey decision. Obviously, not every on-the-job injury an employer knows about needs to be reported for processing under the workers’ compensation system. You do not need to fill out an 801 form if you overhear an employee complaining she just got a paper cut. If that same employee later tells you she contracted a staph infection as a result of the paper cut, however, things change. In the absence of a formal written request for workers’ compensation benefits, whether an employer has notice of a workers’ compensation claim becomes a question of fact.

It will not always be clear at the outset whether an on-the-job incident will lead to time loss, permanent disability, and/or medical treatment. Under the circumstances, it is reasonable to take a “wait and see” approach in the absence of an 801/827 form, or other written request for workers’ compensation benefits. The obvious benefit of taking a “wait and see” approach is the likely reduction in the number of workers’ compensation claims you will have to deal with. The downside to delay is the possibility that a large portion of the 60-day window to investigate the claim may be wasted. The best advice is simply to act reasonably and remember that a third party (i.e., an Administrative Law Judge or Workers’ Compensation Board) ultimately may be asked to decide if/when you received notice of a workers’ compensation claim. If there is a reasonable expectation that a work accident will lead to disability or result in medical treatment, we recommend reporting the accident to Empire Pacific and letting the claims department decide how best to proceed in the absence of a written request for workers’ compensation benefits from the worker.

In conclusion, do not wait for an employee to submit an 801 form or other written request for compensation before notifying Empire Pacific of a potential workers’ compensation claim. A verbal report of injury coupled with time loss and/or medical treatment is sufficient to trigger claim processing obligations under Oregon law. In questionable cases, please do not hesitate to call the Empire Pacific Claims Department at (503) 968-6300 for their input.

Observation and feedback, part of the five key pieces of behavioral safety programs, are particularly crucial, Mr. Moran said. In these stages, trained observers provide positive, discipline-free feedback to their co-workers and discuss how safety can be improved. Such steps can reinforce positive work habits.
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Giving positive responses for safe behaviors are important because unsafe work habits sometimes can be easier for workers, Mr. Moran said during a recent joint meeting of the Risk & Insurance Management Society Inc. and the American Society of Safety Engineers in Oak Brook, Ill.

“What’s happening is taking (unsafe) safety shortcuts lets us get things done faster (or) easier sometimes,” Mr. Moran said. “It’s less expensive to do it that way. “

Behavioral safety has helped significantly decrease injury rates for Knife River Corp. of Bismarck, N.D., and reduced its workers compensation rates to its lowest in 10 years.

Elsewhere, the city of Henderson, Nev., began using E. I. du Pont de Nemours & Co.’s behavioral safety program in its parks and recreation department in 2009. The department has some 1,700 full- and part-time employees, most of whom are seasonal and have a wide range of job functions.

Safety Director Michael Francis said 200 supervisors have been trained to observe employees once a month and provide safety feedback. The observations are reported to the parks and recreation team, and employee feedback is sought.

“Those behaviors, whether they be positive or negative in aspect, we take them as a learning situation,” said Mary Ellen Donner, the city’s parks and recreation director.

A case study by DuPont showed the department’s workers comp claims decreased 25% in the program’s first year.

While experts said that behavioral safety efforts have been used by employers for at least two decades, today such programs use much different tactics.

Strategic Safety Associates’ Mr. Pater said behavioral safety programs sometimes get pushback from unions because they are viewed as blaming employee behavior for a company’s safety concerns.

“Everybody’s responsible,” Mr. Pater said. “It’s not just workers that are responsible for organizational safety.”

Tom Krause, a psychologist and independent consultant in Ojai, Calif., said there is a danger for firms to pinpoint employee behavior as a safety concern without providing proper equipment and safe facilities to protect workers.

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