Unemployment, Workers' Compensation and Claim Management

Human Resources Elements

Hire ❖ Develop ❖ Retain

Unemployment, Workers' Compensation, and Safety & Health

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Unemployment Compensation

Overview

The Social Security Act of 1935 instituted unemployment insurance. Financed largely by employer contributions in the form of taxes, these benefits vary widely from state to state but generally amount to 50 percent or less of what the employee was earning.

Because benefits are so often inadequate, some unions have obtained provisions for supplementary unemployment benefits (SUBs). When combined with regular unemployment benefits, these SUBs can bring an employee's earnings much closer to normal wages. Severance pay provisions or pay in lieu of notice under the federal or state plant-closing laws are another means of supplementing unemployment benefits.

Because state unemployment compensation laws lack uniformity, the benefits and their duration can vary considerably. Lower-income workers usually receive a larger percentage of their previous earnings than workers with higher incomes do. The normal benefit period is 26 weeks, but this, too, can vary. Eligibility is normally limited to employees who have worked a minimum number of weeks and earned a minimum amount during that period.

In all but a few states, the cost of unemployment compensation is borne by employers, with the cost to each employer being based upon its "experience rating"—the frequency with which claims have been filed against the employer in the past. The company that is able to reduce the number of unemployment compensation claims charged against it will be able to reduce the amount of the contribution required.

Joint federal/state program

Federal and state authorities jointly administer unemployment compensation. The responsibilities of the federal government are set forth in the Federal Unemployment Tax Act (FUTA) and the Social Security Act. These laws establish guidelines that the individual states must follow in fashioning their own tax structures, benefit levels, qualification criteria, and disqualification procedures.

Virtually all employers must pay federal and state unemployment tax. Employers pay the federal tax if during the current or preceding year, they

- Paid wages of $1,500 or more to covered employees in any calendar quarter
- Employed at least one person for some part of the day during any 20 weeks of the year
- Paid cash wages of $1,000 or more in any calendar quarter for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.
- Paid $20,000 in cash wages in one calendar quarter for farm work, or employed 10 or more workers in each of 20 weeks in a given calendar year.
- Only the wages paid to employees in covered employment can be used in establishing and in determining the benefit amounts payable, if and when such employees become unemployed.

"Employment" defined

The legal definition of "employment" is fairly broad. It includes most part-time and temporary employees. Independent contractors may be excluded, but only if the employer has little control over their work. Federal requirements leave some room for states to differ in defining employment, in the criteria used to determine the existence of an employer-employee relationship, and in the kinds of services that are excluded.

Exclusions from coverage

Certain types of employment are specifically excluded from coverage. An employer is not liable under the law when all individuals performing service are in excluded or non-covered employment, nor can such employees be considered in determining liability.

Wages paid to non-covered employees are not subject to the payment of contributions, nor can they be used in establishing a claimant's eligibility or in the computation of benefit amounts.

The following are wages which are exempt from FUTA:

- Wages for services performed outside the United States
- Wages paid to a deceased employee or a deceased employee's estate in any year after the year of the employee's death
- Wages paid by a parent to a child under age 21, paid by a child to a parent, or paid by one spouse to another spouse
- Wages paid by a foreign government or international organization
- Wages paid by a state or local government or by the United States federal government
- Wages paid by hospitals to interns
- Wages paid to newspaper carriers under age 18
- Wages paid by a school to a student of the school
- Wages paid by an organized camp to a student
- Wages paid by non-profit organizations
- Effective January 1, 2011, an alien admitted to the United States to perform service in agricultural labor.

Unemployment in Illinois

Unemployment insurance requirements are set in The Illinois Unemployment Insurance Act (IUIA). This law defines who must pay state unemployment taxes (SUTA) and who is exempt from SUTA.

Who is Covered?

- Virtually all employers are subject to unemployment insurance taxes under the Illinois Unemployment Insurance Act (IUIA) including:
    - Anyone who, in the current or preceding calendar year, paid wages of at least $1,500 in any calendar quarter or employed at least one person for some part of a day in each of 20 different calendar weeks;
    - Tax-exempt nonprofit organizations employing four or more people for some part of a day in each of 20 or more weeks in either the current or preceding calendar year;
    - The state of Illinois and its instrumentalities;
    - Employers that voluntarily elect to be covered;
    - Anyone who buys or acquires a covered business;
    - Employers of agricultural labor that, in either the current or preceding calendar year, either paid wages of $20,000 or more, or employed 10 or more people in each of 20 different weeks;
    - Employers of domestic workers that, in any quarter of either the current or the preceding calendar year, paid $1,000 or more;
    - Employers subject to the Federal Unemployment Tax Act, unless they are specifically excluded by law

Who is Exempt from Coverage?

- The law excludes certain services from coverage, including, for example, services provided by:
    - Students working for schools, colleges, or universities;
    - Students working for work-study programs;
    - Spouses of students working for the school (if service is provided under a program to provide financial assistance to the student);
    - Real estate and insurance salespersons;
    - Insurance solicitors and real estate appraisers;
    - Student nurses;
    - Hospital interns;
    - Certain newspaper distributors (i.e.: minors);
    - Part-time workers for nonprofit entities;
    - Freelance editorial or photographic workers for a newspaper

Experience Ratings

Past unemployment experience. Experience rating is a method of determining the contribution rates of individual employers to their state unemployment funds. Once a year, in accordance with the Illinois Unemployment Insurance Act, you are assigned the rate you will use to calculate your quarterly tax contributions. Your contribution rate is based on your own experience, i.e. your benefit charges (for benefits paid to former employees) and your taxable wages, and the experience of the entire state. The Act sets minimum and maximum rates.

The Division keeps a record experience for each employer's account. The experience includes taxable wages reported contributions paid (including voluntary payments), and benefits charged. Unemployment taxes paid are credited to the employer's account. Unemployment benefits paid to eligible claimants are charged against the accounts of the claimant's employers during the base period of the claim. An employer generally becomes eligible for an experience rate after three full calendar years of liability.

UI tax rates will vary according to state. In Illinois, each employer that becomes liable to report workers' wages any pay unemployment taxes is assigned to an industrial classification division. For the first three consecutive calendar years in which liability for the payment of contributions is incurred, an employer that first becomes subject to the Illinois Unemployment Insurance Act pays contributions on its taxable payroll at a rate equal to the greatest of: (Section 1500)

1. 2.7 percent;

2. 2.7 percent multiplied by the current adjusted state experience factor;

3. The rate determined by the employer's Economic Sector in the North American Industry Classification System (NAICS), which is based on the average contribution rate for all experience rated employers in that specific Economic Sector (or a similar system sanctioned by the U.S. Secretary of Labor and established by rule) (Section 1500); or

4. A rate determined in accordance with the experience rating provisions of Sections 1501 through 1507 of the Act, but only if the employer has had at least 13 consecutive months experience with the "risk of unemployment."

For each calendar year thereafter, so long as the employer's liability continues, it earns a variable contribution rate. However, if in any subsequent calendar year the employer pays NO WAGES, it will lose its variable rate and will be subject to the above provisions for three additional years.

The experience rating system in Illinois has four essential features:

1. It rests on the principle that the fund from which benefits are paid to eligible claimants within a given period should be replenished in a subsequent year or years.

2. It provides that the rate of contribution for an individual employer shall be determined not only by its own experience, but also by the benefit payment experience of the entire State. Thus, favorable experience in the State will tend to lower the rates of employers generally, while unfavorable experience will tend to raise the rates for employers generally. (Sections 1504 and 1505)

3. It provides that, should the fund become too large, the state experience factor will be adjusted so as to scale contribution rates downward. On the other hand, should the fund become too small, the state experience factor will be adjusted so as to scale contribution rates upward. (Sections 1504 and 1505)

4. The amount of benefits paid to workers become the employer's benefit charges (one of the factors governing the rate of contributions for an individual employer) only when such workers or former workers have drawn benefits in any benefit year. (Sections 1502 and 1502.1)

Fund Building Rate

In order to build up adequate reserves in the trust fund, for years prior to 2004, there is added to each employer's contribution rate a fund building rate, equal to 0.4 percent. For 2004, the "fund building" rate was 0.7 percent; for 2005, it was 0.9 percent; for 2006 and 2007, 0.8 percent; for 2008, 0.6 percent; for 2009, 0.4 percent; for 2010, 0.45 percent; for 2011, 0.5 percent; and for 2012 through 2017, 0.55 percent. The fund building rate is 0.525 percent for 2018. This rate applies to all taxable employers subject to the Act. The increase in the "fund building" rate for 2004 and thereafter serves the dual purpose of providing adequate reserves in the trust fund and also provides a source for the repayment of any bonds which might be issued by the Department when the trust balance becomes so low that issuing bonds is the only alternative to borrowing the needed funds from the federal government. Bonding may be a preferred alternative to borrowing from the federal government.

However, for employers whose total wages for insured work for a quarter are less than $50,000, that employer's contribution rate, including the fund building rate, shall not exceed 5.4 percent. This limitation does not apply to a newly liable employer which has its contribution rate determined by the average rate of employers within its Economic Sector in the North American Industry Classification System (NAICS).

Computation of the Contribution Rate

The contribution rate of an employer is the product obtained by multiplying the employer's benefit ratio for that calendar year by the adjusted state experience factor for that same year.

The maximum contribution rate is limited to the greater of 6.4 percent or 6.4 percent multiplied by the adjusted state experience factor. In addition to the employer's regular contribution rate, there will be a permanent "fund building" rate.

The maximum contribution rate for 2018 is 6.925 percent (this figure includes the 0.525 percent fund building rate). The maximum contribution rate for 2019 is 6.875 percent (this figure includes the 0.475 percent fund building rate).

Employers whose total payroll in a calendar quarter is less than $50,000 will have a maximum rate of 5.4 percent.

For all employers that qualify for a variable rate, the minimum experience-based portion of the contribution rate is the greater of 0.2 percent or the product obtained by multiplying 0.2 percent times the adjusted state experience factor, except that, for 2012 through 2019, the experience-based portion of the contribution rate shall be 0.0 percent. (Section 1506.1) The experience-based portion of the contribution rate is added to the applicable "fund building" surcharge (see VI. EXPERIENCE RATING). For 2014 through 2017, the minimum rate was 0.55 percent, which includes the 0.55 percent fund building rate for those same years. For 2018, the minimum rate is 0.525 percent, which includes the 0.55 percent fund building rate.

An employer which has qualified for a variable contribution rate, has benefit charges but did not report wages for insured work for the applicable period, shall pay at the maximum contribution rate applicable to employers for that year, plus the fund building rate. An employer that had no benefit charges during the computation period applicable to that year, and that did not report wages for insured work for the applicable period, shall pay at the rate applied to new employers for that year, plus the applicable fund building rate. (Section 1506.1)

SUTA Dumping

As required by federal law, Illinois has amended its unemployment statue to provide that employers transferring employees to a new company or enterprise with substantially common ownership, management, or control will have their unemployment experience rating transferred as well. The law is aimed at employers that attempt to avoid higher unemployment rates by transferring employees out of companies with bad experience ratings after layoffs and terminations. Employers that knowingly attempt to violate the SUTA dumping provisions by be subject to civil and criminal penalties

Federal tax credit. Experience rating is taken into consideration when calculating the employer's federal tax credit. In the case of an employer with a good experience rating and a lower state tax rate, instead of basing the credit on the actual amount of the contribution, the federal law allows the employer to take credit for the contribution that would have been payable had the experience rating not been low. Most businesses pay a rate of .008% on the first $7,000 of wages paid per employee.

Reducing Your Unemployment Taxes

The methods vary from state to state, but the fundamental rule is that employers can qualify for a lower rate if they keep labor turnover down and keep ineligible employees from drawing benefits. Here is where the proactive HR professional can be of some help.

You can be alert to helping your company minimize its tax bill by taking pains to stabilize its workforce. Suggested techniques for reducing unemployment taxes include:

- Reducing layoffs
- Helping laid-off employees find other jobs
- Rehiring former employees who are drawing benefits
- Not hiring temporary or casual employees for ongoing work
- Keeping close track of benefit charges made to your employers' accounts
- Obtaining signed termination notices from employees who quit voluntarily, since voluntary separation disqualifies them from benefits under most state laws
- Terminating marginal employees before they become eligible for benefits chargeable to you.
- Maintaining accurate records on periods of employment, earnings, and reasons for separation.

Unemployment Benefits - Illinois

Eligibility

An employee or former employee becomes eligible for unemployment benefits under the following circumstances:

- They lose their job through no fault of their own OR quit for good cause related to the work or the employer
- Have earned at least $1,600 in the base period, with $440 in a quarter other than the high quarter. The “base period” is the first four of the last five completed calendar quarters immediately preceding the claim.
- **Waiting period.** The first week of unemployment is not compensated.

Conditions Affecting Eligibility

Following are some of the actions that may result in the loss, denial, or delay of the right to collect benefits:

- Being discharged for committing a felony or for theft (all benefits for such a claimant are canceled. The employer must inform the Illinois Department of Employment Security of the discharge and the reason for it);
- Leaving work because of a labor dispute in which they, or the class of workers to which they belong, are participating or have an economic interest;
- Making fraudulent representations to obtain benefits (Disqualification is for seven weeks for the first offense and two weeks for each additional offense);
- Failing to apply for or accept a suitable job when offered;
- Being discharged for misconduct connected with the job;
- Leaving the job voluntarily without good cause (Good cause for quitting includes illness, illness in the immediate family, and to avoid sexual harassment.).

Victims of Domestic Violence

An individual will not be disqualified from receiving benefits because he or she left work due to circumstances resulting from the individual being a victim of domestic violence, provided the individual reasonably believed that his or her continued employment would jeopardize his or her safety or the safety of his or her spouse, minor child, or parent. The individual must provide written notice to his or her employer of the reason for leaving work and must provide the IDES with written documentation of the violence. Acceptable documentation includes: a protection order, court records, police report, medical documentation, or evidence from a counselor, social worker, health worker, or domestic violence shelter worker. The Department will keep all information and documentation relating to the domestic violence confidential.

Weekly Benefit Amount

The weekly benefit amount is 47 percent of the claimant's prior average weekly wage. The "prior average weekly wage" is the sum of the claimant's total earnings in the two highest-paid quarters of the base period, divided by 26.

Partial Benefits

Claimants who earn wages in a week that are less than their weekly benefit amount are eligible for partial benefits. The amount of their benefits for that week is reduced by the amount that the week's earnings exceed 50 percent of the claimant's weekly benefit amount.

Retired Workers

Retired workers receiving pensions may be eligible for unemployment benefits however, such benefits are reduced by:

- Half the amount of the pension, if the base-year employer and employee both contributed to the cost of the pension;
- The full amount of the pension, if the employer paid the entire cost of the pension.

The Claims Process: Reviews, Notifications, and Appeals

- When a former employee files a claim, a claims adjudicator determines whether the claim is valid, and if so, the amount of weekly benefits.
- The last employer then receives a Notice of Claim to Chargeable Employer and has 10 calendar days from its mailing date to question the person's eligibility for benefits.
- If the employer protests the claim, it will receive a notice of IDES's determination with the final decision.
- The employer may then appeal the decision to a referee who will hold a hearing on the claim.
- The employer may take an appeal from the referee's written determination within 30 days of the date on which the determination was made.
- The referee's decision becomes final unless an appeal is taken to a board of review within 30 days.
- Further appeals are to the state court and must be filed within 35 days of the date on which the board of review issues its decision.

