

VITALITY ATLAS

EMPLOYEE HEALTH SOLUTIONS

06 Alternatives to Assessing Pain as Fifth Vital Sign

08 Prepare Now for 2019-20 Flu Season

09 Clinical Conversations

10 Regulatory Update

11 Workers' Comp Roundup

12 Health Promotion Programs

Gig Economy: Who's Responsible for Worker Health and Safety?

By Karen O'Hara

The term gig once conjured up images of musicians jamming after hours at a local hangout. Now gig is used to describe all types of non-standard work arrangements.

Everyone has an obligation to help ensure healthy and safe workplaces. But to understand ways in which employers are considered responsible for protecting gig workers, it's important to first define the employment relationship, which is a moving target.

What is Gig Work?

In the gig economy, service providers depend on web-based platforms and smartphone apps to connect with consumers.

Other non-standard work arrangements have similarities but may not rely as much on communications technology for transactions. They may be referred to, for example, as temporary, contract, contingent, part-time, on-call, direct-hire, on-demand or freelance jobs. Self-employed professionals who are retained to provide specific expertise fall into yet another category, often for tax reasons.

Flu Shot Reminder

To avoid getting and spreading the flu, remember to get your flu shot this fall.

Annual vaccination is recommended because viruses change and immunity declines over time. The vaccine protects against multiple viruses expected to be most common during the 2019-20 flu season. It takes about two weeks after vaccination for your body to develop infection-fighting antibodies.

The vaccine will not give you the flu. Injected vaccine is made with inactivated viruses and nasal spray contains weakened viruses that only react to warmth in the nose.

Refer to page 8 to learn more.



Independent Contractors

Service providers working for a virtual marketplace company (VMC) operating in the gig economy are independent contractors, not employees, according to an [opinion letter](#) issued by the Wage and Hour Division of the U.S. Department of Labor (DOL) on April 29, 2019.

In its response to an unidentified company's request for guidance, the DOL opinion, which is not legally binding, defines the VMC as a referral source that "empowers service providers to provide services to end-market consumers." It finds that these service providers "are not working for the employer's virtual marketplace; they are working for consumers through the virtual marketplace."

In the letter, the DOL says the "touchstone of employee versus independent contractor status has long been 'economic dependence.'" When determining economic dependence, the Wage and Hour Division considers six factors derived from U.S Supreme Court precedent:

1. Nature and degree of the potential employer's control.
2. Permanency of the worker's relationship with the potential employer.
3. Amount of the worker's investment in facilities, equipment or helpers.
4. Amount of skill, initiative, judgment or foresight required for the worker's services.
5. A worker's opportunities for profit or loss.
6. The extent of integration of the worker's services into the potential employer's business.

"More business-friendly than similar opinions from the Obama-era administration, this opinion is helpful to any employer engaged in the gig economy and/or web-based operations," said [Rebekah Ramirez, an attorney with Faegre Baker Daniels LLP](#), a global business law firm. She interprets the guidance as broad enough to be referred to by any employer to help ensure contracts and work arrangements accurately reflect an independent contractor relationship.

Joint Employer Liability Rule Change Proposed

The U.S. Department of Labor issued a Notice of Proposed Rulemaking to update Fair Labor Standards Act (FLSA) joint employment regulations on April 1, 2019.

Under current labor regulations, two or more employers acting independently of each other may be deemed joint employers if they are "not completely disassociated" with respect to an employee who performs work for more than one employer in a work week.

The proposed rule involves situations in which a primary employer and other joint employers could be held liable for wage and hour violations under the Fair Labor Standards Act, which is often a point of dispute when an employee lodges claims for unpaid wages or overtime.

If adopted, the rule would represent a major update to federal labor regulations in an area of law that has become more complex due to an increase in the use of gig workers, independent contractors, staffing agencies and similar staffing models. The proposed rule apply the following factors to establish an employer's status:

1. Hires or fires the employee in question
2. Supervises and controls the employee's work schedule or conditions of employment.
3. Determines the employee's rate and method of payment.
4. Maintains the employee's employment records.

Additional factors may be relevant if the joint employer:

- Exercises significant control over the terms and conditions of the employee's work
- Acts directly or indirectly in the interest of the employer in relation to the employee

Whether an employee is economically dependent on the potential joint employer is not considered relevant in determining that employer's economic reality under the FLSA. "Accordingly, to determine joint employer status, no factors should be used to assess economic dependence," the proposed rule states.

