



Risk ADVISOR

Texas Water Conservation Association Risk Management Fund



Light Duty, Modified Duty, Early Return to Work, Return to Work...

By whatever name you call it a Return to Work program has several very positive effects when it comes to an employee injured on the job. It also has positive effects for the district that flow from the benefits to the employee.

The positive effects for the injured worker include:

- ◆ The injured employee misses very little time from his or her job
- ◆ Wages and benefits continue at the same levels as before the injury
- ◆ Physical recovery from the injury is usually much quicker than a sedentary recuperation at home
- ◆ The worker maintains his or her relationships with fellow workers
- ◆ The worker maintains seniority and the same job title and duties as before the injury (with temporary modification based on the physical restrictions dictated by the injury)

The district benefits in several ways as well:

- ◆ A productive and experienced employee continues to do most of their job
- ◆ Productivity is maintained at a higher level than if a temporary employee is brought in to make up the slack
- ◆ An early return to work usually results in reduced medical and lost time costs that effect the amount the employer must pay for workers' compensation coverage
- ◆ In most cases, the employee stays employed with the district reducing turnover and the need to train a replacement

In many cases overall employee morale increases when the district shows care and concern for its employees and their families after the on the job injury. Many studies have shown that the longer an injured worker stays away from the workplace the less likely they are to return. Injuries that do not result in the return of a worker to his or her job cost much more in medical expenses and lost time benefits. Employers bear the cost of replacing and training a new worker and suffer the resulting lag in productivity. Although workers compensation pays a tax free wage replacement benefit it is usually not as much as the original wage and it might not replace amounts the employer contributed to health insurance and retirement plans.

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Loss Control Briefs

Zika Virus Update

The following table comes from the Centers for Disease control website as of May 4, 2016. It contains some interesting information about how people have acquired the Zika infection.

At A Glance - Zika in the U.S. (as of May 4, 2016)

US States

- ◆ Travel-associated Zika virus disease cases reported: 472
- ◆ Locally acquired vector-borne cases reported: 0
- ◆ Total: 472
- ◆ Pregnant: 44
- ◆ Sexually transmitted: 10
- ◆ Guillain-Barré syndrome: 1

US Territories

- ◆ Travel-associated cases reported: 3
- ◆ Locally acquired cases reported: 658
- ◆ Total: 661
- ◆ Pregnant: 59
- ◆ Guillain-Barré syndrome: 5

Centers for Disease Control and Prevention, May 4, 2016

In the continental United States none of the cases have been “locally acquired vector-borne cases.” That means that as of the report date no one acquired the virus from native mosquitoes. That is not the case in such places as the U.S. Virgin Islands or Puerto Rico. Most epidemiologists believe however, that it is only a matter of time before Zika is carried by mosquitoes in southern states. Another observation is that only six cases of possible associated Guillain-Barre’ syndrome have been reported out of the total of 1,133 cases.

The Centers for Disease Control and Prevention website also offers other evidence of how seriously they are approaching the possible spread of the virus to the United States. There are several entries that include doctor’s checklists for pregnant women, a survey of Puerto Rican blood banks and an article entitled “Vital Signs: Preparing for Local Mosquito Borne Transmission of Zika Virus – United States 2016.” The article about the presence of Zika virus in blood supplies contains this statement about the danger posed by the virus:

“Because of the potential for transfusion-associated transmission of Zika virus, the Food and Drug Administration (FDA) has recommended deferral of blood donors in affected U.S. areas until blood donations can be screened by nucleic acid testing or blood products can be subjected to FDA-approved pathogen reduction technology (PRT). FDA has recommended that whole blood

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2016 Safety Workshops

The annual Safety Workshops for members of the Fund have been scheduled for several locations around the state. The upcoming locations and dates are:

- ◆ Pearland, June 29, 2016 at the Brazoria Drainage District #4
- ◆ Wylie, August 10, 2016 at North Texas Municipal Water District
- ◆ Conroe, October 19, 2016 at San Jacinto River Authority
- ◆ Edinburg, November 9, 2016 at The Echo Hotel

Watch for flyers and register for the workshops online at TWCARME.org. Details about the workshops will also be on the website. There is no charge for the workshops and lunch and snacks are provided.

