P&C Pro-File

Workplace and safety tips brought to you by: LaPorte

DID YOU KNOW?

According to the Bureau of Labor Statistics, musculoskeletal disorders (MSDs) accounted for one-third of all workplace injuries and illnesses in 2013.

Even though average workers' comp claims for MSDs cost employers about $26,000 each year, most employers do little to identify and prevent common sources of musculoskeletal injury. Conducting an ergonomics assessment and educating employees on good ergonomic practices could save employers thousands of dollars every year.

"Best Practices" Exclusion Case Dismissed by Los Angeles Judge

A federal judge in Los Angeles dismissed a potentially landmark case in cyber insurance, though his decision offers no legal ruling on the "best practices" exclusion.

In 2013, Cottage Health System suffered a data breach in which 32,000 confidential records were compromised. The breach resulted in a class action lawsuit, which Cottage settled for $4.1 million. Columbia Casualty Co., the company that had insured Cottage Health System's cyber policy and paid the settlement, filed a lawsuit seeking recovery of the paid claim, citing the policy's "best practices" exclusion.

The "best practices" exclusion states that if a vendor identifies and notifies companies of a security breach, and they fail to take appropriate actions, the companies will be held liable. The exclusion required Cottage Health System to maintain certain minimum practices regarding cyber security, like checking for and implementing security patches.

While this was the first true legal test of the "best practices" exclusion, this ruling will likely have little impact on the future of the exclusion. The judge dismissed the claim because Columbia Casualty Co. failed to go through a policy-mandated mediation procedure before filing its lawsuit, as the policy had stipulated.

LAPORTE
Insurance | Risk | Benefits

Warning from OSHA: HCS and GHS Differ

OSHA's guidance for the agency's compliance officers regarding enforcement of the revised Hazard Communication standard (HCS) warns of possible noncompliance if employers follow the wrong revision of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS).

The new standard—which went into effect for manufacturers, importers, distributors and employers on June 1, 2015—was devised to bring the U.S. standard in line with the GHS. However, the agency warns that the HCS and GHS are not identical, and the two standards may differ in some significant ways.

(Continued on next page.)

Hidden Risks of Zero-tolerance Policies

As the use of medical marijuana has grown more widespread, understanding employee rights and employer responsibilities regarding medical marijuana use has become more complicated. Rather than attempt to navigate the complicated laws regarding marijuana use, some employers might want to avoid the confusion and opt for a zero-tolerance approach. However, some recent court cases show why screening potential employees for or questioning current employees about medical marijuana use might not be as simple as it seems.

In June, the Colorado Supreme Court upheld a lower court decision in which an employer fired a quadriplegic employee for off-duty marijuana use, even though the employee had a prescription for medical marijuana to treat muscle spasms. Colorado has a "lawful activities" law that prohibits employers from firing employees who engage in lawful activities while away from work. The court ruled that, since marijuana use is always illegal under federal law, it cannot be considered a lawful activity, and the company was therefore within its rights to terminate the employee for violating the company's zero-tolerance drug policy.

On the other hand, other states, such as Arizona, Delaware, Minnesota and Nevada, protect employees who use medical marijuana. These states explicitly prohibit employers from firing employees for their off-duty use of medical marijuana, as long as employees otherwise comply with state law. Still, while these states demand that employers make "reasonable accommodations" for their employees' medical needs, employers don't have to extend accommodations that pose a threat to people or property, or prevent employees from completing their essential job tasks.

In short, employers that inquire about marijuana use when screening employees and prospective candidates may expose themselves to discrimination claims. Given the overlapping, varied and often contradictory laws regulating the use of marijuana, employers ought to consult with legal counsel before adopting or implementing zero-tolerance drug policies.

HCS and GHS Differ, Cont.

(Continued from previous page.)

The guidelines note that while HCS 2012 is based on GHS Revision 3 (2009), employers who aligned their practices to later versions of GHS, like Revision 4, may consequently be in noncompliance with HCS 2012.

For example, Revision 4 introduces a new category for aerosols, Category 3 (nonflammable) Aerosols, which does not require a pictogram. HCS 2012 does not have such a category and does require a pictogram. Thus, a company following the most current GHS revision would be in noncompliance with HCS 2012.

Compliance with the HCS has been a complicated process. Previously, OSHA announced that manufacturers, importers and distributors who have acted with "reasonable diligence" and "good faith" to obtain correct Safety Data Sheets (SDS) but have been unable to procure them from upstream suppliers would be allowed limited use of HCS 1994-compliant labels.

For more information, consult OSHA's instructions for inspectors.

P&C Pro-File

Workplace and safety tips brought to you by the insurance professionals at:
LaPorte