Misclassification Hurdle.....

The opinion is significant, in part, because independent contractors are not entitled to minimum wage and overtime pay under the Fair Labor Standards Act (FLSA). In addition, it could be used as a legal defense in lawsuits involving allegations of employee misclassification or as a guide in establishing business relationships with independent contractors, Ramirez explained.

According to the DOL, [misclassified employees](#) often are denied access to benefits and protections they are legally entitled to receive, including minimum wage, overtime compensation, family and medical leave, unemployment insurance and safe workplaces. Employee misclassification reportedly generates substantial losses to the federal government and states in the form of lower tax revenues, as well as to state unemployment insurance and workers' compensation funds.

[Attorneys with Jackson Lewis](#), a national employment law firm, point to a growing trend among states to "protect companies operating a virtual marketplace from scrutiny arising out of the worker classification tangle." They report that several states have passed marketplace contractor statutes that treat service providers as independent contractors.

"Typically under these statutes, the company that creates and hosts the virtual marketplace is protected from claims that it is an employer, but the requirements are fairly strict and compliance can be challenging, especially given the shortage of judicial guidance on the subject," Jackson Lewis attorneys say. States that have enacted related legislation include Alabama, Florida, Indiana, Iowa, Kentucky, Tennessee and Utah.

Jackson Lewis advises employers with independent workforce arrangements to consider evaluating whether their business model legitimately supports the use of such arrangements and whether it will withstand employment classification scrutiny. They say employers should also consider their obligation to protect independent contractors from harassment, which may include providing preventive training.

Interpretations Vary.....

In [Navigating Employment Law in the Gig Economy](#), an article published by the Society for Human Resource Management (SHRM), attorney Margaret M. Clark notes that the status of an independent contractor may also be interpreted differently by different agencies, such as the DOL, Internal Revenue Service or a state workers' compensation board. Courts have also blurred lines in rulings involving independent contractors.

Clark said some confusion arises from criteria used to identify employee or independent-contractor status that "impose 20th century constraints on a 21st century labor model." She advises employers to:



- Consider the tasks at hand. It is preferable for gig workers to support individual projects rather than core business functions.
- Apply the most stringent employee and independent contract definitions allowable in applicable jurisdiction(s).
- Avoid the perception of creating an employment relationship, such as direct supervision or performance evaluations.
- Provide protection against harassment and investigate misconduct complaints as you would for any other type of employee.

- Review terms and conditions on gig platforms/apps to avoid having liability risk passed on to your organization.

Workplace Hazards.....

With a growing number of workers trading flexibility and variety for less job security and lack of customary employment benefits and workers' compensation coverage, there are questions about who is responsible for protecting them from exposure to job-related hazards. While case law is gradually developed to provide clearer direction, experts say it's advisable to proceed with caution.

In a presentation at the 2019 American Occupational Health Conference sponsored by the American College of Occupational and Environmental Medicine, Natalie Hartenbaum, M.D., M.P.H., president and chief medical officer of OccuMedix, spoke about health protection vulnerabilities and the role of medical professionals who provide clinical oversight in the workplace.

Workers with non-standard arrangements tend to do jobs with higher risk, less training and access to personal protective equipment (PPE), and lower pay than those with standard arrangements, she said. Some of them have a "standard" job and do gigs on the side. Others may perform multiple jobs for multiple employers or customers.

Regardless of the scenario, she told her colleagues that there is an opportunity for occupational medicine physicians to educate company leaders about how to better protect this vulnerable population.

Safety training, culture, work practices, supervision and enforcement must be adapted to keep pace with changes in the nature of employment relationships, attorneys with Seyfarth Shaw, a national employment law firm, say in a recently published article on [Workplace Safety in the Gig Economy: New Hazards and Liabilities](#).

They note that certain labor groups, advocacy organizations and legislative bodies encourage gig companies to address worker health and safety. Meanwhile, plaintiff's lawyers are finding new ways to hold gig companies liable for accidents and injuries.

Potential health and safety concerns cited by Seyfarth Shaw include:

- Gigs tend to occur in industries with higher than average risks. For example, drivers who transport people or goods in their own vehicles or do casual manual labor have higher than average risk of accidents, injuries and fatalities.
- Workers may not have the requisite experience, appropriate training or protective equipment needed to work safely.
- In the event of an exposure risk, a gig worker may not know who to contact to report safety concerns or simply choose not to report it, creating risk for others.
- Absent an instilled safety culture, younger people who find this sector particularly attractive may be more vulnerable to hazardous conditions.