Unemployment in Missouri

Missouri law exempts some payments from unemployment taxes (SUTA):

General Business

- The delivery and/or sale of newspapers when one of the following applies:
    - Wages paid to persons under the age of 18 who deliver newspapers or shopping news. This exemption applies to the typical house-to-house delivery for sale, and also extends to passing out handbills and other similar types of advertising on the street. This also exempts activities for services incidental to the delivery of the materials, such as assembling
    - Wages paid to an individual of any age for services performed as a direct seller in the trade or business is delivering and distributing newspapers or shopping news
    - Newspaper or magazine vendors of any age at the time of sale of the papers or magazines to the ultimate consumer. This is true even if the person is guaranteed a minimum amount of compensation and/or can sell back all unsold newspapers or magazines
- Services performed as a direct seller who is engaged in the trade or business of of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business or services, **or** services or a direct seller who is engaged in the business or trade of selling or soliciting sales of consumer products in a home, or otherwise than in or affiliated with a permanent fixed retail establishment (such as cookware, cosmetics, and the like) if 80 percent of the compensation received is directly related to such sales rather than the number of hours worked and sales are performed under a written contract that provides the seller will not be treated as an employee for federal tax purposes.
- Services performed in the employ of a son or daughter, spouse, or by child under the age of 21 in the employ of the child's father or mother. This includes legally adopted, step, and foster children and parents. If the business is a partnership, and exempt family relationship must exist between the worker and each partner in order for this exemption to apply. The exemption for **family employment** does not apply to the family of the officers or stockholders of a corporation
- Services as a licensed insurance agent or an insurance solicitor paid solely by commissions
- Services for which academic credits are given and which are performed by an individual who is a student enrolled in a public or nonprofit school
- Services performed un the employ of a foreign government
- Services of a licensed real estate salesperson or broker, provided that at least 80 percent of the compensation for services are directly related to sales performed rather than the number is hours worked, and the services are performed under w written contract that provides the individual will not be treated as an employee for federal tax purposes

- Services performed by an individual in a barber or beauty shop who pays rent or other payments to the owner or operator for the use of the facilities
- A motor carrier whose operations are confined to a commercial zone or who is regulated by the Missouri Department of Transportation or by the U.S. Department of Transportation or any of its sub-agencies shall not be considered the employer of a lessor of its vehicle or of a truck driver paid by a lessor. Also excluded are services performed by owners who drive their own trucks for a contract or common carrier
- Workers covered by a federal unemployment insurance system (railroad workers and federal employees
- Full time students working less than 13 weeks for an organized summer camp

Churches and Religious Orders

- Services performed in the employ of a church, or convention or association of churches
- Services performed in the employee of an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church, or convention or association of churches
- Services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of the ministry
- Services performed by a member of a religious order in the exercise of duties required by such order

501(c)(3) Organization and Governmental Entities

- Services performed by individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, if performed in a facility conducted for carrying out a program for rehabilitation of such individuals
- Services performed by individuals who, because of injury, physical or mental capacity cannot be readily absorbed in the competitive labor market, if performed in a facility whose purpose is to carry out a program providing work for such individuals
- Services performed by an individual receiving work-relief or work-training if the program is assisted or financed in whole or in part by a federal agency or by an agency of the state or any of its political subdivisions
- Services performed in the employ of a nonprofit school, college or university by a student who is enrolled and regularly attends classes at such school, college or university
- Services performed by a student's spouse in the employ of a nonprofit school, college or university at which the student is enrolled and regularly attends classes provided the spouse is advised at the beginning of such services that:
    - The employment is provided under a student-assistance program; and
    - The employee is not covered by any program of unemployment insurance
- Services performed by an inmate of a custodial or penal institution

- Services performed in the employ of a governmental entity if such services is performed by an individual in the exercise of duties:
    - As an elected official
    - As a member of a legislative body or a member of the judiciary of a state or political subdivision
    - As a member of the state national guard or air national guard
    - As a temporary employee due to fire, storm, snow, earthquake, flood, or similar emergency
    - In a position designated by the Missouri laws as a policymaking or advisory position in which the duties ordinarily do not require more than eight hours per week
    - As an election judge appointed by the election authority

Family Employment

Missouri law exempts from coverage services performed in the employ of a son, daughter or spouse or by a child, stepchild, or foster child under the age of 21 in the employee of the child's father or mother. This includes legally adopted, step, and foster children and parents. When the employing unit is a sole proprietorship, the services performed by the owner's parents, spouse and children under the age of 21 are not covered by state unemployment insurance.

If the business is a partnership, or a limited liability company axed as a partnership, an exempt family relationship must exist between the worker and **each** partner in order for this exemption to apply. The qualifying relationship does not have to be the same for all partners/members.

The exemption for family employment does not apply to corporations.

Required Notice to Non-Covered Workers

If an employee of a church, religious order, or 501(c)(3) (not for profit) organization is exempt from unemployment insurance coverage as defined under Employment Security law, Missouri Revised Statutes section 288.041 requires a written notice from the employer to the exempted worker. The notice must state that wages earned by the individual will not be used to determine insured worker status for unemployment benefits. The notice must be provided to each exempt individual at the time of initial hire or upon a change in the employing unit's status regarding liability for unemployment insurance coverage.

Exclusion for independent contractors

The services of an individual who is determined to be an independent contractor (IC) are also excluded from covered employment. To be excluded, it must be established by the employer that the:

1. IC is free from company direction and control over the service s/he is performing;
2. The service is not in the usual course of the business for which it is being performed; and
3. The IC is customarily engaged in an independently established trade, occupation, profession or business.

Experience ratings

Past unemployment experience. Experience rating is a method of determining the contribution rates of individual employers to their state unemployment funds. Once a year, in accordance with the Missouri Employment Security law assigns the rate you will use to calculate your quarterly tax contributions. Your contribution rate is based on your own experience, i.e. your benefit charges (for benefits paid to former employees) and your taxable wages, and the experience of the entire state. The Act sets minimum and maximum rates.

The Division keeps a record experience for each employer's account. The experience includes taxable wages reported contributions paid (including voluntary payments), and benefits charged. Unemployment taxes paid are credited to the employer's account. Unemployment benefits paid to eligible claimants are charged against the accounts of the claimant's employers during the base period of the claim. These factors, which are recorded in the employer's account through the preceding July 31st, are used to compute the annual tax rates after the employer becomes eligible for an experience rate. An employer generally becomes eligible for an experience rate after two full calendar years of liability under the law.

UI tax rates will vary according to state. In Missouri, each employer that becomes liable to report workers' wages any pay unemployment taxes is assigned to an industrial classification division. Until eligible for an experience rate, regular employers are assigned to an annual tax rate that is the average tax rate computed during the preceding year of all employers within the industrial classification division to which the employer is assigned, or 2.7 percent, whichever is higher.

Nonprofit organizations described under Section 501(c)(3) of the Internal Revenue Code and governmental entities are assigned an annual tax rate of 1.0 percent until eligible for an experience rate. These organizations also have the option of making reimbursable payments.

Employers participating in the Shared Work Program will be assigned a rate of 0.0 to 9.0 percent plus any applicable maximum rate surcharge and contribution rate and reduction due to the unemployment automation surcharge, if applicable, until eligible for an experience rate.

An experience rate is based on a ratio arrived at by dividing an employer's account balance by its average annual taxable payroll. Rates could range from 0.0% to 6.0%, not including maximum rate surcharge, contribution rate adjustment.

Benefit charges result from claims filed against an employer's account by former or current employees who are now unemployed or underemployed. Charges can negatively affect an employer's experience rate. If an claimant has multiple employers in his or her base period, each employer will be charged for the percentage of the unemployment benefits paid that is equal to the wages it paid the claimant.

Maximum Rate Surcharge

In Missouri, if an employer has been at the maximum experience rate for two consecutive years, a surcharge of one-quarter percent is added to the rate. In the event that an employer remains at the maximum rate for a third or subsequent year, an additional surcharge of one-quarter percent shall be added each year to the annual rate calculation up to one percent. If an employer continues to remain at the maximum rate, an additional surcharge on one-half percent shall be added for a maximum allowable surcharge of one and one-half percent in any given year.

SUTA Dumping

State Unemployment Tax Act (SUTA) dumping refers to attempts by employers to pay power state unemployment taxes than their experience rate allows. SUTA dumping practices include shifting payroll from an account with a higher rate to an account with a lower rate and various restructuring schemes to obtain beginning or lower tax rates. The Missouri Employment Security Law bans these practices by mandating transfers of experience rating in the certain situations and prohibits transfers of experience rate in others. In addition, the law requires DES to impose substantial penalties on those who knowingly engage in SUTA dumping activities.

In an individual, or organization or employing unit knowingly violates or attempts to violate the Employment Security Law related to determining the assignment of a contribution rate, or knowingly advises another in a manner that results in a violation of such provision, the individual, organization, or employing unit shall be subject to the following penalties:

- In an employer, then for the current year and three rate years immediately following the current rate year, the employer's base rate will be the maximum base rate applicable to such type of employer, or the employer's current base rate plus two percent, whichever is higher
- If not an employer, the individual, organization, or employing unit shall be subject to a civil monetary penalty of not more than $5,000.

Federal tax credit. Experience rating is taken into consideration when calculating the employer's federal tax credit. In the case of an employer with a good experience rating and a lower state tax rate, instead of basing the credit on the actual amount of the contribution, the federal law allows the employer to take credit for the contribution that would have been payable had the experience rating not been low. Most businesses pay a rate of .008% on the first $7,000 of wages paid per employee.

Contribution rates

Payments made by an employer into the Unemployment Compensation Trust Fund, as required by law, are called "contributions." Contributions are paid on a quarterly basis. The taxable wage base for 2019 is the first $12,000 of an employee's annual wages in Missouri. The taxable wages cannot be prorated over the year. Contributions must be paid until the first $12,000 for each employee has been paid.

The $12,000 limitation on wages is an exemption earned by the employer in its own right. Other companies that employ that same employee cannot share in it. If an employee works for a second company, the first $12,000 paid by that employer is also subject to the payment of contributions.

The unemployment service in Missouri will notify your company of its contribution rate annually, no later than December 1st of each preceding calendar year. This rate will also be preprinted on the quarterly Employer's Contribution Report.

Reducing your unemployment taxes

The methods vary from state to state, but the fundamental rule is that employers can qualify for a lower rate if they keep labor turnover down and keep ineligible employees from drawing benefits. Here is where the proactive HR professional can be of some help.

You can be alert to helping your company minimize its tax bill by taking pains to stabilize its workforce. Suggested techniques for reducing unemployment taxes include:

- Reducing layoffs
- Helping laid-off employees find other jobs
- Rehiring former employees who are drawing benefits
- Not hiring temporary or casual employees for ongoing work
- Keeping close track of benefit charges made to your employers' accounts
- Obtaining signed termination notices from employees who quit voluntarily, since voluntary separation disqualifies them from benefits under most state laws
- Terminating marginal employees before they become eligible for benefits chargeable to you.
- Maintaining accurate records on periods of employment, earnings, and reasons for separation.

Unemployment Benefits - Missouri

Eligibility

An employee or former employee becomes eligible for unemployment benefits under the following circumstances:

- They lose their job through no fault of their own OR quit for good cause related to the work or the employer
- Make at least $2,250 – at least $1,500 during one of the calendar quarters, and at least $750 during the remainder of the base period from a insured employer during your base period.
- **AND** the individual's total base period wages must be at least 1.5 times your highest quarter wages
- **OR** if they made at least $18,500 (for 2019) during two of the four base period quarters

The base period is defined as the four quarters preceding the filing of the claim.

Determining benefit amount

The weekly benefit amount (WBA) is 4 percent of the average of the two highest quarters in the base period (highest quarter and second highest quarter quarter /2 x 0.04 = WBA). Missouri's maximum WBA is $320.

The maximum benefit amount (MBA) is the most one can receive in your benefit year. It is 20 times the WBA or one-third of the total base period wages, whichever is less. When calculating, your quarterly earnings are limited to 26 times your WBA.

Partial Benefits

Partial unemployment benefits may be earned if an insured individual works less than part time. The claimant must continue to look for work full time and the benefits paid will be reduced based on actual wages earned in the following manner:

Subtract $20 or 20% from the weekly benefit amount, whichever is greater. This is the deduction which will be subtracted from the weekly benefit amount.

WBA	$279
Allowable Wages = $279 x 20%	$55.80
Wages for the week	$102.00
Minus allowable wages	-$55.80
Wages to be deducted from WBA	$46.20
Pay amount for the week (WBA-$46.20)	$232.80
Pay amount to claimant (rounded down)	$232.00

Filing for benefits

To obtain benefits, an individual must file an application and register for work. The employee must be able to work, be available to work, and actively seeking work. Benefits are not paid for the first week of unemployment.

In Missouri, a claim can be filed

At www.moclaim.mo.gov or by contacting the regional claims center.

Benefit exclusions

Benefits are not payable if the employee is out of work because the employee:

- The claimant quit the employer to accept a higher paying job or failed without good cause to accept suitable work offered by the employer
- The claimant was disqualified for being discharged due to misconduct connected with the work or the claimant quit without good cause attributable to the work of the employer
- The claimant was paid less than $400 by the employer during ht entire base period of the claim
- The claimant was properly reported as a probationary worker whose period of employment for the employer was 28 days or less
- The claimant is a part time employee who remains employed to the same extent each week AND the employer notifies the DES each quarter within 30 days of the mailing date of the Statement of Benefit Charges of the part time employment
- The claimant quit temporary work from the employer to return to work for a regular employer. Any benefits paid claimant based on wages paid by such temporary employer are charged to claimant's regular employer
- The claimant quit work, which was determined not suitable, within 28 calendar days of the first day worked
- The claimant was discharged when the employer was required to discharge him or her because the claimant's name was placed on a disqualification list maintained by the Missouri Department of Health and Senior Services or an Employee Disqualification Registry maintained by the Department of Mental Health after date of hire
- The claimant quit work to accompany his or her spouse who received a mandatory and permanent military change of order station

Extended benefits

A federal-state extended unemployment compensation program requires that states participate in several extensions of benefits when state unemployment reaches prescribed levels. There was a maximum of 99 weeks in 2010-2013 in some states.

Contesting Unemployment Compensation Claims

You should immediately challenge any claim that you really believe is not justified. When a worker files a claim, you will be notified of the claim. The Notice of Claim will tell you if you appear to be the chargeable employer for that claim. You have ten days to file your protest by returning the form, or a letter in lieu, to the address indicated. It is important that you reply by the due date indicated on the form; otherwise, you forfeit the right to appeal any subsequent decisions. To make effective challenges, good recordkeeping is essential. HR should keep track of the facts about each layoff or termination and know the state unemployment law.

There may be cases where you do not want to contest an unemployment compensation claim, especially borderline claims for benefit. At the same time, you don't want to risk having your company's silence interpreted as an admission of any kind in the event of a future lawsuit for unjust dismissal. Respond to such a claim with a statement such as the following:

> *"It is our opinion that the employee was not forced to leave, but left voluntarily. Nevertheless, we believe in the statutory purpose of unemployment compensation, and will not object to allowing the claim."*

Get supervisors involved

Formal policy statements on unemployment compensation are not commonly found in corporate policy manuals, perhaps a reflection on management's belief that this is something to be handled by the HR manager, and not a matter for the supervisor's concern. But such an approach is not always wise. For one thing, supervisors are in a good position to help the company improve its experience rating by keeping the number of successful claims to a minimum. But if they aren't familiar with their state's unemployment compensation law, and if they aren't told how they can help the company avoid unnecessary claims, they may be unintentionally contributing to a costly drain on the company's finances.

