

# Wright & Kimbrough Report

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## WORKERS' COMP

# 10 Tips for Shortening the Life of an Injury Claim

**O**NE WORKERS' comp claim can send your experience modifier spiraling out of control if the injured employee stays away from work for an extended period of time.

The longer they are off work, the more costly the claim grows since they are receiving temporary disability payments, which can cost up to \$1,074.64 per week in California.

The bane of employers in the workers' comp arena is open claims and it's to your benefit to work with the doctor and the claims adjuster to get the claim closed as soon as is feasible, and safe for the injured worker.

That said, there are ways to reduce the time a claim is open, including:

**1. Report accidents promptly** – Require workers to report accidents immediately, no matter how minor.

While some injuries require just first aid that can be taken care of using in-house first-aid supplies (which you should have on hand as per Cal/OSHA requirements), others are

more serious. If you are unsure whether first aid can fix the problem, it's best to send the worker to a doctor.

**2. Accompany to clinic** – Ask a supervisor to accompany the injured worker to the industrial clinic you have pre-chosen. There are good reasons for doing this, including:

- We have heard of lawyers soliciting employees going into and out of clinics.
- You gain useful feedback from your supervisor regarding the length of time it takes to be seen and how clean and sanitary the clinic is. A filthy clinic with long wait times does not send a good message to your employees.

**3. Investigate** – As soon as an accident is reported, investigate to determine what happened. Identify witnesses and separate them and interview them one at a time to fully understand the whole story.

**4. Explain** – Explain the workers' comp process and file the necessary claim forms.

See 'Valued' on page 2



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WISHES YOU A  
HAPPY HOLIDAY SEASON



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# More Workers Sue for Time Spent Post, Pre-Shift

**F**OR MANY years there's been a debate in the manufacturing, farming, mining and like industries about the merits of paying employees for the time they spend putting on and removing work clothes and protective gear before and after their shifts.

Individual and class-action lawsuits have been filed by employees seeking pay for the time they spend "donning and doffing," which can sometimes be 15 minutes or more in some industries.

But these lawsuits may no longer be the domain of those labor-intensive industries. In recent years, office and service sector employees have started suing their employers for back wages for time they spent performing what they consider job-related functions before and after their work shifts. Consider these recent lawsuits:

### The bankers

A court recently approved a \$6 million settlement in a case where two employees accused their employer, TD Bank, of requiring them to arrive early to work each day in order to undertake various procedures to open the branch for business.

Amongst the requirements were security functions that needed to be performed both inside and outside the branch before the bank's



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## Telling an Employee They Are Valued Is Good Medicine

Answer the employee's inquiries quickly and designate someone as the primary contact.

**5. Don't leave them hanging** – One reason that injured workers get an attorney is that they feel abandoned by their employer. Assign a supervisor to visit with the employee on a regular basis to keep them motivated to return to work and to answer any questions they have.

Positive, encouraging messages of the employee's value to the company are often the best medicine.

**6. Return to work** – Have a return-to-work program in place. If the injured worker's treating physician clears the employee for a return to work or for light duty with restrictions, make sure the worker, their supervisor and fellow employees understand the restrictions.

This is important because one of the main factors in workers re-injuring themselves is that their supervisor fails to educate others about the work restrictions and, unknowingly, peers place pressure on

computers could even be booted up for the day's activities.

The unpaid-overtime lawsuit claimed that such activities took between 15 and 20 minutes to complete each day.

### The whole enchilada

Two lawsuits are seeking class status in accusing the national eatery chain Chipotle of requiring employees to continue working after clocking out. A former employee accused Chipotle of conducting training, meetings and other activities which employees were "required to attend, but for which they are not allowed to punch in."

Also, the suit alleges that the company encouraged managers "to require that work be performed off the clock" after 12:30 a.m. and that systems were put in place for "reward and punishment" of supervisors who either stayed within or exceeded their payroll budgets.