"Safety training may be necessary to ensure gig workers can do the job safely. Similarly, given their independent nature, these workers may need personal protective equipment or other traditional workplace protection designed to reduce workplace risk," attorneys say.

Seyfarth Shaw advises employers to consult with legal counsel and environment, health and safety (EH&S) professionals to learn how to mitigate task-related risks and liabilities. This suggests that it is incumbent on EH&S, risk management and human resources teams, among others, to educate themselves about legal and ethical responsibilities in the context of the evolving employment landscape.

The federal Occupational Safety and Health Administration (OSHA) already takes the position that staffing agencies and host employers are "jointly responsible" for maintaining a safe work

environment for temporary workers, including training requirements. (Refer to the agency's [Temporary Worker Initiative](#).) OSHA has also developed recommendations to protect younger workers, and it is using the Occupational Safety and Health Act general duty clause to enforce workplace violence prevention, one of the chief safety concerns for gig workers.

Other Paths to Protection

Some state and federal legislators have proposed attaching per-service fees to gig economy transactions to help fund portable benefits programs for workers. As envisioned, accrued fees would be shared across one or more employers and cashed in for benefits such as health insurance or sick leave pay.

Another proposed solution is for the U.S. to follow the lead of Canada and create a "dependent contractor" category of employment. In Canada, dependent contractors are economically reliant on one employer. The following parameters apply:

- Working predominantly for one principal
- Subject to the control of the principal as to how the services are provided
- Uses his or her own tools in the provision of services
- Has undertaken any business risks, or expects a profit from provision of the services

Some companies are taking independent steps to improve protections for gig workers. For example, Steffi Bryson, who oversees safety and consumer protection at Uber, spoke at a February 2019 Campbell Institute symposium about functions of the company's Safety Advisory Board and its partnerships with experts in human trafficking, domestic violence and road safety as part of efforts to make driving and riding safer for drivers and passengers.

The National Council for Occupational Safety and Health, National Staffing Workers Alliance and the Occupational Health and Safety Section of the American Public Health Association are among public interest groups that support a dual employer approach to protecting temporary and gig sector workers under

provisions of the OSH Act, potentially making multiple parties responsible for health and safety.

Meanwhile, many experts believe organizational culture drives health and safety performance, especially in the gig economy. Some emphasize the importance of establishing a sense of psychological safety, including freedom to report hazards to authorities without fear of repercussions.

[Denison](#), a global firm that guides organizations on corporate culture and leadership strategies, recommends cultivating a vision to help workers in decentralized situations see themselves as members of a community with common goals. Steps to achieve this vision include inviting storytellers within an organization to weave a narrative about the culture and "doers" to translate these stories in action-oriented steps.

It's also important to study the impact of these efforts. Experience suggests that the degree to which culture empowers people to address real challenges and improve outcomes they truly care about is what should be measured, Denison says.

Did You Know?

In 2018, a Gallup study on the Gig Economy and Alternative Work Arrangements found that 36 percent of U.S. workers are engaged in this sector. Meanwhile, staffing industry analysts report:

- *\$1.3 billion spent in the U.S. in 2018 on 53 million gig workers*
- *Rapid growth in human cloud; more moderate growth in overall gig work*
- *Workers identify flexibility as the most attractive aspect of this economy*

WorkCare Commentary

Alternatives to Assessing Pain as the Fifth Vital Sign



In this commentary, WorkCare Associate Medical Director Brittany Busse, M.D., discusses the implications of designating pain as a vital sign that can be measured and controlled.

More than 20 years ago U.S. medical organizations got behind a movement to make

pain a fifth vital sign in addition to body temperature, pulse, respiration and blood pressure.

This resulted in an unprecedented increase in the use of prescription opioid medications to control pain, which is exactly what was intended at the time. To understand what has since turned into an unintended consequence – the national opioid addiction and overdose death crisis – and how to change course, it is important to reflect on some key influencing factors.

Suffering

One of the leading proponents of opioid use to control pain was the late Mitchell Max, M.D., president of the American Pain Society, who led a national campaign to institute pain as the fifth vital sign.

