

# Managing Risk

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Employment Practices

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## Dress Codes and Discrimination

“Casual Fridays” have now become “casual everyday” at many workplaces. What can you do if an employee has gone overboard, wearing clothing that reveals too much skin—or too much ink?

Some employers might shy away from imposing a dress code, but written dress codes have their place. Until the 1980s, most people had the same idea of what “business attire” meant. But with the advent of “casual Fridays,” denim as acceptable evening wear and a generally more casual style of dress, some employees don’t really know how to dress for work.

A dress code lets employees know what is expected so they can dress accordingly. And a written dress code gives supervisors clear guidelines for when they should take corrective actions, if needed.

Dress codes can also create a team appearance and atmosphere, as when employees wear uniforms or matching colors. They can also help you avoid situations that other employees

might see as sexual harassment or discrimination, such as overly revealing clothing or tee-shirts with offensive or off-color sayings. And finally, dress codes can also protect employee and customer safety.

The law and courts have generally recognized employers’ rights to require employees to meet a reasonable dress code. So what can your dress code cover?

Employer dress codes can require employees to meet specified standards of hygiene and grooming. They can address hairstyles and facial/body hair, and prohibit long fingernails and excessive use of perfumes or other scented products, which might cause allergic reactions in others. You can require employees to wear certain articles of clothing (i.e., uniforms or business suits for men and women), and prohibit



the wearing of specific items, such as clothing with offensive sayings or gang associations, visible facial piercings and tattoos.

Any dress code should take into consideration your industry, geography and customer expectations. Styles that wouldn’t earn a second glance in a San Francisco high-tech firm could be greatly out of place in a Midwestern accounting firm. Employers can also have different dress codes for different classes of employees—many employers have stricter codes for those who meet the public, which might not be necessary for those in less-visible jobs. For example, a firm might require outside salespeople to wear a business suit, while allowing office employees to wear business casual.

## This Just In

The Occupational Safety & Health Administration (OSHA) is developing a new rule that will require employers to develop and implement programs that minimize worker exposure to safety and health hazards. The agency is currently using comments from a series of recent stakeholder meetings to develop the final program. The proposed new rule is tentatively named the Injury and Illness Prevention Program, or I2P2.

Instead of waiting for an OSHA inspection or a workplace accident that forces a company to address its problems, the new rule will require employers to create a plan to proactively identify and correct hazards and then implement safety plans. Workers will participate in development and implementation of the plans.

“We are asking employers to ‘find and fix’ the hazards in their workplace,” said OSHA Chief Dr. David Michaels. “This commonsense rule will help make the Secretary of Labor’s vision of ‘Good Jobs for Everyone’ a reality.”

# Healthy Aging in the Workforce

The workforce is aging. Understanding the specific needs of older workers can help you keep them healthy and on the job. Here's what you should know.

**A**lmost 12 percent of the civilian workforce is 55+ years old, according to the Bureau of Labor Statistics (BLS). Since 2006 there has been a 26 percent increase in the number of workers 65 years and older. They represent a small but growing percentage of the workforce, and by 2016, the bureau projects they will account for nearly five percent of workers.

Mature workers offer companies many advantages: experience, commitment and a strong work ethic. They tend to roll with the punches, and they can offer important perspectives to younger workers.

## Older Workers = Safer Workers

The BLS reports that the incidence of injuries (per 10,000 hours of full-time work) is lowest among workers 65+. Additionally, older workers in relatively hazardous manufacturing and construction-related industries have a lower frequency of workers' comp claims than younger workers, according to the National Council of Compensation Insurers (NCCI).

Those statistics support the premise that older workers have more experience and are

less likely to rush through work that requires attention to detail.

## Higher Severity

However, the picture isn't entirely rosy for older workers.

When accidents occur, injuries are more likely to be severe. Medical expenses are more costly because older workers' injuries tend to be more extensive and take longer to heal. NCCI estimates that medical costs are 26 percent higher for workers 65+. If a 60-year-old woman falls and breaks her wrist, it may be due partially to osteoporosis that has weakened her bones. A 20-year-old might only strain her wrist in the same fall.

