Job Ready Services

December 2010

Is Obesity a Worker's Comp Issue?

Boston Gourmet Pizza v. Childers: In this case, the employer was ordered to pay for gastric bypass surgery for an injured employee so that he could undergo a spinal fusion surgery. The physician in the case stated that without the gastric bypass, the surgery was "doomed to fail." Even though the employee was overweight at the time of hire (340 lbs), the courts ruled that this had no bearing on the fact that the injury occurred in conjunction with pre-existing conditions. **Furthermore, there was no objective evidence of the employee's obesity prior to being placed on the job.** The courts ruled that it was indisputable that the back injury occurred on the job and that the employer was required to treat the injury, which includes the precursor gastric bypass.

Schnipke v. Safe Turf: Craig Schnipke, an employee of Safe Turf Installation Group, reported that he was turning and rotating to take a bag off a machine when his knee popped and he felt instant, severe pain. Schnipke suffered a torn right medial meniscus which eventually required surgery. His physician opined that his injury was caused by his work activities. Safe Turf said that Schnipke was merely walking when he claims he felt the pain, therefore the injury was the result of his large size. Schnipke was six-foot-eight and weighed more than 400 lbs.

The court ruled unanimously in favor of Schnipke, saying he should receive workers' comp benefits. In the opinion of the court, "Granted, the weight that Schnipke put on his knee as he was turning was substantial, **but employers must take their employees as they find them**." [Not true!]

A Duke University Medical Center analysis found that obese workers filed twice the number of workers' compensation claims, had seven times higher medical costs from those claims and lost 13 times more days of work from work injury or work illness than did non-obese workers. That being said, just being obese does not preclude someone's physical ability to do the job – the employee's **physical capacities to safely perform the essential functions of their job**, should be the deciding factor on whether they are safe to do the job.

Not only could obesity be a major factor for the employees themselves, but for those employees who are **in charge of the caring for the obese.** As patients get heavier, so do the job tasks of those who care for them. If they are not physically able to lift the patients for whom they care, they not only put themselves at risk of injury, but the patients and their co-workers as well. A risky nightmare for employers.

Just being obese is not necessarily an indicator that someone is "not capable" to do a job – the necessity comes in proving the employee has the **safe physical ability** to do the essential functions of their job. For example, if the job requires the ability to enter a confined space that is too small for the person to enter due to their physical size, then that person could be deemed "not capable" of being able to perform the duties of that job. However, if the employee is physically capable of doing the job, but is injured later, **objective evidence of pre-existing** factors could assist the employer in identifying their responsibility in returning the employee to their pre-injury state.

Post offer testing would: 1) provide **pre-existing information** on the employee's height and weight PLUS their ability to do the job (VERY important for ADA and EEOC purposes); and 2) determine the safe lifting ability of those persons who are in charge of the care of obese patients.

For more information about post-offer employment testing, contact us at Job Ready Services, visit our website: www.jobreadyservices.net or visit the WorkSTEPS website: www.worksteps.com.

Who's GINA?

GINA is the Genetic Information Nondiscrimination Act – **it prohibits employers from requesting or requiring genetic information about their employees (including family medical history).** Some interesting interpretations of this act have been in the courts recently. According to an article by Jackson Lewis attorneys, employers need to beware of "water cooler" talk that might be interpreted as probing questions about family medical history. The interpretation of what is considered an "inadvertent" acquisition of information has been a point of some dispute. It may be all right to ask an employee how they are doing or how a family member is doing, when undergoing medical treatment. However, if follow up questions include "do other family members have this condition?" or "Have you been tested for this condition?", then these could be considered "probing" questions and will lead to the illegal acquisition of information.

Are you absolutely clear about your rights under federal regulations such as the **ADA, EEOC and GINA?** Can you afford to hire your **next worker's comp claim?** Are you sure that your **aging workers** are safe to do their job? If you answered "No" to any of these questions, you might want to attend our …

5th Annual Seminar:
Reducing Worker's Comp Costs From Hire to Retire.
Thursday, February 10, 2011
One Eleven Place in Cary, NC
Register online: www.jobreadyservices.net
Click on "Education" tab

Lunch & Learns at Job Ready:

THURSDAY, JANUARY 20, 2011
12:00pm -1:00pm
Chiropractic Care in NC Worker's Comp Arena
Dr. Thomas Ayres
Job Ready office in Raleigh
Approval pending: OHN, CCM
Register/RSVP by January 18
www.jobreadyservices.net and click on "Education" tab

THURSDAY, FEBRUARY 24, 2011
(Re-scheduled from 12/9/10)
12:00pm-1:00pm
Motion Loss: Clinical Outcomes and Financial Burden
Lucas Dinga
Job Ready office in Raleigh
Approved: CCM, CRC (1 hr)
Register/RSVP by February 22
www.jobreadyservices.net and click on "Education" tab
Or, contact Michelle Morgan:
michelle.morgan@jobreadyservices.net

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