

# RISKY BUSINESS

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**Miami Valley Risk Management Association**

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## FYI - Silence is Not Golden

*By Tom Judy*

A review of Workers Compensation and liability claims files will likely reveal that workplace accidents are caused by a dangerous work condition or work practice that existed long before the accident occurred. A March 2019 Public Risk Magazine article titled "Deadly Silence" states that dangerous work conditions and practices that cause an injury or property damage were almost always known to someone in the organization in advance. If only someone had spoken up, perhaps many of these accidents could have been avoided. This unfortunate fact turns the old phrase "Silence is Golden" on its ear. Silence in the workplace can be deadly.

Per the article, studies show that behavior is the primary cause of workplace accidents with 80% to 96% of workplace injuries caused by unsafe acts such as using the wrong tools, not using the proper personal protective equipment, taking shortcuts, horseplay and distracted behavior. Most of the remaining 4% to 20% of accidents are attributable to unsafe conditions.

Oftentimes, safety programs focus on regulatory compliance, inspections, and historical data. All of these have their place in a comprehensive safety program; however, regulatory compliance and inspections/forms/checklists generally address unsafe conditions which account for only a small portion of workplace accidents. Safety programs should address historical claims as well, but too much emphasis on historical claims may mean you are always chasing the last accident. As 80% to 96% of workplace injuries are caused by behaviors, a comprehensive safety program should emphasize behavioral-based training and best practices.

In 1989, researcher Sidney Yoshida conducted a study of an organization to determine the awareness of various groups of employees of the front-line workplace problems. Interestingly, Yoshida concluded that front-line employees (collectively) knew about ALL the problems. Front line supervisors were aware of 74%, middle managers 9% and executives 4%. The organization studied by Yoshida had a classic top-down structure so other organizations' numbers may vary somewhat but the overall conclusion still provides some valuable insight.

Yoshida's research reveals both an opportunity and a challenge for organizations. If front-line employees know about all the problems – i.e., unsafe acts – there is a great opportunity to leverage that knowledge to find solutions to problems before they result in accidents. On the other hand, if front-line employees know about problems, why don't the decision makers know? The challenge is identifying and eliminating the communication barriers.

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One study showed that 51% of front-line employees felt comfortable speaking up although 85% said they felt unable to raise an important issue on at least one occasion. Fifteen percent of employees indicated they have never been able to speak up.

Fear is perhaps the chief reason for employees not speaking up. Employees fear being labeled as malcontents, being subject to retaliation or punishment, or damaging relationships with other employees or supervisors. Some employees may lack confidence in expressing their opinions due to lack of experience. Perhaps the overriding reason for employees' failure to speak up is simply the culture is not supportive of such communication.

The challenge for employers is to create a culture in which employees feel comfortable communicating potential problems, issues and unsafe practices to the appropriate persons in the organization. The article suggests that the definition of "good employee" be updated to one who confronts and communicates problems, asks questions when they don't understand something and tells the appropriate person when they see something that does not look right to them. Management should follow up by intentionally engaging employees in discussions about such issues and making it clear that it is safe – and expected – for employees to communicate such issues. Particular attention should be paid to training and education of front-line supervisors to ensure they are on board. Many cities have successfully used a safety committee, with representation from employees and supervisors from all departments, as a means to encourage communication of this sort.

This cultural shift can be aided by sending employees to safety training that focuses on behaviors and practices. MVRMA provides many training sessions of this type and we encourage members' participation. If you have questions or suggestions about training, please contact Loss Control Manager Starr Markworth.

## Loss Control Lowdown...

### OSHA: Reaching More Employees with Effective Safety Training

*By Starr Markworth*

It is common knowledge that a safe working environment goes a long way in ensuring the health and well-being of your employees. It helps improve performance levels and plays a key role in improving productivity, as your staff members can work effectively without the fear of getting sick or injured.

One of the key aspects in creating a risk-free workplace is the delivery of high-quality behavior-based safety training. Effective safety training educates employees on the importance of industrial safety and equips them with the knowledge and skills required to follow safety procedures and practices.

MVRMA recommends that city departments conduct in house safety training at a minimum of six times per year. Those topics should focus on relevant areas of work that match up to the current work load and season.

How can you deliver good safety training to your employees? What does it take to educate your workforce on safety aspects, irrespective of their education level and location, in an interesting manner? You need to go for blended learning!

Blended learning is a commonsense concept that results in great learning success. The blended learning approach is simply acknowledging that one size doesn't fit all when it comes to training. In a nutshell, blended learning means using more than one training method to train on one subject. Here are several good reasons to use a blended learning approach:

- A University of Tennessee study showed that a blended learning program reduced both the time and the cost of training by more than 50 percent.
- The same study showed a 10 percent improved result in learning outcomes compared with traditional training.
- Learning experts believe that a big advantage of blended learning is that it more closely replicates how people learn on the job, through experience and interaction with co-workers.