The extra days that are lost on medical leave also contribute to indemnity costs for lost wages. NCCI reports that average indemnity payments per claim begin to increase at age 45, but then decline somewhat after age 65 — probably because workers who continue to work after 65 have relatively low salaries. Additionally, older workers tend to want to get back to work.

Although individual comp claims can be significant, the total number of age 65+

workers continues to be small enough that they are not a significant driver of comp costs — less than three percent of claims, according to NCCI.

## Understanding Older Workers

Older workers have health and wellness needs that differ from those of younger employees.

Physical strength peaks between 20 and 30 years of age, so older workers who do physical activity are working closer to their maximum capacity. Reaction time declines with age; eyesight and hearing also diminish. However, according to the Department of Health & Human Services (DHHS), age is less a factor in physical health than other factors such as obesity, smoking, lack of exercise and diabetes.

Mental abilities also change as people age. Older workers have slower cognitive speed. According to DHHS, they retrieve information more slowly and learn more slowly. However, they are ultimately equally successful in learning new things and may have greater retention of new material.

## Loss Prevention

Slip/trip/fall injuries are the biggest risk to older workers, accounting for 47 percent of injuries, versus only 20 percent for all workers, according to BLS. Older workers are also more apt to have shoulder, arm and lower back injuries.

Employers should analyze jobs to make sure all employees, regardless of their age, are not continuously doing repetitive-motion activities and do not lift items that are too heavy for their specific strength. Tasks should be modified to prevent potential problems.

Employers should evaluate their lighting systems, ensure they have slip-resistant flooring and make sure their entrances, walkways



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Employers can even have different standards for men and women—such as requiring men to wear ties and women to wear skirts—as long as they are based on cultural norms and do not have a disparate impact on one sex or the other. Where employers run into trouble is requiring attire that imposes a greater burden on one group — such as requiring women to wear high heels while allowing men to wear comfortable shoes. A reasonable standard would be to require both women and men to wear dress shoes (if appropriate for your workplace) and not specify heel height.

Before publicizing your dress code, make sure it passes the discrimination test. Areas of potential concern include:

- \* **Sexual discrimination:** As in the shoe example cited above, dress codes should not impose an undue burden on women.
- \* **Racial discrimination:** While many employers have rules prohibiting facial hair on men, the U.S. Equal Employment Opportunity Commission (EEOC) says, a "...‘no-beard’ employment policy may discriminate against African-American men who have a predisposition to pseudofolliculitis barbae (severe shaving bumps) unless the policy is job-related and consistent with business necessity.” You can enforce a no-beard policy when facial hair could affect safety, such as interfering with the secure fitting of respirators or masks.

\* **Religious discrimination:** The EEOC says that employers must “reasonably accommodate an employee’s religious beliefs or practices. This applies...to such things as dress or grooming practices that an employee has for religious reasons. These might include, for example, wearing particular head coverings or other religious dress (such as a Jewish yarmulke or a Muslim headscarf), or wearing certain hairstyles or facial hair (such as Rastafarian dreadlocks or Sikh uncut hair and beard). It also includes an employee’s observance of a religious prohibition against wearing certain garments (such as pants or miniskirts)...

“An employer *does not* [emphasis added] have to accommodate an employee’s religious beliefs or practices if doing so

would cause undue hardship to the employer. An accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work.”

\* **Safety:** Prohibitions made for safety purposes have a legitimate business purpose. For example, employers can prohibit employees who handle food or who have physical contact with others from having long fingernails for hygiene purposes. Prohibiting flip-flops or high heels can prevent slips, falls and other injuries. And requiring employees to wear protective gear — such as hard hats or face masks — might be required by law.

As mentioned earlier, a dress code should reflect legitimate needs of your business, without discriminating against any class of employees. For more information on dress codes or on protecting your organization from discrimination lawsuits, please contact us. ■

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and parking lots have smooth, non-slip surfaces that are well lit — basic loss control measures that will benefit all employees.

When training employees about new tools — whether it’s new machinery or computer software — it is important to realize that older workers need a slower-paced class, while young workers may need a follow-up refresher.

