
CSI NEWS

Celly Services, Inc.

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Investigate Accidents: Save Money & Fight Fraud

A prompt, accurate and thoughtful accident investigation can, simply stated, save money and fight fraud. First, it is state law that mandates that an employer investigate each accident and take corrective measures to prevent repetition of accidents. Secondly, a written investigation report can be reviewed by senior management or the safety committee to undertake steps that would prevent such accidents in the future. Last and not the least, such reports can be useful ammo in fighting the 3F-Fictitious, Fraudulent or Frivolous claims. In summary, as an employer, it is your duty to provide a safe workplace and also to ensure that any worker's compensation claim is legitimate and preventable in the future.

Employers who have seen their premium sky-rocket have been a victim of either repeat accidents within the same job-function or the proverbial "milking the system" 3F claim. When an accident occurs, the fact-finding approach should begin immediately, within the same day or within a day. We have drafted a form that is enclosed for your review and use.

CSI recommends that each department have at least one individual trained and designated to investigate accidents and forward the report to the manager. The manager, in turn should be able to review all reports, investigate claims, and communicate with the insurance company and the treating physician. Also, if a fraud is suspected, an investigation by the workers' compensation insurance should also be triggered.

While the enclosed form will document facts related to the accidents, the investigator should be cognizant of certain issues as follows:

- Check witnesses who saw the accident and also saw the loss of body motion, if any. Case: Employees walk away from the scene stating they are ok but later state that they have severely limited body functions.
- Was the employee injured at work and during normal work function? Case: Business office employee wearing high heels, slip and fall while walking through greasy shop floor.
- Was a non-employee the cause of the accident? Third party may be liable.
- Employee injured while not doing work duties. No AOE or COE may make injuries non-compensible.
- How much time elapsed between the accident and reporting to management. Longer the time, the greater the probability of a questionable claim!
- How long has the employee worked for you? Fraudulent claims are usually filed by newer employees.
- If the employee was injured and has temporary disability, can we bring him back to an alternative work function during the disability period? This usually saves the employer a lot of money. θ

Strike 300

California has exempted New & Used Car dealers from injury recordkeeping requirements such as those outlined in OSHA Log 300. In doing so, California has followed federal law that has exempted car dealers since the earlier Log 200 came into existence. However, the reporting of workplace incidents, that result in a serious injury or illness, to OSHA within 8 hours as required under Title 8 Section 342 of California Code of Regulations, is still a requirement.

CSI believes that even though the regulatory requirements for injury recordkeeping have been removed, it makes sense to keep a log of injuries just for internal review. The log can alert the management of repeat offenders or repeat causes of accidents. Repeat offenders can be counseled or if fraud is suspected, the incident can be followed by a formal investigation. A quick scan of the log during safety committee meetings can lead to scheduling employee training or purchase of new safety equipment. In summary, the log (even though not a government requirement any more) is sure a valuable tool in tracking accidents, eliminating sources of injuries & highlighting fraud operators.

(Ref: Title 8 CCR Section 14300.2 Appendix A). θ

What's Up?

It's your workers' compensation insurance bill. Again! After about a 35% increase in 2000 and 20% in 2001, the premiums will rise again in January 1, 2003 and beyond, thanks to a bill signed by Governor Davis earlier this year. The benefits have increased for the first time since 1996 and the Governor calls the new rate fair and not an undue burden on business.

Assembly Bill 749 will cost employers in the Golden State a hefty sum, about \$2.5 billion over the next four years in temporary and permanent disability coverage, as well as death benefits. Actual benefits go up in a tiered fashion as follows:

- Death benefits go up to between \$250,000 to \$320,000 depending on the number of dependents, virtually doubling from the current level.
- Minimum weekly temporary disability and permanent total disability benefits go up from \$79 to \$126.
- Maximum weekly permanent partial disability benefit goes up to \$230/week for partial disability rating of less than 70% and \$270/week for rating of more than 70%. Present benefits range from \$140 to \$230/week.
- Maximum weekly benefits, currently at \$490/week for temporary disability and permanent total disability go up as follows:
 - Jan. 1, 2003 - \$602/week
 - Jan. 1, 2004 - \$728/week
 - Jan. 1, 2005 - \$840/week *

