



Oil Patch Quarterly

Exclusive Program Managed by Sisk & Company

Second Quarter 2010

INSURANCE NOTES

MSEA Strength in Numbers Benefit 401(k) Plans

Earlier this year Sisk & Company announced the *MSEA health care initiative* and to date we are finding that businesses who have signed up to get health insurance under the plan have been able to realize savings of 12% to 29%. Every business is unique, but for those businesses that qualify, the MSEA health plan programs can be a very good deal.

The concept Sisk & Company used to leverage the MSEA has been working to the benefit of MSEA members, by allowing them to get the best programs at the best prices. By extending the strength of the MSEA beyond the workers' compensation and health programs and into the area of 401(k) plans, we are seeing interest by major companies wanting to offer special programs and incentives.

Per Todd Heiserman, Manager of Benefits, Sisk & Company, "The 3000 member strong MSEA allows

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Video Showing Hazards of Hot Work Available

The U.S. Chemical Safety Board (CSB) recently released a 14 minute safety video warning of the hazards of welding and other hot work activities in and around storage tanks containing flammable materials. The "Dangers of Hot Work" video presents key lessons from an accident where three workers were killed in July 2008 during a hot work-related explosion.

Hot work is defined as burning, welding, or similar spark-producing operations that can ignite fires or explosions. Since March of this year, nationwide there have been at least 11 hot work accidents resulting in five fatalities and 14 hospitalizations. Included in these events is the explosion and fire at the Navajo Refining Company that killed two workers and injured two others in Artesia, N.M., where a crew of insulators was reportedly working on a crude oil storage tank.

The video uses 3-D computer animations to depict three hot work accidents at Partridge-Raleigh, an oil production site in central Mississippi; the Bethune Waste Water Treatment Plant in Daytona Beach, Fla.; and the Motiva Enterprises Refinery in Delaware City, Del.

The video also features an interview with John Capanna, who suffered burns over ninety percent of his body following a hot work accident while he performed maintenance activities at a refinery in New Jersey in 1979.

The video is available for viewing and downloading on CSB's website as well as the agency's YouTube channel. Free DVD's can be requested by completing the online request at www.csb.gov.

In the past several years we have seen fires at locations and tank batteries in Colorado. If you have questions about what you can do to prevent these devastating fires, call Dan Klimek at Sisk & Company (303)831-7100. We can work with MSEA members to help them set up a hot work program.



LESSONS LEARNED

When is Employee Travel Compensable?

Case 1. A worker was employed in Battlement Mesa, but lived in Greeley. On the date of injury the employee left work and drove toward Greeley to attend a personal meeting. Prior to reaching Greeley the employee was involved in an accident. The Employer provided gas, maintenance and \$50 a day for use of the employee's personal vehicle. The injured worker filed a claim alleging he was in travel status. The claim was denied and upheld at hearing.

The Lesson:

Ordinarily an employee injured traveling to or from work is not entitled to workers compensation. However, travel required by the employer may fall within the course and scope of employment thus causing the injuries sustained while traveling to be compensable. (If you have questions about "travel required by employment, call Dan Klimek and we will work with Pinnacol to review your specific situation.)

Case 2. A worker was injured on a Friday evening while off duty and when out of town due to a job assignment for the employer. (The employee slipped in a parking lot while out for dinner.) In this case the claim was determined to be compensable.

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Lessons Learned

OSHA to Verify that Employees Understand Safety Training

Many OSHA standards require employees receive safety training. Some of these standards simply state that an employer must provide employees with safety training or instruction, while other standards require the training or instruction to be "adequate" or "effective." There are no OSHA standards that specifically require safety training to be translated into a language or format which all employees will understand. However, OSHA interprets its training standards as requiring employers to present safety training "with comprehensibility in mind."

For example, if an employee does not speak or comprehend English, OSHA takes the position that safety training must be presented to the employee in a language which he or she can understand. Likewise, if an employee understands English but is illiterate, an employer cannot satisfy its training obligations by telling the employee to read training materials.

OSHA has recently instructed its inspectors to issue "Serious" citations under applicable training standards if a "reasonable person" would conclude that the employer has not provided safety training to its employees in a format which they are "capable of understanding." Inspectors have been directed to look beyond an employer's written documentation of safety training and investigate whether employees actually understood the elements included in the training.

What should employers do to avoid a citation and ensure that their employees understand the safety training that they receive? An approach is for employers to realize "that if they customarily need to communicate work instructions or other workplace information to employees at a certain vocabulary level, or in language other than English, they will also need to provide safety and health training to employees in the same manner." Employers may find it worthwhile to:

- Adopt simplified safety rules and "plain English" restatements of OSHA requirements.
- Utilize written tests, translated where necessary, to confirm employee knowledge.
- Where reading comprehension presents an issue, draft policies and training materials with diagrams or pictures, showing the "right way" and the "wrong way" to perform the job.
- Verbally quiz employees with language or reading comprehension barriers, making certain to document the determination that the employee adequately understands the materials.
- Use a documented task evaluation that requires employees to actually demonstrate how to safely perform a job, such as putting on a safety harness or locking out a piece of equipment.

