
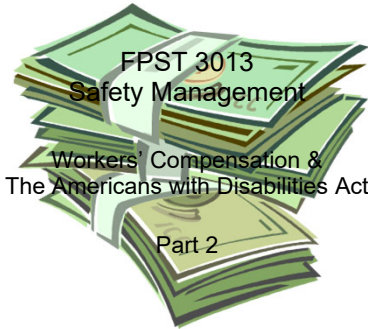



Collaborative Bachelor's Degree Program of Fire Protection and Safety
Engineering Technology between Southwest Jiaotong University and
Oklahoma State University, U.S.A.






FPST 3013
Safety Management
Workers' Compensation &
The Americans with Disabilities Act
Part 2

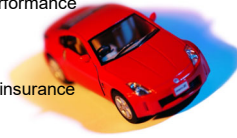
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Coverage




- Self-insured
- Insurance
 - Policy holder pays premium
 - Rates are set by **experience**
 - Credits, discounts given for good performance
 - Liability maximums
 - Deductibles
 - Payments made on claims
 - Highly regulated than other types of insurance



2



How to Calculate a WC Premium



**Three Factors for calculating Workers' Comp
Premiums:**

- Size of the employer's payroll (per \$100)
- Employee job classifications
- Company's claims experience

• **Annual Payroll/100 x classification rate x
Experience modifier**

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- ABC Trucking
 - \$453,000 annual payroll
 - Scopes Code Rate: 7229, Trucking-Long Haul
- Premium $453,000/100 \times 13.71$ or \$62,106
- Scopes Manual sets the classification rate

<https://classcodes.com/workers-compensation-class-codes/>

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Some Sample Scopes Rates



Code	Profession	Rate Per \$100 payroll
8810	Clerical	0.40
5645	Carpentry	25.00
7229	Trucking	13.71
5057	Steel Erection	23.56

NCCI has 550 classification codes in the Scopes Manual
Rates vary by state

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Experience Modifier



- 3 year average of losses
- Average = 1.0
- If a company has an experience modifier of .73, they will pay only 73% of their manual premium.
- This effectively gives the company a 27% discount, and reflects the company's lower than average losses, claims and injuries.

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ABC Trucking



\$453,000 payroll and is
Scope Manual Code 7229, Trucking-Long Haul.

Premium 453,000/100 X 13.71 or \$62,106.

Premium	E-Mod	Discount/Penalty	New Premium
\$62,106	0.73	-\$16,769	\$45,337
\$62,106	1.00	\$0	\$62,106
\$62,106	1.43	+\$26,706	\$88,812

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Disadvantages for State Run Systems



- Companies who operate internationally
 - Separate policy
- Employees who travel across states
 - Extraterritoriality – limited coverage follows
 - Reciprocity – receiving state acknowledges sending state's coverage
- Inconsistent benefit levels
- Rate competition across states
- State politics can impact programs

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So why not adopt a Federal System?



- Brings up Federalism issue
 - 10th amendment to the US constitution
 - "The powers not delegated to the US by the Constitution, nor prohibited by it to the states are reserved to the states respectively, or to the people."
- OSHA Ergonomics Standard (2001)
 - New benefit system for MSD injuries
 - Vigorously opposed by insurance, states, and business
- Healthcare for all
 - Clinton's Health Care Reform Act (mid 90's) tried
 - Affordable Healthcare Act (Obamacare)
- No direct effect on Workplace injuries and illnesses

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Disputes



- Disputes over pay, length of benefits, degree of disability,
 - Arbitration in many states
- Court System in some
 - Administrative System
 - OK switched from Court to Admin in 2013

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Medical Treatment



- Most laws have full coverage for medical treatment \$\$
- Some limit the liability after return to work
 - Limit the medical for 5 years after RTW
- Physician Choice
 - Employer selects
 - Employee can change later
 - http://www.owcc.state.ok.us/employees_faq.htm

