

Question of the month: *We have a reasonable safety program in place but are still experiencing a high accident rate. And we recently were sued by an employee after an injury we thought was his fault and lost. What are we doing wrong?*

Obviously, something is wrong. However, the answer may not be so obvious. Look for factors common to all of your lost time accidents. You will find that a high percentage occur on Monday mornings and also that a high percentage involve employees who may have exhibited some of the symptoms of substance abuse in the past. The rest is not brain surgery! Read on.

Personal injury lawyers are targeting your safety program

A new legal trend is emerging in California and across the nation that could be financially crippling for some companies - and your safety program and documentation will be front and center on the witness stand.

Cash-hungry injury lawyers are using every scrap of paper even remotely related to your safety programs to go after companies for negligence.

Worse, any past Cal/OSHA citations can be dragged out of the closet to bolster the case against your company.

These lawyers aren't pulling any punches either. They're taking a cue from past court cases that have yielded huge damage awards and are using the same strategies.

The people at the crux of this new trend have lots of experience crucifying companies over safety issues - many of them made their fortunes in asbestos litigation.

Now they're taking what they learned in that area and applying it to other safety issues.

Old dogs, new tricks

One common strategy is to focus on past OSHA citations that a company has received. Your Cal/OSHA citation record is available for all to see on the federal OSHA website.

While the citation itself can't be used to prove negligence, it can be used as supporting evidence.

For example, an expert witness could testify that a company didn't follow industry safety standards and submit the Cal/OSHA citation as proof.

Sympathetic juries are likely to view citations as a failure on the company's part to protect its workers.

Injured workers' lawyers are also likely to introduce as evidence any scrap of paper - or lack thereof - remotely related to *your* safety program, including internal memos, reports and communication with vendors.

In the hands of an attorney looking to make a buck, even the most innocent notation or lack of compliance with safety codes can be used against you.

Your game plan

The best safety program in the world won't add up to much in court if there's no paper trail to prove you have actually used it. Training, inspection, and enforcement records are crucial.

That means it's critical to operate defensively and proactively on a day-to-day basis to protect your company from vicious civil lawsuits.

Here are some things you can do:

1. Challenge any citation you think is unfair.
2. During Cal/OSHA inspections, take photographs and measurements side-by-side with inspectors. It's all too common for companies to be cited based on faulty information.
3. Be sure to stick to verifiable facts on any safety documents, including incident reports.
4. Implement aggressive personal protective gear, training, inspection, and discipline programs.
5. Conduct medical and substance abuse monitoring to uncover problems early.

Reducing the risk workplace accidents and drug abuse - warning signs

A high percentage of individuals involved in workplace accidents test positive for drugs of abuse after post accident drug screens – as high as 75% for some trades! The fact that 75% of your employees - 50% or even 25% - would fail a drug screen today should be a “sobering” thought. Most safety managers would probably agree that drug testing isn't a fail-safe proposition. For example, conducting testing only before hire or after an accident could mean that a drug user is compromising the safety of your workforce all along. The classic case of closing the barn door after the cows are gone.

That's why it's imperative to train supervisors to look for signs of drug abuse to prevent drug-related incidents.

Here are some warning signs to be on the lookout for:

- increased absenteeism or tardiness, especially Mondays, Fridays, and long breaks away from everyone else
- people frequently away from their work areas – in their car, etc.
- frequent accidents or near-misses
- difficulty concentrating
- confusion with instructions
- resistance to changes that may make it harder to hide poor job performance
- missed deadlines and poor judgment
- lack interest in grooming
- complaints from co-workers or employees – they know who's using

Most businesses have sufficient labor policies and procedures in place to deal with tardiness, poor performance, or disruptive employees – a much better way to deal with drug abuse in the workplace than after a tragic accident.

And, yes, your Labor Policy and Procedures Manual should contain a Drug Free Workplace Program.