

# BAYLOR BULLETIN

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## 2009 SAFETY & WORKERS' COMPENSATION MANAGEMENT SEMINARS



### 2009 SAFETY & WORKERS' COMPENSATION MANAGEMENT SEMINARS

**11-20-2009**  
MAUMEE (TOLEDO)

**12-3-2009**  
COLUMBUS

**12-8-2009**  
AKRON

The meeting dates for this year's seminars are fast approaching. Attached is the registration form for this year's workshops. We will conduct the meetings at Maumee (Toledo), Columbus and Akron from 9:00 am to 5:00 pm. Please register now to attend the seminar most convenient to you. These programs are designed to reduce your workers'

compensation premiums in the short and the long term.

We are required to make these seminars available to Group Rating Program Participants under Section 4123-17-68 OAC. These seminars fulfill the training requirements of Section 4123-17-03 OAC and Section 4123-17-70 OAC as they apply to the 100%

EM Capping Program Sponsored 10-Step Safety Business Plan. We will not be responsible for an employer who is removed from a discount program because of their failure to obtain the seminar requirement. If you have any questions concerning these seminars, please contact Bruce Baylor at Baylor Associates.

## THE "VOLUNTARY ABANDONMENT" DEFENSE

In 1985, the Supreme Court of Ohio was asked to decide whether an employee who takes a regular, age-related retirement is entitled to collect temporary total disability compensation for an injury sustained prior to his retirement. In a victory for employers, the Court decided that he had voluntarily abandoned the workforce for personal reasons unrelated to his injury by retiring and that he was not entitled to collect compensation. This "voluntary abandonment" concept was thereafter used successfully to deny compensation following voluntary departures from employment other than

retirement.

Nearly ten years later, the Supreme Court significantly expanded the reach of the "voluntary abandonment" defense to include those discharged from employment by reasoning that "voluntary" may also refer to conduct that willingly undertaken by an employee that results in the loss of his job. The Court's 1995 *State ex rel. Louisiana-Pacific Corp. v. Industrial Commission* decision further defined this expansion in the case of an employee discharged for violating a company rule. In that case, the Court ruled that an employee will be denied

payment of temporary total disability compensation where:

- (1) the employer's rule defines the prohibited conduct clearly and in writing;
- (2) the rule defines the violation as a dischargeable offense; and
- (3) the employee knew or should have known of the rule and the consequences of violating the rule.

In the years that have followed the *Louisiana-Pacific* decision, nearly all of the litigation over the "voluntary abandonment" defense has focused on whether the employer has



*“Employers must also be prepared to prove that employees are made aware of the rules and the consequence for violations. Such awareness is best demonstrated through the use of a written receipt of the rules or handbook signed by all employees, including revisions.”*

satisfied the above criteria.

The collective outcome of the tremendous volume of litigation in this area has failed to lead to any further expansion of the “voluntary abandonment” concept. In fact, the courts and the Industrial Commission have made clear that employers will be strictly held to a literal reading of the *Louisiana-Pacific* criteria. In a case decided in August, for example, the Supreme Court negated an employer victory before the Industrial Commission because it could not show that it circulated a revised employee handbook policy to the employee. In previous cases, the courts have similarly insisted that the employer rule at issue be *in writing*.

The courts have also determined certain situations to which the defense will no longer apply. For example, if the employee is already disabled from work at the

time of the rule violation, the discharge will not serve to extinguish the entitlement to temporary total disability compensation. Similarly, if the cause of the injury and the reason for the discharge are one and the same, the employee has not “voluntarily abandoned” his employment. This latter scenario arose out of a well-publicized case involving a fast food worker who violated safety rules and was seriously injured, and fired, as a result. The Supreme Court initially denied payment of temporary total disability compensation because of the violation of a written work rule, but later reversed its own decision. (Fortunately, despite these limiting cases, the courts continue to find the “voluntary abandonment” defense viable for substance abuse policy violations involving post-accident drug screens.)

In order to take the best

advantage of the tremendous cost savings associated with the “voluntary abandonment” defense, employers are encouraged to review and update written employment rules to include as many foreseeable acts of employee misconduct as possible and to define discharge from employment as a potential consequence for violations. Employers must also be prepared to prove that employees are made aware of the rules and the consequence for violations. Such awareness is best demonstrated through the use of a written receipt of the rules or handbook signed by all employees, including revisions.

