

# The Wright & Kimbrough Report



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## NEW OSHA REGS

# Electronic Reporting Rules Go a Step Beyond

**B**Y NOW you should be aware of new rules from Federal OSHA on the electronic reporting of workplace injuries and illnesses that will take effect next year.

But, while the new rules focus mainly on employers with 250 or more workers submitting Form 300A electronically starting in 2017, the regulations contain a number of other rules that employers need to know about.

Specifically, the new electronic reporting rules contain provisions on discrimination and retaliation, post-incident drug testing, and workplace safety incentive programs.

### Post-incident drug testing

OSHA stated in its commentary on the regulation that blanket post-injury drug testing policies can be a form of retaliation.

“To strike the appropriate balance here, drug testing policies should limit post-incident testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use.”

For example, it is unreasonable to drug test an employee who reports a bee sting, a repetitive strain injury, or an injury caused by a tool malfunction.

If you have a policy like this in place, you may want to review and revise it.

### Discrimination and retaliation

Here's what you need to know about the new rules:

- Employers must ensure that their injury reporting procedures are designed so that they do not deter or discourage employees from reporting job-related injuries and illnesses.
- Employers cannot have in place injury reporting mechanisms that are too burdensome, or require employees to take too many steps.
- Employers may not have in place policies that discipline employees for failing to report an injury in a timely fashion. This mainly concerns injuries that develop over time, like repetitive motion and cumulative trauma injuries.
- Employers' reporting mechanism and discipline policies must allow for reporting of injuries and illnesses within a reasonable timeframe after the employee has realized that he or she has suffered a work-related injury or illness.
- Employers must inform employees that they have a right to report work-related injuries and illnesses free from retaliation.



**NO TIT FOR TAT:** Inform your workers they have a right to report work injuries without fear of retaliation.

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# Keeping Your Employees Safe around Electricity



**W**HILE ALL businesses need electricity to get the job done, it can also pose a significant workplace safety issue if your workers are careless.

To reduce the chances of an injury or death, it's imperative that you train your workers in electrical safety.

While we've all gotten an electrical shock at some point, it should not be taken lightly as even a small amount of electrical current can be fatal.

Here are some of the main areas you should focus training on:

### Metal and water

Risk is greatest around metal objects and in damp conditions.

- Train workers to ensure that electric equipment, switch enclosures and conduit systems are properly grounded and that all external or damp operations are wired for wet conditions prior to operations.
- They should wear the correct gear, such as rubber gloves and boots, while working in damp environments.
- You should provide rubber mats, insulated tools and rubber sheets to protect them from exposed metal.

### Defective equipment

Defective equipment can result in shock or electrocution.

- Workers and supervisors should inspect electrical equipment, outlets, plugs and cords before each use.
- If a worker finds faulty or damaged equipment, they should alert a supervisor who should remove, tag and have the item repaired.

### Cord management

- Make sure outlets and cords are of adequate size and length to prevent an electrical overload.
- Keep cords out of the way if possible to avoid tripping hazards.

### Lockout/blockout

- Follow lockout/blockout procedures.
- Workers should stop using a tool if they feel even a small shock.
- Workers should turn off the power if they smell a hot or burning substance, or if they notice smoke, sparks or flickering lights.

### Watch for power supply lines

Contact with overhead power supply lines is one of the most common causes of electrocution for construction workers. This usually happens when workers are using portable elevators, cranes, pipes or hoisting machinery that puts them in close proximity to power lines.

- Workers using high-clearance devices should continually scan for danger and take precautions to avoid contact with overhead lines.
- If an overhead line breaks, keep away from the wire and everything it touches. Call the power company to shut off the electricity.
- Only qualified electricians should repair electrical equipment or work on energized lines.

### One last thing...

Besides training your workers in all facets of electrical safety, don't forget to train them in emergency response procedures and CPR, too. ❖

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## Safety Incentive Programs Should Not Reward Non-reporting

### Safety incentive programs

OSHA also stated in its commentary for the proposed rules that certain incentive programs that reward employees for remaining injury free at work can be retaliatory and deter reporting of injuries.

