CEU SEMINARS

6/13/14: "Work Related Foot and Ankle Injuries... Why Do Foot and Ankle Injuries Take So Long to Reach MMI?" by Dr. Medina with the Orthopedic Center of South Florida. 11:30 AM - 1:00 PM, Johns Eastern Company, Inc., Hurricane Room, 6015 Resource Lane, Lakewood Ranch, FL.

6/20/14: "5 Hour Law and Ethics Course," by Eraclides, Gelman, Hall, Indek, Goodman & Waters. 11:00 AM - 5:00 PM, Holiday Inn Lakewood Ranch, 6231 Lake Osprey Drive.

7/8/14: "Affordable Care Act and Its Impact on WC in Florida," by William H. Rogner and Paul L. Wescott of Hurley Rogner. 10:00 AM - 12:30 PM, Holiday Inn Lakewood Ranch.

For more details: E-mail Rose Rome at rrome@johnseastern.com

JOHNS EASTERN COMPANY, INC.
Claim Adjusters & Third Party Administrators
WWW.JOHNSEASTERN.COM

HOW TO HANDLE INJURED WORKERS

Offering them modified or light-duty positions has many advantages.

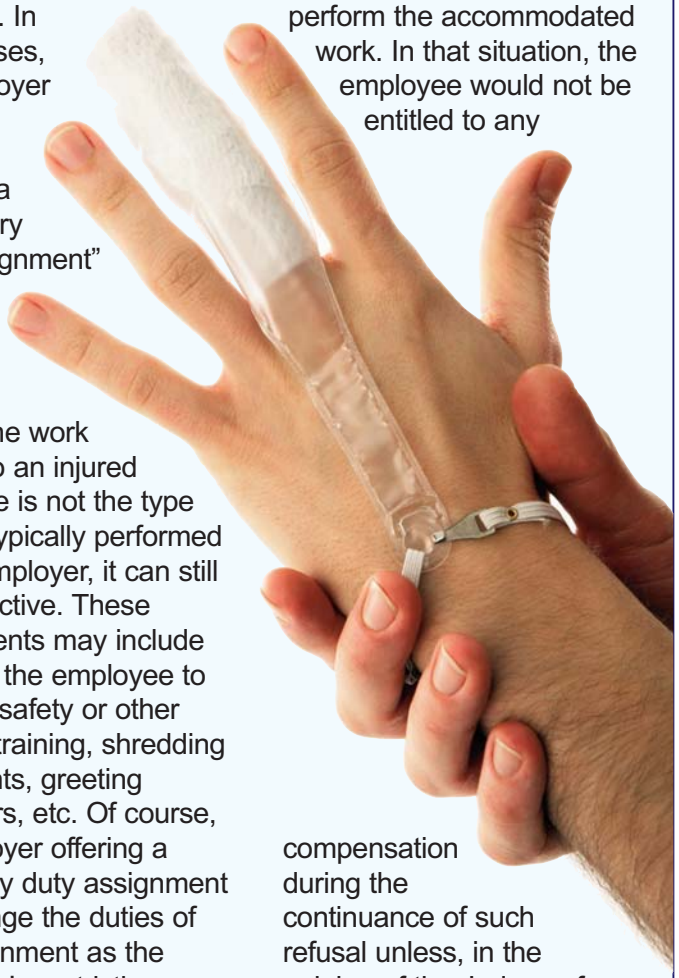
When an injured worker is assigned temporary restrictions which prevent him from performing his normal duties, the employer has two options: pay him to stay at home, or accommodate the worker's restrictions and pay him to work in a different role. Offering accommodated work for an injured employee is a win-win situation. The employee gets an opportunity to earn their full pre-injury wages, and the employer gets some work done with a low effective cost.

In most cases, paying an employee to work in a reduced role is more efficient than paying him Temporary Partial Disability to stay at home (TPD benefits are payable at 80% of the difference between 80% of the employee's average weekly wage and the salary, wages, and other remuneration the employee is able to earn post-injury). If an employer typically has light and sedentary duty work available, accommodating an injured worker is simple. However, some employers will not typically have light or sedentary positions available. In these cases, the employer should consider creating a "temporary duty assignment" for the injured worker.

Even if the work offered to an injured employee is not the type of work typically performed by the employer, it can still be productive. These assignments may include requiring the employee to undergo safety or other types of training, shredding documents, greeting customers, etc. Of course, an employer offering a temporary duty assignment can change the duties of the assignment as the employee's restrictions lessen.