This approach works well because the variety of approaches keeps trainers and trainees engaged in training. Blended learning simply makes a lot of sense. Consider the many factors that affect training:

- Subject matter
- Audience make-up
- Types of learners
- Budget considerations
- Space constraints
- Compliance issues

Any or all of these considerations affect your choices for training and may even necessitate that you use a blended learning approach. Chances are you already use this method without even realizing it. Have you ever:

- Used a PowerPoint training session and incorporated written quizzes, small group discussions, and role plays at various points in the training?
- Broken a complex subject into parts and used a different training method to teach each section or step?
- Used a live trainer with hands-on demonstrations for initial training and a CD-ROM or online course for refresher training?

If you have done any of the above methods, you are already using a blended learning approach.

MVRMA has a valuable resource available for our members to assist you in providing quality blended training.

Through MVRMA's broker, Alliant, all MVRMA members have access to Wumbus online training videos and supplemental training resources through [itrainstation.com](http://itrainstation.com) at no cost.



## Broker's Beat

### Property Market Sea Change

The commercial property market is undergoing a “sea change” currently with carriers increasing prices or completely withdrawing from the market following three consecutive years of net underwriting loss. The wildfires of California, as well as the hurricanes, floods, and hail storms in the Southern and Midwest regions have caused carriers to pull back from offering the rock-bottom pricing that has been generally available over the past five years.

To put things into perspective, 2018 was the fourth-costliest year since 1980 in terms of insured losses. This was due to an accumulation of severe and costly events in the second half of the year such as hurricanes Michael, Florence and the wildfires in California. The overall economic impact was \$160 billion, of which \$80 billion was insured. This was significantly higher, and almost double the 30-year average of \$41 billion. This comes on the heels of the costliest year on record, 2017, which accounted for nearly \$230 billion of economic loss with \$140 billion being insured.

Although policyholder surplus is at a record high, weather extremes, wildfires, catastrophic losses and investment earnings remain areas of concern for insurers. Looking forward, there still remains uncertainty in the property market, and as a result, we are seeing a widespread pricing correction.

With the property market seeing a widespread pricing correction, carriers and reinsurers are renewing at 10%-20% higher than expiring rates-for clean accounts, while some loss-affected or hard-to-place accounts are set for rate hikes of 100% or more.

To summarize, capacity in the property market is continuing to shrink and the market is not able to sustain the continued underwriting losses for property coverage. Overall, the severity of catastrophic losses, and the frequency of non-cat losses are trending upwards which has resulted in uncertainty in the property insurance marketplace.

## Counselor's Comments

By *Dinsmore & Shohl*

### Ohio Supreme Court Concludes Passive Business Owner's Renewed Disability Does not Support A New Period of Temporary Total Disability Benefits

In what has become somewhat of a “quagmire” of voluntary abandonment decisions, last week the Ohio Supreme Court ruled that mere ownership of a farm is not sufficient proof of ongoing employment that would entitle an injured worker who had surgery for an old injury to qualify for a new period of temporary total disability benefits. See State, ex rel. Vonderheide v. Multi-Color Corporation, et al., Slip Opinion No. 2019-Ohio-1270 (2019).

Ohio workers who are injured in the scope and course of their employment and who lose time from work as a result are entitled to temporary total disability benefits. Some injured workers leave their former position of employment and re-enter the workforce elsewhere. If they become temporarily and totally disabled due to their original injury during a time period they are working at the new job, they can again qualify for temporary total disability benefits payable by the initial employer. Those who re-enter the workforce as “family-business workers, including farmers” are covered by the same rule, but to be eligible for renewed periods

of temporary total disability benefits, those individuals must be “actively engaged in gainful employment.” See State, ex rel. McCoy v. Dedicated Transport, Inc., 97 Ohio St. 3d 25 (2002); State, ex rel. Pierron v. Industrial Commission, 120 Ohio St. 3d 40 (2008). Although the ongoing work may be full or part time, it must be “regular, not sporadic.” See e.g., State, ex rel. Brown v. Industrial Commission, Franklin No. 14AP-722 (10<sup>th</sup> Dist. 2015). Moreover, they must be receiving current earnings from that work that will be lost due to the new disability caused by their prior industrial injury.

In Vonderheide, the claimant sustained injuries while working at Multi-Color Corporation in 1992 and her claim was allowed for a variety of back, leg and knee conditions. In 2001, she had a right total knee replacement, and in 2002 began receiving Social Security retirement benefits. When her allowed conditions were determined to have reached maximum medical improvement in 2003, she entered a vocational rehabilitation program but withdrew before completing the

program. From 2002 through 2009, the claimant worked at her family farm, where they raised cattle and grew tobacco. She performed a variety of services on the farm, including planting tobacco seeds, stripping tobacco leaves, and driving a tractor, for which services she received a portion of the farm’s annual net profits.