*Editor’s Note: The foregoing is not intended as a substitute for legal advice on this topic. Additional questions may be directed to Kelly E. Drushel, Esq. at (440) 546-7616 or (800)478-6499.*

## **BWC Emphasizing Safety for Group Rated Employers**

Employers that are group rated for the policy year which began July 1, 2009 and incurred a workers’ compensation claim between July 1, 2007 and June 30, 2009, must attend 2 hours of safety training by June 30, 2010.

The requirement may be fulfilled by attending the seminars we have scheduled, taking courses provided by the BWC Division of Safety &

Hygiene or in-house training provided that the training is well documented and is beyond the expected regular day-to-day safety training in the workplace.

The training must be conducted by reliable and credible safety training sources. We must maintain signed class rosters and provide certificates of completion to seminar attendees. A

different individual **must attend** for each policy. If you use a source of training other than attending the seminars we conduct, be sure to obtain a certificate of completion from the source and e-mail it to our Lynne Miller at [lmiller@baylorwc.com](mailto:lmiller@baylorwc.com) or fax it to (440) 546-7601.

The certificate or accompanying documentation must indicate: your policy #;



business name; date(s) of instruction; class topic(s); length of time of class; individual attending class; method or place of attendance; instructor and/or source of instruction. If relying on in-house training, be sure to also enclose an explanation of how it goes beyond regular day-to-day safety training.

The BWC Division of Safety & Hygiene offers several different training forums. These include:

- Ohio Safety Congress and Expo safety educational sessions
- Division of Safety & Hygiene Training Center ½ and full day courses
- BWC on Demand courses that are geared

toward safety

- Currently available on-line courses that meet the 2-hour criteria

BWC Division of Safety & Hygiene on-line courses meeting the 2-hour criteria are:

Single Courses: Avoiding Back Trauma (2hrs)

Getting Started with Safety (4 hrs)

Combined Courses: Preventing Slips/Trips /Falls (1hr)

Industrial Hygiene Overview (1hr)

Preventing Cuts and Lacerations (35 min)

Ladder/Stairway Safety (45 min)

All pages of the online course must be completed and the *test passed* before a certificate can be printed from the student transcript in the BWC Learning Center located in the "Personal Learning Center."

BWC online courses can be accessed through the following path: OhioBWC.com – Safety Services – Training Services – Safety and Hygiene Training Center – BWC Learning Center – then log in (If you do not have a log-in ID and Password, go to "First Visit") – Learning Center - Course Information & Enrollment (Enter the name of the course in "Keyword" and search.

## KEY SAFETY PROGRAM PARAMETERS

**A written safety and health policy signed by the top company official that expresses the employer's values and commitment to workplace safety and health.** The safety and health policy must clearly state your company is committed to effective safety management and wants to provide a safe working environment. The commitment is by the owners, management and employees. The policy must stress the safe work environment is initially provided and continuously maintained for all employees. This may be the first step in implementing effective safety and health programs.

The top executive in your company should sign the safety and health policy. The

policy must be given to all employees. A special meeting can be held to communicate the policy to all employees. Annual review of the safety and health policy with all employees will show your continued commitment. Include in the policy the responsibility and role of the manager, supervisor, team leader and employee. The policy should also mention returning injured or ill employees to work as soon as possible.

**Visible senior management leadership that promotes the belief that the management of safety is an organizational value.**

Senior management must act as a role model for all employees in creating a safe work environment. Senior management will establish

the importance of safety in all operations and by taking the lead; management helps in the campaign to reduce accidents. Senior management's leadership, support and active commitment encourages management and employees to make the safety health system successful.