Offering an injured worker a temporary duty assignment has the added benefit of providing opportunities for the claimant to act in a way that cuts off his entitlement to benefits. For instance, the employee may refuse to perform the accommodated work. In that situation, the employee would not be entitled to any compensation during the continuance of such refusal unless, in the opinion of the Judges of

Continued on page 5



MEDICARE SET-ASIDE ARRANGEMENT EXPANSION PROPOSED

On February 11, 2014, CMS announced a proposed expansion of the Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) re-review (reconsideration) process. Under the proposed expansion, reconsideration requests would be handled by a group of experts with the best skills to review the identified issue. These experts would not be the same individuals that handled the original determination. All reconsideration requests will be forwarded to the Workers' Compensation Review Contractor (WCRC) for resolution within 30 business days.

CMS has proposed the following guidelines in relation to the expansion of the reconsideration process:

► Re-review requests can be submitted at any time to the WCRC for the following reasons:

- A mathematical error was identified in the approved set-aside amount.
- Original submission included case records for another beneficiary.

► Re-review requests can be submitted to the WCRC when the original WCMSA was approved within the last 180 days; the case has not settled; no prior re-review request has been submitted for this WCMSA; and, the re-review requests a change to the approved amount of 10% or $10,000 (whichever is more) for any of the following reasons:

- Submitter disagrees with how the medical records were interpreted.
- Medical records dated prior to the submission date were mistakenly omitted.
- Items or services priced in the approved set-aside amount are no longer needed or there is a change in the beneficiary's treatment plan.
- A recommended drug should not be used because it may be harmful to the beneficiary.
- Dispute of items priced for an unrelated body part.
- Dispute of the rated age used to calculate life expectancy.

► Review requests may be elevated to the CMS Regional office for review in certain circumstances such as CMS' failure to adhere to court findings; CMS policy disputes or the carrier maintains Ongoing Responsibility for Medicals for treatment that has been included in approved WCMSA.

GENEX

GIVING SOMETHING BACK

Johns Eastern Company has a new Charity Committee that has volunteered its time and talents to organize our quarterly fundraising events. In the first quarter, we raised funds for Multiple Sclerosis (MS) by participating in the MS walks in Sarasota and Tampa. In the second quarter, employees at our Lakewood Ranch office are contributing time and funds to Feeding Empty Little Tummies (F.E.L.T.), Manatee County's program to feed homeless children on weekends. We look forward to helping needy children in our community.

MEDICARE'S NEW LIABILITY REPORTING THRESHOLD

There has been some confusion about an Alert that was issued by the Centers for Medicare and Medicaid Services on February 18, 2014. The Alert indicated that in keeping with section 202 of the Strengthening Medicare and Repaying Taxpayers Act of 2012, (SMART ACT) a cost analysis was completed which suggested that seeking a conditional payment recovery of less than $1,000 would be too costly for CMS.

The Alert went on to say that based upon the review, "CMS is increasing its current reporting threshold from $300 to $1,000. This new threshold is effective immediately. This means that physical trauma-based liability settlements of $1,000 or less do not need to be reported and recovery of Medicare's conditional payment amount from these settlements will not be pursued."

Because the Alert was ambiguous, there was a need for clarification as to whether or not it meant that starting on February 18, 2014, claim settlements of $1,000 or less were the new threshold and did not need to be reported; or if the current threshold of $2,000 was still in place. Because CMS indicated the current reporting threshold was $300 without clarifying what timeframe they were referring to by specifying dates, the February 28, 2014 Alert was produced. This Alert brought about much needed clarity.

Time Frames for Reporting Thresholds

The current mandatory reporting threshold for liability insurance (including self insurance) Total Payment Obligation to the Claimant (TPOC) is $2,000 and over for TPOCs dated on or after October 1, 2013. (The $300 and under settlement will not be pursued by CMS to satisfy conditional payments.)

The Mandatory reporting threshold for liability (including self insurance) TPOCs dated October 1, 2014 and after is changing from $300 to $1,000. If the most recent TPOC date is on or after October 1, 2014, and the cumulative TPOC Amount is greater than $1,000, the TPOC(s) must be reported by the end of the RRE's submission timeframe in the quarter beginning January 1, 2015. (The new $1,000 and under settlement will not be pursued by CMS to satisfy conditional payments.)

The Smart Act section 202 calls for the threshold to be adjusted annually on or before November 15th. If the amount owed is below the reporting threshold, CMS is barred from seeking repayment according to section 202 of the Smart Act.

James Boelter, TPA Liability QA Manager
Johns Eastern Company, Inc.

LOOK UP! BEWARE THE DANGERS OF TEXTING WHILE WALKING

An emergency medicine physician calls attention to the problem of texting while walking. He states nearly 10 percent of pedestrian injuries treated in U.S. emergency rooms are related to cell phone use. However, he thinks this percentage is underestimated because many people are too embarrassed to report these accidents.

There are more injuries sustained per mile from texting and walking than from texting and driving, although injuries from texting and driving are usually more serious.