The topics that will be covered are:

- ◆ TWCARME Workers' Compensation Loss Analysis 2006 – 2015 provides a deep look at the causes and consequences of workers' compensation claims to district staff. The major causes of most workers' compensation claims for Fund members are presented in terms of cost and lost days from work with a major recommendation for reducing their impact.
- ◆ Worksite Safety examines the hazards and safety precautions associated with the most common worksites Districts encounter in their day to day operations. Specific types of worksites include trenches, canals, general worksites common to most districts and the hazards associated with the use of heavy equipment. A discussion of a recent fatality involving heavy equipment is also discussed for the important lessons it teaches.
- ◆ Why do you Drive the Way that you Do? Presents some of the most basic and important principles of safe driving and goes into detailed examination of driving behavior. An 18 step set of safe driving tips are also included that give practical suggestions for improving driving skills.
- ◆ Best Safety Practices for Tools and Shops is an in depth look at the primary hazards and causes of injury associated with common shop tools and the shop environment. The presentation gives several examples of poor practices that can lead to serious injury. It also presents recommendations for the safe use of tools and best practices for a safe shop.
- ◆ Safer Approach to Moving Materials Manually examines the ergonomic and bio-mechanical aspects of lifting and shares basic principles of safe lifting. It also presents proper lifting technique and discusses some of the fallacies that have developed about proper lifting.

The workshops will be presented by the Fund's Loss Control Consultants, Michael LeVasseur, Joe Salazar and Jeremy Wade. The topics are directed at a general audience of district staff who are involved in the safety effort in any way. This includes supervisors, safety officers, human resources, facilities, risk management and upper management.



Fair Labor Standards Act Update for Texas

The Wage and Hour Division of the U. S. Department of Labor usually seeks recovery of back wages for employees who have not been paid overtime properly for work in excess of 40 hours in a calendar week. And it also has other ways to impose significant penalties on employers for violating the Fair Labor Standards Act. One such measure is "liquidated damages." Liquidated damages are an amount equal to the back wages owed to the complaining employee. This penalty can be imposed by the Wage and Hour Division at their discretion and without any legal proceedings other than the final conference with the employer. Up until recently, it was the Division's practice to assess liquidated damages only in association with cases filed in Federal court. However, in keeping with their more aggressive approach to regulating wage and hour matters they have decided to apply the liquidated damages provision in all cases. This could mean a doubling of costs for employers in Texas in non-federal court cases. As the administrator of the Wage and Hour Division, David Weil states in a recent blog, "We're increasing the cost of non-compliance by using all enforcement tools provided by Congress where appropriate, including civil money penalties, liquidated damages, and debarments." The only defense against liquidated damages is a "good faith" misunderstanding of the law. An example would be erroneous advice from the Wage and Hour Division that was relied on to pay employees. Ignorance of the law or mis-interpretation by the employer is not a defense.

The best way to prevent these costly and time consuming actions is to adhere strictly to the 40 hour per week rule for overtime and the definitions of "exempt" and "non-exempt" employee status. On May 18, 2016, the Department of Labor issued new rules governing wage and hour matters. The new rules will raise the "exempt status" threshold to \$913 per week effective December 1, 2016. This more than doubles the current threshold of \$455 per week.

Sources: Department of Labor Wage and Hour Division, Andrews Myers P. C. Monthly Law Alert "Wage and Hour Division Update on Liquidated Damages" article by Tony Stergio.

Loss Control Briefs, continued from page 2

and blood components for transfusion be obtained from U.S. areas without active Zika virus transmission.”

As the mosquito season approaches and is enhanced in many parts of Texas by the recent heavy rains, districts are advised to carefully monitor the situation and take measures necessary to protect employees.

