

# MANAGEMENT SAFETY NEWSLETTER

SELF INSURED WORKER'S COMPENSATION FUND MEMBERS

JUNE 2015

## MULTIPLE INJURIES CAN LEAD TO LARGE CLAIMS

Your MAAS Workers' Comp Fund has been researching claims where there have been multiple injuries reported by the same employee. Specifically, we are trying to track those injuries that are lifting related. The theory that we are trying to test is that where there are multiple lifting related injuries over time, do they lead to a large claim that possibly could have been prevented?

The MAAS Workers' Comp Fund has incurred more soft tissue, strains, sprain type injuries than in previous years. Could more thorough investigation of the circumstances surrounding the accident, i.e. who the partner was, height of each partner, hospital transfer vs. emergency run, steps or stairs involved, weight or combativeness of the patient, experience level of the injured employee or partner, stretcher or backboard or stair chair, have led to retraining the employee on proper lifting techniques? In addition, could supervisors have intervened sooner with greater personal oversight or reassignment to another team?

### ***Key Components that comprise Best Practices***

1. Effective communication between employees and management
2. Active involvement and feedback from all members of your organization
3. Positive attitude—"change is inevitable, but improvement is optional"

We will keep you informed of any developments or recommendation on this issue. *For now, please remember to list the patient's estimated weight on your injury report form that is sent to CompOne Administrators. That will assist us immensely in our ability to help you reduce your claims and receive more of your money back.*

## FILING INJURY REPORTS PROMPTLY SAVES MONEY

A key component to the successful management of a workers compensation claim is the timely submission of the notice of injury. If we receive the notice promptly, the cost of treating the injury can be controlled more effectively. Controlling the cost of an injury also involves aligning yourself with an occupational health facility in your area.

Schedule a meeting with your treating physician so that they can get a solid understanding of the types of functions that your employees perform. This will allow the physician to write pertinent work restrictions to facilitate a more timely return to work.

### **Management Articles**

- Large Claims
- Filing Injury Claims Promptly
- Legalized Marijuana Use & EMS Providers

### **EMS Staff Articles**

- Summer Storm Safety
- National UV Safety Month

## Pro Bono: Marijuana Use by EMS Providers Poses a Legal Conundrum

[Douglas Wolfberg JD, EMT](#) (*link provided for more about the author*)

More than one-third of the states in the U.S. now have laws legalizing marijuana. In some states, pot is legal for medical use; in a smaller number of states, it's also legal for recreational purposes. It's expected that more states will follow suit with some form of legalization in the next few years. This growing issue means that sooner or later, most EMS employers will be forced to confront a range of personnel issues and legal questions about their rights and responsibilities when it comes to employee use of marijuana.

In states where it is legal, do EMS providers have the right to use marijuana off duty without fear of retaliation from their employers? Wouldn't it be the same as using alcohol off duty? As long as the employee doesn't show up to work under the influence or stoned, then they should be free from discipline by their employers, right?

In reality, the answers to those questions are far from clear. So far, the law has favored employers who have disciplined or terminated their employees for the use of marijuana, even when that use was lawful in the state.

First off, tetrahydrocannabinol (THC) isn't like alcohol—evidence of it can show up in the bloodstream for as long as six weeks. Therefore, even if an EMS provider was using marijuana lawfully, it's possible he/she would still test positive for THC at a later time, say, for instance, after they get into an accident with the ambulance and are drug tested. Employers still have the right to test employees for marijuana unless state law specifically prohibits that right (and we're not aware of any that do at this time).

Though this is an emerging area of the law, several courts have upheld the right of employers to fire employees for failing a drug test for THC, even if the employee wasn't impaired while on duty.

A Colorado case upheld an employee's termination, even though the state had a "lawful activity" statute - a law protecting employees from being fired for engaging in lawful, off-duty activity. That court ruled this because the federal Controlled Substances Act still makes marijuana use illegal, so the state "lawful activity" protections didn't apply.

In Michigan, a court upheld the discharge of an employee who legally used marijuana to treat intractable pain, ruling that the state's medical marijuana law didn't regulate private employment. Note that there's federal legislation—the "[Respect State Marijuana Acts of 2013](#)" - pending before Congress that would exempt medical users of marijuana from federal penalties in states where medical use is legal. However, that legislation is still only a proposal and has not been passed or adopted into law at this time.

The issue becomes a little hazier where state medical marijuana laws intersect with the federal Americans with Disabilities Act (ADA). There's still no clear precedent under federal law on whether employers are bound to make "reasonable accommodation" to employees for the lawful use of medical marijuana under state law. If an EMS employer is faced with this question, they should consult a competent employment attorney in their state.

In the meantime, EMS employers can best protect themselves by having clear policies that explicitly state what their drug policies are. If an EMS agency wants to maintain a "zero tolerance" policy even in a state where marijuana use is legal, and be able to drug test employees, it should make sure policies state as such—and that employees are aware—up front. Attempting to implement these policies after an accident or after someone flunks a drug test would be less defensible for an employer.

EMS agencies provide vital public safety services and depend on the confidence of the public to function effectively. On one hand, holding employees to a clear, written "zero tolerance" policy when it comes to marijuana or other drug use would likely be defensible. On the other, balancing the demands of a workforce that is increasingly likely to engage in marijuana use is a budding reality. Employers, in conjunction with their organization's legal counsel, should craft policies that clearly state their positions and balance the legal rights of employee and employer alike.