Wellness programs for employees of all ages can also have a positive impact on the severity of workers’ comp claims. A healthier employee generally recovers faster than one who is overweight and out of shape. Encourage employees to stop smoking, eat healthy foods and exercise regularly, including taking a walk at lunchtime. The fresh air will do them — and you — a world of good. ■

CERTIFICATES—continued from Page 4

writing each policy, plus addresses and policy numbers.

- \* Whether coverage is written on an “occurrence” or “claims-made” basis. If coverage is claims-made (meaning that the policy will only cover claims that are filed during its effective period), the certificate should state the retroactive date. Occurrence policies cover claims arising from events that occurred during the policy period, even if the claim is filed after the policy expires.
- \* Specification that the insured’s policy is primary and non-contributing. This makes your own insurance coverage “excess” in a claim situation, meaning that your insurance would not have to contribute until the limits of the named

insured’s policy had been reached.

- \* Notice of cancellation provision: Require the certificate to state you will be given at least 30 days’ written notice if the policy is canceled for any reason.
- \* Whether coverage is subject to a deductible or self-insured retention and if so, how much. Is the general liability deductible an amount the named insured is going to be able to pay? If not, your company, as the certificate holder, may become responsible for paying it. The deductible should preferably be written on a “per occurrence” basis.

For more information on certificates of insurance, please contact us. ■



# The Protections—and Limitations—of Certificates of Insurance

When entering into a contract with vendors or contractors, how can you be sure they have enough insurance to protect your company from “deep pockets” liability if someone makes a claim against them in connection with your project?

**A** certificate of insurance provides evidence of insurance coverage, but be warned — it is not an insurance policy and merely indicates that the other party had insurance at that moment. That said, a certificate of insurance is a good way to show that your contractor had the proper insurance at the outset according to the terms of the contract. (Make sure your contracts are specific in the coverage details you want.)

Contractors, vendors and service providers can obtain certificates of insurance from their carrier, broker or risk management department. Certificates cannot be handwritten. Look for the following information in a certificate of insurance:

- ✦ **Property covered:** Is all the property that must be insured described on the certificate? Make sure the certificate reflects your interest in the insured property. Will you be listed as an additional insured?
- ✦ **Limits:** Does the certificate specify coverage limits that meet the requirements in your agreement?
- ✦ **Coverages:** Make sure the certificate reflects necessary coverage. Make sure your company is an “additional insured,” and don’t be caught unprotected if the other party carries liability coverage naming your company, for example, but not covering your directors and officers. Also, make sure property coverage is broad enough. Be sure contractors working on your behalf carry workers’ compensation — if not, your company could become liable for any injuries occurring on the project.
- ✦ **Policy dates:** Make certain the policies’ commencement and expiration dates correspond with your needs. Set up tickler systems as needed.
- ✦ **The named insured’s name and address.**
- ✦ **The name of the insurance company**

*CERTIFICATES—continued on Page 3*



## Reducing Workers’ Comp Severity

**T**he severity of a typical workers’ comp claim continues to rise. Indemnity costs are up over four percent, despite a one percent decline in average wages. Medical severity also continues to increase — up an estimated five percent in 2009, according to the National Council of Compensation Insurers.

Increases in indemnity and medical costs impact your experience and, eventually, your premium. However, even after an injury occurs there are things you can do to help control costs.

### Medical Costs

Good communication is key to controlling medical costs.

- ✦ Make sure managers know that

prompt reporting of all injuries and accidents is mandatory. Research consistently shows that delayed reporting increases medical costs.

- ✦ Have a plan for regular communications with the injured worker and your insurance company. Make sure your employee is getting the appropriate care.
- ✦ When you talk to your injured employee, make sure you convey your concern for her health. Make her feel like a valued member of the team so she wants to get back to work, rather than malingering.

### Early Return to Work

Getting employees back to work re-

duces indemnity payments and can also have a positive impact on the employee’s overall recovery by improving her morale and self-worth. It also improves the morale of co-workers. Return-to-work programs need structure, including:

- ✦ Job descriptions and analyses.
- ✦ Return-to-work agreements that state the responsibilities of the employer and the injured worker.
- ✦ Light duty assignments — tasks that are modifications of the usual job.
- ✦ Work schedules — full-time or part-time.

For more information on controlling post-injury costs, give us a call. ■