Here are several good ideas for keeping unemployment claims under control.

- **Legal compliance.** Know the provisions of your state's unemployment law to show that you are interested in complying with the law, while at the same time keeping the cost involved to a minimum. Further, this will aid your managers in reducing unemployment compensation claims, since they will know the manner in which to document misconduct connected with work in order to defeat such claims.
- **Responsibility for administration.** It is usually the human resource manager who is placed in charge of administering the unemployment compensation program.
- **Eligibility.** Know under what circumstances employees who lose their jobs are eligible for unemployment compensation benefits. In some states, for example, employees who quit voluntarily are not eligible.
- **Filing procedures.** Know how an employee should file for unemployment benefits. What forms must be completed? Who should sign them, etc.?

- **Hiring.** In your hiring policy, you should refer to the fact that you hire only qualified persons. In that fashion, you remind managers to take care in hiring employees, so that there are fewer who may end up being discharged. This can be an easy step to reducing unemployment claims.
- **Review of claims.** The individual responsible for administering your unemployment compensation program should be required to periodically review your unemployment insurance account to ensure accuracy.
- **Written performance standards.** To aid your managers in documenting misconduct connected with work that disqualifies an individual from unemployment, you should have written performance standards. For example, absenteeism, tardiness, work schedule, sick leave, overtime, and other common policies should be referenced. In other words, you should list violations of company policy that could lead to disqualification of former employees for unemployment benefits.
- **Attendance at hearing.** The person responsible for unemployment compensation claims should attend all unemployment hearings along with any individuals with personal knowledge of the misconduct of the employee.
- **Documentation of reasons for discharge.** You should always document discharges. In this fashion, you can reinforce the economic reasons for complying with your documentation of discharge policy. Further, your discharge forms can be written with reasons phrased in a manner consistent with your state's unemployment laws.
- **Plant closing laws.** Your unemployment compensation policy should provide for coordination between any pay in lieu of notice and any applicable plant-closing law. For example, if a federal or state plant-closing law requires you to pay laid-off employees certain amounts of money, you should ensure that they are not also eligible to obtain unemployment benefits for the time period covered by the pay in lieu of notice required under the plant closing law.

The Appeals Process - Illinois

Responding to a claim:

- Once you receive notice of a claim for unemployment benefits, you have 10 days to file a protest of you believe the claimant should not be eligible or unemployment benefits.
- Once the protest has been received, the case goes to an Illinois Department of Employment Security (IDES) caseworker. The case worker has absolute discretion in deciding the issue. The case worker might schedule an interview with the employee or make a decision based on the evidence presented. At this stage, the main question is whether the employee's claim is trustworthy and accurate. No evidence is required from the employer.
- The case worker will mail a letter of determination to both parties. From the date of the letter, the losing party has 30 days to appeal the decision. The letter explains how to appeal.
- The losing party will ask an IDES Administrative Law Judge (ALJ) to schedule a formal hearing and reverse the decision made by the case worker. This is the time the employer will submit any evidence to support the claim such as timesheets, handbooks, policies, and procedures
- When the ALJ schedules a hearing, IDES sends a letter to each party advising them of the time and date for the hearing and the issues to be resolved.

What happens at the Hearing:

- IDES hearings are held over the phone Each party must file an attorney appearance (if the party is represented by an attorney) and must submit a witness list and any evidence 24 hours before the hearing. Also, the parties must exchange any information they are planning to refer to at the hearing at least one business day before the hearing.
- The ALJ will call the parties, attorneys and witnesses. Usually the party that is appealing the caseworker's decision must prove, by a preponderance of the evidence, that the caseworker abused his or her discretion. If the appealing party is not present, judgement will be entered for the other side. The whole procedure is recorded on tape.
- The ALJ will establish jurisdiction, make sure the appeal was filed on time, and swear in all witnesses.
- The ALJ will ask basic questions afterwards each party can present direct testimony and cross-examine the other side.
- At the end, each party will be given an opportunity to make closing statements.
- The ALJ will make a decision within 14 days after the hearing and send a copy to each party.

After the Hearing:

- The losing party has 30 days to file an appeal which must be filed with the IDES Board of Review.
- The IDES Board of Review consists of three judges who decide which appeals they will hear (not all appeals are heard)
- If selected, the Board will review the evidence and arguments that were presented to the ALJ in the hearing and decide whether the ALJ made a mistake or abused his/her discretion.
- If the Board overturns the ALJ's decision,, the case sill be sent back to another ALJ – If the Board upholds the decision, the losing party can only go to civil court to seek other relief.

The Appeals Process - Missouri

Once you receive notice of a claim for unemployment benefits, you have 10 days to file a protest of you believe the claimant should not be eligible or unemployment benefits.

Once the protest has been received, the deputy will make a determination either granting or denying unemployment benefits to the claimant.

Once the deputy has made their decision, the claimant can appeal if they have been denied benefits or the amount of benefits granted. Likewise, the former employer(s) can appeal the amount of benefits or the granting of benefits. Both the claimant and employer(s) have 30 days from the date of the determination to file an appeal with the DES.

Once an appeal has been filed a hearing will be held on the facts in dispute. An Appeals Tribunal referee conducts a hearing in which both parties have a chance to argue their case and present their evidence. The referee will then issue their decision based on the evidence presented in the hearing.

One Stop Shops

A significant change to the unemployment system is the federal government's focus on establishing one-stop shops**.** The **Workforce Investment Act of 1998** (H.R. 1385) rewrites current legislation governing programs on job training, Adult education and literacy, and vocational rehabilitation. The new legislation creates a more flexible approach where all of the available programs and various guidance available from assorted agencies, may be coordinated and communicated to eligible individuals.

Key characteristics of the Workforce Investment Act include:

- Simplification of current programs – The process should allow states to "manage" their grant money to create the "coordination" system and will hopefully reduce redundancy.
- Business will have a role in developing/shaping the content of training programs to make sure educational initiatives transfer to employable skills.
- One-Stop Shops will be created to encourage individuals to be aware of and utilize available services.
- Training providers and programs will be held accountable for their results.

The "One-Stop" approach will include a community location where individuals:

- Receive a preliminary assessment of their skill levels, aptitudes, abilities, and support service needs;
- Obtain information on a full array of employment-related services, including information about local education and training service providers;
- Receive help filing claims for unemployment insurance and evaluating eligibility for job training and education programs or student financial aid;
- Obtain job search and placement assistance, and receive career counseling; and

- Have access to up-to-date labor market information that identifies job vacancies, skills necessary for in-demand jobs, and provides information about local, regional and national employment trends.

Unemployment Cost Control

Practical Ideas to help control costs

- Employer should obtain employees' signature indicating receipt of "in-house" rules and penalties for violating such rules.
- Unless previously agreed upon, the employer should be wary in proceeding with any substantial change to original terms of hire after employee has been on payroll for "reasonable" length of time (e.g., salary, shifts, duties, etc.). Such change could bring about voluntary quit of the individual and would likely be upheld by unemployment law as "quit with good cause," allowing benefits.
- Enforce rules reasonably and equally, without favoritism.
- Although management judgment in individual cases is appropriate, be careful not to vary rules and policies. Do not improvise to the employee's detriment.
- Avoid provoking employees. An employee quitting and claiming personality clash may be held to have good cause and may be allowed benefits.
- Consider having a strong written warning system. Employee dismissed and then filing for benefits may end up drawing them if the employer cannot prove previous warnings were issued. A solid warning system should meet the test of the following frequently asked questions by the unemployment system:
  - What dates did you warn the individual?
  - How close was the last warning to the date of discharge?
  - Did the warning specifically indicate the employee's job was in jeopardy upon repetition?
- Use a standard exit interview form for terminations and quits.
- Voluntary Quits: Do <u>not</u> rely only on a letter of resignation (these are usually "self-serving"). Employee should sign employer's exit interview form. This provides you with certain answers, which would not otherwise be forthcoming (e.g., claimant's intentions as to future employment, restrictions on future employment, etc.).
- Keep your introductory periods to a minimum length. Find out as soon as possible within the introductory period if employee will work out. If an employee is extremely inept but kept on merely to fulfill an introductory period, the employer will "buy" unnecessary extra weeks of liability if a claim is filed and allowed.
- If the employee is dismissed, do not let the record show the exit to be the employer's "fault", if not true. If a claim is filed and is to be "fought," the true facts will have to be told and could be embarrassing to you.

- Do not back an employee into corner with a "resign or be fired" situation. If the employee later files a claim and can show coercion, it is not a true voluntary quit. States have ruled consistently in the past that if an employee's actions were really that serious, no choice should have been given by employer - there should have been an outright firing.
- If you are granting a general leave of absence, it should be in writing with a re-contact date indicated. Any employee failing to re-contact you by that date should be sent a registered letter giving a 24 or 48-hour deadline for re-contact, otherwise, you will assume that s/he has abandoned the job.
- When using part-time help, communicate to them in writing:
  - Days and hours expected.
  - Any employee request for a subsequent change in original days and/or hours must be made in writing to management.
- Such request will be honored only if suitable to management.

Your Role in Benefit Procedures

Maintain employment records

Each covered employer and non-covered employer is required to keep true and accurate employment records of all his or her employees, including hours worked and wages paid, and to furnish this information to a requesting agency upon request. The employment record must be preserved and maintained for a period of not less than five years after the calendar year that remuneration is paid to employees.

Accurate permanent employment and payroll records must contain each employee's name and address, SSN, amount of gross earnings for each pay period before deductions for any purpose, date of payment and the amount of wages paid with respect to each separate pay period, the date(s) that services were performed for the company, the date(s) hired or rehired or returned to work after a temporary layoff, the date that services were terminated and the cause, the time lost due to being unavailable to work, the character of the services performed by the employee, a division between covered and excluded employment when both services appear in the same pay period, and the cash value of any remuneration paid instead of or in addition to cash wages.

Payroll and employment records must be made available for audit at the employer's place of business during regular daytime business hours.

Identification notices to employees

The notice must carry the employer's correct name, business address and unemployment compensation account number. This provides the employee with a record of the places that s/he worked, and is used to correctly identify employers when an application for benefits is filed.

A covered employer who separates 50 or more employees within a seven-day period due to lack of work may wish to furnish each employee with a Notice of Closing. This notice should be furnished at the time the employee is separated and provides the employee with the address of the local DES office where you have filed the required separation information (WARN Act). The notice must contain:

- The name and address of the employment site(s) where the plant is closing or mass layoff will occur;
- Whether the planned action is expected to be permanent or temporary and if the entire plant is to be closed, a statement to that effect;
- The expected date of the first separation, and the anticipated schedule for making separations;
- The job titles of positions to be affected, and the number of affected employees in each job classification; (for multiple sites, list per site)
- A statement as to the existence of any applicable bumping rights;

- The name of each union representing affected employees, and the name and address of the chief elected officer of each union, if non please state; and,
- The name and telephone numbers of a company official to contact for further information.

You will want to contact the Employment Transition Team (ETT) in the event of a mass layoff. The ETT can be reached at 800-877-8698 or at jobs.mo.gov/ETT.

Workshare Programs

States are allowed to implement Workshare Programs. These programs benefit businesses, workers and states. Businesses retain their trained workforce, for easy recall to full-time work when economic conditions improve. Workers keep their jobs instead of being laid off, and collect reduced unemployment benefits to partially replace their lost wages

ILLINOIS: Does NOT have a workshare program

MISSOURI: HAS a workshare program explained below

If your business is facing a reduction in available work, the Shared Work Unemployment Compensation Program is an alternative to layoffs. This program allows you to divide available work among a specified group of affected employees instead of a lay off and the employees receive a portion of their unemployment benefits while working reduced hours for you. You may participate in the Shared Work Program when:

- There is an “affected unit” of three or more employees
- The normal 40 hour workweek and corresponding wages for a participating employee are reduced in the plan by no fewer than 20% and no more than 40%
- The plan applies to at least 10% of the employees in the affected unit
- The plan describes the manner in which the participating employer treats fringe benefits of each employee in the affected unit
- The employer certifies that the implantation of the Shared Work Plan and the resulting reduction in work hours is in lieu of a temporary layoff that would affect at least 10% of the employees in the affected unit and that would result in an equivalent reduction in work hours
- An individual must accept all work offered by the participating employer for the claim period filed
- An individual must be able to work and be available for full-time work with the participating employer
- An individual must be eligible for regular unemployment benefits in the State of Missouri
- No benefits will be paid to an individual who works for the participating employer more than the reduced hours specified in the plan
- The first eligible week will be the waiting week on the claim

New Hire Reporting

All employers are required to report new employees to their state's New Hire Directory within 20 days of the employee's first day on the payroll and provide all of the necessary information.

Workers' Compensation

Overview

Workers' compensation *(formerly known as Workmen's Compensation)* is a type of insurance that covers employees who are injured or who become ill as a result of performing their jobs. Generally, an employee does not have to establish any negligence; only that the injury or disease is work-related. In other words, the employee is able to recover for lost earnings due to a job-related accident or occupational disease without proving that the employer is at fault. The employer benefits because its liability is generally limited to lost wages and medical costs.

Each state has a workers' compensation law governing the amount of the payments made to eligible employees and detailing the circumstances under which they become available. In most states, employers must provide workers' compensation through insurance or self-funding. Three states, New Jersey, South Carolina and Texas permit employers to choose not to carry workers' compensation. However, in these states, employers can be sued for negligent working conditions and have very limited defenses to such claims.

Employers are responsible for paying workers' comp premiums, and these are usually adjusted to reflect the frequency of the company's claims. It is to every employer's advantage, therefore, to publicize the link between high workers' comp premiums and unnecessary accidents on the job. A good policy statement is the first step in helping supervisors understand what they can do to keep these costs (not to mention the injuries that trigger them) to a minimum.

A retrospective

In 1908, the first system was established for civilian employees of the federal government. By 1948, every state had its own program.

Before workers' compensation laws were passed, workers held little chance of success in court because common law favored employers, who had three lines of defense. First, they could deny responsibility for a disability on the grounds that the disability was attributable to the ordinary risks of work (assumption of risk). Second, they could claim that the disability was caused by the negligence of a fellow worker (fellow-servant rule). Or, they could claim that the disability was caused by the employee's own negligence (contributory negligence).

However, public sentiment grew for workers' compensation as accident rates mounted, and the workers' compensation programs that evolved effectively neutralized these common-law defenses. More than half a century of experience and modification has resulted in the modern workers' compensation system.

Objectives of the system

The six basic objectives of workers' compensation are as follows:

- Provide sure, prompt, and reasonable income and medical benefits.
- Provide a single remedy and reduce court delays, costs, and workloads.
- Relieve public and private charities of financial drains.
- Eliminate payment of fees to lawyers and witnesses.
- Encourage maximum employer interest in safety and rehabilitation.
- Promote frank study of accident causes.

