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Small Business & Workers' Compensation Claims: Early precautions - Less Hassle

by Walter Kelley, Attorney at Law
Wilmer & Lee, P.A.

An on-the-job injury and resulting workers' compensation lawsuit can be very stressful matters for all parties involved. A legitimately injured worker may be hesitant to report a job-related accident out of embarrassment or a sense of loyalty to his employer. An employer faced with a workers' compensation claim may be suspicious of certain alleged injuries, or may feel it is unfair that the employer, through its workers' compensation insurance carrier, becomes responsible for the employee's medical expenses, indemnity benefits, and even job retraining. All of these and many other troublesome issues can be compounded **when the employer is unprepared for the potential occurrence of an on-the-job injury**, no matter how remote or unlikely the possibility of an injury may seem.



The problems associated with being an unwary employer when it comes to on-the-job injuries can be especially disturbing to small employers, which often operate under the assumption that, "We're a family company. None of our employees will sue us." Tragically, some have even gone so far as to decline insurance coverage with disastrous results. The fact is that injuries can happen to anyone, and even the most faithful employee may be compelled to seek workers' compensation benefits when an injury leaves him unable to earn a living. The Alabama Workers' Compensation Act covers an employer with five or more employees. The requirements of the workers' compensation statute may seem very cumbersome, particularly for a small employer. For example, with few exceptions, an employer is liable for an employee's injuries, which arise out of and occur while in the line and scope of his employment even though the employee may have been negligent or careless. Importantly, though, the employee must report an industrial injury in a timely manner for it to be compensable. Therefore, **having a well-defined plan in the event of an alleged on-the-job injury is critical to providing prompt, effective, and curative medical care and in minimizing the potential for false claims.**

Employers of all sizes need to have a clearly established policy for reporting on-the-job injuries. Employees need to be trained during orientation that on-the-job injuries must be reported immediately, no matter how insignificant the employee may believe his injury to be. The "notice" and "timing" provisions of the Alabama Workers' Compensation Act have been widely litigated and greatly relaxed; however, the subtleties of these issues are too numerous to describe in this brief summary. Clearly, an effective "notice" requirement should designate one very specific member of management, and at least one alternate person, to whom employees must immediately report any injuries, unless the need for emergency care prevents compliance with this requirement.

At the time an accident is reported to the employer (or the employer otherwise learns of an employee's on-the-job injury), a First Report of Injury must be prepared for the Alabama Department of Industrial Relations. The employer should also develop its own injury report form which lists witness names and provides other detailed information about the occurrence of the accident and actions taken by the employer following the accident. This form should also include the name of the employer's approved

See *Precautions* on page 2

Occupational Contact Dermatitis

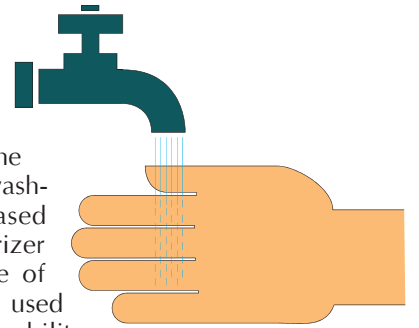
by Freddy G. McMurry, MD, MPH

The Problem:

Dermatitis (skin rash) is a common problem in the workplace and comprises approximately 20% of all reported occupational diseases. Almost every occupation or industry has potential exposure to the many various agents that can cause contact dermatitis. In addition, contact dermatitis is frequent because there are so many agents that can trigger a skin rash. The term contact dermatitis simply indicates that the skin rash was triggered by contact with an agent. The true frequency of occupational dermatitis is probably underreported since minor episodes respond to avoidance of the offending material and clear up with little or no treatment.

Contact dermatitis can be divided into two broad categories. Irritant contact dermatitis (ICD) is by far the most common accounting for approximately 80% of contact dermatitis episodes. Allergic contact dermatitis (ACD) accounts for the remaining 20%. Irritants affect almost everyone in some manner. Irritants do exactly what one would expect by directly irritating or damaging the skin, perhaps even on the very first exposure. For example, a caustic chemical may cause a severe ICD with a single exposure. ACD on the other hand requires a period of exposure during which time the body's immune system becomes sensitized to the agent. Once sensitized re-exposure to the allergen will cause a rash. It is difficult to predict who will develop ICD or ACD. There is likely significant genetic predisposition in both ICD and ACD. Individuals with underlying skin disorders, such as eczema or psoriasis, may be more susceptible but this is not universally true. There is a wide spectrum in the severity of the rash due to the same agent in different individuals, with some cases mild and some very severe.