When the claimant’s husband died in 2009, the cattle were sold and the farm was leased out. Although the claimant testified she continued to mow grass and pick up trash on the farm, her income thereafter varied significantly from year to year. In 2012, the claimant had surgery on her injured right knee and requested temporary total disability benefits in her 1992 claim. The Ohio Industrial Commission denied the request, finding that the claimant had not established that she was in the workforce and had wages to replace at the time of her 2012 surgery. The Tenth District Court of Appeals reversed, concluding that the U.S. Department of Labor’s current population survey (“CPS”) “would have counted (claimant) as employed and

## Counselor's Comments....Continued

*By Dinsmore & Shohl*

In reversing the Tenth District's decision, the Ohio Supreme Court ruled that the Court "erred when it created a new standard to determine whether farm workers are in the active workforce based on whether the CPS survey would count them as employed. No authority supports the use of guidelines for a federal population survey to determine eligibility for Ohio workers' compensation benefits." State, ex rel. Vonderheide v. Multi-Color Corporation at ¶ 10. Applying the Ohio Supreme Court's prior decision in Pierron, the Court instead agreed with the Commission that at the time she underwent knee surgery, the claimant's "farm was a passive investment, she was not in the active workforce, and she therefore had no wages to replace." Id. at 13. The fact the claimant had chosen to begin receiving Social Security retirement benefits at age 62, well in advance of her 2012 surgery, was also cited "as evidence that (the) claimant was no longer in the workforce." Id. at ¶ 13; see also State, ex rel. Floyd v. Formica Corp., 140 Ohio St. 3d 260 (2014).

Although the decision in Vonderheide might be limited in its express application, it does perhaps signal that the Ohio Supreme Court may be curtailing how broadly their prior decisions can be applied to allow claimants to receive on-going benefits once they have left their former position of employment. Time will tell.



## The Claims File...

*Craig Blair*

While handling claims is an important part of what MVRMA does, there are other value-added services that come with being a member of MVRMA. One of these services would be the risk management component of the program.

With the summer months ahead of us, our members receive numerous requests for the use of their parks or other facilities. Allowing residents to use city property or facilities is an excellent benefit for the residents but is a risk exposure for the city. MVRMA is regularly asked to review the risk involved with these exposures.

There are three types of event sponsors (1) city (2) non-profit or (3) profit making groups.

How a city treats the exposure is related to which category it falls into. The first category is the easiest to understand as it will have city employees involved in the setup, running, and cleanup of the event to ensure reasonable precautions are in place. Usually no fee is charged but if one is, understand the city would be held to a different/higher standard of care regarding negligence if a loss occurs.

In the other two categories a member needs to have a policy requiring certain procedures and criteria to be met to reduce the risk exposure to the city. The policy should include gathering information from the sponsor about the event to determine if the facility can accommodate it. Older buildings may not have sufficient electrical capabilities for the event or have enough accessible exits to accommodate the expected crowd. The city should ensure the facility can safely handle the traffic flow. Measures also need to be in place to make sure the area in which attendees will be walking is free from obstructions such as chairs at the booths and electrical cords.

While safety issues are important, the city must also insulate themselves from their exposure to claims from the event. This is accomplished by requiring a contract with the group that includes (A) a hold harmless and indemnity clause that states the sponsor will take responsibility for losses or damages from the event and protect the city by (B) requiring the sponsor to carry appropriate liability insurance and cover the city, its officials and employees as "additional insureds". A certificate of insurance should be required to confirm their coverage. An "additional insured" has the same rights to coverage for losses as the sponsor. Therefore, if a claim or lawsuit is filed due to the event, the insurance company on the certificate will protect the city, handle defense of the claim, and pay for the loss if needed.

MVRMA can assist with risk transfer language for the contract and with obtaining "special event coverage" that will insure both the event sponsor and the City. Please contact Tom or Sandy if you have questions about special event coverage.

## Calendar of Events

### Upcoming Training Events

Supervisors' Guide to Conducting Progressive Disciplinary Processes and Performance Evaluations - May 10th, Home2 Suites, Centerville

Parks and Wrecks - How to Avoid Legal Issues in Your Parks - May 14th, West Carrollton Fire Station

Confined Space - May 21st, Piqua

Discipline for Public Safety - May 29th, Centerville Police Department

### Upcoming Board Events

#### Committee Meetings

Risk Management - May 30th 10:00 AM Finance - May 30th 1:30 PM

Personnel & Compensation - June 6th 10:00 AM

#### Board Meeting

June 17th- 9:30 AM at Home2 Suites, Centerville

## *From The Board Room*

Actions taken at the March 18th Board meeting included:

- Approved Revision to the Membership Selection Policy
- Approved 5 year lease agreement for MVRMA office