Some employers offer to pay employees a bonus or enter their names in a drawing for a prize in an effort to encourage workplace safety. OSHA states that these types of incentive programs result in the significant underreporting of recordable injuries, especially if

employees are subjected to peer pressure from coworkers who also will be denied the award/prize as a result of a reported injury.

According to OSHA, this violates anti-retaliation regulations because an employer would take an adverse action – like denying a reward or benefit – because a worker reports an accident.

Instead, OSHA asks that employers use incentives for identifying hazards, participating in safety committees and similar activities. ❖

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## NEW LIABILITY

# Pokémon Go and the Dangers to Your Business

**T**HE POKÉMON Go craze has exposed people who play the game to new dangers that have previously not been associated with mobile phone apps.

To play Pokémon Go, players follow their phone's GPS, which leads them to various places in the real world where they encounter and capture in-game creatures called Pokémon.

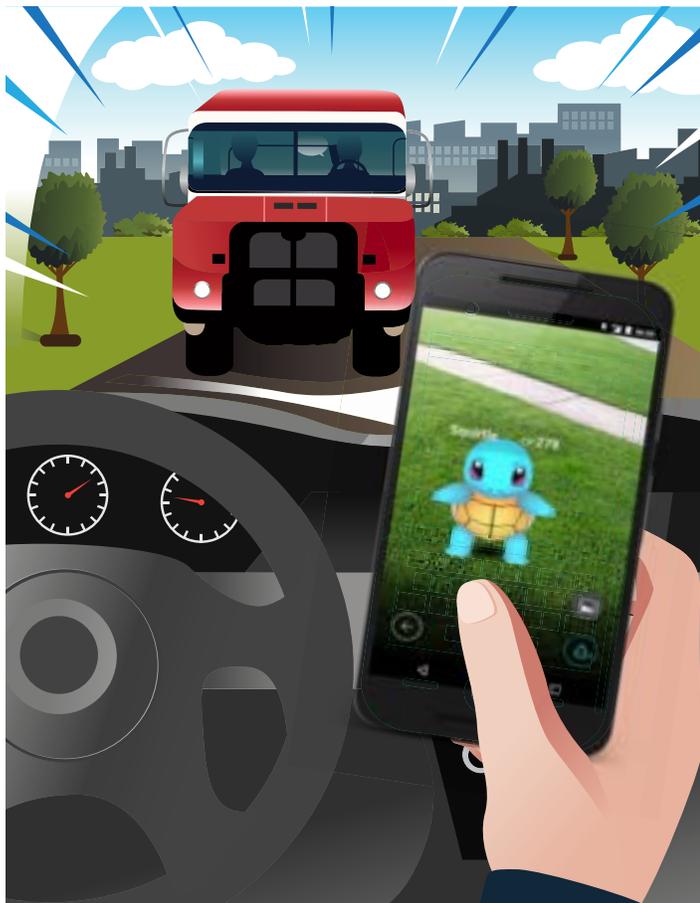
In their zeal to catch these virtual critters, players have been robbed at gunpoint after walking into alleyways, been shot at for trespassing on private property, been hit by cars after walking into traffic – and even fallen off cliffs.

But businesses face an even greater liability from employees who play the game, including workplace injuries, potential data breaches and third parties playing the game on your premises.

### Workplace safety

The highly addictive game cuts across many demographics in terms of usage and is putting people in danger if they play it and are not paying attention. And since most people have jobs, the same people who play Pokémon Go are also employees, including yours.

As mentioned, many people have been injured playing the game. Already you must know that your employees are spending time on their smart phones doing things that are not associated with their jobs.



It doesn't take much stretching of the imagination to understand that employees will play the game while on the clock.

If they play while driving on the job, they can not only injure themselves, but also add further liability if they injure someone else or damage a third party's property. You may also have your own damaged property as a result.

### Cyber security

The game was created by a company called Niantic Labs, which is owned by Alphabet Inc., the parent company of Google.

Problems at Niantic Labs have added to the security issues with Pokémon Go. Because of the company's scalability problems, millions of users have had to download the app from third-party websites, where some of the software contains malware along with the game.

One version of the malware, called DroidJack, gains access to anything on your Android phone, including all of your e-mail, contacts and text messages.