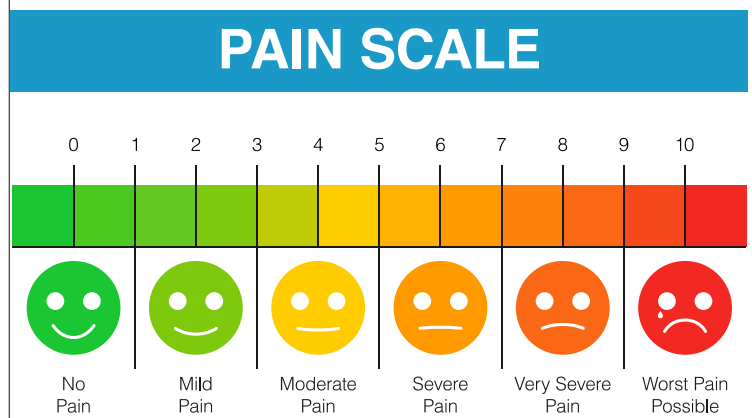
Early in his career Dr. Max practiced behavioral, hypnotic and mindfulness interventions for pain under his mentor at Harvard University, Matthew Budd, M.D. However, Dr. Max said he didn't "quite have the heart that (Dr. Budd) had." He found it difficult to watch people suffer while waiting for lifestyle interventions to take effect. He wanted to find a way to provide immediate relief, even if only temporary.

While conducting research on pain management, primarily among hospitalized patients with cancer, Dr. Max concluded that ineffective methods for measuring and evaluating pain caused unnecessary suffering. In his opinion, pain was an enemy that could be eradicated with medications. According to [the Joint Commission](#), his position reflected conventional wisdom at the time that "therapeutic use of opiate analgesics rarely results in addiction."

Patient Satisfaction

Findings from the U.S. Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) patient satisfaction survey, which influences reimbursement for health care providers and is used by the Centers for Medicare and Medicaid Services (CMS), has also been cited as a contributing factor. The survey asks: "How often did the hospital or provider do everything in their power to control your pain?"

It has been suggested that this question helped embed pain as the fifth vital sign in the U.S. health care delivery system and facilitated opioid administration in response to self-reported numerical pain scores. (Refer to Are pain management questions in patient satisfaction surveys driving the opioid epidemic? J Adams, G Bledsoe, J Armstrong; [Am J Public Health](#), 2016; 106: 985–986.)



Prescribing Pattern

Studies also suggest there may be an association between opioid manufacturer payments to physicians and the volume of opioids prescribed. While it is illegal for pharmaceutical companies to pay physicians to prescribe their drugs, physicians may receive payment for related promotional activities, research or consulting work.

(Refer to Pharmaceutical payments to physicians may increase prescribing for opioids; T Nguyen, et al.; [Addiction](#); Jan. 22, 2019.)

Pain as a Sign of Vitality

Recognizing that opioid medications were initially intended to relieve severe pain and promote healing, we can understand its initial utility and acceptance into the assessment process. Pain associated with post-surgical conditions, cancer and acute traumatic injury is caused by tissue disruption or destruction. The short-term goal of pain reduction is balanced with the long-term goal of healing or at least the maintenance of some comfort in the case of terminal cancer pain.

Pain is a direct reflection of how much healing needs to occur in the body before the person can return to full functioning.

Effective pain reduction improves sleep, decreases production of cortisol and other stress hormones, and improves the body's ability to heal in the short term. The assessment and reduction of pain in the short term improves vitality and has effects similar to the maintenance of a stable heart rate and rhythm.

We also know from neurological studies that not all pain is processed by the brain in the same way. For example, chronic non-cancer pain is processed by the memory centers of the brain. This means that what the mind is determining is how the story of pain is "impacting my daily life and how I should behave."

There may be no direct tissue damage, destruction or derangement that is causing the pain; if there is, it is often a lesser cause. The trauma caused the initial pain, which caused the reaction to pain, and now the person is living in this pain story that is difficult to rewrite. The vital energy becomes locked within the tissues. This can happen with any kind of trauma, whether it is emotional, mental or physical.

In these cases, assessment of pain on a numeric scale tends to yield little insight into the overall function of the person or their vital state. When opioid pain medications are used to ameliorate chronic pain, the person will notice immediate – but only temporary – relief. The trauma remains stored in the tissue.

