

# The Wright & Kimbrough Report



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## WORKERS' COMPENSATION

### Baseline Health Tests Can Reduce Claims Costs

**M**ORE EMPLOYERS are testing new hires in physical jobs to establish a baseline in case they ever file a workers' comp claim down the road.

The aim is to establish what physical ailments and pain the new hire already has, so if they are injured you can find out if they aggravated an existing injury or it's just an existing injury that's flaring up. And if done correctly, baseline testing doesn't infringe on the worker's rights or health privacy.

Baseline testing should not be confused with physical evaluations that are conducted after a job offer, but prior to placement, to ensure the new hire doesn't have physical constraints that would keep them from performing their job. The data in a baseline evaluation cannot be used for that.

In fact, the data collected in baseline testing is kept sealed from the employer.

See 'Testing' on page 2

#### Transport Firm Sees Immediate Payback

Wisconsin-based Marten Transport conducts the tests as part of its employment agreement and uses a third-party company to carry them out.

According to an article in the *Business Insurance* trade publication, Marten Transport since starting baseline testing in 2015:

- Has seen its rate of soft-tissue injury claims for new hires drop from 3.3 per 100 new hires to 1.4.
- Has had only three of the 37 claims filed by new hires in their first six months showing actual injuries beyond soft-tissue pain that was documented when they began working.



#### Non-profit's Claims Costs Plummet

The non-profit organization, the Gatesway Foundation, started using baseline testing by contracting with California-based Emerge Diagnostics to rein in its spiraling workers' comp costs.

It had been experiencing a high share of work-related musculoskeletal injuries (soft-tissue) claims, like injuries to muscles, tendons, ligaments, joints, cartilage and spinal discs.

The year prior to implementing baseline testing, the foundation's developed claims losses were \$1 million. Here are the results:

- In first six months after starting testing, losses dropped to \$30,000.
- Claims costs fell by \$316,544.
- The program cost \$9,200 – a return on investment of 3,441%.

## CONTACT US

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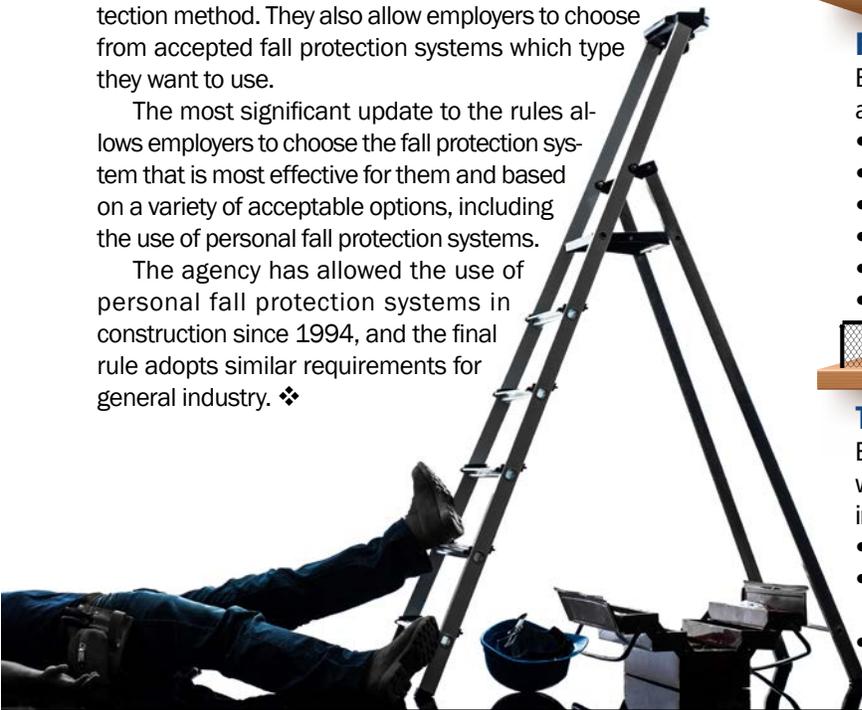
# New Slip, Trip, Fall Prevention Rules Issued

**F**EDERAL OSHA implemented a new rule on Jan. 17 that is aimed at reducing slip, trip and fall hazards in the workplace. The revisions are aimed at tackling one of the main causes of worker deaths and injuries in American workplaces by applying rules designed for the construction and manufacturing sectors to other general industries.

They add requirements for personal fall protection systems and eliminate existing mandates to use guardrails as a primary fall protection method. They also allow employers to choose from accepted fall protection systems which type they want to use.

The most significant update to the rules allows employers to choose the fall protection system that is most effective for them and based on a variety of acceptable options, including the use of personal fall protection systems.