### The takeaway

Under the Fair Labor Standards Act (FLSA), compensable hours worked include all time an employee is on duty or at a prescribed place of work and any time that an employee is suffered or permitted to work.

The Portal-to-Portal Act, which supplements and limits the FLSA, states that employers must count as working time incidental activities that are integral to the job, such as depositing the mail after the close of business, or changing clothes and showering if required by the employer.

In light of this new legal trend, you need to be careful about how you are compensating your staff for all the time they spend on activities that are integral and indispensable to their principal work duties.

So, if you are requiring your workers to perform duties before or after clocking in, you may be running afoul of the law. If you do, you should revisit your policy and talk to a labor attorney.

It would be wise to put in place policies and procedures for tracking the time employers spend on those activities to make sure they are properly paid. ❖

the injured employee to perform tasks beyond the restrictions.

**7. Doctor network** – Identify and establish relationships with doctors who have expertise in occupational medicine and understand the value of returning injured employees to work.

**8. Monitor claims** – Monitor claims progress if your insurance agent is not already doing so. Discuss the claims with the medical provider and your agent to determine how to get the claim on track.

**9. Know your claims** – Examining your claims, patterns may emerge that identify areas in need of attention.

**10. Close claims promptly** – Open claim reserves affect the X-Mod in the same way as actual claims paid.

In some cases, claims that are closed may be on the books as open or the reserves set for the claim may be excessive based on your knowledge of the claim. If you're concerned about this, give us a call. We can help. ❖

# Playing It Safe during the Holidays

**W**ITH YEAR-END festivities about to commence, you should include safety into your holiday plans, be that if you are simply decorating the office or throwing a party for your staff.

Since the holiday season is only once a year, it's easy to overlook safety even though you already incorporate it into the other aspects of your operations.

While you obviously want your staff to relax and have fun at your holiday party, you also want to make sure they get home safely and that nobody gets hurt or sick at your event.

Due to their infrequent nature, the liability risks of company-sponsored holiday events are often overlooked.

At the top of your list should be the safety of all party-goers and potential liabilities.

## Safety

While you want your staff to enjoy themselves, safety should still be your top priority during the holidays. Consider the following:

- If you are holding a party outside your premises, inspect the venue first to make sure it meets your safety standards. You should keep an eye out for exits, emergency lighting and flooring that might prevent slips and falls, particularly if there is a chance of bad weather.
- Consider the effects that weather may have on safety. You may need to make special plans to keep sidewalks and parking lots clear if the event is outside of normal business hours.
- Do you need security? It's something to consider.
- Keep an eye on party-goers to ensure that no one wanders off or goes to their car alone after dark.
- Prepare an emergency plan in case someone is injured or needs medical assistance. Know where the closest hospital is and if anyone knows how to use a defibrillator or can perform CPR.
- Accommodate employees with disabilities or special needs.

## Other issues to consider

- Apply your workplace policies on behavior, including those on violence, harassment, discrimination and general code of conduct, even if you've chosen a venue other than your workplace. Prior to the event, let employees know the standards to which they will be held.
  - Make sure that the party is not tied to any specific religious tradition and is referred to as a "holiday party."
  - Monitor employees' behavior to ensure that it conforms to company policies. Take prompt action if any activity or behavior exceeds acceptable bounds.
- For instance, if someone is getting too friendly, carrying mistletoe and asking for kisses from others, you should pull the person aside and discreetly manage the incident before it becomes a bigger issue.
- Avoid activities or items such as mistletoe, a game of Twister, or inappropriate music that could lead to physical contact, unwanted social pressure or inappropriate conversation.
  - Take complaints stemming from the party seriously. As you normally would with any other incident, document, investigate and take appropriate action.