State laws

Generally, there are two options given employers for providing coverage:

1. Through an authorized insurance carrier; or
2. Through self-insurance, if the employer qualifies financially.
3. The residual market, or "pool" (typically premiums under $10,000)

In addition, some states have state workers' compensation insurance funds through which employers can secure insurance coverage. The amount of benefits and the time period over which they are payable vary from state to state. Group rating programs that allow a group of employers to be charged a premium which reflects the claims experience of the entire group, rather than any one employer are permitted in some states. Group rating is one way employers can save on premiums. Settlements with the injured worker are often cost effective and may save group eligibility. Employers with too high an experience rating may be barred from the group. These are commonly referred to as a "captive" or "small group captive".

Learn the intricacies of your state's plan

Workers' compensation issues can get very complicated. What happens, for example, if an employee is injured in an automobile accident after working hours while out of town on company business? What if an employee is injured while participating in a company-sponsored recreational activity? What if an on-the-job accident can be traced to an employee misconduct? What if job stress leads to a physical or mental injury? It is vitally important that you study your state workers' comp law carefully before sitting down to hammer out your company's policy statement.

Workers' Compensation - Illinois

Requirements

The Illinois Workers' Compensation Commission is the State agency that administers the judicial process that resolves disputed workers' compensation claims.

In Illinois, you are required to carry workers' compensation insurance in nearly every work situation, even those with only one part-time employee.

There are some exceptions to Illinois unemployment law. You do not need to provide coverage if you are a sole proprietor (with no employees). Employees who are family members that are corporate officers, work for an agricultural business that employs less than 400 days of labor per year, or are immediate family members who live with the employer.

Employers are obligated to follow the provisions of the Workers' Compensation Act.

Employers must:

a) purchase workers' compensation insurance or obtain permission to self-insure from the Commission;

b) post a notice in the workplace. Employers can obtain this notice at http://www.iwcc.il.gov/forms.htm;

c) keep records of work-related injuries and report to the Commission those accidents involving more than three lost workdays.

Employers are prohibited from doing the following:

a) charging the employee for any part of the workers' compensation insurance premium or benefits;

b) harass, discharge, refuse to rehire, or in any way discriminate against an employee for exercising his or her rights under the Workers' Compensation Act.

What Is an Injury

The term "injury" has a specialized meaning in the workers' compensation statute. While most people think of an injury as the result of a specific event or incident (such as an accident), workers' compensation defines the term more expansively, to include disabilities resulting from chronic harmful exposures of various kinds, as well as those caused by the cumulative effects of minor traumas that, individually, would not be capable of producing any noticeable ill effects.

Occupational diseases. Occupational illnesses are included within this broad definition of injury. They are compensable if there is a direct causal connection to the job and the disease follows as a natural incident of, or has been aggravated by, the work.

Stress-related disabilities. Stress-related disabilities are covered only if the employee can show that employment activities created a higher than normal degree of stress.

Exceptions: As a matter of basic fairness, the law recognizes a few exceptions to the basic "no-fault" rules:

Injuries while intoxicated. An employee is not entitled to compensation if use of illicit drugs or a blood alcohol content of 0.08 percent or higher is the sole cause of an injury. The employee has the burden to prove that intoxication was not the sole cause of the injury.

Alcohol and drug rehabilitation. There is no compensation for injuries or deaths that occur during participation in drug or alcohol rehabilitation programs, even if the employer is paying the cost of the treatment.

Recreational activities. Injuries sustained during participation in recreational activities sponsored by the employer are not covered unless the employer required participation, intended that business be discussed at the recreational event, or benefited in some way from the team's participation.

"Going-and-coming" injuries. Injuries sustained on the way to and from work are not covered unless the travel was part of the job or the employee was on some job-related errand.

Insurance Coverage

Insurance coverage is compulsory for all employees not explicitly excluded from the workers' compensation laws. Illinois law offers alternative methods of insuring against workers' compensation liability:

• **Commercial insurance.** Employers may purchase a workers' compensation insurance policy from an authorized private insurance company. Premium rates are determined on the basis of claims history, the type of business the employer operates, and various other risk factors.

• **Self-insurance.** Employers and groups of employers may qualify as self-insurers and pay claims out of their own funds. An annual fee of $500 is imposed on self-insurers.

Benefits

The Workers' Compensation Act provides that accidents that arise out of and in the course of employment are eligible to receive workers' compensation benefits. This generally means that the Act covers injuries that result in whole or in part from the employee's work.

The Act provides the following benefit categories:

A) Medical Benefits: care that is reasonably required to cure or relieve the employee of the effects of the injury

The employer is required to pay for all medical care that is reasonably necessary to cure or relieve the employee from the effects of the injury. This includes, but is not limited to first aid, emergency care, doctor visits, hospital care, surgery, physical therapy, chiropractic treatment, pharmaceuticals, prosthetic devices, and prescribed medical appliances.

Generally, the employee may choose the provider where he or she seeks treatment. However, there may be some limitations both on the number of providers seen by the employee or on which particular providers that an employee may choose. The employee must choose carefully so that he or she does not end up becoming personally responsible for medical bills.

The employee's choice of provider will be limited to a selected network of providers if an employer has established what is called a Preferred Provider Program or "PPP." If there is a PPP, the employee has a choice of two physicians from the network within the PPP.

If an employer does not have a PPP, then the employee has a choice of any two providers. This does not include referrals from those two providers. First aid and emergency care are not considered to be one of the employee's two choices. Nonemergency care obtained before the employee reports the injury to the employer does not count as one of the two choices.

Employers may use other methods under the Workers' Compensation Act to evaluate or challenge the necessity of medical care sought by an injured employee. An employer may perform what is called a "utilization review," which is a review of the employee's past, present, and future medical treatments related to the work injury, and analyze the necessity of those treatments. The Commission will consider the utilization review finding, along with all other evidence, when determining whether a treatment was reasonably necessary. If the Commission finds that a medical treatment was not reasonably necessary, the employer will not be responsible for paying the bill. The employee is not responsible for any treatment the Commission finds to be excessive or unnecessary. The employee may be held responsible for treatment that is deemed not covered under the Act.

The employer may order a full medical exam by the doctor of its choice. The employer must provide notice of the exam to the employee and the exam must be at a time and place reasonably convenient for the employee. If submitting to the examination causes the employee loss of wages, the employer must provide reimbursement for the wages and also the expense of travel and meals.

B) Temporary Total Disability (TTD) benefits while the employee is off work, recovering from the injury;

The TTD benefit is two-thirds (66 2/3%) of the employee's average weekly wage, subject to minimum and maximum limits. The minimums and maximums for TTD are available in Commission offices and online at www.iwcc.il.gov/benefits.htm.

The calculation of AWW can be complicated and will depend on the facts of each case. Generally, AWW is based on the employee's gross (pre-tax) wages during the 52 weeks before the date of injury or exposure. However, the calculation of AWW may be affected by many different factors, including, but not limited to: if the

employee had more than one job at the time of the injury, worked less than 52 weeks, or on a casual basis.

C) Temporary Partial Disability (TPD) benefits while the employee is recovering from the injury but working on light duty for less compensation;

For injuries that occurred on or after June 28, 2011, the TPD benefit is two-thirds (66 2/3%) of the difference between the average amount the employee would be able to earn in the pre-injury job(s) and the gross amount he or she earns in the light-duty job.

Example: An employee was earning $900/week at the time of injury. While the employee was off work and recuperating, the pay for the job increased to $925/week. The employee returns to a light-duty job and earns $500/week.

Pre-injury average weekly wage (AWW) = $900
Current AWW of pre-injury job = $925
Post-injury gross pay = $500
Wage differential = $925 – $500 = $425
TPD = $425 X 66 2/3% = $283.33/week

D) Vocational Rehabilitation/maintenance Benefits: provided to an injured employee who is participating in an approved vocational rehabilitation program;

If the employee cannot return to the pre-injury job, the employer must pay for treatment, instruction, and training necessary for the physical, mental, and vocational rehabilitation of the employee, including all maintenance costs and incidental expenses. The employee must cooperate in a reasonable rehabilitation program. The employee may choose the provider of such reasonable vocational rehabilitation services or may accept the services of a provider selected by the employer

E) Permanent Partial Disability (PPD) benefits for an employee who sustains some permanent disability or disfigurement, but can work;

PPD is:
a) the complete or partial loss of a part of the body; or
b) the complete or partial loss of use of a part of the body; or
c) the partial loss of use of the body as a whole.

"Loss of use" is not specifically defined in the law, but it generally means the employee is unable to do things he or she was able to do before the injury.

There are four types of PPD benefits:

1. Wage differential. If, due to the injury, the employee obtains a new job that pays less than the pre-injury employment, he or she may be entitled to receive a wage differential award. The wage differential award is two-thirds (66 2/3%) of the difference between the amount the employee earns in the new job and the amount he or she would be earning in their prior employment

2. Schedule of injuries. The Act sets a value on certain body parts, expressed as a number of weeks of compensation for each part. The number of weeks is then multiplied by 60% of the employee's AWW. If a body part is amputated or if it cannot be used at all, that represents a 100% loss, and the employee is awarded the entire number of weeks listed on the chart. If the employee sustains a partial loss, the benefit is calculated by multiplying the percentage of loss by the number of weeks listed

3.Non-schedule injuries. If the condition is not listed on the schedule of injuries, but it imposes certain limitations, the employee may be entitled to a percentage of 500 weeks of benefits, based on the loss of the person as a whole. The number of weeks is then multiplied times 60% of the employee's AWW

4. Disfigurement. An employee who suffers a serious and permanent disfigurement to the head, face, neck, chest above the armpits, arm, hand, or leg below the knee, is entitled to a maximum of 162 weeks of benefits at the PPD rate. The number of weeks is then multiplied by 60% of the employee's AWW. A scar must heal for at least six months before a hearing to assess the disfigurement can be held.

An employee may not collect compensation for disfigurement and the loss of use for the same body part.

F) Permanent Total Disability (PTD) benefits for an employee who is rendered permanently unable to work;

PTD is either:

a) The permanent and complete loss of use of both hands, both arms, both feet, both legs, both eyes, or any two such parts, e.g., one leg and one arm; or

b) A complete disability that renders the employee permanently unable to do any kind of work for which there is a reasonably stable employment market.

A claimant who is found to be permanently and totally disabled is entitled to a weekly benefit equal to two-thirds (66 2/3%) of his or her average weekly wage, subject to minimum and maximum limits, for life.

G) Death benefits for surviving family members.

For injuries resulting in death occurring after February 1, 2006, the benefit is $8,000. The primary beneficiaries of the survivors' benefit are the spouse and children under the age of 18. If no primary beneficiaries exist, benefits may be paid to totally dependent parents. If no totally dependent parents exist, benefits may be paid to persons who were at least 50% dependent on the employee at the time of death.

Second Injury Fund

First established in the 1950s, the Second Injury Fund (SIF) provides an incentive to employers to hire disabled workers. Illinois' SIF is more narrowly constructed than most other states. If a worker who had previously incurred the complete loss of a member or the use of a member (one hand, arm, foot, leg, or eye) is injured on the job and suffers the complete loss of another member so that he or she is permanently and totally disabled (PTD), the employer is liable only for the injury due to the second accident. The fund pays the amount necessary to provide the worker with a PTD benefit

Workers' Compensation - Missouri

In Missouri, you are required to carry workers' compensation insurance if you have five or more employees, unless you are in the construction industry, then you must carry workers' compensation insurance if you have one or more employees.

There are some exceptions to Missouri unemployment law. You do not need to provide coverage to the following groups of employees: farm labor, domestic servants in a private home, occasional labor performed for or related to a private household, qualified real estate agents, direct sellers, volunteers of a tax exempt organization where such volunteers are not paid wages and adjudicators, sports officials or contest workers for interscholastic activity programs or armature youth programs who are not employed by the sponsor of the event.

Employers are required by law to maintain accurate records of work-related deaths, injuries or illness (other than minor injuries requiring only first aid and not involving further medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job). Once an injury occurs, the injured worker should notify the employer in writing of the injury; the written notice should include the date, time and place of the injury, the nature and extent of the injury, other than an injury which that requires immediate first aid and not further medical treatment or lost time from work, to the Division of Workers' Compensation within 30 days after knowledge of the injury. The First Report of Injury (FROI) is electronically filed with the Division.

Benefits – in Missouri

There are different types of benefits an injured worker can receive, depending on the type and nature of the injury or illness.

- Temporary Partial Disability – These benefits are paid weekly and are calculated at 66 2/3% of the difference between the average earnings prior to the accident and the amount the employee can earn during the period of temporary disability, subject to the maximum weekly rate. The maximum weekly rate for fiscal year 2018 is $947.64.
- Temporary Total Disability – These benefits are paid weekly and are calculated at 66 2/3% of the injured worker's average weekly wage, not to exceed the maximum set by law. The maximum weekly rate for fiscal year 2018 is $947.64.
- Permanent Partial Disability – These benefits are paid weekly and are calculated at 66 2/3% of the employee's average weekly earnings as of the date of injury, not to exceed the maximum set by law. The maximum weekly rate for fiscal year 2018 is $496.38. The injured worker may also receive a lump sum settlement based on the nature and extent of the permanent partial disability.
- Permanent Total Disability – If an employee has a total permanent disability, they may receive lifetime payments or they may negotiate a lump sum settlement. The amount of the weekly payment is 66 2/3% of the average weekly earnings at the time of the injury, not to exceed the maximum set by law. The maximum weekly rate for fiscal year 2018 is $947.64.

Second Injury Fund

The second Injury Fund is funded by a surcharge to premiums paid for worker's compensation premiums and from group trusts and self-insured companies. The second injury fund compensates injured employees when a current work related injury combines with a prior disability to create an increased combined disability. For example, if an injured employee has a 15% disability from a prior injury and the combined disability from the new injury is 40%, the Second Injury Fund pays for the increased disability.

Managing The Process

In many cases, the benefit levels mandated through a state's workers compensation system may be more generous than through other funding sources such as company sick pay, and short term and long term insurance coverage. As a result, employers need to remain alert to the possibility that an employee may identify an illness or injury as a work related event, regardless of the actual circumstances.

Union contracts also provide special benefits, such as continued pension contributions, medical benefits, and holiday and vacation pay while the employee is off the job on a workers' compensation claim. (On the other hand, if the injury occurs outside the workplace, all such benefits cease).

Of course, legitimate compensation claims should not be denied. However, because of the potential for abuse, it is important for you to be aware of the possibility of fraudulent claims. If you have reason to believe that a claim is not based on a valid injury, or is fraudulent, notify your insurance company or attorney. Failure to advise your carrier on time may not only validate an expensive claim, but will also risk the possibility that the company will have to pay the total bill. Sometimes insurance companies take the position that you forfeit coverage by failing to give timely notice.

Develop a Workers' Compensation Policy

The basic points a policy statement of workers' comp might cover are listed below. You may decide to take either a less detailed or a more comprehensive approach, but in either case this will give you a starting point.

- **Applicable state law.** You may want to start your policy statement by citing the relevant statute and summarizing its basic provisions.
- **Benefits.** If detailed information on the amount of workers' comp benefits is not readily available to supervisors elsewhere, you can include a compensation schedule or a brief explanation of how payments are calculated. What are the limitations on the amounts of medical expenses and lost salary that an employee can receive?
- **Exceptions.** You may want to cite some examples of injuries or illnesses that are not covered by workers' comp. For example, injuries incurred in an accident that is due to an employee's intoxication or flagrant abuse of work rules may not be covered. By giving a few relevant examples, you stress the point that the availability of workers' comp does not justify ignorance or abuse of safety rules.
- **Claim procedures.** What are the procedures that must be followed when an employee is injured on the job? What forms must be completed? This can be broken down into two parts: the responsibilities of the supervisor and the responsibilities of the human resource department or whoever in the company is in charge of dealing with workers' compensation claims.
- **Maintenance of other benefits while on leave.** If an employee is out of work for an extended period of time, will the company continue to maintain his or her participation in other benefit programs? If some of these benefits require an employee contribution (for example, health insurance), must the employee pay this out of his or her workers' comp benefits or will the company pick up the full amount for the duration of the leave?