The agency has allowed the use of personal fall protection systems in construction since 1994, and the final rule adopts similar requirements for general industry. ❖



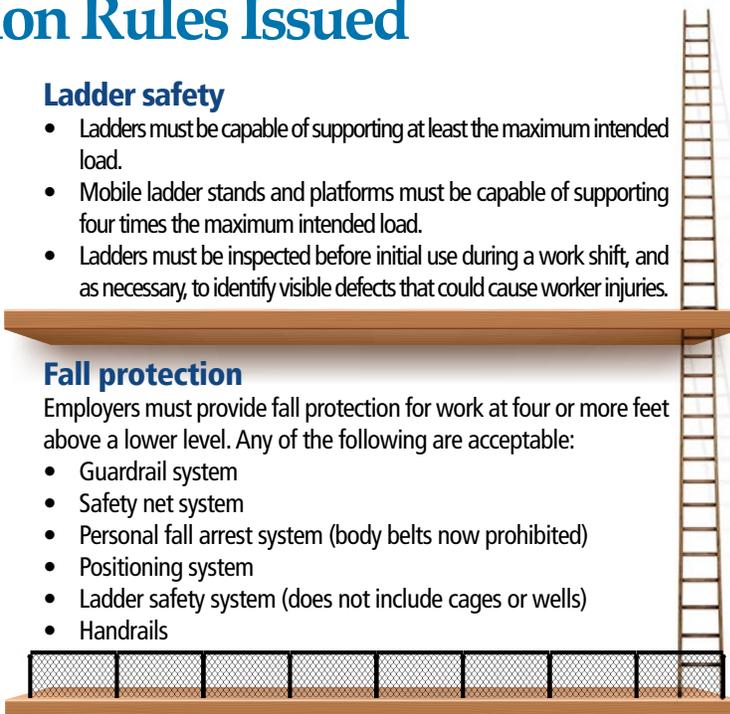
## Ladder safety

- Ladders must be capable of supporting at least the maximum intended load.
- Mobile ladder stands and platforms must be capable of supporting four times the maximum intended load.
- Ladders must be inspected before initial use during a work shift, and as necessary, to identify visible defects that could cause worker injuries.

## Fall protection

Employers must provide fall protection for work at four or more feet above a lower level. Any of the following are acceptable:

- Guardrail system
- Safety net system
- Personal fall arrest system (body belts now prohibited)
- Positioning system
- Ladder safety system (does not include cages or wells)
- Handrails



## Training

Employers must ensure that workers who use personal fall protection or work in dangerous jobs are trained in:

- Identification of fall hazards.
- The proper use of personal fall protection systems.
- The maintenance, inspection and storage of equipment.



Continued from page 1

# Testing Can Weed out Claims That Aren't Work-related

## How it works

Baseline testing is best conducted on workers in physical jobs.

Baseline tests measure the signals traveling in the nerves and muscles, and include the use of electromyography. The tests are non-invasive and often include range-of-motion testing.

Employers that send their employees for testing cannot view the test results unless the information is needed to confirm or refute a subsequent injury.

If a worker files a claim for a soft-tissue or repetitive motion injury, the employer can order a second test, which will be used by the insurance claims adjuster or treating physician to compare to the baseline test. If there is no change in pathology, the claims administrator can deny the claim and the chances are high it won't be contested.

To avoid problems with singling out specific workers or disabilities, you should perform this testing on the entire workforce – or at least in all of your physical jobs.

Under the law, you can order baseline testing at any time on any employee, and not just when they are hired.

The good thing about the testing is that it can identify legitimate claims. Since there is a baseline, when doctors compare and see a change in pathology, they can order treatment and workers' comp insurance pays for it and the worker's time away from work.

On the other hand, a second test can show irrefutable evidence that there was no chain in pathology and so the injury that the worker is claiming is likely not work-related.

## The takeaway

As mentioned, workers in physical jobs are the best candidates for baseline testing. That includes both light and heavy manufacturing, construction, agriculture, cleaning services and movers, to name a few.

But it could also be applied to any job that involves any type of repetitive motion, even without physical exertion. ❖

## EMERGING RISK

# Ransomware Becomes Biggest Cyber Threat

**R**ANSOMWARE IS turning out to be the biggest cyber threat facing companies in 2017 after attacks more than quadrupled in 2016 from the year prior, according to a new study.

If you are not familiar with this fast-evolving cyber threat, typically the perpetrators will essentially lock down your database and/or computer system and make it unusable, then demand that you pay a ransom to unlock the system.

The “Beazley Breach Insights Report January 2017” highlights a massive and sustained increase in ransomware attacks.

Another report, the “2017 SonicWall Annual Threat Report,” found that cyber criminals are shifting their attention from malware and other types of threat to ransomware – as evidenced by a significant decline in the former types of attack and a dramatic increase in the latter.

Here’s what SonicWall saw in 2016:

- Unique malware attacks fell to 60 million from 64 million in 2015, down 6.25%.
- Total malware attack attempts fell to 7.87 billion from 8.2 billion, down 4%.
- Ransomware attacks exploded to 638 million attempts in 2016 from 3.8 million in 2015, up a massive 166 times!

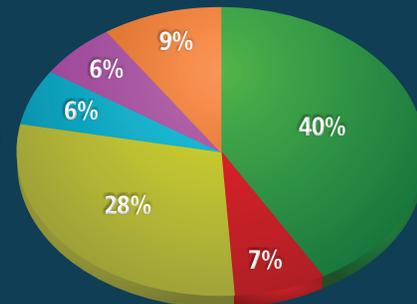
SonicWall’s report estimates that around \$209 million in ransoms was paid in the first quarter of 2016 alone.