As medications wear off and awareness returns, pain may actually become magnified as the body literally cries out for more awareness and healing. In this way the temporary relief afforded by pain medication actually prolongs and intensifies the pain, in turn requiring higher doses to provide temporary relief over time.

This is the process of pain amplification and physical tolerance. What we see as addiction is an intolerance to pain, both on an individual and societal level.

Subjectivity

Over time, opioids that were appropriately prescribed to alleviate time-limited pain associated with distinctly destructive conditions such as post-surgical recovery, cancer and similar acute conditions have increasingly been given to those with indistinct musculoskeletal complaints, such as low back pain. Not surprisingly, opioids became a costly solution in the workers' compensation system.

As these issues came to light, organizations that once backed using pain as the fifth vital sign, including the American Medical Association, American College of Surgeons, Joint Commission, American Academy of Family Physicians and CMS, withdrew their support.

Despite these developments, medical professionals still ask patients to rate their pain on a scale of 1 to 10 and treat it accordingly. Examples of recommended pain measurement scales include the commonly used numeric rating scale (NRS) or numerical pain scale (NPS), as well as the visual analogue scale (VAS) and the categorical 4-point verbal rating scale (VRS).

Unlike other vital signs, the measurement of pain is subjective. With the implementation of a universally applied numeric pain scale to establish the fifth vital sign, some important questions were left unanswered:

- *Should eradication of pain or effective management of pain be the goal?*
- *What is the best way to measure pain intensity?*
- *Does a 1-10 scale provide an objective picture of a subjective response to pain?*
- *What is the "normal" or acceptable range for pain?*
- *Can pain be brought within a desirable range, similar to blood pressure or heart rate?*

Not a Numbers Game.....

As Johann Hari, a journalist who writes on topics including depression and the war on drugs, says: "If you want to understand why people are turning to pain killers in such enormous numbers, we need to understand why they are in such pain."

The antidote to chronic pain isn't vilification of addiction, experts say. The antidote to chronic pain is the ability to take an individualized, holistic approach. It involves increasing awareness, allowing acceptance and encouraging movement.

When pain is reduced to a number on a scale, people will accept short-term relief of pain in an effort to move that number down. This does nothing for the underlying cause of the pain, and when nothing is done, nothing changes; the pain only worsens over time.

In addition to asking how a person is experiencing the pain physically, we need to assess how the pain is impacting his or her life. This helps the individual and the provider to start to unravel the pain story. How the pain is affecting sleep, interpersonal relationships, mood, emotions and stress is just as important, if not more important, as how it feels in the body.

When we have a more complete picture of the pain, we can develop individualized treatment plans that include physical therapy, cognitive behavioral therapy, yoga and mindfulness, as well as temporary pharmacological solutions that will lead to improvements in physical pain and bio-psychosocial functioning.

In this way we truly move forward in the treatment of pain and of individuals in pain.

Dr. Brittany Busse joined WorkCare as an Associate Medical Director in March 2019. She is an integral contributor to development of the company's telemedicine program, which will allow occupational medicine physicians to evaluate and provide treatment recommendations to injured employees via a secure video connection. Dr. Busse supports the delivery of simple, proximate and immediate care for injured employees as a way to significantly improve health and business outcomes. She previously served as Medical Director at two different telehealth companies, where she managed physicians focused on providing compassionate, quality care to employees.

Prepare Now for 2019-20 Flu Season

Employers are encouraged to extend their annual flu vaccination campaigns if they want to provide adequate coverage during the 2019-20 season.

Seasonal influenza (flu) is a contagious, potentially life-threatening respiratory illness. Public health officials recommend annual vaccination for children starting at 6 months old and all adults, including pregnant women, unless they have a condition that precludes safe administration.

In a rare move earlier this year, the World Health Organization (WHO) and the U.S. Food and Drug Administration (FDA) postponed decisions about composition of the vaccine in order to recommend the most effective formula possible. Viruses change over time, and experience with prevalent viruses and research on emerging strains must be carefully evaluated.

In turn, manufacturers had to delay the start of production. While public health officials and manufacturers say total vaccine supply will be adequate for the season, available quantities may be impacted at the start of workplace and community campaigns. It's still worthwhile to promote vaccination even as the season progresses in order to be protected.