The University of Oxford in England recently published an ar-



ticle in the online science journal “eLife” that contained the map shown below. Through a very detailed and exhaustive mapping

From “Mapping global environmental suitability for Zika virus” in eLife Journal published by eLife Sciences Publications, Ltd.

exercise the authors determined that over 2.17 billion people in the world could eventually be exposed by the spread of the Zika virus. The map shows their estimate of the extent of the potential spread of Zika in the United States and other nearby countries. The red shading shows areas where it is very likely that mosquito populations will acquire and spread the virus. Note that the four largest metropolitan areas of Texas are shown as dark red, or the areas most likely to become infested.

Effective anti-mosquito measures include using a “DEET” based insect repellent, wearing long sleeve shirts and pants and reducing areas where mosquitoes breed.



Basic Boat Safety

Many water districts use small boats in their operations to inspect shorelines, deal with invasive plant species, inspect and repair intake and other structures, patrol the lake and many other jobs.

The range of small boats include small open boats with outboards, law enforcement patrol boats, flat bottom work barges and larger boats with larger outboards or inboard engines. Whatever kind of boat your district operates the same principles of safe boating apply. The most important element of boat operation is the operator. His or her knowledge, training and attitude determine the safety of the boat, its occupants and others on or adjacent to the body of water. Employees designated as boat operators should have training that acquaints them with boat safety and operating systems, rules of the road, emergency procedures, District policies and procedures and state, local and Coast Guard requirements and regulations. No person should be allowed to operate a district boat without this training and familiarization. The last step in training should include observation of the operator by an experienced district operator.

Another human factor crucial to boat safety is awareness of the conditions in which the boat will be operated. A major factor is the weather including wind, waves and approaching storms or fronts that can change the weather almost instantaneously. The load a boat will be carrying is also important to safe operation. What does the load weigh? How is it placed in the boat? How many people will be in the boat? These questions all get at the stability of the boat in the water under varying conditions. What kind of traffic is on the lake and how will that impact boat operations? What are the floating and submerged obstacles that could affect safe operation of the boat? Recent inflow of flood waters often brings floating debris that can damage or overturn small boats.

Critical safety factors are also determined by the mechanical condition of the boat and the safety equipment on board. Engines should be well maintained, well ventilated and start easily. Fuel tanks should be full and free of leaks or loose connections. All running and navigation lights should work and steering and throttle controls should be unimpeded. Safety equipment on board should include personal flotation devices for every occupant of the boat, a throwable life ring, flares, signaling device such as an air horn, fire extinguishers and a first aid kit. An anchor with sufficient line for typical anchoring depths is also desirable. Most people now carry cell phones for work use but a vhf radio on the boat can also be an important means of communication in case of an emergency.

Although boating accidents on the water are rare for members of the Fund, there have been serious injuries to employees while entering or exiting boats at the dock. Boats react quickly to weight and can move unexpectedly when someone steps in or out of the boat. Wave or wake

continued on back cover

Return to Work, continued from front cover

So, how does a return to work program work? There are several moving parts but they all start with the employee, his or her physician and the employer's willingness and commitment to provide continued employment. The employee should understand that the district has a return to work program and convey that fact to the doctor. Part of the paper work for the doctor should be a physical restriction form that tracks with the physical demands of the employee's job. The DWC 73 form contains this type of questionnaire. The doctor can use this to set limits on what the employee can safely do based on the type of injury experienced. Another piece of communication for the doctor should be a detailed job description so they will know the employee may still be able to do many aspects of their pre-injury job. For instance, a backhoe operator who injured his knee when he jumped off the backhoe and landed on a rock may still be able to operate the equipment and even carefully enter and exit the cab of the machine. He just can't jump off like before. The doctor's restriction will acknowledge this and the employer will make sure the worker has help if he needs it so he can get back on the backhoe and continue digging.

The district's willingness to find work that will accommodate the restrictions is also a key component. Except in the event of very serious injuries, most workers are not completely disabled and are able to do parts of their job or other jobs. If an employee is limited to lifting no more than 20 pounds because of a back injury, over time and as a result of treatment that weight restriction can be increased gradually with the physician's approval until the employee is back to full strength. The district accommodates the restriction and modifies the job as the employee improves. When released by the doctor, the worker returns to full duty, usually much sooner than if they were just sent home. The modification of duties to accommodate an injury does not create a new job for the employee. The modifications are temporary and diminish as the worker's injury heals.