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Goals of Medical Management of Workplace Injuries



- The goals of medical management of workplace injuries are to:
 - Speed up the processing of claims
 - Reduce costs
 - Reduced fraud and abuse
 - Improve medical management

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Managing Workers' Compensation

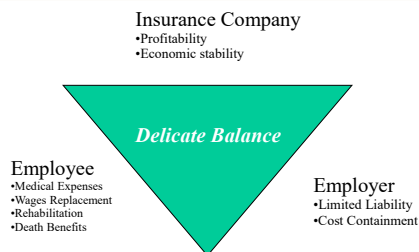


- Objectives
 - Prevent accidents
 - Control costs
 - Respond to accidents promptly
- Hiring
 - Pre-employment physicals
 - Americans with Disabilities Act – ensure you are avoiding discrimination
- Incident Reporting
 - Must have solid system of documenting, investigation and follow-up
- Physicians and Medical Institutions
 - Meet with them. Discuss your restricted duty program
- Follow-up
 - Get worker back to work as soon as possible

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WC - The Three Constituents



Source: Scott Szymendera, Michigan State University (2004)

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What makes an employee hire a lawyer?



- Denial of Benefits
 - Course and scope of employment
 - Disability disputes
- Lack of Communication
- Hope for a lump sum settlement
- Feeling that the employer doesn't care
- Fraud

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Fraud



- Small but significant Warning signs
 - Never home or available by phone
 - Coincides with layoff, termination, etc.
 - Active in sports
 - Has another job
 - In line for early retirement
 - No organic basis for injury
 - Known to have skills marketable for cash
 - No witnesses
 - History of claims
 - Contradictory doctor's reports

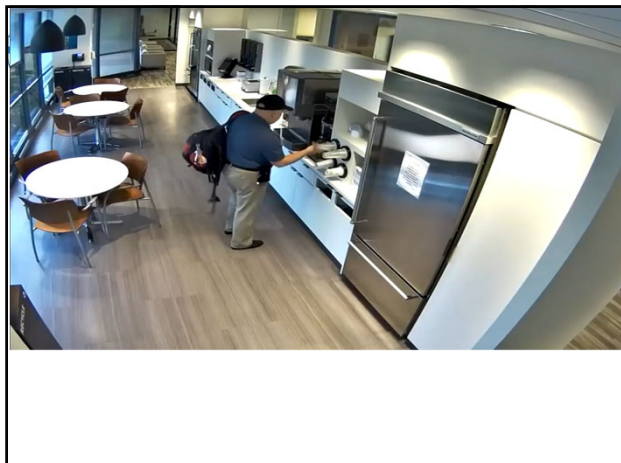
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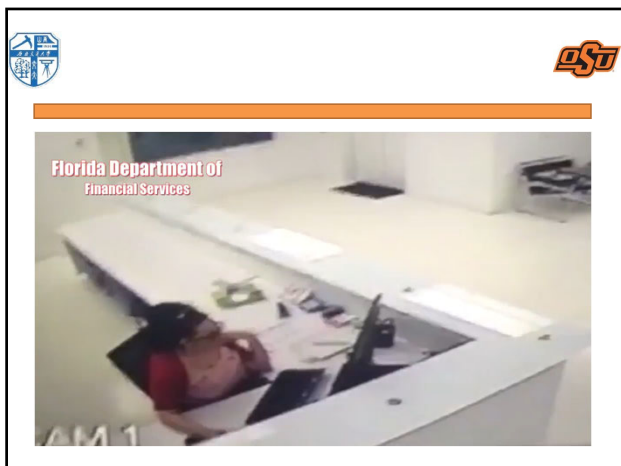
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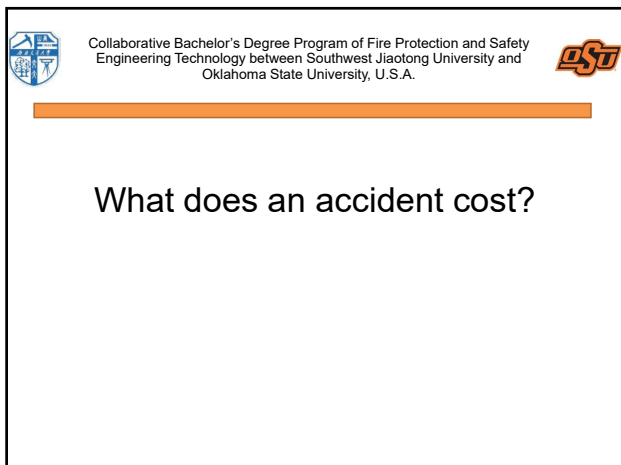
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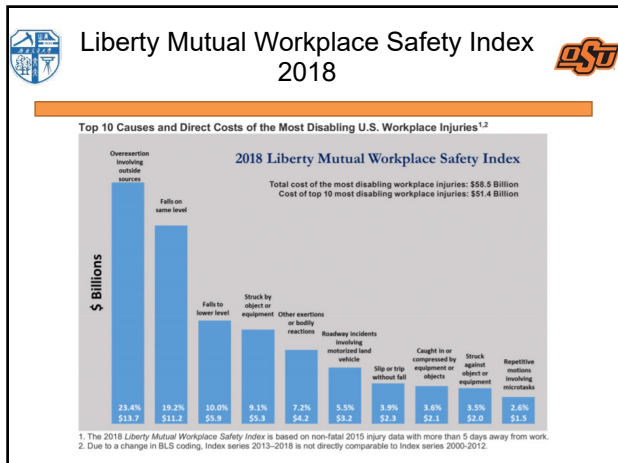
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Direct vs. Indirect costs

