

# Employee Benefits & Workers' Comp News



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Compliance

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## Compliance Dates, Deadlines and Changes

Employers have compliance requirements to meet or face possible fines. Two of the newest compliance challenges are the employee reporting requirements of the Affordable Care Act and employee classification for overtime pay.

**W**hile some of these compliance deadlines have passed for 2016, they should be on your calendar for 2017. Also, changes in employee exemptions are expected to be announced this year.

### Employee Reporting Requirements

**Applies to:** Any employer classified as an applicable large employer (ALE) that employs 50 or more full-time workers or part-time equivalents.



## This Just In

**W**ith marijuana legalized in five states, and legal for medical use in 23 states plus Washington, DC, and Guam, what will that do to your drug-free workplace programs?

The state of Maine recently reported that 2015 brought the highest percentage of positive drug tests since testing began. Five percent of all drug tests run by Maine employers read positive for drug use. According to the state's Department of Labor, "...many employers use a common five-panel test including cannabinoids (marijuana), amphetamines, cocaine, opiates, and phencyclidine. Cannabinoids accounted for 84.1 percent of all positive test results."

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- \* **What:** Complete **Form 1095-C** for each full-time employee who has been covered under your health plan and is receiving minimum essential health coverage. File the forms with the IRS and send each employee a copy. This form lists the names, addresses and Social Security numbers of all employees and dependents who are covered under your medical plan and the number of months during which they had at least one day of coverage.

This is a lot of information to track, and employers that wait until the last minute to collect it might be unable to meet the deadline. We suggest employers track employees' coverage consistently throughout the year.

- \* **When:** By Jan. 31. Please note that the deadline this year was extended to March 31 for 2016.
  - \* **What:** Submit **Form 1094-C** to the IRS. This form is basically a cover sheet for the 1095-C and provides information about your company, number of employees, contact person and how many 1095-C forms are being sent.
  - \* **When:** The due date for mailing the 2015 Form 1094-B was changed from February 29, 2016 to May 31, 2016. If filing electronically, the due date was changed from March 31, 2016, to **June 30, 2016**.
- Applies to:** Self-insured employers

- \* **What:** Complete **Form 1095-B**, which is similar to Form 1095C. Forms 1095-B and 1094-B are sent out by the insurance pro-

vider rather than the employer. However, if you self-fund your health plan — regardless of the size of the company — you or your third-party administrator should send this form.

This means self-insured companies with more than 50 employees must send covered workers both a 1095-B and a 1095-C. In such cases, the law allows the employer to combine the information onto a single 1095-C form.

- \* **When:** The due date for filing the 2015 Form 1095-B was changed from February 29, 2016, to May 31, 2016. If filing electronically, the due date was changed from March 31, 2016, to **June 30, 2016**.
- \* **What:** Form 1094-B is essentially a cover sheet you or the insurance company use when sending the IRS information about employees who have health coverage that meets the standards of the ACA.
- \* **When:** The due date for filing was changed from February 29, 2016, to May 31, 2016. If filing electronically, the due date was changed from March 31, 2016, to **June 30, 2016B**.

For EVERY form 1095-C or 1094-C that you do NOT file, you will receive a \$250 fine — with a maximum total fine of no more than \$3,000,000. Failure to provide a correct payee statement has the same fines for each missing form. The good news is that if you missed the deadlines this year, the IRS will not enforce penalties for reporting incorrect or incomplete information as long as you can prove you made a good faith effort to follow

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**Regardless of whether an employee is using marijuana (or any other drug that could affect reflexes or reaction time) for medical purposes, employers have the right to prohibit its use in safety-sensitive positions. For more information on drug testing and other safety procedures, please contact us.**



the 2015 reporting requirements.

For more information, visit [IRS.gov](http://IRS.gov).

## Employee Classification for Overtime Pay

Many employers will soon need to review their employee classifications to determine which employees now qualify as exempt from overtime pay requirements.

The U.S. Department of Labor (DOL) proposed changes to the Fair Labor Standards Act (FLSA) overtime rules in June 2015. The proposed changes would make the minimum salary for overtime eligibility equal to the 40th percentile of earnings for full-time sala-

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ried workers. Currently, employees who perform certain duties and earn more than \$23,660 annually are exempt from overtime pay. The proposal increases the minimum salary for exemption to \$47,892 a year based on 2013 data, and is estimated to become \$52,440 a year in 2016.