Another key element of the return to work program is a bona fide offer of employment from the employer. This is a step required by the Texas Division of Workers' Compensation. It is a formal offer from the district to the injured worker that work is available that meets the restrictions established by the doctor. If the worker

rejects the offer, workers' compensation benefits can be terminated. It is a powerful encouragement to accept the offer.

There are some obstacles to a return to work program, most of which can be overcome if the employer is determined. Some "old school" supervisors, foremen and managers don't like the idea of a worker returning unless they are "100%" and able to do all of their job. This attitude creates a culture of expectation that if you are injured on the job you get to go home until the doctor releases you to "full duty." This period could be a long time or at least until the limit set in the district's neutral termination policy. The longer an employee is off work, the less likely they are to return to the district. The result of this job loss contributes to loss of health insurance for the injured worker's family, loss of contributions to a retirement plan, slower physical recovery from the injury and an eventual return to employment in a job that often pays less than the one the district provided. Under current Texas workers' compensation law lost wage benefits are limited to two years and under certain conditions can be extended up to seven years. That is the maximum paid, so there is no "pot of gold" available for settlements or impairment ratings. The best financial result for employees is to go back to work.

Another obstacle is the perception that "we don't have enough work to accommodate the restrictions." In rare instances that could be true. But most districts have things that employees can do to contribute from clerical work to cleaning or running errands that help other people be more productive. If the district is committed and communicates that commitment to managers, supervisors and employees a return to work program can be an effective benefit for everyone involved. The Fund's senior workers' compensation claims adjusters understand return to work situations and can help the district in the process.



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action can also move a boat suddenly at the dock. Both hands should be free when entering or exiting. If you are loading or unloading objects place them on the dock so you can reach them after you are in the boat. Do the same when exiting. Better yet, hand the object to someone already in the boat or on the dock.

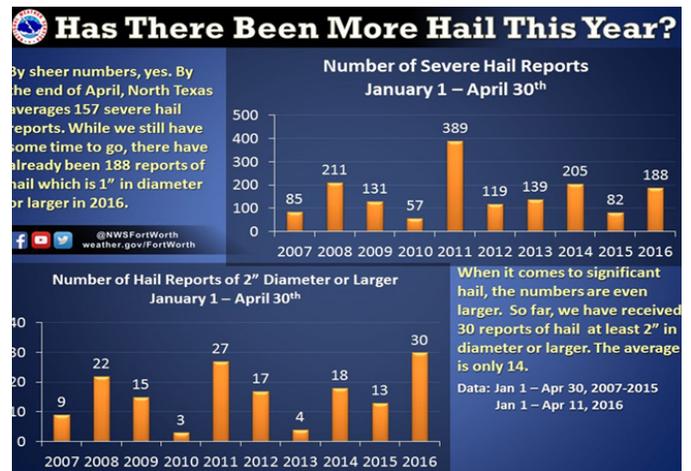
Remember, boating safety starts with the person driving the boat. Use a checklist before departure and make sure someone at the district knows what your work plan is and when to expect your return. Wear your personal flotation device and keep your eyes open. Be safe on the water.

Source: U. S. Coast Guard Rules and Regulations, American Boat and Yacht Council Boating Safety Checklist

Hail Season

The Fort Worth office of the National Weather Service responded to the question: Has there been more hail this year than usual? Their answer is in the graphic shown below.

From the Fund’s perspective, it has been a very busy year for hail and it is not over. As of May 11, 2016, the Fund has reserved or paid 68 hail claims valued at \$224,785.34.



National Weather Service Office in Fort Worth, Texas

A recent article in the Fall 2015 Risk Advisor detailed many of our recommendations about what to do if you are affected by hail. Most important is to report the damage or possibility of damage to the Fund. The next most important thing is to get the damage repaired. Although it may be tempting to take the money and do nothing to the roof which may not yet leak, hail impacts can increase the rate of roof deterioration and cause leaks and interior damage long after the storm. This makes dealing with your claim extremely difficult when there is obvious old, unrepaired damage alongside new damage.