*Cost of living adjustment annually after 1/1/2006 for all TD & PTD injuries after 1/1/2003. θ

Empty or Contaminated Containers

Inspectors from local health departments visit dealerships and find aerosol cans with solvent and propellant in them disposed of in the trash. Employees, not patient with the can being "empty" according to regulations, dispose the can in trash violating state and local regulations. Inspectors find this a violation and writes-up the dealership. The purpose of this section is to guide the dealership on disposal of empty contaminated containers. According to state regulations, the definition of an "empty" container is as follows:

- If the container stored has a hazardous liquid, then it must be completely drained so that no liquid can drain from the container when is tilted or held upside down.
- If the container stores a solid or known portable hazardous material (powder, sludge, grease, thick resins, etc.) it must be completely scraped out with no remaining buildup inside the container.
- Aerosol containers are "empty" if the contents and pressure are completely dispensed and the spray mechanism is in place and not defective and it is not reactive waste (i.e., where the container may explode).

Dealerships must note that empty containers not meeting the definition above must be disposed of as a regulated waste.

Effective January 1, 2002, the state has expanded the Universal Waste regulations to aerosol cans and issued directives for their management. Details on Universal Waste were discussed in great detail in the November 2000 newsletter. Universal Waste is the new EPA designation that lessens the regulatory burden of the generator as compared to handling the material as a hazardous waste. In the new regulations, on-site puncturing and draining of aerosol cans does not require a permit if carried out within certain parameters prescribed by the state, and provided a notice has been served to the local regulating agencies. Offsite treatment of aerosol cans will still require a permit. CSI does not recommend that dealers start recycling aerosol cans on-site as this requires special equipment and specific training. Management should dispose of empty aerosol cans into the dumpsters and

continually instruct employees to completely “empty” the aerosol cans. The management should continue to monitor disposal of aerosols into the dumpsters as well.

In disposing of the empty containers other than aerosols, the dealership should consider recycling options first. Solid waste facilities (landfills) should only be a last resort. Any disposal of empty containers to a landfill must be transported and packaged in accordance with state of Cal EPA and Department of Transportation (DOT) regulations.

The following additional requirements must be met for “empty” containers with greater than 5 gallons in capacity:

1. The container must be marked with the date it was emptied.

2. The container shall be managed within one year of being emptied.
3. The generator shall provide the name, street address, mailing address and telephone number of the facility where the “empty” containers have been shipped. This information shall be maintained on-site for 3 years by the generator.

Note: Local administrative agencies in certain jurisdictions may have regulations that are more stringent than the regulation described above. Also, the level of enforcement activities may differ from city to city and as such, inspectors demands differ.

(Ref: Title 22 California Code of Regulations) θ

“Empty” Container Disposal Options

Disposal Options for Empty Containers	Empty Container of 5 Gallons or Less in Size	Empty Container of Greater than 5 Gallons in Size	Empty Aerosol cans	Absorptive Containers (wood, paper, bags, etc.) which has not absorbed any hazardous material	Empty Compressed Gas Cylinders (at atmospheric pressure)
To the original SUPPLIER for refilling	OK	OK	—	OK	OK
To a DRUM RECONDITIONER	OK	OK	—	—	—
To a SCRAP METAL/PLASTIC or other legitimate authorized recycling facility	OK	OK	OK	OK	OK * Remove valve stem (ensure cylinder is completely empty)
*To a solid waste facility (top of container must be removed and appointment may be needed for bulk amounts)	OK	OK No containers greater than 5 gallons will be accepted at the local landfills	OK Spray nozzle must be in place	OK	OK * Remove valve stem
To a HAZARDOUS WASTE disposal facility (TSDF)	Requirement if container is not “empty”	OK	Requirement if spray nozzle broken or the can is not empty	Required if hazardous material absorbed into container	Required if not “empty”

* Needs sophisticated machinery and trained operators. Dealerships should avoid such operations.

Tires – Keep on Trucking Part II

New laws were enacted in 2000, that require car dealers and tire dealers who generate waste tires and other haulers & processors to comply with new legislation by participating in the Tire Manifest System for the accounting and tracking of used and waste tires within the state of California. Now a new three page manifest has been prepared and a new ID number is being issued!