- Iceberg Theory
- Direct costs
 - Things you can quantify directly relating to accident
 - Insured Costs
 - Tangible
- Indirect costs
 - Things that may not be easily quantified or seen after an accident
 - Uninsured costs
 - Intangible

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What's the ratio of direct to indirect?

Direct Costs	Indirect Cost Ratio
0 - \$2,999	1 : 4.5
\$3000 - \$4,999	1 : 1.6
\$5000 - \$9,999	1 : 1.2
\$10,000 or more	1 : 1.1

Source: OSHA Safety Pays Program www.osha.gov
NCCI data 2011-2013

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Congressional Purpose ADA - 1990



"The purpose of the ADA ... is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring those individuals into the economic and social mainstream of American life."

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ADA Definition of Disability



- A legal term, not a medical term
 - a physical or mental impairment limits one or more major life activity; or
 - that substantially limits one or more major life activities of such an individual; or
 - a record of such an impairment; or
 - e.g. person with history of physical or mental illness, even if impairment does not currently exist; e.g. person who suffered heart attack; former cancer patients; recovered alcoholics or drug addicts
 - being regarded as having an impairment
 - e.g. parents or caretaker of child with AIDS or even a severely disfigured burn victim

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Examples of Impairments



- Physical
 - physiological conditions or disorders,
 - cosmetic disfigurement or
 - anatomical loss covering of any of the body systems
 - cancer, diabetes, muscular dystrophy, epilepsy, cerebral palsy, paraplegics, but also covers asthma and HIV and AIDS and alcoholism and drug addiction
- Mental
 - Mental or psychological disorder
 - mental retardation, organic brain syndrome,
 - emotional or mental illness
 - learning disabilities

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ADA Title I



- Prohibits discrimination in all phases of employment
 - hiring, advancement, termination, compensation or other terms of employment
- Must provide or at least investigate "Reasonable Accommodation" for a qualified person with a disability who is able to perform the essential functions of the job

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Reasonable Accommodation by Employers



- Statute itself lists several examples:
 - physical accessibility (internal and external) must be done
 - job restructuring may be called for or re-design of office procedures
 - flex time; shift adjustments
 - modifying equipment (hardware and software)
 - changing examination procedures
 - providing qualified readers, interpreters and attendants