- **Procedures governing return to work.** If an employee is out of work for an extended period of time, will his or her old job be kept open? What if the employee is able to return to work but is no longer physically able to handle the old job? Is a medical release required? Will you permit return to "light duty" or must the employee be fully recovered? (Remember to consider FMLA and ADA issues).
- **Documentation and paperwork.** This part of your policy should cover forms that must be filled out by the supervisor, by the human resource department, and by the examining physician. Keep in mind that the failure to report compensation claims can lead to fines. Also remember to coordinate your workers' compensation forms with any paperwork required by state or federal safety laws, such as the Occupational Safety and Health Act.
- **Analysis and correction of dangers.** What are the procedures for reviewing any claim in order to correct dangers? Does a workstation need to be redesigned? Is safety training required?
- **Coordination with safety training.** Your policy should provide that records of worker's compensation claims are shared with the safety department so that your safety training can be used to reduce claims.
- **Confidentiality of records.** To ensure that you do not violate any privacy laws, the information that is provided concerning workers' compensation claims should be limited to those individuals with a business need to have the information. To illustrate, while your safety department needs to know about the accident, the injuries and the job function, it may not normally need to know the identity of the employee.
- **Coordination of benefits.** If an employee is entitled to workers' compensation, will you also provide group health coverage for the same injury or disease or will you exclude it? Similarly, if the employee files a group medical claim, will you later oppose coverage under workers' compensation for the same injury or disease?
- **Retaliation.** Many states forbid discharging an employee because the individual files a workers' compensation claim. Your policy should recite that no employee will be fired because of the filing of a claim. Moreover, you should include the same rule in your discharge policy. Finally, you should design a system so that a supervisor looks for items such as a workers' compensation claim *after* deciding to fire an employee but *before* doing so. In that fashion, you will be aware of the risk of a wrongful discharge claim before you fire the employee and may be able to reduce the risk. At the same time, you will not have inadvertently created a wrongful discharge claim by looking for a compensation claim prior to deciding to fire the employee.

Other Things to Consider

The wisdom of including a policy on workers' comp in your supervisors' policy manual cannot be overemphasized, but you'll have to decide how far you want your policy to go in explaining the relevant procedures and legal provisions. Here are some points to consider:

- **Your company's safety record.** If a study of your company's records reveals a fairly high frequency of on-the-job accidents leading to workers' comp payments, you may want to stress the high cost of workers' comp premiums, lost time at work, and the importance of accident prevention in your policy statement. A good place to start is examining your Modification Factor, or MOD rate.

- **Integration with policies on sick leave, FMLA leave, accident reporting, and wage and salary administration.** Review your policies in closely related areas to make sure that there are no conflicts. You may want to mention workers' comp as part of these other policy statements.
- **Other explanatory materials available.** Sometimes the state will put out brochures or booklets explaining the workers' compensation law. (Usually, HR should have printed materials to which supervisors can refer when confronted with a potential workers' comp case.) The point here is that if most of the information your supervisors need concerning workers' comp is readily available elsewhere, it may not be necessary to go into a great deal of detail in your policy statement.
- **Workers' compensation as a defense.** Because the remedies are limited under workers' compensation to medical expenses and lost wages, you may want to treat claims for intentional infliction of emotional distress, wrongful discharge, assault and battery, defamation, invasion of privacy, and the like as workers' compensation claims. By doing so, you can avoid damages for pain and suffering, emotional distress, and most punitive damages. Whether such claims are covered by workers' compensation will vary from state to state and even claim to claim.
- **First aid and emergency training.** You should consider arranging for first aid and emergency training for your employees. You may consider using the American Heart Association, the fire department, and others who often offer the training at no or minimal cost. Indeed, OSHA and some states may require employees to be trained for particular emergencies. For example, some restaurants are required to train employees on how to handle a choking victim.
- **Light duty.** Many employers have defined “light duty” positions to accommodate restrictions on workers returning to work after job-related injuries. In many cases, light duty jobs are completely separate from the job the employee performed prior to the injury. Placing employees in light duty assignments should be limited to a specific period of time. Whatever you do, remember to coordinate with FMLA and ADA requirements!!
- **Claims and litigation management.** Claims ought to be quickly and thoroughly investigated. Interview all witnesses to determine what the employee was doing at the time of the injury and how the accident occurred. Complete all forms quickly and completely. Assign one manager or HR rep to personally follow up with the employee. This personal approach will communicate to the individual that the employer cares and that the employee is needed. In addition, it may reduce costs due to malingering.
- **Stress.** More and more claims for workers' compensation are being filed for mental and physical disorders caused by work-related stress. Mental stress can cause a physical injury such as a stroke. On the other hand, a physical injury can cause a mental injury (e.g., a fall causing a fear of heights). Finally, mental stress can cause a mental injury such as anxiety and depression. If your state recognizes one or more of these claims as compensable under the workers' compensation system, you may want to create a program to reduce stress and to treat it when it does occur.
- **The Human Touch.** Recognition that the employee has suffered an injury that might create some degree of hardship for him/her, and consistent follow-up to monitor the employee’s progress tends to make the employee understand that he/she is considered a valued part of the team and missed. Consequently, s/he is encouraged to return to work sooner rather than later.

- **Good faith and fair dealing.** Courts have begun to recognize the concept of good faith and fair dealing in the context of workers' compensation claims. To illustrate, if an employer or insurance carrier denies workers' compensation to an employee and does not have a good reason for doing so, it could be sued for violation of the duty to deal in good faith and fairly with the employee. Moreover, the employee could sue not only for the actual remedies due under the compensation system but also for damages such as increased costs because of the delay, pain and suffering due to the delay, and punitive damages. The latter are damages imposed by the court to punish the employer or the insurance carrier and to discourage others from doing the same thing.

Is the Workers' Compensation Claim Legitimate?

Your supervisors should also be trained to recognize "red flags" that may indicate a claim is not legitimate and/or is suspicious and should be reviewed more closely. Each situation, in and of itself does not equate to fraud, rather the list should provide you with questions to consider when assessing the probability that a claim may not be legitimate.

- The employee can't be reached by phone during normal working hours or the employee is not at home at the time of the call, but returns your call within a couple of hours.
- The employee pushes for a quick settlement.
- An attorney representation letter arrives very shortly after the alleged injury.
- The employee misses scheduled appointments for independent medical exams.
- The employee seems oddly knowledgeable about the claims process.
- The length of the employee's absence seems disproportionate to the condition claims.
- The employee was recently fired, demoted, or passed over.
- The employee changes his/her address to a PO Box, parent's home, or out-of-state address.
- The pharmacy receipts show a pharmacy not near the employee's presumed home.
- The employee has a prior history of workers' compensation claims.
- The employee was overqualified for the job and was employed there less than three months.
- The employee is building or remodeling his/her own home.
- The employee is known to have a side business that is seasonal.
- The employee is known to do side work in a business that's sporadic, such as construction or contracting.
- The employee made the injury claim during an impending plant shutdown or reduction in force.
- For injury claims, either no surgery is required or there was no witness to the injury.
- The employee's diagnosis changes after or during the claims period.
- The employee was frequently absent prior to the claim.

Illinois employers may contact the Workers' Compensation Fraud Unit, Department of Insurance, when and if a claim seems questionable. To report fraud, the Fraud Unit can be reached at doi.workcompfraud@illinois.gov or (877) 923-8648.

If an employee has mentioned to you that an injured worker is working somewhere else, try to find out where, when, and for whom. This allows the investigator to narrow his/her search for the person and place greater focus on collecting the actual proof.

Some employers prefer to perform their own investigation initially and may hire a detective agency to investigate and/or videotape. You should be cautious about performing your own investigations since privacy issues could come into play.

Timely Return to Work

When the claim is legitimate, support the employee's efforts to obtain necessary medical treatment and encourage a timely return to work. This can be accomplished by completing certain activities before, during, and after injuries occur.

Before the Injury Occurs

- Provide a work environment where employees feel "valued" and appreciated.
- Understand the costs associated with lost work time and claims premium experience.
- Promote safe practices at work.

At the time of injury

You should promptly report every workers' compensation claim to your insurance carrier whether or not you are questioning the validity of the claim. The best approach is to set up a procedure for forwarding claims, delegating the responsibility to dependable individuals at both company headquarters and branch offices. Consistent contact with your insurer ensures that employees' claims are handled effectively and timely.

Contact the injured employee periodically. For best results, the supervisor should make most of the contacts. Prior to the injury, the supervisor worked with the employee daily. If the supervisor doesn't express concern for the employee after the injury, the employee is likely to believe that the supervisor never really cared about the worker and/or somehow blames him/her for the injury. Rarely, do employees intentionally inflict injuries upon themselves and regardless of the additional work that might result from an absent employee, the best way to let an employee know that he/she is valued and missed is to demonstrate your care and concern through phone calls or visits.

During the Rehabilitation Period

- Provide temporary "modified duty" assignments when practical. Generally, employers may provide temporary duties on a case-by-case basis, however the general parameters should be established from which the modified duty decision may be made. For example, will the ability to provide modified duty depend upon the company's current business levels? Available alternative positions? Restrictions of the injured employee?

  If the employer has established a formal "rehabilitation" program, than all employees otherwise qualifying on the basis of their disability should be afforded the opportunity to participate in the program. (In other words, it should not be limited to disabilities resulting from a workers' compensation claim alone.) Modified duty may be made available based on the employee's ability to perform the functions of the altered job (with or without reasonable accommodation). If you provide alternative positions, or duties, as a means of encouraging the employee to return to work, specify a time limit that the temporary position will be available.

- Continually coordinate the insurance companies—your own, the employee's, and the third party administrator's (when applicable)—efforts to ensure everyone stays within the communication loop throughout the recovery period.

Other Cost Containment Strategies

- **Salary Continuation.** Employers may be able to continue to pay an employee's wages while he/she is experiencing a lost work time claim. By doing so, the employer incurs only the medical costs and related medical reserve in their workers' compensation account. Alternately, the normal "lost time" costs and reserves are waived. If considering this strategy, first discuss the ramifications with your third party administrator and/or insurance company.
- **Examinations.** Employers should become familiar with their rights to request independent medical examinations in appropriate circumstances. Often, the employee's doctor may not clearly understand the employee's duties or responsibilities.
- **Lump Sum Settlements.** Employers may wish to settle certain claims that would ordinarily incur greater expenses if allowed to remain on the employer's claim experience for the full period of time. Caution should be exercised when considering lump sum alternatives. While the advantages seem clear, the affect on future claims must also be taken into consideration. For example, would the settlement be likely to encourage others to file claims? Is the injured worker likely to re-injure himself/herself and file a new claim? It is generally a good idea to discuss a possible lump sum settlement with legal counsel and/or your third party administrator before proceeding.

Safety

In the absence of, or in conjunction with, a full-time employee devoted to safety issues, this responsibility usually falls to the HR department. Like in other areas of HR responsibility, the mastery of technical knowledge will be important to discharging this duty properly.

Although many companies now have safety managers or assign HR professionals to spend significant amounts of time on safety issues, the real effectiveness of your company's safety program will be determined by the active role of line management and the employees themselves. Safety can never truly be a "staff activity". It must be fully ingrained in the line operations. Each and every employee must be accountable for a safe work environment.

On the federal level, the Occupational Safety and Health Act (OSHA) imposes on virtually all employers an obligation to observe safety standards throughout the workplace. On the state level, Illinois OSHA covers public-sector workers only; private-sector employees are covered by federal OSHA. Although this chapter attempts to give an overview of the requirements of these laws, it obviously cannot detail the myriad of safety regulations imposed by them. You should seek to educate yourself and the supervisory workforce, and identify and obtain those safety codes and regulations that apply to your particular operations. Then put their requirements into effect.

Safety hazards are those aspects of the working environment that have the potential of immediate and sometimes violent harm to an employee. Because of the severity and complexity of safety problems in many organizations, human resource professionals must not only design safe activities that reduce work-related injuries, illnesses, and deaths, but they must also be the guiding force behind the development, administration, and evaluation of health and safety programs.

Occupational Safety & Health Administration (OSHA)

The Federal Occupational Safety and Health Act (OSHA) was passed in 1970 to correct the perceived inadequacy of state and local regulation of workplace safety. OSHA directs the Secretary of Labor to promulgate safety standards for each industry and industrial process, and creates an enforcement mechanism to assure compliance with those standards. In addition, OSHA includes a "general duty" clause that acts as a catchall standard to require a safe workplace in those instances where no specific standard exists.

OSHA applies to all employers, regardless of size, who are engaged, even to a minor extent, in interstate commerce. Since the notion of interstate commerce is very broadly construed, covering even small purchases of supplies which are made by an out-of-state manufacturer, OSHA in fact applies to nearly every employer.

Workplace health and safety is governed by the federal Occupation Safety and Health Act (OSH Act), unless a state's own safety and health act is at least as stringent as the federal Act and has been approved by the federal Occupational Safety and Health Administration

Illinois OSHA covers public-sector workers only. The federal OSHA governs Illinois private-sector employers.

The human resource professional is responsible for effecting compliance with all regulatory agencies at the work site, including coordination of the required drills and education programs and the completion of reports.

The most important requirements for employers are to:

- Meet OSHA safety standards
- Cooperate with inspectors during scheduled and unscheduled OSHA inspections
- Meet OSHA record keeping and reporting procedures for all qualifying incidents

The Act mandates three types of standards:

1. Interim standards. These consist of federal standards from other acts and national consensus standards existing at the time the Act was implemented.
2. Permanent standards. These replace or augment the interim standards.
3. Temporary emergency standards. These may be issued immediately upon discovery of any serious danger to employees.

As with OSHA health standards, OSHA safety standards may be industry-specific or they may apply only to a particular enterprise. The human resource professional is responsible for knowing those standards and assuring compliance by all appropriate personnel in the organization.

Standards

The heart of OSHA is the requirement that all employers comply with all occupational safety and health standards promulgated by the Secretary of Labor.

Examples of enforcement standards include hazard communication, means of egress (emergency evacuation), bloodborne pathogens, recordkeeping, mechanical power transmission equipment, scaffolding, guardrails, forklift safety, and material handling.

In addition, in the absence of a specific standard, OSHA (under Section 5(a)(1) of the OSH act) imposes a **general duty** to furnish to each employee **"employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm."** In the years since OSHA was enacted the Labor Department has promulgated numerous standards in all areas of employment. Often times, such standards merely adopt recognized industry safety codes, such as those developed by the American National Standards Institute (ANSI). In other cases, standards have been developed by the National Institute for Occupational Health and Safety (NIOSH).

A catalog of the standards that have been adopted, as well as other OSHA publications, can be obtained from the OSHA Publications Office, Room S-1212, Washington D.C. 20210, (202) 523-6138. (Information can also be accessed through OSHA's website: www.osha.gov.) In addition, NIOSH has published numerous guides and self-evaluation checklists for use by employers. These publications focus either on particular industries, such as hotels or tool and die shops, or on particular hazards, such as spray-painting or arc welding. Information on these publications can be obtained from the Superintendent of Documents, Government Printing Office, Washington D.C. 20402.