The DOL is expected to issue its final rule changing overtime pay exemptions this year. Employers covered by the FSLA include:

- ✱ Federal, state, or local government agencies
- ✱ Hospitals or institutions primarily engaged in the case of the sick, the aged, and the mentally ill or mentally retarded who live on the premises
- ✱ Pre-school, elementary or secondary school or institution of higher learning (e.g. College) or a private or public school for mentally or physically handicapped or gifted children
- ✱ A company/organization with annual sales volume or receipts of \$500,000 or more.

Employers should analyze their employee classifications because it's expected these changes could make almost 5 million workers eligible for overtime pay as early as this year. For assistance in managing your compliance responsibilities, please contact us. ■

## Successful Return-to-Work Programs

Fifty-five percent of employers are providing accommodations to assist employees in returning to work. Of these, 54 percent are reporting success. Forty-five percent are providing accommodations to employees with disabilities to stay at work in lieu of absence. Of these, 54 percent are reporting success.<sup>1</sup>



**R**eturn-to-work programs can get injured employees back to productive work, saving you workers' compensation lost time dollars. In addition, a worker who returns to work quickly is less likely to stay out on disability. So how do you develop a successful return-to-work program? What are the pitfalls to avoid?

A successful return-to-work program starts with a detailed company plan that has management support and has been thoroughly discussed with employees so that they understand their role in getting well and returning to work.

Three important components of the plan should be:

- ✱ Job descriptions and analyses for each job. Job descriptions and analyses are important tools for doctors and insurance companies to use to determine how soon an employee can return to work and what duties he or she will be able to do. Detailed job descriptions are especially helpful if the injured worker has become disabled, making it relatively easy to decide whether he can perform his old job — with or without accommodation.
- ✱ A process for regular communications. Open and regular communications between the injured worker, his supervisor, the doctor and the insurance company help keep the worker's treatment on track. When workers know they are missed and that their managers are concerned about their recovery, they maintain a more positive attitude and tend to return to work more quickly.
- ✱ Return-to-work agreement. Using an agreement that clearly states the responsibilities of the employer and the injured worker will help employees understand what they need to do if they are injured. Both the employer and employee should sign the agreement.

### Pitfalls to Avoid

Return-to-work programs can be a minefield of problems due to the variety of rules and regulations that apply, including the Americans with Disabilities Amendment Act of 2008 (ADAAA), the Family Medical Leave Act (FMLA) and various state workers' compensation laws.

**ADA issues:** ADAAA significantly expanded the definition of disabilities, and, therefore, more injured workers can be expected to be classified as disabled when they return to work. For instance, "physical impairment," a key part of the ADA definition of disability, now includes major life activities such as having difficulty in walking, standing, bending and lifting.

Workers with injuries that result in any of those impairments are considered disabled and require reasonable accommodation to perform their jobs. The workers are also usually eligible to receive a workers' comp disability settlement.

**ADA issues:** An injured employee may choose to go on unpaid leave, rather than participate in an early return-to-work program. Under FMLA rules, the employer must accept the leave, and the employee maintains the right to have her job back after returning from FMLA. (The good news is that the company can usually stop making the workers' comp indemnity payments during the leave.)

**Long employee absence:** When companies are not able to develop a light duty schedule for injured workers, they stay at home until ready to assume their old job. The longer they stay home, the higher the chance they will mangle, finding physical reasons to further delay return. Immediately after a worker is injured, the manager should use the worker's job analysis to identify those duties he or she may be able to perform during recovery. A return-to-work plan should allow a worker to perform as many of his normal tasks as possible, while augmenting them with other work that will not affect the injury.

**Insufficient budget:** Some companies make the mistake of not adequately funding return-to-work programs. Good programs have costs. Someone has to manage the program, and extra people may have to be hired to do part of the injured worker's job. However, return-to-work programs actually save money because employees are back at work sooner. Savings also come from:

- ✱ Lowering the odds of expensive litigation.
- ✱ Reducing claims reserves.
- ✱ Reducing the injury's impact on the company's workers' comp experience modification and insurance rates.

