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MONTHLY NEWSLETTER

Don' be afraid to ask "why"

Every manufacturer in California has a statutory responsibility to provide workers' compensation benefits to their employees if they are injured on the job. Regardless of whether a manufacturer elects to self-insure or fully insure this employer borne liability, organizations must apply risk control practices in their operations in order to avoid accidents and losses. Typically these practices are outlined in their Injury & Illness Prevention Program. But how do companies develop truly sound and effective safety practices?

Shaping Safety Practices and Safety Plans

Safety practices are shaped by a number of driving forces. In some cases, they are created to comply with existing laws. For instance, only those individuals who are appropriately licensed can operate a commercial three-axle vehicle. In other cases safety practices are dictated by equipment manufacturers. Use of that equipment in the manufacturing process oftentimes requires specific machine guarding. Based on the equipment manufacturer's requirements, safety protocols will prohibit the use of that equipment without proper guarding. Frequently the safe use of certain tools may have specific ventilation requirements. Finally, the use of machinery or tools may require personal protective equipment (PPE) such as eye protection, which creates protocols for use of PPE.



In many cases safety practices will grow out of the desire to stop the recurrence of accidents events that have already taken place. Manufacturers are encouraged by safety professionals to examine what happened and what caused a given accident. From there they Try to determine the root and contributing causes for that accident. This leads to developing safety procedures and practices that address what happened in the past and recommends ways any unsafe conditions discovered in the accident investigation can be avoided in the future.

The Need to Ask Why?

There's a shortcoming to the traditional accident investigation process when only "what" questions are addressed. Without really understanding why an accident occurred it is very difficult to address what is the foundational cause of 85 percent of accidents, which is actuality unsafe acts. Studies have shown that most accidents are rooted in a bad decision or a bad choice. Accidents are largely behavior based. The key to reducing or avoiding accidents is to reinforce safety behaviors within the workforce. No one wants to get hurt or hurt their co-workers. But, depending on how employees approach their tasks and work activities can dramatically increase or decrease the chance that an accident event might occur that could either injure themselves or a co-worker or both.

OSHA proposes clarification of ongoing recordkeeping requirements

Provided by Ronald G. Guillen with Warren G. Bender Co.

On July 29, 2015, the Occupational Safety and Health Administration (OSHA) proposed amendments to its recordkeeping regulations to clarify that an employer's duty to create and maintain work-related injury or illness records is an ongoing obligation.

Recordkeeping Requirements

OSHA requires employers to create and maintain records about workplace injuries and illnesses that meet one or more recording criteria. Specifically, employers must:

- ◆ Create and update a log of work-related injuries and illnesses (OSHA 300 Form);
- ◆ Create and maintain injury and illness incident reports (OSHA 301 Form); and
- ◆ Create and display an annual summary of workplace incidents (OSHA 300A Form) between Feb. 1 and April 30 of each year.

Employers must keep these records for at least five years. The five-year retention period begins on Jan. 1 of the year following the year covered by the records. For example, the five-year retention period for incident reports created on Jan. 23, 2015, June 15, 2015, and Nov. 4, 2015, begins on Jan. 1, 2016.

Penalties for Noncompliance

OSHA has the authority to issue citations and assess fines against employers that violate recordkeeping laws.

However, in general, the Occupational Safety and Health Act (OSH Act) does not allow for a citation to be issued more than six months after the occurrence of a violation.

OSHA is of the opinion that a violation exists until it is corrected. Therefore, the six-month period to issue citations and assess penalties begins on the date of the last instance of the violation. For example, if a violation that started on Feb. 1 was corrected on May 15, the six-month period would begin on May 15 and OSHA would have until Nov. 15 to issue a citation.

OSHA also asserts that uncorrected violations are considered ongoing violations, and that each day of noncompliance is subject to a separate penalty.

Why is OSHA Amending the Regulations?

In 2012, a federal circuit court held that current regulations do not authorize OSHA to "cite the employer for a record-making violation more than six months after the recording failure." Nevertheless, the court also noted that there is a discrepancy between the OSH Act and the regulations, and that while the OSH Act allows for continuing violations of recordkeeping requirements, the specific language in the regulations does not implement this statutory authority and does not create continuing recordkeeping obligations.

As a result, OSHA now proposes to amend its regulations to implement the authority to enforce continuing recordkeeping obligations.

Impact on Employers

The proposed regulations do not create additional or new recordkeeping regulations and employers will not be required to record incidents that they were not previously required to record.

However, this clarification could make it possible for OSHA to penalize employers for a recordkeeping violation within six months of the last date of noncompliance, not the first date when a violation occurs. OSHA believes that the clarification will encourage employers to comply with record-making and recordkeeping obligations even when these records are not produced within the first six months of when a recordable incident takes place. In other words, the clarification would discourage employers from ignoring record-making and recordkeeping obligations solely because six months have transpired since the occurrence of a recordable incident.

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This also means that OSHA could now have a window of up to five years and six months after the occurrence of a recordable incident to enforce record-making and recordkeeping requirements.

Finally, the amended regulations would emphasize an employer's ongoing duty to create and maintain records and increasingly justify OSHA's ability to assess penalties against a violating employer for each day of noncompliance, until the maximum penalty amount is reached or the employer corrects the violation.

More Information

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Understanding why an accident occurred is fundamental to changing the behavior that led to that accident. Rather than focusing on what happened, a greater emphasis needs to be placed on why the accident occurred. This means carefully interviewing the individuals that were injured in the accident, as well as, any witnesses to the accident. Investigators need to gather information and answer the "why" questions surrounding the accident. For example, did the employee engage in risky behavior? Did they take a shortcut in their work process that put them at a greater risk for injury? Recognizing that accidents are largely behavior based, the "why" questions are going to reveal what behavior needs to be changed in order to keep his accident from occurring again in the future.

Once you have an understanding of what happened and why, safety practices and protocols can be developed to address both unsafe conditions and unsafe acts. For example, if it was discovered that an accident occurred because the machine operator did not have enough time to adequately inspect the equipment he or she is using prior to beginning their shift, a practice can be put in place that ensures that an inspection must be part of the start-up protocols each day. Adequate time is then made available to complete that inspection. Perhaps failure to complete the required inspection on a daily basis might result in some form of discipline as a consequence for failing to fulfill this work requirement. Reward and consequence are fundamental to fostering the desired behavior.

Understanding the "whys" associated with the organization's loss experience shapes the organization's safety culture. Realistically there are some degrees of tolerable loss. You may find that the organization's tolerance for a certain degree of loss may influence the behaviors of the employees. The "why" behind that tolerable loss might be that the cost of loss is far less than the cost to put a risk control practice in place. But, be careful. Providing a message that certain levels of loss are acceptable can be misunderstood as a lack of concern for safety. This may encourage a more casual approach to safety than is acceptable, and a casual approach to any safety protocol may lead to a serious loss. Remember, frequency can be controlled, severity cannot.

Answering the "what" questions associated with an accident simply isn't enough in a sound risk management program. Understanding and addressing the "why" issues behind an accident is critical to creating a safety culture that balances productivity and safety. If you have an effective safety culture your organization will place equal value on safety and productivity.





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