Dealers who are generating waste tires must complete the manifest at the time of each pickup. Currently some haulers are leaving a receipt having the same information as a manifest. The state

officials have informed CSI that such a “Milk-Run” procedure is ok so long as the receipt has all the information on the manifest. In July, the “Milk-Run” exemption goes away and the state mandates that a carbon-less three-page form be completed by generators for each pickup. The top part gets mailed to the California Integrated Waste Management Board, and a copy each is kept by the generator and hauler. The board intends to reconcile the manifests and violators will then be subject to civil penalties.

The state is also issuing a unique Waste Tire Generator Number to each waste tire generator. Fortunately, you do not have to apply for one, a

number will be automatically generated against your name if you are paying into the California Tire Fee Program. Of note, other requirements such as submitting a quarterly summary statement to the Board and paying \$1.00 per tire fee to the state remain intact.

State will have training and orientation programs this summer on the new rules effecting handling of waste tires. Visit, www.ciwmb.ca.gov/tires/manifest/

(For further details, review our newsletter from November 2001). θ

Manifest Violations Are Expensive

Dealers are required to complete a uniform hazardous waste manifest for disposal of hazardous waste at their facility. The manifest is a six page, multi-colored state of California document that has certain procedural requirements. Violations of these requirements have subjected a shop in Orange County to a \$23,500 penalty.

Dealers are exempt from manifest requirements for waste oil, waste antifreeze, waste oil filters, waste parts cleaning solvent (both petroleum-based and water based) and oil water sludge up to 500 gallons. For waste thinner in the bodyshop, certain haulers have "Milk-Run" exemptions, exempting dealers from manifest requirements. Certain dealers are still managing their coolant and solvent wastes under a hazardous waste manifest. Following manifest procedures, when none is required under the code is not a smart idea. The dealership has to spend extra time. See details below. There is a fee per manifest. Lastly, non-compliance brings penalties!

When completing a manifest, the generator is responsible for accuracy of information on the manifest. Of six copies, one yellow copy "Generator Retains" is left at the dealership at the time of pickup along with a blue copy that the dealership mails to the Cal-EPA DTSC in Sacramento. Within 30 days, a second yellow copy "TSDF sends this to Generator within 30 days" arrives at the dealership. The dealership should match the manifest number on the two yellow copies and file them. If the second yellow copy is not received from the recycling facility within 45 days, a manifest exception report is to be filed with DTSC, Cal-EPA in Sacramento. Details of the procedure are also available in the black compliance box prepared by CSI.

The shop, in the case at hand, failed to file manifest exception report with DTSC on 17 occasions and hence the penalty. CSI recommends that a responsible individual be tasked with handling of the manifest procedure. Also, the dealership should make sure that the hauler and the treatment facilities are properly licensed and permitted. A complete permitted facility list is also available at www.dtsc.ca.gov.

(Ref: Senate Bill 606, O'Connell). θ

First Aid/CPR Training (Widow Protection)

California law requires that in the absence of a clinic or hospital in near proximity to the workplace, which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. The training provided to dealership staff must be equal or better to that of American Red Cross.

Cal-OSHA has defined "near proximity" in the code to be that employee be able to receive CPR or first aid within 4 minutes. This is based on data from medical literature that suggests that following the occurrence of a cardiopulmonary arrest from any precipitating cause, those who receive CPR within the first four minutes do far better than other who do not receive care within that time frame. In reality, response sometimes has been more than four minutes even when paramedics are across the street! Training under such circumstances sounds prudent.

In urban areas, most of the paramedic facilities are located/planned so as to meet the 4-minute deadline within that jurisdiction. If the dealership is beyond the four-minute distance from the paramedics, first aid and CPR training is required for facility personnel. State of California Office of Emergency Services recommends that 1 in 7 (14%) of the staff be trained to deal with the big earthquake, when it comes. The definition of first aid and first aid kits was also discussed in great detail in our November 1999 Newsletter.

(Ref: T8CCR3400(b)). θ

The **CSI News** is a periodic publication of CSI and It should not be considered as legal advice or legal opinion on any specific facts or circumstances. The contents are for general information purposes only. For further information regarding issues addressed in this publication, please contact Sam Celly, MS, JD, REA, CSP.

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