Employee Rights and Duties

Employees enjoy certain rights under OSHA.

- **To request an inspection of the workplace.** Employees may initiate an inspection of the workplace by making a complaint to the Occupational Safety and Health Administration. At the request of the complainant, his or her identity will not be disclosed to the employer.
- **To accompany an OSHA officer on the inspection.** During the inspection, the employees have the right to have their representative (typically a union steward or safety committee representative) accompany the OSHA inspector. The company does not need to pay an employee for the time spent accompanying the inspector, unless a union contract or other employment policy requires such pay. In February 2013, OSHA issued guidance that workers at establishments without a collective bargaining agreements can designate who will act on their behalf during inspections, even if the designee is not a co-worker.
- **To file a complaint, institute a proceeding, or testify without fear of retaliation.** An employer may not retaliate against an employee for reporting a violation, testifying in any proceeding under OSHA, or asserting any rights under OSHA.
- **To refuse unsafe work.** This right is available to employees in situations where all of the following criteria are met:
  - There is a good faith belief by the employee that conditions are unsafe;
  - That there is a reasonable basis for believing conditions are unsafe;

- There is a real danger of death or serious bodily injury;
- Where possible, the employer has been given the opportunity to correct the unsafe conditions; and
- There is insufficient time for OSHA to act to require correction of the unsafe conditions.

- **To know workplace hazards.** (HAZCOM, HAZMAT). Employees also have the right to be informed of violations uncovered during an inspection and of the employer's contest of a citation. This is generally accomplished by posting the citation in an area that the employees frequent.

The Complaint Process

When OSHA receives a complaint, it will determine whether to immediately inspect or investigate the alleged hazards. If an investigation is appropriate, the agency will telephone the employer, describe the alleged hazards and follow up with a fax or a letter. The employer is to provide a written response, and OSHA will provide a copy of the response to the complainant.

If OSHA receives an adequate response and the complainant does not dispute or object to the response, an on-site inspection generally will not be conducted.

A complaint inspection is done at the worksite when the complaint meets one of the following criteria:

- It is in writing and signed by a current employee or employee representative and there are reasonable grounds to believe that a violation of a safety or health standard or danger exists under the requirements of the OSH Act,
- It alleges that physical harm such as disabling injuries or illnesses have occurred, and it is believed the hazard still exists,
- It is based on an allegation of an imminent danger situation,
- It identifies a hazard or establishment covered by a local or national emphasis program,
- The employer fails to provide an adequate response to a complaint or there is evidence that the employer's response is false or does not adequately address the hazard,
- The firm or establishment has a history of egregious, willful or failure-to-abate citations within the area and within the last three years,
- An OSHA discrimination investigator requests an inspection in response to an employee's allegation of discrimination for complaining about safety or health conditions or for refusing to do an imminently dangerous job or task,

If an inspection is scheduled or has begun at an establishment and a complaint that normally would be investigated by phone/fax is received, the area office can schedule it for inspection as a companion complaint.

OSHA requires employees to comply with all applicable safety standards. However, employees may *not* be cited if they fail to comply with the standards; it is up to the employer to see that employees comply.

Variances

Where a particular standard is impractical in the context of a particular employment situation, a temporary or permanent variance can be granted. In general, to obtain a variance the employer must show that it is working to come into full compliance or that, while full compliance is impractical, it has instituted safety measures that achieve the same level of safety as that provided by the standard.

Enforcement

Enforcement is accomplished primarily through unannounced inspections of the workplace by OSHA compliance officers. When an inspection uncovers violations, OSHA issues a citation, with proposed penalties, and also requires the employer to take steps to remedy the violations within a specified period of time. The employer must notify OSHA of the steps it has taken to achieve compliance.

Proposed penalties are based upon the size of the employer, the employer's good faith and past history of compliance, and the seriousness of the violation. Fines can range up to $10,000 per violation for serious, repeated or willful violations, and criminal penalties may also be imposed in certain situations.

If an employer contests a citation, the dispute is heard by an administrative law judge of the Occupational Safety and Health Review Commission. The judge's decision may be appealed to a three member Review Commission, and may then be appealed to the U.S. Court of Appeals.

Inspections

OSHA allows for "no notice" safety inspections by OSHA inspectors. However, the US Supreme Court has ruled that an employer may request that OSHA obtain a search warrant before inspection. "Ex parte" search warrants are easy for OSHA to obtain with a showing of specific cause (administrative probable cause.)

When an OSHA inspector arrives at the plant to be inspected, s/he must display his or her credentials and explain the nature and purpose of the inspection. If the inspector does not have a search warrant, you may refuse to permit the inspector to conduct the inspection, if you wish.

In addition to scheduled inspections, federal OSHA inspectors may also visit a place of employment by invitation of an employer, union, or employee. Because of the number of work places to be investigated, safety inspection priorities have been established by OSHA.

Priority inspections take place in the following circumstances:

- **Imminent danger.** A hazard is expected to cause serious physical harm or death before it can be eliminated through standard enforcement activity.

- **Catastrophic inspections.** Inspection initiates from reports of incidents involving fatal occupational injuries or the hospitalization of three or more employees.
- **Employee complaints.** OSHA prohibits the employer from discriminating against an employee for lodging a complaint.
- **Designated hazards.** Special attention is given to certain industries, such as grain elevators or oil-drilling operations.
- **Targeted inspections.** These are made in industries with high accident rates or numerous OSHA violations.

Inspections usually involve these elements:

- **Opening conference.** Before an inspection begins, the inspector will conduct an opening conference, usually with the HR Manager and the top official at the facility in which the inspector will explain the purpose for the inspection, the scope and nature of the investigation, and will probably examine the documents that you are required to keep pursuant to OSHA. The inspector may also check to make sure that the postings required by OSHA are properly displayed.

  Other suggestions that may improve the focus or quality of the inspection include:
  - Treat the OSHA representative with respect and courtesy, but do not VOLUNTEER information.
  - Request the OSHA representative's full name (and proper spelling) and ask him/her to identify if he/she is a Safety Specialist or Industrial Hygienist.
  - If the inspection is a result of a complaint, request a copy of the complaint (with the employee's name deleted).
- **"Walk around" physical inspection.** The inspector will then proceed to the inspection. The inspector should be shown only the machine, equipment, or facility specified in the search warrant or identified as being the purpose of the inspection. Remember, selecting the most direct route to the area undergoing inspection, may mean taking the inspector out of the building and in through a closer door. Should the inspector seek to inspect other areas of the plant, s/he should be asked to desist or leave. At all times the inspector should be accompanied by a member of management, who should take notes on the scope of the inspection and, if possible, take photographs of the areas and things inspected. The inspector should be asked for copies of all photographs that s/he takes. As noted above, an employee representative is also entitled to accompany the inspector.

  If the inspection will result in the inspector viewing any confidential processes or trade secrets, the inspector should be advised of that fact and asked to maintain the confidentiality of the trade secret. Under the law, OSHA must maintain the secret.

  The OSHA inspector may consult employees, take photos, take instrument readings, collect air samples, measure noise levels and examine records. Note that while OSHA inspectors may question employees, employees are not required to respond. However, employers may not prohibit and punish an employee who chooses to speak with the inspector.

  The employer should not concede any violations should the inspector mention them.

For example, it is not wise to say, "We knew about that, and we were planning to do something about it, but…"

- **Closing conference.** After the inspection, a closing conference will be held during which you and the inspector will discuss the possible citations that may be issued and the possible penalties which may be proposed. It is your option whether to have an employee representative present during the opening and closing conferences.

  As a result of the OSHA inspection, the federal inspector prepares a report listing all probable violations, proposed fines, and scheduled corrections of violations within a specified period of time. If the employer does not challenge the citation within 15 days, the decision becomes final and no longer subject to review by either the Occupational Safety and Health Review Commission (OSHRC) or the judicial system. If an employer does challenge the citation within the 15-day period, appeal procedures are instituted with OSHRC and the employer has the right to initiate court proceedings.

Violations and Citations

Overview of Process for Violations:

- Citation issued.
- Settlement conferences held.
- If no settlement reached, notice of contest filed (within 15 days)
- OSHA Area Director forwards case to Occupational Safety and Health Review Commission who assigns case to an Administrative Law Judge
- Findings may be appealed to the U.S. District Court of Appeals.

OSHA violations and citations depend on the severity of the alleged condition according to the following types:

- **Repeat violation.** Repeat of similar violation within three years of original citation becoming final
- **Willful violation.** Employer intentionally and knowingly commits a violation, or reckless disregard of the Act)
- **Serious violation.** Where there is substantial probability of death or where serious physical harm could result.
- **Other-than-serious violation.** Has a direct relationship to safety and health but would probably not cause death or substantial injury.
- **De Minimis.** No direct relationship to safety and health; no citation issued.
- **Failure-to-correct/abate.** When the employer fails to correct or abate an alleged violation.

Required Documents

OSHA requires the ready availability of many written documents, procedures and records. These documents should be up-to-date, complete, and easily available. A caretaker for the master document should be appointed who assumes responsibility for the completeness of the record. The following items should be prepared or acquired and be readily accessible. They are listed in the order that the OSHA inspector is likely to ask for the document.

Document
OSHA 300 (OSHA 200 prior to 1/1/02) Log of Work-Related Injuries & Illnesses for the previous 5 years and current
Evidence that the OSHA300A Summary of Work-Related Injuries & Illnesses is posted from February 1 through April 30
Approval of first aid supplies signed by a physician
Training records for access to exposure and medical records
Policy for providing employee access to exposure and medical records
Injury reports for mechanical punch press point operation incidents
Facility safety manual
List of inventory of hazardous chemicals
Written hazard communication program
Material Safety Data Sheets
Training records for hazard communication
Fall Protection Program including methods, inspection reports, and training records
Written emergency procedures and training records for handling fires, explosions, and chemical releases
Written hearing conservation program
Ladder inspection and training records
P.E.'s certification on certain scaffolds
Job safety analyses or other assessments and procedures for using personal protective equipment

Notification, Posting and Record Keeping

Employers are generally required to post all OSHA citations. If an employer contests the citation, it must also post a notice that it contests the citation. Employers must also post at all times an OSHA poster that gives employees details of their rights under the law. The poster may be obtained from any OSHA office.

Employers are required to keep two kinds of records. First, individual safety standards may require the keeping of certain records, such as the levels of exposure to certain chemicals. Employers should refer to the applicable individual standards for these requirements.

Second, employers with more than ten employees are required to maintain a log of occupational injuries and illnesses.

Key OSHA forms/posters:

- Form 300 "Log of Work-Related Injuries & Illnesses" is used to classify work-related injuries and illnesses and note the extent and severity. Details what happened and how it happened. Retain for 5 years.

- Form 300A "Summary of Work-Related Injuries & Illnesses" shows the totals for each injury and illness for the year in each category. Must be posted from February – April in a visible and accessible location for all employees to view. Retain for 5 years.

- Form 301 "Injury & Illness Incident Report" is used to capture complete details of each injury or illness including: who was involved, what happened, where did it happen, and what was the extent of treatment. Must be completed within 7 days after receipt of information about the injury or illness. Retain for 5 years.

- OSHA - Job Safety & Health: It's the Law poster must be posted in a visible and accessible location for all employees to view.

On May 12, 2016, OSHA published the injury and illness reporting rule, known as "Improved Tracking of Workplace Injuries and Illnesses" and it became effective January 1, 2017. This rule requires identified establishments to submit their OSHA 300, 300A, or 301 forms to OSHA on an annual basis. The forms required are dependent on the size (number of employees) of each establishment covered.

Establishments with 250 or more employees in industries covered by the recordkeeping regulation must submit:

• 300A forms covering calendar year (CY) 2016 by December 1, 2017
• 300A, 300 and 301 forms covering CY 2017 by July 1, 2018
• Beginning in 2019, and every year thereafter, the information must be submitted by March 2.

On July 30, 2018 OSHA issued a Notice of Proposed Rulemaking to eliminate the requirement to electronically submit information from OSHA Form 300 and OSHA Form 301 for establishments with 250 or more employees that are currently required to maintain injury & illness records

How Does OSHA Define a Recordable Injury or Illness

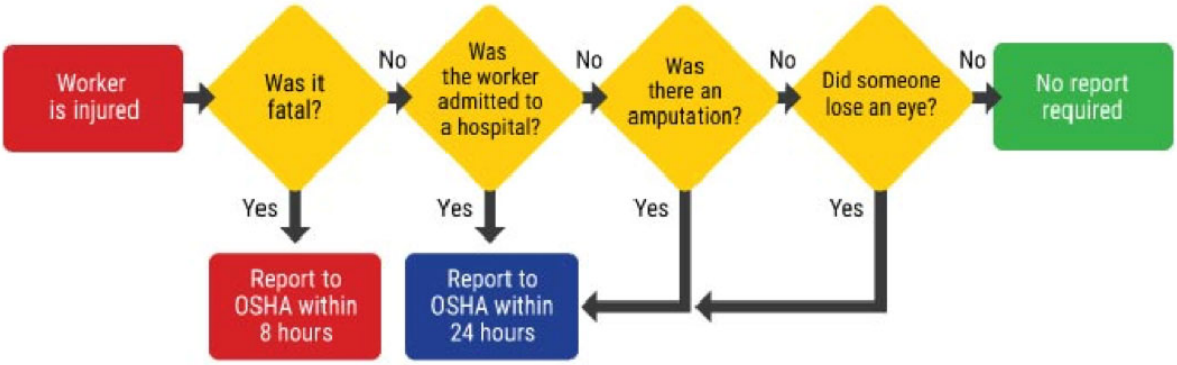
- Any work-related fatality
- Any work-related injury or illness that results in loss of consciousness, days away from work, restricted work, or transfer to another job
- Any work-related injury or illness requiring medical treatment beyond first aid

- Any work-related diagnosed case of cancer, chronic irreversible diseases, fractured or cracked bones or teeth, and punctured eardrums
- There are also special recording criteria for work-related cases involving: needlesticks and sharp injuries, medical removal, hearing loss, and tuberculosis

When Should I Report to OSHA?

- Fatal injury – within 8 hours
- Hospitalization – within 24 hours
- Amputation – within 24 hours
- Loss of eye – within 24 hours

Reporting Flow Chart



"Right to Know" Law/Hazard Communication Standard

The Hazard Communication Standard is a law that give workers a right to know about the hazardous materials with which they work. The laws require that employers train employees about the health and safety hazards of the materials they use in order to make knowledgeable decisions about the personal risks of their employment. The Hazard Communication Standard became effective for public sector employees on July 1, 1988. The following provides a summary of UIS employee's rights and obligations under the laws, and contains basic instructions on how to read and understand a Material Safety Data Sheet (MSDS).

The Hazard Communication Standard requires employers to provide employees with five points of information including;

- RTK signs that summarize employee rights,
- Proper labels on containers of hazardous materials,
- Access to MSDS' for each hazardous material in the work place,
- Proper training about the health and safety hazards of the materials, and
- Access to the employer's written plan.