For 2019-2020, trivalent (three-component) vaccines are recommended to contain:

- A/Brisbane/02/2018 (H1N1)pdm09-like virus (updated)
- A/Kansas/14/2017 (H3N2)-like virus (updated)
- B/Colorado/06/2017-like (Victoria lineage) virus

Quadrivalent (four-component) vaccines are recommended to contain these three viruses plus B/Phuket/3073/2013-like (Yamagata lineage) virus.

WHO selected H1N1 and both B components on Feb. 21, 2019, but delayed a decision on an H3N2 vaccine component for another month.

The FDA's Vaccines and Related Biological Products Advisory Committee approved selection of the H3N2 component on March 22.



Clinical Conversations

Chronic Fatigue Syndrome

People suffering from chronic fatigue syndrome (CFS) may soon benefit from a diagnostic test that could lead to more effective treatment options. Researchers at the [Stanford University School of Medicine](#) have created a blood test that can flag the disease, which currently lacks a standard, reliable diagnostic test, the Stanford Medical Center news center reports. A CFS diagnosis is based on symptoms including exhaustion, sensitivity to light, depression and unexplained pain after other diseases have been ruled out. Employees with CFS have higher than average rates of work absence and disability. They may request job accommodations under the Americans with Disabilities Act. A paper describing the research findings was published in [Proceedings of the National Academy of Sciences](#).

Opioid Use After Injury

In a study of 46,399 injured workers in Tennessee who were not taking opioids drugs at the time of their injury, 4 percent had long-term opioid use after injury. Long-term use was associated with receiving 20 or more days' supply in the initial opioid prescription and visiting three or more prescribers. Careful prescribing for initial opioid prescriptions is recommended.

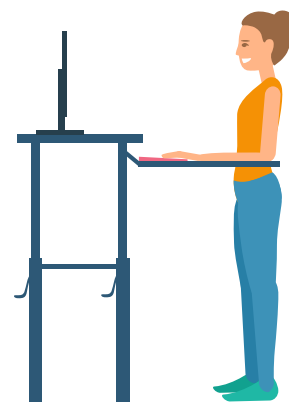
Citation: Prevalence and Risk Factors Associated With Long-term Opioid Use After Injury Among Previously Opioid-free Workers; Z Durand, et al.; [JAMA Network Open](#), July 17, 2019.

Productivity Indicators

Mental and physical health are the most important factors affecting workplace productivity, according to an [open-access paper](#) published in the June 2019 *Journal of Occupational and Environmental Medicine*. Four main determinants of employee productivity were identified: mental health, physical health, job characteristics and support from the organization. "There is a need for a more tailored strategy to improve employees' well-being as well as the overall organizational, work and management culture," Martin Stepanek of Charles University, Prague, and colleagues said in the paper. They concluded that employers need to address the source of physical and mental health problems "through supportive management, promoting more inclusive work atmosphere, and improving job satisfaction in a healthy work environment."

Sit Less, Stand More.....

Office workers who were encouraged to stand while working significantly decreased their sitting time and reported better psychological health and job performance, according to research published in *BMJ*. In the study, 146 office-based hospital employees in England were randomly assigned to a Stand More AT (SMaRT) Work intervention or to a control group. The SMaRT participants received a height-adjustable workstation and a vibrating cushion that prompted them to avoid prolonged sitting. They received feedback on sitting and standing times and brief coaching every three months. Sitting time was measured with an accelerometer worn on the thigh. The control group continued with usual practice. Compared to the control group, the intervention group had improved behaviors related to sitting and standing times, job performance, work engagement, occupational fatigue, sickness absenteeism, daily anxiety and quality of life. No differences were seen for sickness absenteeism.



Citation: Effectiveness of the Stand More AT (SMaRT) Work intervention: cluster randomised controlled trial; C Edwardson, et al.; *BMJ*, Oct. 20, 2018.

Traffic Noise Effects

People exposed to aircraft, road or railway traffic noise are at increased risk of illness, including cardiovascular disease and depression. However, it is unclear how combined exposure to different types of noise affect disease risk. A comparison of two different models used to estimate disease risks associated with combined traffic noise – conventionally performed energetic addition of noise and epidemiological risk multiplication – shows that the latter method may provide more accurate data. If confirmed in further studies, the findings may influence noise protection measures and traffic planning strategies, researchers said.

Citation: Is the whole more than the sum of its parts? Health effects of different types of traffic noise combined; A Seidler, et al.; [Int J Environ Res Public Health](#), May 13, 2019.