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Reasonable Accommodation



- Not reasonable if cost creates "undue financial hardship" on employer
 - Case by case determination based on:
 - nature and cost of accommodation
 - financial resources of employer

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Health and Safety Defense



- Employees can't pose a direct threat to the health or safety of other individuals in the workplace
- Reasonable accommodation is still required
- Four factors in evaluating the direct threat defense
 - i. duration of the risk
 - ii. nature and severity of the potential harm;
 - iii. likelihood that potential harm will occur;
 - iv. the imminence of the potential harm.

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Pre-employment Screening



- Tests which screen out persons with disabilities must be job related and have business necessity
- Tests which measure aptitude, physical agility, intelligence and specific skills are not considered to be "medical examinations" under the ADA
- Screening tests must test
 - Essential functions of the job,
 - Must be accurate predictors of successful performance on the job
- Cannot segregate or classify jobs or applicants by disability
- Cannot make pre-employment tests a screening device for people with disabilities
- Cannot make pre-employment medical tests condition of job offer unless essential part of the job

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Pre-Employment Screening



- ADA Rules for Medical Examinations
- **Medical examinations are prohibited until after employers have made a job offer to the applicant.** There are no exceptions.
- Employment can be conditional on the results of an applicants post-offer medical examination
- Cannot give an examination to some and not to others

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Case Study



- Ramjack Company, a small manufacturing facility with 60 employees.
- Mary has been working full time at the plant for two years as a widget packer.
- During the previous year she has missed 14 days of work, but never more than one or two days in a row.
- Under Ramjack's "zero tolerance" attendance policy, if Mary has one more absence this year, she will be terminated.

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- On Friday morning, Mary calls in to say she will miss her second shift later that afternoon because she is having back pain.
- She has visited her doctor, who told her to stay in bed and see him again on Monday morning.
- Mary's back injury turns out to be serious, restricting her ability to stand and walk.
- She now contends that she injured her back while lifting a box at Ramjack.
- After nine weeks off Mary comes back to work and wants her old job back.

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Mary Wants to Return to Work: What is Your Response?



- The severity of her condition, limiting her ability to stand and walk, will probably qualify her as disabled under the ADA.
- If she can perform the essential functions of her job, she is entitled to have her job back and entitled to reasonable accommodation.
- Mary is entitled to her original position or an equivalent position with equivalent pay and benefits if she can perform the essential functions of her job.
- Because Mary's injury was incurred on the job, she is eligible for Workers' Compensation benefits as well.

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Mary Decides She Can't Do Her Job and Goes Home: Can She Do That?



- Upon her return to work after nine weeks, Mary discovers that she is still not able to do her job as a widget packer.
- You offer her light duty in the office, but she declines, and goes home for another three weeks.
- The light-duty work you offered Mary qualifies as a reasonable accommodation under the ADA.

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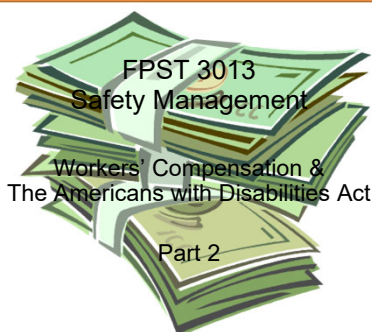


Reasonable Accommodations: Is Mary Entitled to These Requests?



- When Mary returns after 12 more weeks, she wants her old job even though she is still experiencing back problems.
- She thinks she can do the job if she is given a tall chair to use while working, allowed to take a five minute walk every hour, and allowed to report to work a half-hour late on Fridays so she can see her doctor.
- Are these accommodations reasonable?
 - Yes because they pose no "undue hardship" to you as an employer.
- If Mary is able to perform her old job – with the accommodations requested – she ends TTD, and hopefully reaches MMI with her new, slightly modified job duties.

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