Walking texters face three specific distractions — as they walk, they are doing, seeing, and thinking. Texting also involves all three — texting, reading, and composing, all of which divert the senses. The result is often bumping into walls, tripping, falling down stairs, or walking into traffic.

A similar study found the number of injuries seen in the ER as a result of texting and walking have increased threefold from 2004 to 2010.

www.sciencedaily.com (Mar. 3, 2014).

INCIDENT INVESTIGATION: FIND FACTS, NOT FAULTS

A cut on the hand, a forklift collision, even a near miss — no one likes it when an incident occurs on the job. When something goes wrong, it is in everyone's best interest to determine exactly what happened and why. Investigations should be conducted to discover the cause of the incident, learn lessons and help prevent future incidents from occurring. All personnel, regardless of position, need to be taught the importance of being objective and keeping an open mind. If this does not happen, people may focus on uncovering fault rather than facts, leaving the true cause undiscovered.

The root cause of an incident may be more complicated that you suspect. It is important to follow a process to determine root causes and not jump to conclusions based on incomplete information. Root causes can be a combination of factors relating to employees, management, equipment or environment. The important thing to remember is it is not appropriate to focus on an employee breaking a rule — that is not a root cause and suggests the employee is at fault.

For example, an employee is walking through the work area and trips on an obstruction. The easiest (and incorrect) assumption is that the incident was caused by the person not looking where he was walking. The true root causes are related to the safety systems and could point to the process for reporting observed hazards, routine inspections to identify and eliminate hazards, or maintaining walking/working surfaces. Only a thorough incident investigation will reveal the root causes that will lead to the most appropriate corrective measures.

Follow These Steps

Although many investigations are overseen by a supervisor, it is important that employees understand the process, and potentially be involved. The National Safety Council recommends the following steps to ensure a best practice investigation:

► **Respond to the emergency.** See that any injured person receives medical attention.

Secure the area. Use barricades or tape to keep people from changing the scene in any way. Shut down involved equipment, including locking/tagging it out.

► **Identify potential witnesses.** Find out whether any employees saw, heard, or smelled anything that may explain the incident.

► **Collect evidence and record data.** Supervisors and investigators will rely on a pre-assembled investigation kit that includes a camera, film, flashlights, and sampling equipment. Know who is responsible for maintaining the "go-bag" at your company.

► **Conduct interviews.** Talk to each employee separately, focusing on the who, what, when, where, why, and how of the incident. Ask open-ended questions and write down each response. It may be beneficial to have the employee read the supervisor's notes so they can either accept them or provide additional information.

► **Review all data.** Study all relevant reports involving equipment maintenance, housekeeping, work permits, and similar incidents. For example, an incident may have been caused by equipment acting up on a previous shift.

► **Prepare an investigation report.** Record only facts, not your opinions.

► **Implement corrective action.** Follow your company's protocol for making necessary changes to prevent future incidents.

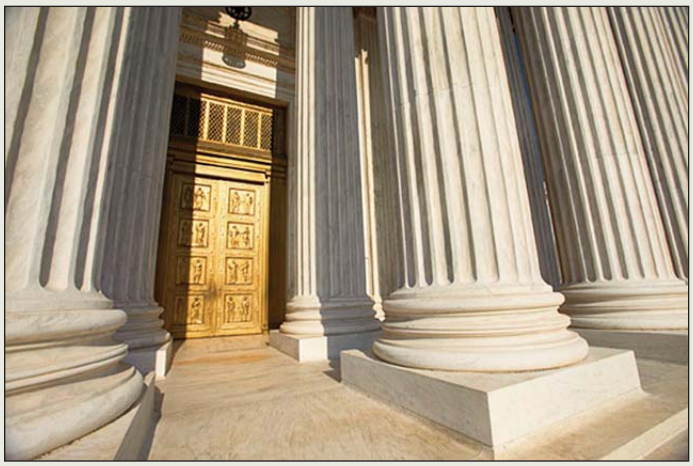
► **Follow up.** Check back to make sure that appropriate remedies are in place and working as intended.

Finally, understand that you might not always like the investigation's outcome. Safety is the ultimate goal. You may find out that you need to make changes. Investigation findings should help prevent future incidents and never be ignored.

Source: National Safety Council

FEDERAL EMPLOYMENT LAWSUITS ARE ON THE DECLINE

Labor & Employment Alert



Federal lawsuits alleging violations of employment laws are down around the country, according to data and analysis released by the Transactional Records Access Clearinghouse of Syracuse University. TRAC, as it's also known, monitors and analyzes data regarding the number of lawsuits filed in federal district courts concerning labor and employment law matters.