“It would be inaccurate to say the threat landscape either diminished or expanded in 2016 – rather, it appears to have evolved and shifted,” said Bill Conner, president and CEO of SonicWall. “Cybersecurity is not a battle of attrition; it’s an arms race, and both sides are proving exceptionally capable and innovative.”

The unprecedented growth of ransomware was likely driven as well by easier access in the underground market, the low cost of conducting a ransomware attack, the ease of distributing it and the low risk of being caught or punished.

## HOW RANSOMWARE INFILTRATES

-  **Hack or malware:**
-  **Insider:**
-  **Unintended disclosure:**
-  **Physical loss:**
-  **Portable device:**
-  **Other/unknown:**



Source: Beazley Plc (numbers for financial services industry)

Ransomware is also growing in both sophistication and type of attack, and the hackers are proving to be inventive in how they can cripple your business enough to elicit the ransom.

### When you are most vulnerable

There are some times that businesses are more susceptible than others in being targeted for an attack.

“Organizations appear to be particularly vulnerable to attacks during IT system freezes, at the end of financial quarters and during busy shopping periods,” the SonicWall report states. “Evolving ransomware variants enable hackers to methodically investigate a company’s system, selectively lock the most critical files, and demand higher ransoms to get the more valuable files unencrypted.”

Ransomware enters a company’s system in a variety of ways.

The most common method is when an employee clicks on a link in a bogus e-mail that opens the door to malicious code to start rifling through your systems. But more often, an employee unintentionally clicks on a link or sends information.

The types of attack will vary from industry to industry. ❖

## HORROR STORIES

- Hollywood Presbyterian Medical Center in Los Angeles paid \$17,000 in bitcoin to regain access to its data in February 2016.
- Lansing Board of Water & Light paid ransomware attackers \$25,000 after they had paralyzed the company’s information system in April 2016.
- A four-star hotel in the Austrian Alps paid 1,500 euros (about \$1,600) in bitcoin after ransomware had locked up the computer running the hotel’s electronic key lock system, leaving guests unable to enter their rooms.



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## LIABILITY RISK

# Professional Services Increasingly Targeted

**A**T SOME POINT, most businesses are involved in some type of legal dispute, be it over an alleged physical or property damage to a third party or financial injury to a competitor, client or vendor.

And you'd surely want an insurance backstop in case you are targeted, to help pay for legal costs and any settlements or judgments. The type of liability that your business is going to face will depend on the type of work that you do.

If you're in a service trade, the chances of your work causing someone physical damage or harm are remote, but you could still be sued for not living up to your part of a contract or if your services caused a client to lose money.

The costs of defending against a lawsuit of that type can quickly mount, even if you win. Those costs would have to be borne out of pocket if you didn't have the appropriate insurance.

The costs of not carrying professional liability insurance in many services trades can be a disaster to your finances as a lawsuit can catch you by surprise, even for work that you may have done years ago.

## The unfunded lawsuit

Here's a scenario that could leave you scrambling for funds. You run an engineering firm and a manufacturer sues your business after one of the machine parts that you designed failed, causing one of the client's machines to seize up, resulting in \$58,000 in damage to the machine and production downtime. The lawsuit accuses your firm of negligence. Your business could be facing serious financial hardship as the suit asks for the cost of repairs and the lost production.

Here's what you're looking at:

- **Attorneys' fees** – Depending on where you live, these can range from \$150 to \$400 an hour, or more if you go with a topflight law firm.
- **Court expenses** – Fees for copying, filing and other miscellaneous tasks all add up.
- **Other legal fees** – You may need to call expert witnesses, as well.
- **Damages or settlements** – Even if you try to reach a settlement with your client, they may opt to take the case to trial in hope of winning the full amount of the damages they are claiming.

You can see how the costs can quickly mount and if it gets to a damages or settlements stage, they will increase significantly.

You should know too that even if the case was frivolous, you'd still have to pay attorneys to defend it and file motions to have it tossed out of court. That alone could run you at least \$5,000 in legal fees – a lot of money to pay out of pocket.

In fact, the U.S. Small Business Administration estimated in a recent study that legal costs for litigation ranged from \$3,000 to \$150,000, and only one-third of small business owners reported spending less than \$10,000.

And there can be other fallout, as well. Perhaps word has gotten out about the lawsuit, damaging your reputation and ability to attract new clients and retaining existing ones.

And if one client has sued, others who may have held off and had similar experiences could also file suit.

## Professional liability insurance

Insurance could have saved you from these significant expenses. The coverage, which is relatively inexpensive, is what's known as "claims-made" coverage.

That means your policy must be active when the alleged incident occurred and when the claim is filed, in order to receive your benefits.

Client allegations that your work caused them a financial loss are often covered by a professional liability policy.

Professional liability insurance can cover errors and oversights with your work, as well as legal fees and the cost of settlements or judgments.

**Cost:** The average yearly cost of professional liability insurance for a small business, regardless of the limits chosen or the industry of the business, was \$985.49 in 2015, according to the Insurance Information Institute. The median was \$758.00. ❖

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