Material Safety Data Sheets

Each employer is required to obtain a MSDS for each hazardous material with which employees work. A hazardous material is any product that poses a health or safety hazard to employees. Generally, if a product has a warning on the label, such as flammable. toxic, corrosive, do not inhale, avoid skin contact, etc., it is considered a hazardous material for which a MSDS is required. Certain materials are exempt from the MSDS requirements, These include products for the personal consumption of employees, hazardous and special waste, many consumer goods, pharmaceuticals. laboratory chemicals, and packages that pass through the work area unopened. It is not possible to tell from the trade name of a product whether it poses a hazard to worker safety or health. That is why the MSDS lists each ingredient in a product that makes it hazardous. The MSDS also includes information about physical properties, ore and explosion hazards, reactivity data, health hazards, safe handling and use directions, protective gear requirements, and disposal information. MSDS' must be kept readily available for inspection by employees in their work areas during each work shift. An employee, his physician, or his legal representative, are entitled to a copy of a MSDS within 10 days of a written request. II the employee does not receive a response to the written request within 10 days, ii is the employee's right to refuse to work with the material until a response is received. The response may be either a copy of the MSDS, or a letter showing that the MSDS has been requested them the supplier. Under tile Right-to-Know Law, MSDS' must be kept available to employees and former employees for at least 10 years after the material is no longer used, produced, or stored on the work site.

Labels

Each container of hazardous material in the work place must be labeled with the identity of the product and the appropriate hazard warnings. As a general rule, the Label provided by the supplier of the product is sufficient. Relabeling becomes necessary if a product is

transferred to an unlabeled container for intermediate or long term storage. Containers holding 10 gallons or less, intended for the immediate use of the employee filling the container, are exempt from the labeling requirements. Pipes, vats, and other fixed containers must also have their contents identified. Batch tickets, tags, placards, or other equally effective means of labeling may be used.

Training

Employees must be trained about the materials at work to which they are exposed. Training must include a summary of employee rights and employer obligations: operations in the work area that expose the employees to hazardous materials during normal use and foreseeable emergencies; locations and availability of written materials, including MSDSs and the written program; physical and health hazards of the materials: proper use and handling instructions, such as use of protective gear, work practices, and emergency procedures; and an explanation of the Right-to-Know program, including an explanation of the labeling system, how to read a MSDS, and how to utilize the safety information from these sources. Training must be provided to employees before the initial assignment begins, and annually thereafter.

Other Rights Under RTK

Employees have other rights under the RTK laws in addition to information access. Employees are protected from discrimination for requesting information. Employees may not be fired, demoted, have pay cut, lose seniority, or be harassed in any manner for exercising any rights guaranteed by the RTK laws. This includes current employees, prospective employees and employee representatives who make a claim, file a complaint, or testify. If the complainant wishes, the complainant's identity will be kept anonymous. The complaint may be by telephone or letter, and the information needed is the facility name and address; the contact person; number of persons exposed; and the type of material being used, produced, or stored on the work site.

For more information:

Contact OSHA Regional Office at:

ILLINOIS
Region V
230 South Dearborn Street, Room 3244
Chicago, Illinois 60604
(312) 353-2220
(312) 353-7774 FAX

MISSOURI
Two Pershing Square Building
2300 Main Street, Suite 1010
Kansas City, MO, 64108-2416
Phone: (816) 283-8745
Voice: (816) 283-0545
Fax: (816) 283-0547

Programs to Ensure Compliance with Regulations

The human resource professional is responsible for effecting compliance both at the work site and in reporting. Methods used to effect compliance at the work site include those listed below. How many are you handling at present?

- Conducting basic safety training for all employees, including HAZCOM
- Developing written and verbal safe work practices that are understandable by all employees
- Instituting and managing effective and productive safety committees
- Conducting safety inspections, or providing assistance if the safety committee is responsible for safety inspections
- Providing safety orientations for all newly hired or transferred employees
- Presenting safety education for designated employees when new equipment or processes are introduced
- Assuring proper preservation and availability of MSDS
- Assuring proper safety equipment is available and provided to employees as required

Sensitizing employees

Employees need to be sensitized to the importance of occupational safety regulations in the least disruptive, most efficient, and positive manner. Effective methods used to sensitize employees to occupational safety regulations are **goal-oriented training**, such as job instruction training, basic safety training, and accident prevention training.

Another method used to inform employees is to **conduct safety inspections**, which can be done either by an organizational safety committee appointed with the responsibility for inspections or by OSHA federal inspectors.

A third method used to educate employees and ensure compliance with regulations is **incentive programs**, which may be ongoing or periodic. Many organizations have effectively used contests, awards, or monetary incentives to sensitize employees to the importance of safety regulations.

A fourth method used to sensitize employees and promote compliance is the use of a **combination of different communications**, such as posters, safety booklets, five-minute safety motivational talks, articles in corporate publications, and announcements or advertising on billboards. The combined use of these different communication programs has proven effective for many organizations attempting to enforce occupational safety regulations.

Reviewing Safety Rules

Accidents are caused by unsafe acts and unsafe conditions. Every human resource professional wants to reduce the degree and severity of incidents or, if possible, prevent incidents from occurring at all. Occupational health and safety can be improved by adopting these four practices:

- Carefully selecting employees
- Analyzing job design (to develop the safest methods possible)
- Conducting safety research and accident analysis
- Making use of safety committees, protective equipment, and incentive programs

One often-overlooked method to improve organizational safety is the review of safety rules at regular intervals. A regular review of safety rules based upon incident records, lost time hours and dollars, liability costs, organizational needs, employee safety considerations, and EEO/Affirmative Action issues might yield a wealth of information in terms of how safety could be improved and incidents prevented and reduced.

A study of incident records may show instances of unsafe behaviors or unsafe conditions and may warrant the need to reinforce and update the safety program. A study of lost time hours and dollars and corporate liability costs may indicate a need to review the safety control procedures for specific job titles that are experiencing increases in the costs in insurance, workers' compensation claims, OSHA fines, and sick pay, or rises in turnover or absenteeism.

A review of safety rules could be used to justify the costs and benefits of safety expenditures for an organization. This is especially important when attempting to demonstrate that appropriate safety expenditures have continuing positive results and that less financial outlay may be needed in subsequent years.

A review of safety rules and procedures may also reveal important employee safety considerations that must be taken into account in the development of safety standards and may suggest more appropriate selection procedures and training methods in an effort to comply voluntarily with EEO/affirmative action standards.

Emergency Procedures

Organizations need procedures to identify, locate, and assist disabled employees during such emergencies as fires, bomb threats, and earthquakes. Some effective methods used to identify disabled employees include:

- **Awareness meetings.** Informing all employees of the specific needs of the organization including evacuation routes and meeting places.
- **"Buddy system" assignments.** Assigning employees to each other to make sure each gets out safely.
- **Employment of health staff members and company physicians.** Hiring people to be responsible for assisting where necessary during emergencies, communicating information about common disabilities and the needs of disabled employees, and suggesting procedures for an emergency response plan. When it is not possible to have medical personnel on staff, these services are often available at nearby clinics or medical office complexes.

Standard procedures to locate and assist employees during emergencies include:

- Holding informational meetings to review the emergency plan
- Determining who is trained in CPR/first aid
- Posting, at all times, the local phone numbers of emergency agencies, such as the ambulance service, the fire department, and state and local police stations at all appropriate locations
- Determining how transportation to a medical facility will be provided if there are no medical personnel on staff
- Conducting regular standard drills and role-plays to keep employees up-to-date on emergency response procedures.

Investigating, recording, and reporting incidents

A plan for the investigation, recording, and reporting of incidents in compliance with governmental and organizational regulations includes several components:

- Performing an investigation to determine and evaluate the risks involved
- The investigation determines compliance with safety rules, use of safety equipment, the condition of mechanical equipment, the content of certain chemicals used on the job, and the details of actual incidents.
- Recording the findings of incident investigations. These findings include the source of the illness or injury, the cause, the location, all persons involved, and any unusual circumstances; for example, a power failure or shutoff of the water supply.
- Submitting a written report to key management for strategic planning purposes
- The report may include graphs, diagrams, interviews, and suggested ways to prevent similar incidents from occurring.

Supervisory support during investigations

The cooperation and involvement of supervisors while attempting to uncover and resolve safety problems or to investigate an incident will produce far better results. Supervisors know the employees of a work group, their jobs and habits, and how well safety procedures may have been followed. They are the best resources for information or details regarding work-related incidents.

Since supervisors are most familiar with the structure and inner workings of their groups, they may provide invaluable information in terms of opinions on why an incident occurred, how the injury or illness could have been prevented, and suggestions of control procedures to prevent similar incidents in the future.

When it is necessary to establish new or updated safety control procedures, subsequent preventive measures are more likely to be accepted if supervisors have been asked to participate. Supervisors are always more likely to generate productive results when they feel ownership in any decisions that have been made.

When supervisory support is present during the investigation of work-related incidents, more accurate information concerning each incident is obtained, line supervisors are made more aware of safety regulations and procedures that in turn affect employee sensitivity, the human resource professional has a greater chance of uncovering the cause of the incident, and subsequent preventive measures will be more easily instituted and more accurately followed.

Do we need a Full-Time Safety Professional?

To help you decide whether you need a full-time professional to run your safety program, the National Safety Council offers these guidelines:

Numbers:

- Organizations employing 500 or more people with moderate or high hazards should have a full-time safety professional.
- Organizations employing up to 500 people with less severe hazards can place the program in the hands of an industrial manager, HR, facility superintendent, or other responsible person in the organization who has some knowledge of safety procedures and standards.

Hazards:

- Numbers often are not the only factor to be taken into consideration. Some hazardous operations need full time safety supervision whether or not there are one or 500 employees, or more. In very small companies the chief executive may be responsible for the program, or responsibility may be vested in the manager or another qualified individual.

Importance:

The safety program should be co-equal in status to other activities such as sales, production, engineering, or research. If your HR department cannot devote the same level of attention to this as the employees in the other departments named, you may need to readjust some duties or assign someone to this responsibility on a full time basis.

What should a safety professional do?

If you're "it", be aware that the basic functions of a safety professional usually include:

- Handling the accident prevention program.
- Submitting regular reports on the status of safety to top management.
- Acting as an advisor when needed.
- Maintaining the accident record system, investigating accidents, and checking on corrective measures.
- Supervising or closely cooperating with the trainer in giving employees safety training.
- Cooperating with the medical department, if you have one, particularly in connection with selection and placement of employees.
- Making and supervising inspections to discover unsafe work practices before they cause accidents.
- Maintaining outside professional contacts and exchanging information to keep your program up-to-date.
- Making certain that all laws on industrial safety and health are complied with.
- Initiating activities that stimulate and maintain employee interest.
- Supervising fire prevention.

- Setting standards for personal, protective equipment.
- Approving designs for new equipment.
- Recommending provisions for safety in plans and specifications for new buildings or remodeling of old ones.

Too small for a full time safety specialist?

If your company isn't big enough to employ a full-time safety specialist, the functions described above may be delegated to someone in management who has authority and standing. But the individual selected should be given both the time and facilities to carry out these additional functions.

For the small employer, OSHA has also provided guidelines to a four point system to effectively handle safety and health in the workplace.

Point One: Management Commitment

Small employers should, at all times, demonstrate personal concern for the safety and health of their employees. OSHA advises small employers to take the following steps:

- Post your own policy on the importance of worker safety and health beside the required OSHA workplace poster so all employees can see it.
- Hold a meeting with all of your employees to communicate that policy to them and to discuss your objectives.
- Make sure that support from the top is visible by having managers take a personally active part in the activities of the safety and health program. For example, managers should personally review all inspection and accident reports. Ensure that all supervisors adhere to the safety requirements that employees must follow.
- Make clear assignments of responsibility for every part of your program and make certain the assignments are fully understood.
- Give those with responsibility enough people, on-the-clock training, and other resources to get the job done, and then personally ensure that it does get done.
- At least annually, take time to review your accomplishments and to compare them to your objectives to decide if you need to revise the program.

Point Two: Work Site Analysis

Work site analysis is a group of processes that helps employers make sure they know what is needed to keep workers safe. To carry out this phase of the program, the agency suggests the following actions:

- Request a consultation visit from your state OSHA Consultation Program covering both safety and health to get a full survey of the hazards that exist in your workplace and those that could develop. You can also contract for such services from private consultants.
- Set up a way to get expert help when making changes in your procedures, processes, or facility to ensure that the changes are not introducing new hazards into

the workplace. Also, find ways to keep current on newly recognized hazards in your industry.

- Assign someone (perhaps teams that include employees) to look carefully at each job from time to time to see if there are hidden hazards in the equipment or procedures involved in the task.
- Set up a system of checking to make sure that hazard controls haven't failed and that new hazards haven't appeared. Checking is usually done through routine self-inspections using a checklist.
- Provide a way for employees to let management know when they see things in the workplace that could be hazardous.
- Learn how to do a thorough investigation to use when things go wrong and someone gets sick or injured. Doing this investigation will help you find ways to prevent recurrences.

Point Three: Hazard Prevention and Control

Once a company knows the existing and potential hazards in its workplace, it is ready to put into place the systems that prevent or control hazards. OSHA recommends that employers do the following:

- Set up work procedures based on hazards analysis and make sure that employees understand the procedures.
- Be ready to enforce the rules for safe work practices. It is a good idea to enlist employee participation in determining a fair discipline system.
- Where necessary, provide personal protective equipment to employees and make sure that they know why they need it as well as how to use and maintain it.
- Plan for emergencies and drill all employees frequently, so that everyone will know how to react in these situations.
- Ask your state consultant to help you develop an appropriate medical program that involves nearby doctors and emergency facilities.

Point Four: Training

When it comes to training, OSHA says, the result that employers should seek is for all personnel to know what is needed to keep themselves and their co-workers safe. To achieve that result, the agency suggests the following:

- Ask your state consultant to recommend training for your work site. The consultant may be able to do some of the training while he or she is there.
- Once employees have been trained on every potential hazard to which they could be exposed, verify that they understand what they have been taught.
- Pay particular attention to new employees and to old employees moving to new jobs. Because they are learning new operations, they are more likely to get hurt.
- Make sure that supervisors know how to reinforce training with quick reminders and refreshers.

Additional information is available through the "OSHA Handbook for Small Businesses" which may be obtained by calling (202) 738-3238.

Scattered operations

If you have scattered operations with relatively few employees, the National Safety Council offers these suggestions:

- Adopt a general policy to be followed at all locations.
- Have a staff safety department at the main location act in an advisory capacity.
- Let the local manager determine the methods of fulfilling the general policy; he may employ a local safety professional or delegate the responsibility to someone on a part-time basis.

Have the chief safety professional check application of the general policy at all locations and give assistance as required.

Safety Program Evaluation

Evaluate the effectiveness of your safety and health program by assessing the programs' performance in seven key areas.

1. No program can be successful without management leadership.
    - Do you have a written safety policy and program?
    - Do you solicit your employees' participation?
    - Does management actively set a good example?
    - Is management concerned with off-the-job safety?
    - Do you review safety performance systematically?
2. How well you assign responsibility may make or break your program.
    - Is there a clear line of responsibility for the program?
    - Do you include time and expenses for safety in your budget?
    - How competent is your safety staff?
    - Do you monitor safety responsibility?
3. Identification and control of hazards is the primary goal of any safety and health program.
    - Do all of your employees have ready access to safety and health data?
    - Do you conduct routine safety and health inspections?
    - Do you have an effective program of housekeeping and routine maintenance?
    - Do safety inspections include inspection of:
        - Electrical cords (location and condition)?
        - Grounding of metallic cable and conduit systems?
        - Grounding of electrical tools and appliances?
        - Appropriate securing of switches?
4. Everyone in the company must be thoroughly aware of safety and health problems, so employee and supervisor training must be effective.
    - Are your training objectives clearly defined?
    - Do you assess training priorities?
    - Do you assign training responsibilities?
    - Do you evaluate the training program?