Now, imagine that an employee has downloaded the game onto their company-issued phone and that phone has as a result become a conduit for criminals to access your network.



### Other liability

Businesses also face potential liability, as Pokémon Go players wander onto premises where they can hurt themselves. Construction sites carry specific dangers to anyone not paying attention, like open trenches, trip hazards and nails and other fasteners strewn on the ground.

There was one report from Idaho of a Pokémon Go player wandering onto a farm and almost falling into a grain elevator.

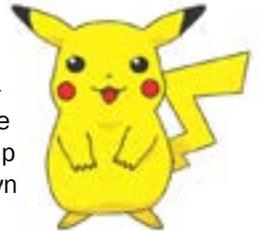
So, if you have another commercial facility and players wander in and fall and hurt themselves, you could be held liable. Even if you face a lawsuit and eventually win, it will still cost you mounds in defense costs.

### The takeaway

Work with your company counsel to develop policies to address the phenomenon. These can include forbidding employees from playing the game on a company-owned device, while driving or during work hours.

Ensure that your properties are secure, especially after hours, to thwart overzealous Pokémon Go players from stepping onto your facilities and injuring themselves.

If you have security on your grounds, you should alert them to stop players from wandering into unauthorized areas. ❖



## WORKERS' COMP

# Bill Aims to Cut Unnecessary Opioid Prescriptions

**G**OVERNOR BROWN has signed legislation that reduces the chances of injured workers getting hooked on opioids when they are recovering from workplace injuries.

Senate Bill 482 will require doctors to first check the state's prescription drug monitoring system before writing a prescription for opioids.

The measure addresses opioid scourge that has hit injured workers hard, leading to addictions that reduce the chances of them returning to their at-injury employer. California has already seen a decrease in the opioid prescriptions for injured workers, but if this legislation is signed into law, it would strengthen safeguards even further.

SB 482, authored by Sen. Ricardo Lara, a Democrat from Bell Gardens, will force doctors to use the Controlled Substance and Utilization Review and Evaluation System (CURES) database.

Even though CURES is the oldest such system in the nation, legislators believe that few doctors consult it before writing prescriptions for opioids, which are highly addictive and are often associated with slower recovery periods for injured workers.

Under the measure, doctors authorized to prescribe, order, administer, furnish or dispense a controlled substance, would be required to check CURES no earlier than 24 hours before writing a prescription for a Schedule II, Schedule III or Schedule IV controlled substance for the first time – and at least annually thereafter.

Doctors who knowingly fail to check the database would be referred to their licensing board for administrative sanctions.

The American Insurance Association says that CURES and other prescription drug monitoring programs have been shown to be effective in controlling the practice of “doctor shopping”, whereby patients will visit different doctors to obtain prescriptions for addictive medications.

The association also said it will protect patients and improve outcomes.

### The study

The new law is coming on line after a study by the Workers' Compensation Research Institute found “significant” decreases in the amount of opioid prescriptions being written for injured workers around the country.

Fourteen of 25 states examined by the institute recorded decreases in opioid prescriptions of between 11% and 31% in the study, which measured 24-month periods ending in March 2012 and March 2014.

Michigan saw the biggest drop (31%), followed by Oklahoma (29%) and Massachusetts (24%). Texas saw a drop of 19%; Connecticut, 17%; California, 12%; and Pennsylvania, 4%. Just four states saw increases.

The institute noted that the decreases coincided with various states enacting legislation aimed at reducing the abuse of opioids by improving prescription drug monitoring programs and adopting more stringent treatment guidelines and drug formularies. ❖



## Addictive Medications

**Schedule II:** Substances that have a high potential for abuse which may lead to severe psychological or physical dependence.

**Types:** Methadone, meperidine (brand name Demerol), oxycodone (brand names OxyContin, Percocet), fentanyl, morphine and high-strength codeine.

**Schedule III:** Substances with a potential for abuse less than substances in Schedule II, and abuse of which may lead to moderate or low physical dependence or high psychological dependence.

**Types:** Hydrocodone (brand name Vicodin), codeine (Tylenol with Codeine).

**Schedule IV:** Substances in this schedule have a lower potential for abuse than Schedule III drugs.

**Types:** Brand names Xanax, Soma and Valium.