Federal labor and employment laws and matters brought under those laws that were subject of TRAC's analysis include: sex, race, age and other types of job discrimination, including retaliatory practices under 42 USC 2000 and 2000e; violations of the Americans with Disabilities Act (42 USC 12101 and 12117); the Fair Labor Standards Act (29 USC 201); job discrimination related to rehabilitation and handicaps (29 USC 791 and 794); the Family and Medical Leave Act (29 USC 2601); and the Uniformed Services Employment and Reemployment Rights Act (38 USC 4301-4335), which concerns protections afforded to service members of the U.S. military.

According to TRAC, the monthly average number of federal employment lawsuits is under 1,000 for the first five months of 2014, the lowest this number has been since TRAC has analyzed this data, 2006. The data indicates that the number of federal employment lawsuits is trending downward since 2011 and that number is 15.1 percent lower than a year ago.

Notwithstanding this downward trend, the U.S. District Court for the Northern District of Florida, which covers North Central and Western Florida from Gainesville to Pensacola, is one of the leading districts in the nation for federal labor and employment suits on a per capita basis. Indeed, the Northern District of Florida ranked second for the incidence of such lawsuits in the nation and has been generally one of the leading districts for federal employment lawsuits in the past few years.

Sniffen & Spellman, P.A.

Continued from page 1

Compensation Claims, refusal is justified (*See Fla. Stat. § 440.14(7)*). It is important to note that the concept of "sheltered employment" is not applicable in claims for TPD benefits (s*ee Moore v. Servicemaster Commer. Servs., 19 So. 3d 1147, 1149 (Fla. 1st DCA 2009)*). Therefore, a claimant is not justified in refusing work, merely because the job was created to get the claimant back to work.

The employer is also entitled to cease paying TPD benefits if the employee accepts accommodated work and is discharged following his accident for misconduct (*see Fla. Stat. § 440.15(4)(e)*). Recent case law suggests that a violation of company policy, such as a "no call, no show," may constitute misconduct for this purpose (see *Southeast Milk v. Fisher, 2014 Fla. App. LEXIS 5432 (Fla. 1st DCA 2014)*. Whether an injured worker refuses work or engages in misconduct, the employer is not liable for TPD benefits.

In summary, offering accommodated work for an injured worker provides several benefits. First, the employer can make productive use of the employee at a low effective cost. In addition, the employee may refuse the work or engage in misconduct, cutting off entitlement to disability benefits. Certainly, not all employers will be able to offer work within an employee's restrictions, but this option should always be explored.

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Broussard & Cullen, P.A.

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- Rose Rome, Johns Eastern
- National Safety Council
- www.sciencedaily.com

AN INSPIRATIONAL WAY TO START YOUR DAY

"Criticism of others is futile, and if you indulge in it often you should be warned that it can be fatal to your career."
- Dale Carnegie

"One important key to success is self-confidence. An important key to self-confidence is preparation."
- Arthur Ashe

"A day of worry is more exhausting than a day of work."
- John Lubbock

"Individual commitment to a group effort - that is what makes a team work, a company work, a society work, a civilization work."
- Vince Lombardi

"You can't build a reputation on what you're going to do."
- Henry Ford

"What you do speaks so loudly that I cannot hear what you say."
- Ralph Waldo Emerson

IN THE SPOTLIGHT

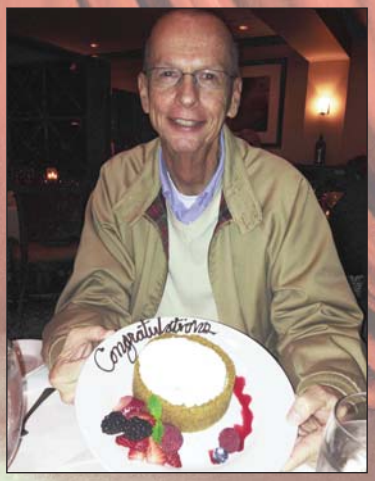
WELCOME!

- **David Ruiz** is the new Risk Manager for the City of Coral Gables.
- **Brian Goddin** is the new Safety and Facilities Specialist for the Panhandle Area Educational Consortium (PAEC).
- **Cindy LeRoy** is the new Risk Management Manager for the Southwest Florida Water Management District.

JOHNS EASTERN COMPANY WELCOMES NEW CLIENTS!

► **Monroe County School District** has contracted with us to provide workers' compensation and third party liability claims administration services. The School District has regular enrollment of approximately 8,500 students, with 524 teachers using 14 school facilities. Total full- and part-time employees number approximately 1,100.

► **The City of Melbourne** has contracted with us to provide workers' compensation third party claims administration and telephonic case management. The City is a full-service municipality with police and fire services, as well as water and water reclamation utilities and an international airport. The City has approximately 900 employees and volunteers covered by its self-insured workers' compensation program.



A FOND FAREWELL!

Ted Bennett, Jr. is retiring as Risk Management Supervisor for the North East Florida Educational Consortium (NEFEC).