5. Both OSHA regulations and common sense dictate good recordkeeping.
    - Is responsibility for recordkeeping assigned and is it being carried out?
    - Is your Form 300 up-to-date?
    - Do you keep records of inspections of facilities and equipment?
    - Do you keep records of environmental monitoring for such problems as noise, heat, dust, and radiation?
    - Do you keep records of training?
    - Do you keep medical records?
6. You must meet requirements for first aid and medical assistance, and it is preferable to have additional resources.
    - Does your company have an emergency action plan?
    - Do you have first aid and medical treatment available for emergency response?
    - Do you have adequate first aid and emergency facilities?
    - Do you have access to a consulting physician?
    - Are your first-aid supplies adequate for the type of potential injuries in your workplace?
7. An effective program requires employee awareness, acceptance and participation.
    - Do your employees participate actively in safety and health committees?
    - Are engineering and administrative controls effective?
    - Do you have an effective personal protection program?
    - Is safety and health performance effective?
8. Don't overlook the basics.
    - Do employees know what to do in emergencies?
    - Are all exits visible and unobstructed—and readily marked?
    - Are there enough exits?
    - Are portable fire extinguishers provided in adequate number and type?
    - Are they regularly checked? Accessible?
    - Are "no smoking" signs posted near combustible areas?
    - Are waste receptacles emptied regularly?
    - Are stairwells in good condition?
    - Are ladders and other equipment in good condition?
    - Is all machinery properly guarded?
    - Is personal protective equipment worn where needed?

Safety Program Tips

To be successful in reducing injuries, the safety program should be as comprehensive as possible. The DuPont Corp., in Wilmington, Delaware, also believes that the program should be based on the principle that all injuries can be prevented. Following is an outline of the steps this company followed in setting up its own safety management program:

- Organize for safety. A central safety committee should be set up at each plant site and be chaired by the senior management member.
- Establish a company-wide reporting system. All injuries, illnesses, and accidents should be reviewed by a small departmental committee to ensure that all data are classified and tabulated consistently.
- Maintain and publish corporate and departmental safety statistics. This promotes accountability and peer pressure.
- Conduct company-wide safety, fire protection, hazardous materials distribution, and occupational health audits. Rate each site and report each plant's performance to top management. These audits will be useful in achieving the safety objectives that top management expects of site management.
- Establish short-term company-wide and departmental safety goals. In addition, publish annual goals that are realistic but challenging. The ultimate objective should be zero accidents and injuries.
- Adopt company-wide off-the-job efforts. Make safety training a continuous activity.
- Use annual coordinated safety themes.
- Publish and use a self-instruction program to train workers and observe unsafe work practices. Training programs that teach, motivate, and retain workers are effective tools for eliminating injuries.
- Manage process hazards. This is a special effort that involves, for example, reviews of production-line hazards, inspections, safety tests, and change of design procedures that prove unsafe.

Health

The HR professional is often the individual who proactively strives to improve the health of employees through informational sessions and proactive programs. "Brown bag luncheons", "smoking cessation programs", "Weight Watchers at Work", are typical of these.

In addition, the HR professional needs to have an understanding of communicable diseases in the workplace. Communicable and infectious diseases in the workplace represent a challenge for companies which must balance medical evidence of contiguousness with statues on disability status and OSHA regulations.

Tuberculosis

TB is a contagious disease which strikes the tissues of the lung making breathing difficult. TB is spread through a carrier coughing. TB is becoming a greater health risk because of the new resistant strains of the disease.

Hepatitis B

This is a highly contagious disease, which attacks the liver causing cirrhosis and liver functioning degeneration. It is transmitted through blood. A series of three vaccinations can provide a fairly high degree of immunity.

Considerations in dealing with contagious diseases in the workplace

- Develop a policy.
- Rely only on sound medical advice based upon the specific situation.
- Follow the Center for Disease Control's "universal precautions."
- Employees and supervisors should receive generic training in contagious diseases.
- OSHA bloodborne pathogens standards must be complied with.
- Remember that under the ADA, any of the contagious diseases can constitute a disability and pre-employment physicals cannot be required without making the offer of employment first. Employees must be otherwise qualified with or without reasonable accommodation unless a known hardship is imposed upon the employer. The ADA also establishes the circumstances under which an employee may be considered a “direct threat” allowing the employer to consider alternatives. According to the ADA guidelines, the employer must be prepared to show that there is:
  - Significant risk of substantial harm;
  - The specific risk must be identified;
  - It must be a current risk, not one that is speculative or remote;
  - The assessment of risk must be based on objective medical or other factual
  - Evidence regarding a particular individual; and
  - Even is a genuine significant risk of substantial harm exists, the employer must Consider whether the risk can be eliminated or reduced below the level of “direct threat” by reasonable accommodation.

Employer liabilities

Toxic or hazardous substances usually pose a significant health risk because they are often not readily apparent and often have a long-term health consequence.

These substances take many forms including:

- Chemicals
- Gases
- Vapors
- Fumes

These impact and can cause:

- Allergies
- Respiratory infections
- Pulmonary system
- Headaches
- Dizziness
- Nausea
- Cancers
- Reproductive disorders

Material Safety Data Sheets (MSDS) are required under OSHA. Employees need to be thoroughly trained in dealing with hazardous or toxic substances. Protective gear and clothing must be provided. Emergency and abatement procedures are required.

Stress management

The HR professional must often take the lead in helping employees deal with stress at work. Stress is a natural reaction to environmental stimuli. Everyone reacts differently to stress. Excessive stress caused by modern life and job demands may give rise to emotional and physical problems.

Symptoms of excessive stress may include:

- Insomnia
- Hypertension
- Alcohol and drug usage
- Depression
- Digestive problems
- Irritability
- Mood swings
- Susceptibility to illness

Note that sometimes your best performers and/or your perfectionists are affected by **burnout**. There are three major classes of burnout symptoms:

- **The "lack of" symptoms.** Burnout sufferers may lack energy, patience, motivation, enthusiasm, creativity, and a sense oh humor.
- **The "too much/too little" symptoms.** These include overeating or oversleeping, or the opposite - - very little interest in eating or sleeping.
- **The victim-mentality symptoms.** People with these symptoms tend to:
  - Exaggerate their importance
  - Believe nobody appreciates how hard they work
  - Refuse to admit that they don't really need to work so much
  - Feel helpless and unable to relax

The National Institute for Occupational Safety and Health (NIOSH) has suggested some of the following considerations to assist employees in reducing stress (and burnout).

- Supervisors should seek to challenge employees without overloading them. Expressing sincere appreciation for good work, providing clear expectations, demonstrating support, managing in a fair, even-handed manner, and encouraging two-way communication, are all behaviors that assist in managing stress levels.
- Employers should consider offering an Employee Assistance Program to help employees deal with emotionally distressing life events such as financial hardship, marital issues, and family needs.
- Employers may also assist employees in reducing stress and/or learning to better manage it by providing wellness information such as tips on handling stress, information about good nutrition, or relaxation techniques.

  Educational programs can improve the employees' overall knowledge and understanding of stress-related issues as well as other physical conditions. For example, educating your workforce about AIDS and the transmission of AIDS, can facilitate greater cooperation and consideration between workers, should an employee become infected with the virus.

In addition, employers may wish to encourage their employees to try the following ideas.

- Strike a balance between work and play. Remember "play" implies relaxation, fun for fun's sake; and being open and creative. Don't simply transfer work strategies on how to win or get ahead, onto the playing field.
- Share responsibilities with others. While it can be an ego boost to get credit when things go well, taking on too much responsibility also means the person has to accept all the blame when things turn out poorly.
- Understand the difference between what's perfect and what's realistic. Life just isn't perfect. People have to make compromises sometimes. Within reason, learn to leave work with some things undone.
- Be alert to potentially frustrating situations, and deal with them immediately. This is a matter of prioritizing responsibilities. But remember that even with the best priority system, frustration may exist from time to time.
- Develop friendships. When we have people to consult and seek assistance from, no problem looks insurmountable.

Consider the basics when trying to reduce stress.

- Do your employees get enough sleep? Sleep is one of the best stress reducers around. It's the ideal time to recharge one's batteries, both physically and mentally.
- Do your employees eat nutritionally balanced meals? Poor eating habits can affect your energy level and your ability to handle stress. Eat a variety of nutritious foods, and limit the amount of fat, salt, and caffeine in the diet.
- What is the exposure to loud noise? Prolonged, excessive exposure to noise can be stressful. So turn down the volume control on the TV and the stereo and wear ear protection – on the job and off – when necessary.
- Is moderate exercise a part of your employees' lives? When the body is responding to stress, it prepares to fight life-threatening situations or to flee from them.. Help release that stress energy by walking, running, biking, or any other aerobic exercise. Of course, employees should check with their physicians to determine the best possible exercise plan for their specific circumstances.

The Shiftwork Issue

While shiftwork is often necessary within the business environment and some employees actually prefer to work "off-shift" hours, employers should be aware that shiftwork schedules can create stress as well.

The National Institute for Occupational Safety and Health (NIOSH) suggests that employers may wish to review night shifts and consider alternatives when available. Even if not available, NIOSH suggests avoiding quick shift changes and/or adjusting the length of the shift based on the workload. When changing the worker's schedule, all aspects of the employee's job and home life should be considered. NIOSH also suggests that employers schedule heavy or demanding work at times when the workers are likely to be most alert or at peak performance. Bright lights might also help the body's natural rhythms by helping the body to be more alert during certain periods. However, changing the lighting within your facility may require structural engineering planning and may (or may not) be beneficial to the workforce. Therefore, it is probably wise to invest in some of the other suggestions offered prior to re-lighting your facility.

Smoking

Smoking in the workplace is an extremely controversial topic for smokers and non-smokers alike. Both parties feel their rights are violated by any form of (or lack of) controls.

Employer concerns include:

- Increased health care costs which have proven to be very real
- Complying with state or city ordinances
- Fire prevention / risk of explosions
- Effects of secondary smoke and potential lawsuits
- Workers' compensation claims

The trend today is to enforce some type of restriction on workplace smoking. Usually this is a designated smoking area or an outright ban.

Most employers develop a policy dealing with smoking. The policy is then supported by discipline and/or supportive programs such as smoking cessation or incentives to quit smoking.

Legally, most employers have the right to limit smoking or to refuse to hire smokers. However, some states are enacting Employee Bills of Rights that prohibit employers from entering into employees' off-duty conduct.

Determination of Work-Relatedness

Are there situations where an injury or illness occurs in the work environment and is not considered work-related? Yes, an injury or illness occurring in the work environment that falls under one of the following exceptions is not work-related, and therefore is not recordable.

1904.5(b)(2)	You are not required to record injuries and illnesses if . . .
(i)	At the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than as an employee.
(ii)	The injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment.
(iii)	The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball.
(iv)	The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption (whether bought on the employer's premises or brought in). For example, if the employee is injured by choking on a sandwich while in the employer's establishment, the case would not be considered work-related. **Note:** If the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered work-related.
(v)	The injury or illness is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee's assigned working hours.
(vi)	The injury or illness is solely the result of personal grooming, self medication for a non-work-related condition, or is intentionally self-inflicted.
(vii)	The injury or illness is caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work.
(viii)	The illness is the common cold or flu (Note: contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work).
(ix)	The illness is a mental illness. Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related.

Key OSHA 300 Log Quiz

1. Joseph is in the company lunchroom during his morning break. He trips on a loose tile and breaks his wrist. Is this case recordable? **Yes** **No**

2. Ruth is playing an impromptu game of softball on the company ball field during lunch and twists her ankle. She misses three days from work as a result of her injury. Is this case recordable? **Yes** **No**

3. Larry is sent to the company parking lot to do some repair work. While on the job he is struck by a car and is hospitalized for several weeks. Is this case recordable? **Yes** **No**

4. Barbara stops by the office on her day off to pick up her paycheck, is hit in the face by a door and breaks her nose. Is this case recordable? **Yes** **No**

5. Sandy, a store clerk, returns to her store during off-hours solely for the purpose of shopping. She falls down a flight of stairs and suffers a concussion. Is this case recordable? **Yes** **No**

6. Dave, a convenience store clerk, is shot during a store robbery. Is this case recordable? **Yes** **No**

7. Jill and her family attended an employee picnic at the zoo. She falls against the barbecue and receives second-degree burns. Jill misses one week from work as a result of her injury. Is this case recordable? **Yes** **No**

8. A company committee meets at a restaurant to discuss personnel policies. During lunch, a committee member cuts himself with a knife and requires stitches. Is this case recordable? **Yes** **No**

9. Alan contracted a flu virus that was going around at the office. His doctor gave him prescription drugs and told him to stay home for one week. Is this case recordable? **Yes** **No**

10. Cindy contracted a mild case of dermatitis on both hands while working in a solution for several hours. She was sent to the doctor who recommended application of a topical lotion. Cindy bought some of the lotion and treated the rash for a few days until it disappeared. There were no subsequent visits to the doctor. The rash did not prevent her from performing all the duties of her job. Is this case recordable? **Yes** **No**

ILLINOIS FORM 45: EMPLOYER'S FIRST REPORT OF INJURY

Please type or print.

Employer's FEIN	Date of report	Case or File #	Is this a lost workday case? Yes No
Employer's name		Doing business as	
Employer's mailing address			Employer's email address
Nature of business or service			SIC code
Name of workers' compensation carrier/admin.		Policy/Contract #	Self-insured? Yes No
Employee's full name			Birthdate
Employee's mailing address			Employee's e-mail address
Gender Male Female	Marital status Married Single	# Dependents	Employee's average weekly wage
Job title or occupation			Date hired
Time employee began work	Date and time of accident		Last day employee worked

If the employee died as a result of the accident, give the date of death.	Did the accident occur on the employer's premises? Yes No
Address of accident	
What was the employee doing when the accident occurred?	
How did the accident occur?	
What was the injury or illness? List the part of body affected and explain how it was affected.	
What object or substance, if any, directly harmed the employee?	
Name and address of physician/health care professional	
If treatment was given away from the worksite, list the name and address of the place it was given.	

Was the employee treated in an emergency room? Yes No	Was the employee hospitalized overnight as an inpatient? Yes No

Report prepared by	Signature	Title and telephone #	Email address

Please send this form to: **ILLINOIS WORKERS' COMPENSATION COMMISSION 4500 S. SIXTH ST. FRONTAGE RD SPRINGFIELD, IL 62703**

By law, employers must keep accurate records of all work-related injuries and illness (except for certain minor injuries). Employers shall report to the Commission all injuries resulting in the loss of more than three scheduled workdays. Filing this form does not affect liability under the Workers' Compensation Act and is not incriminatory in any way. This information is confidential. IC45 8/12

Corporate Membership

Compensation

Compliance

Background Screening

Recruiting & Talent Acquisition

HR Consulting

Training

Leadership Development

Missouri
12851 Manchester Road
Suite 150
St. Louis, MO 63131

Indiana
450 E. 96th Street
Suite 500
Indianapolis, IN 46240

Florida
43 Skyline Drive
Suite 1001
Lake Mary, FL 32746

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300 Hamilton Blvd
Suite L110
Peoria, IL 61602