Regulatory Update

Chemical Exposures

Occupational exposure limits (OELs) have not been established for many chemicals used in the workplace. In response, the National Institute for Occupational Safety and Health (NIOSH) has introduced the [Occupational Exposure Banding Process for Chemical Risk Management](#), which can be used to assign chemicals to categories based on their toxicity and exposure-related health outcomes. Exposure banding involves a voluntary, systematic process that uses qualitative and quantitative hazard information to identify potential exposure ranges. Users can band a chemical manually or use an automated occupational exposure banding [e-tool](#).

Cotton Dust Standard

OSHA has updated its landmark [Cotton Dust Standard 29 CFR 1910.1043](#), which describes how occupational spirometry tests must be conducted to protect workers' respiratory health. Of particular importance are requirements for evaluation of worker spirometry results in medical surveillance paragraph 1910.1043(h)(2)(iii), mandating that [National Health and Nutrition Examination Survey \(NHANES III\)](#) reference values and Lower Limits of Normal (LLN) be used. Mandatory Appendix D has also been updated, requiring, among other elements, that real-time graphical displays be available while the spirometry test is being conducted to help technicians elicit maximal forced expiratory maneuvers from their subjects. Some spirometer manufacturers design their equipment to meet Cotton Dust Standard specifications, which now comply with American Thoracic Society recommendations.

Driver Hours of Service

The Federal Motor Carrier Safety Administration (FMCSA) has published a [notice of proposed rulemaking](#) on proposed changes to hours-of-service rules. In response to public comments, the agency has proposed five key revisions:

1. Increase flexibility for the 30-minute break rule by tying the break requirement to eight hours of driving time without an interruption for at least 30 minutes, and allowing the break to be satisfied by a driver using on-duty, not-driving status, rather than off-duty status.
2. Modify the sleeper-berth exception to allow drivers to split their required 10 hours off duty into two

periods: one period of at least seven consecutive hours in the sleeper berth and the other period of not less than two consecutive hours, either off duty or in the sleeper berth. Neither period would count against the driver's 14 hour driving window.

3. Allow one off-duty break of at least 30 minutes, but not more than three hours, that would pause a truck driver's 14-hour driving window, provided the driver takes 10 consecutive hours off duty at the end of the work shift.



4. Modify the adverse driving conditions exception by extending by two hours the maximum window during which driving is permitted.
5. Change to the short-haul exception available to certain commercial drivers by lengthening the drivers' maximum on duty period from 12 to 14 hours and extending the distance limit within which the driver may operate from 100 air miles to 150 air miles.

The proposed rule would not increase driving time and would continue to prevent operators from driving for more than eight consecutive hours without at least a 30-minute change in duty status.

Driver Testing Rules

The FMCSA also recently announced a [proposed rule](#) to allow commercial driver's license applicants to take general and specialized knowledge tests in a state other than their state of residence. The intent is to provide greater flexibility for driver applicants by reducing time and travel expenditures while having no detrimental impact on safety. Under the proposed rule,

a state would not be required to offer the knowledge tests to out-of-state applicants. However, if the testing state elects to offer the knowledge tests to these applicants, it would transmit the results to the state of domicile, which would be required to accept the results.



Mine Safety

The Mine Safety and Health Administration (MSHA) has completed a major upgrade to the Mine Data Retrieval System (MDRS) to improve functionality and navigation. The MDRS offers a variety of tools to help operators monitor compliance with MSHA regulations. The system provides access to comprehensive mine location, status, ownership, employment, production, accident/inspection/violations history, and health sampling data. Additionally, MSHA's compliance assistance calculators – Pattern of Violations (POV), Significant and Substantial Rate and Violations per Inspection Day – can be accessed [here](#).

Silica Standard

The Occupational Safety and Health Administration (OSHA) is requesting information on additional engineering and work practice control methods to effectively limit exposure to silica for the equipment and tasks listed on Table 1 of its [Respirable Crystalline Silica Standard for Construction](#). It is also requesting information on other construction equipment and tasks that generate silica that it should consider adding to the table. In addition, OSHA is seeking comments about whether to revise paragraph (a)(3) of the [Respirable Crystalline Silica Standard for General Industry](#) to broaden the circumstances under which general industry and maritime employers would be permitted to comply with Table 1 of the silica standard for construction. Comments are due Oct. 14, 2019. Refer to the [Federal Register notice](#) for submission details.