These efforts may go a long way toward ensuring that employees understand the safety training they receive and convincing OSHA that training was presented in a manner that employees were capable of understanding. *Article based on information from Rod Smith of Sherman & Howard L.L.C*

MSEA Health Care & 401(k) Plans ---

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us to approach the major insurance and financial companies with a group that gets their attention. As a result, they are providing products and services to smaller companies that in the past were only available to large companies.”

Whether a MSEA member company is large or small, a 401(k) plan can help get more value from employee benefits offered. A 401(k) plan can help attract and retain key employees. But it is important to make sure the program is set up to operate as efficiently as possible.

As the industry improves, all business owners will likely face situations where there will be competition for experienced employees. It is well accepted that a 401(k) plan as part of a benefit program can help retain good employees and help attract the best candidates. At Sisk and Company we know firsthand how the cost of providing these programs can impact the bottom line.

You owe it to your business and yourself to contact Tom Sisk or Todd Heiserman at (303) 831-7100 to discuss options for setting up 401(k) plans. You also need to ask about the remarkable MSEA health care initiative that has benefited MSEA members looking to offer health care at some of the best rates available.

OSHA Issues Clarification on FRC for Oil Patch

In March of this year OSHA issued a clarification on how citations might be issued regarding the use of FRC under the general industry standards and how this applies to situations when working on locations.

The OSHA letter of interpretation, (can be found on PetroDocs) addresses the need to provide and use FRC during certain drilling, servicing, and production-related operations. The guidance provided is intended to resolve inconsistent use among drilling contractors, well servicing contractors, and oil and gas companies as it relates to the use of FRC. OSHA inspection history indicates a potential for flash fires during well drilling, servicing, and production-related operations. As such FRC is expected to be used.

Where FRC is not being used by workers in these operations, a citation under 29 CFR 1910.132(a) may be issued. The issuing of a citation requires evidence that a reasonable person familiar with the circumstances would have recognized a hazardous condition warranting the use of that equipment and the use would likely prevent injury.

Contact Dan Klimek at 303-381-7100 for a copy of the letter of interpretation or a link to the posting on the OSHA website.

OSHA NEWS

OSHA Penalties to Increase

The U.S. Department of Labor's Occupational Safety and Health Administration, in an effort to address urgent safety and health problems facing Americans in the workplace, is implementing a new “Severe Violator Enforcement Program” and increasing civil penalty amounts.

The new Severe Violator Enforcement Program (SVEP) is intended to focus OSHA enforcement resources on recalcitrant employers who endanger workers by demonstrating indifference to their responsibilities under the law. This supplemental enforcement tool includes increased OSHA inspections in these worksites, including

mandatory OSHA follow-up inspections, and inspections of other worksites of the same employer where similar hazards and deficiencies may be present. SVEP became effective June 2010.

OSHA believes the SVEP will help concentrate efforts on those repeatedly recalcitrant employers who fail to meet their obligations under the Occupational Safety and Health Act. It will include a more intense examination of an employer's practices for systemic problems that would trigger additional mandatory inspections.

For more information, visit this web site:
<http://www.osha.gov/dep/svep-directive.pdf>.

Lessons Learned --- Continued from Page 2

The Lesson:

If, as part of employment, an employee is required to travel out of town with overnight stays paid for by the employer, then nearly any injury would be considered work related. **This analysis is based on the interpretation that this out of town travel is a special part of the employment and directly benefits the employer.** (If travel is not over night, then time spent traveling and distance traveled as well as a deviation from the route would be considered to determine compensability.)

Factors to consider when determining compensability for travel:

- Company provided vehicle
- Company pays / reimburses mileage
- Room, board and meals paid
- Travel is considered a part of the job
- Travel benefits the employer
- Employee is directed to travel, car pool, or drive others.

NOTES FROM DAN

As the second quarter of 2010 comes to a close, I am reflecting on several important issues:

SafeLand Training --- The MSEA has been providing PEC SafeLand Basic training for MSEA member companies at training fees much lower than are offered anywhere else. As of the writing of this article, we have provided training for 170 employees of MSEA member companies during May and June. More classes are being scheduled and there is still time to contact Sisk & Company to learn about this huge benefit that is available to MSEA / Sisk and Company clients.

Colorado Cost Containment --- We have been emphasizing the need for MSEA members to work toward cost containment. The basic programs that most members must have as part of the PEC / ISN score cards are very similar to the steps required for cost containment. With a few minor additions, the steps for Colorado Cost Containment can be achieved.

When a business earns Cost Containment, they qualify for a 5% workers' compensation premium discount. In addition, the safety benefits that cost contained companies realize usually lead to lower emods. All this saves money! Call me at 303-831-7100 to discuss.

Contact Information

The Mountain States Energy Alliance (MSEA) is a not for profit association dedicated to helping members create a safer work environment in the oil and gas industry. The MSEA offers an exclusive workers' compensation program underwritten by Pinnacol Assurance for its members. MSEA members receive a 4% discount on their workers' compensation premium and may also qualify for a dividend payment based on favorable loss experience of the group. To see if your company qualifies for the program or for more information about the MSEA program contact one of the following.

Mike Eastop
Dave Tacha
Tom Sisk

For benefit information contact:
Todd Heiserman

The following websites provide excellent insurance and safety information:

www.tjsisk.com
www.gomsea.org
www.petrodocs.com

If you have questions or comments about this newsletter, contact:

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