## Alcohol

Some companies have recognized the liability exposure that alcohol represents and have chosen to hold holiday events free of beer, wine or liquor. If it is to be served, there are some important considerations that can help to limit potential problems:

- Hold the event at an off-site location and hire professional bartenders who have their own insurance and are certified for alcohol service. Speak with the vendor to determine what protocols it uses to keep from serving minors and others who are visibly intoxicated.
- Make sure there is an array of choices of non-alcoholic beverages.
- Don't have an open bar. Instead, hand out drink tickets to control consumption.
- Stop serving alcohol at least an hour before the event ends.
- Keep lots of starchy and high-protein snacks for the party-goers to munch on to slow absorption of alcohol into the bloodstream.
- Give a supervisor or manager the authority to cut off the serving of alcohol to anyone who is intoxicated.
- Provide alternative transportation, which may include free cab rides.

## A word about insurance

Make sure any vendors you use carry insurance. Insist on seeing the certificates of insurance, with sufficient coverage and liability limits for:

- Catering firms,
- Bartending firms,
- Facilities, or
- Entertainers.

When reviewing rental contracts, be sure to note whether any hold harmless or indemnity agreements that could release the vendor from liability and instead hold your company responsible for losses from situations over which you have no control.

Also, talk to us to make sure that your own insurance policies cover any mishaps that may occur at your company event. ❖

## Liability Got You Worried?

Discuss the party, potential liabilities and other matters with us to make sure your policy protects your business.

**Call Us!**

# Californians Affected by Data Breaches up 600%

**R**ELECTING THE rapidly escalating threat of cyber crime, the number of California residents whose records were affected by breaches jumped 600% in 2013 from the year before.

The California Attorney General's office in October said that while the number of reported data breaches grew 27% to 167 from 131 the year prior, the number of Californians affected by those breaches boomed to 18.5 million in 2013 from 2.5 million in 2012.

The latest report shows the level to which California businesses are targeted by cyber thieves and scammers. And while the number of reported breaches seems low, considering how many businesses operate in the state, experts say the real numbers are much higher since most breaches go unreported.

On top of that, most businesses usually have no idea their data has been breached.

The news comes after a new survey found that while more executives are aware of cyber risks, only half are purchasing insurance. While 64% of corporate executives surveyed by Zurich Insurance Group and Advisen Ltd. were aware of the risks, compared to 54% a year ago, the number of companies purchasing cyber insurance had leveled off at 52%.

The causes of breaches in California were:

- Computer intrusions, including malware and hacking (53%)
- Physical loss or theft of laptops or other devices containing personal information (26%)
- Unintentional errors (18%)
- Intentional misuse by insiders (4%)

The retail industry reported the most breaches in 2013 at 43, or 26% of the total, followed by finance and insurance, with 33, or 20%, and health care with 25, or 15% of the total.

According to another new study – by PricewaterhouseCoopers L.L.P. (PwC) – the number of cyber security incidents worldwide has increased 48% this year, to 42.8 million, or the equivalent of 177,339 incoming attackers per day.

## Smaller firms more exposed

The PwC survey found that smaller firms spend less on data security, and as a result typically are unaware when they have been hacked.

The survey found that organizations with gross annual revenues of at least \$1 billion detected 44% more incidents than last year, while companies with revenues of less than \$100 million detected 5% fewer incidents in 2014 than they did in 2013.

PwC recommends that organizations adopt the “NIST Cybersecurity Framework” to defend against cyber intrusions and data theft. That includes:

- Identifying and classifying your most valuable information and data assets.
- Determining where your high-value data is located across your database ecosystem, and who has access to it.
- Aligning security spending with the organization's strategic assets.
- Investing in the people and process capabilities that allow businesses to rapidly respond to and mitigate incidents.

If you're a retailer, the California Attorney General recommends:

- Updating point-of-sale terminals so that they are chip-enabled, and installing the necessary software.
- Implementing appropriate encryption solutions to devalue payment card data, including encrypting the data from the point of capture until completion of transaction authorization.
- Implementing appropriate tokenization solutions to devalue payment card data, including online and mobile transactions.
- Responding promptly to payment card data breaches. ❖

## Cyber Worries?

Cyber insurance can help cover costs after a breach.

**Call Us:  
(800) 822-3694**



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