Difficulties in following mandatory medical exams: Companies need to follow strict guidelines for medical exams that are used to release employees back to work — for both full-time and light-duty assignments.

If you would like advice on how to develop a successful return-to-work program, give us a call. ■

<sup>1</sup>Source: Prudential Ninth Annual Study of Employee Benefits, released February 2016

# Using Ergonomics to Control Musculoskeletal Disorders (MSDs)

Whether you call them musculoskeletal disorders (MSDs), repetitive strain injuries or cumulative trauma disorders, they add up to a painful condition for affected workers...and a costly problem for employers.

**T**he U.S. Department of Labor defines a musculoskeletal disorder (MSD) as an injury or disorder of the muscles, nerves, tendons, joints, cartilage, and spinal discs. MSDs do not include disorders caused by slips, trips, falls, motor vehicle accidents, or similar accidents. MSDs accounted for 32 percent of all injury and illness cases in 2014 for all types of employers, public and private. MSDs caused 33.8 cases per 10,000 full-time workers.

Workers in certain industries are more likely to experience an MSD. Nursing assistants and laborers and freight, stock, and material movers incurred the highest number of MSD cases.

## Ergonomics: Changes in Design and Thinking

MSDs result when there is a mismatch between the physical requirements of a job and the physical capacity of the human body. Rather than forcing the body to adapt to a job, the science of ergonomics adjusts the job to fit the body's needs by altering the ways tasks are done and eliminating aggravating activities.

Taking the following steps will help you improve ergonomics at your worksite:

- 1** Learn about body mechanics and the interrelationship of body and work environment in job performance. How can the physical environment be altered to make work safer and more productive?
- 2** Position equipment properly for the user and train workers on its safe use. Tailor chairs, desks and other office equipment to individual users as much as possible in terms of height, length, distance and size adjustments. Also be aware of how individuals' medical conditions could influence how they operate within the worksta-



tion. Emphasize posture and body placement.

- 3** Instruct employees to take rests at given intervals and show them stress-relieving stretches and exercises for bodies, wrists and eyes.
- 4** Evaluate tools and equipment: What are their intended uses? What is their expected volume of use? How much strength/force do they require? What positions do employees use when working with the equipment? How much repetitive motion on the operator's part does the equipment require? Are employees using them correctly? Can you reconfigure existing equipment to make it more ergonomically correct, or do you need new equipment? A one-size-fits-all approach to workstation re-design won't help—instead, focus on devising ways to make the workstation conform to the individual.
- 5** Provide ergonomics education. Train employees in the proper use and placement of workplace equipment. It is important that workers think ergonomically. Training exercises and video presentations can increase employee awareness about how to carry out job tasks most safely.

For more information on eliminating or mitigating ergonomic problems, please contact us. ■

## The Long and Short of Disability Benefits

If you're interested in offering a disability plan to your employees, but aren't sure whether to choose a short- or long-term plan, consider these additional facts:

### Short-term

The short-term plan is the most popular. According to the United States Department of Labor, 93 percent of private industry workers are covered by a short-term plan — also known as a fixed-duration plan.

Short-term disability plans are intended to replace lost wages for a short time — usually for six months after sick leave is exhausted. The policy might pay a large percentage of lost salary at first, but payments are often reduced to 60 percent of pre-disability salary or less after a few weeks. However, many of the conditions that lead to the need for short-term disability benefits — pregnancies, strains and sprains — usually do not need the full 26 weeks to heal.

To qualify for short-term disability, an employee must complete six months of continuous employment and have

used all paid leave, including vacation, personal days and sick leave.

### Long-term

A long-term disability plan offers protection for catastrophic illness or injury, including heart disease, musculoskeletal and connective tissue conditions, hypertension and diabetes. These payments pick up where a short-term disability plan stops, often lasting five to 10 years or until age 65 or longer.

A long-term disability plan pays benefits averaging 60 percent of annual earnings. Most long-term plans have a maximum monthly payout. In 2014, that amount equaled \$8,000 per month.

Disability benefits are taxable if the employer pays the premium or the employee pays the premium from pre-tax income.

For more information, please contact us. ■

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