To promote visible, active senior management leadership, issue a safety policy that assigns roles and responsibilities and establishes annual and long-term safety goals. Senior management should discuss safety processes and improvements regularly in all staff and employee meetings and authorize the necessary resources. Management should accompany supervisors, safety team members or safety committee members during

## How to enroll in a BWC class

1. Go to [www.bwclearningcenter.com](http://www.bwclearningcenter.com);
2. If this is your first visit, please click on First Visit and complete the requested information. If you do not know your BWC policy number, please ask your company's Human Resource person;
3. On the home page, click on Learning Center;
4. Click on Course Information & Enrollment;
5. Search by keyword, entering a word(s) that is closely related to the desired course. Click Search. The results will appear in the lower left corner of the screen. If it is difficult to see, consider changing the size of your screen display (directions below for maximum visibility);
6. Locate the desired course and click on the information icon;
7. In the lower right section of the screen, locate the date/location of your choice. Click Enroll;
8. If you have given an e-mail address, you will receive an e-mail confirming your enrollment. If you have no e-mail address, you will receive a fax or letter;
9. Once you are enrolled, you can view your list of selected classes (and cancel, if needed) in the Personal Learning Center, which is located on the left side of the home page;
10. For assistance, please call 1-800-OHIOBWC.

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We're on the Web!

See us at:

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## **KEY SAFETY PROGRAM PARAMETERS (continued)**

periodic departmental surveys and openly discuss safety issues with employees during the surveys. Senior management participation in meetings with accident prevention coordinators and as a student in employee safety training programs. Senior management should personally present safety recognition awards to deserving employees. Senior management must determine the progress of the safety and health processes by reviewing the minutes of safety committee meetings and safety survey reports.

### **Employee involvement and recognition that affords employees the opportunity to participate in the safety management process.**

Both management and employees must actively participate in the safety and health management process for it to be effective. Employee/management safety and health teams facilitate dialogue on safety and health matters. The team is composed of equal numbers of employees and management that represent all areas of the company. The team should meet regularly, but not less than quarterly and make the records of meetings available to everyone. Team objectives must include investigation of accidents and exposures to hazardous substances and recommendation of specific action plans for prevention. The team must respond to all safety suggestions and conduct surveys of the safety culture every 12 to 18 months. The safety team must have the responsibility to make decisions and the accountability for implementing the solutions. Employee recognition should include recognizing employees for excellence in accident prevention and contributions to the safety and health process.

Recognize employees for safety and health suggestions and for the completion of safety and health projects. Develop an approach of positive reinforcement to encourage employees to perform their jobs safely. Advise supervisors to praise at least one employee each day for following safe work practices. Recognition is the visible reminder of the importance safety holds in the day-to-day operations.

### **A program of regular communications on safety and health issues to keep all employees informed and to solicit feedback and suggestions.**

Safety communication is a two-way process between employer and employees. A bottom-up communication process encourages employees to identify obstacles to safety without fear of reprisal. Employee concerns and suggestions must receive timely and appropriate responses. Soliciting employee input and participation will contribute to successful safety culture. Communication strategies can be in many forms. Quarterly written and/or verbal communications should include feedback to all employees on their accident prevention and overall safety and health performance. One-on-one discussion in which a supervisor meets with each employee on a regular basis to discuss safety and health concerns. Install a safety suggestion box in the work area and ask employees to contribute their comments and suggestions. Safety meetings and group discussions provide the opportunity for employees to discuss safety issues. Safety newsletters, information booklets and alert notices inform employees of accident causes and how to

prevent them. Safety signs and bulletin boards serve as a constant reminder of safe work practices and dangerous conditions.

### **Orientation and training for all employees.**

Determine the specific training needs of your employees including supervisors, managers and team leaders. Develop a written safety and health training plan that documents specific training objectives and instruction procedures.

New employee orientation should include a review of the Safety and Health Policy and the safety and health responsibilities of the employee. Orientate employees on proper procedures for reporting injuries or illnesses (See related information on new OSHA injury recording standard) and actions to take in case of emergencies. Provide employees with a method to report unsafe work practices or conditions and explain the return to work procedures. The orientation process must be documented and signed by the employee.

Safety and health training must include specific job/task safe work practices and hazard recognition. Training should cover procedures for the safe and efficient use of machinery and tools. Train employees when applicable on hazard communication, bloodborne pathogens, lockout/tagout, hot work permit and confined-space entry. Provide training for new, current and transferred employees and when new substances, equipment, processes or procedures are introduced into the workplace. All training must be documented with the date, topic, instructor's name and signatures of employees in attendance.