Workers' Compensation Roundup

The National Council on Compensation Insurance tracks state legislative activity on workers' compensation rules. It recently reported the following:

Connecticut: SB 921 amends General Statutes related to the use of advanced practice registered nurses (APRNs), in part, to allow:

- *The state Workers' Compensation Commission chairman to add APRNs to the list of approved providers.*
- *APRNs who are certified as a psychiatric mental health provider by the American Nurses Credentialing Center to diagnose a firefighter with post traumatic stress disorder after the firefighter witnesses the death of another firefighter in the line of duty, for purposes of workers' compensation. (Current law already applies to licensed and board-certified mental health professionals.)*
- *APRNs to conduct physical exams for municipal firefighters and police officers upon their entry to service, which may be used in future workers' compensation claims involving cardiac emergencies.*
- *Hawaii: Laws taking effect Oct. 1, 2019, grant employees the right to have a chaperone present during a medical examination relating to a work-related injury and, with the approval of the examining physician or surgeon, to record the examination. The regulatory change prohibits the chaperone from obstructing the examination process.*

Insurance Journal reports the following:

Oklahoma: A bill signed into law by the governor (HB 2367) grants an increase in the total temporary disability cap to 70 percent of an employee's average weekly wage (with a maximum of the state's average weekly wage) and in the maximum permanent partial disability rate to \$350/week for two years. It also allows for an increase to \$360/week in 2021 and an extension of the maximum number of weeks to 360. In addition, it approves use of American Medical Association guidelines, 6th Edition, in the workers' compensation system.

Health Promotion Programs

Study Suggests Need for Customized Approach

A comprehensive approach to workplace health promotion includes programs, policies, benefits and access to community resources designed to meet the health and safety needs of employees.

In a study on *Availability of and Participation in Workplace Health Promotion Programs* involving 17,469 employed adults, nearly 47 percent of respondents had access to workplace health promotion programs, with a 58 percent participation rate, researchers from the National Institute for Occupational Safety and Health reported in the *American Journal of Health Promotion*.

Noted barriers to participation included time constraints, lack of awareness, little to no supervisory support and no perceived need.

Study Findings

The study examined sociodemographic, occupation and work organization characteristics in U.S. working populations.

Sociodemographic:

- Program participation increased along with levels of education, family income and personal earnings.
- Workers aged 30 to 64 were more likely than younger workers to participate.
- Non-Hispanic black workers were more likely than non-Hispanic white workers to participate.

Occupation:

- Computer and mathematical occupations had the highest availability of programs (76 percent).
- Workers in farming, fishing and forestry had the least access to programs (3 percent).
- Occupations with the highest participation rates were arts, design, entertainment, sports and media (68 percent among those with access); management (68 percent); and community and social services (67 percent).

Work Organization

- Work locations with permanent positions were more likely to offer programs compared to those with non-standard work arrangements (i.e., independent, temporary or contract), hourly workers, or evening and rotating shifts.
- Workers who supervised others were 13 percent more likely to participate than non-supervisors.
- Employees who worked less than 20 hours a week, worked regular night shifts, were paid by the hour, or worked for temporary agencies were less likely to participate.

Employers who take steps to mitigate hazardous conditions should also have policies, programs and practices that advance the safety, health and well-being of the workforce, researchers said. That includes asking workers' for input about their interests before designing and implementing programs.

"Workers have different needs and circumstances, depending on factors such as occupation, working night shifts or being paid by the hour," said Dr. Rebecca Tsai, epidemiologist and lead author of the study. "We recommend that employers tailor their workplace health promotion programs based on their specific work organization characteristics in order to maximize participation."



Executive Editor

William E. Nixon, President and CEO

Editor-in-Chief

Karen O'Hara, Director, Marketing and Communications

Editorial Assistant

Bernadette Greaney, Marketing & Communications Associate

Graphic Design

Christine McClain, Lead Graphic Designer

Please send your questions, comments and editorial contributions to karen.ohara@workcare.com

WorkCare, Inc.

*800.455.6155 • info@workcare.com • workcare.com
Vitality Atlas is published quarterly by WorkCare, Inc.*

*300 S. Harbor Blvd., Suite 600, Anaheim, Calif. 92805
©2019 WorkCare, Inc. All Rights Reserved.*

**Protecting and Promoting Employee Health -
From Hire to Retire**