Irritants can be mild to very severe in nature. Even soap and water are mild irritants. Health care workers frequently get a mild ICD in the winter due to frequent hand washing. Use of an alcohol based hand sanitizer with a moisturizer can help alleviate this type of ICD. Similarly, solvents are used in many workplaces for their ability to dissolve substances and facilitate cleaning of equipment. Solvents also dissolve and remove the protective oily coat from the skin. Over time this leads to a drying and irritant effect on the exposed skin. A good example of this is a painter using paint thinner to clean his equipment and by default his hands and arms. Over time a chronic ICD will develop that is very difficult to treat. Good work hygiene is frequently all that is required to prevent an ICD.



See *Dermatitis* on page 2

OHG DIRECTORY

Administration	256/922-6675
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Dermatitis from page 1

Allergens can be weak or strong. This is largely determined by the period of time required for sensitization and the attack rate among exposed people. In general, biological agents (agents from plants or animals) tend to be strong allergens. The best example is the Rhus plant family, better known as poison ivy, poison oak and poison sumac. These are very strong allergens since about 75% of exposed individuals will become sensitized (allergic) after only a few exposures. Once the immune system is primed to recognize the allergen, re-exposure results in an itchy, weeping rash within 24-48 hours. This is called a delayed hypersensitivity immune reaction in medical language. In general, synthetic chemicals that cause allergic reactions are weaker allergens since the period of time to cause sensitivity may be considerably longer (months to years) and the attack rate among exposed individuals is typically less than 10%.

Some materials can be both an irritant and an allergen. When a material can cause both ICD and ACD, typically it starts as an ICD. Once the skin is irritated the natural protective skin barrier is more easily penetrated by the allergen. A good example of this is cement. Cement is a very alkaline and thus very irritating to the skin. Cement also contains chromium, which is an allergen. Probably the worst case of a severe persisting contact dermatitis I have ever seen was due to cement dermatitis. This same type of effect can be seen in health care workers starting as ICD due to frequent hand washing (wet work), followed by an ACD due to some of the rubber chemicals found in latex rubber gloves.

Evaluation and Treatment:

The true frequency of occupational dermatitis is probably underreported since minor episodes respond to avoidance of the offending material and clear up with little or no treatment. Treatment of mild cases would include 1% hydrocortisone and good work hygiene. In general, hydrocortisone ointments work better for dry, scaly skin and creams work better for cracked and fissured skin. However, many people don't like ointments due to their greasy nature. Cases that persist require medical evaluation and treatment.

Visually it is practically impossible to tell whether a rash is ICD or ACD. They both look exactly alike. Typically, the rash is dry, scaling and cracking with fissures of the skin that will bleed at times. Infection of the skin may be present. The patient typically describes significant itching. They may be using some type of over-the-counter medication such as antihistamines or topical creams or ointments. One point to remember is that over-the-counter antibiotic ointment may have neomycin in it and some people are allergic to this, which exacerbates the rash.

Evaluation and treatment goals are pretty straightforward. First, establish if the rash is occupational or due to a personal medical issue, such as eczema or psoriasis. Eczema and psoriasis are common in the general population and have a characteristic distribution and appearance. Typically, eczema and psoriasis are not work related. One issue that may have to be addressed is aggravation of a pre-existing condition. For initial medical treatment a combination of antibiotics, antihistamines and steroids (topical, injectable or oral) may be needed to start the healing process while further evaluation is done. In addition, some sort of work restriction may be needed.

Exposure history is critical to the correct diagnosis. One point to remember is listen to the employee since through past experience with certain substances, either personally or by co-workers, the source of the rash may be obvious. Frequently, several substances are possible culprits. In this case working with the employer's safety department or human resource department is necessary to compile a list of agents to which the employee is exposed and obtain material safety data sheets (MSDS) for review. A work site visit may be helpful to evaluate the work process and workplace hygiene.

Based on the exposure history and review of any available information on the potential agents, a working diagnosis can be made. Remember that ICD is much more common than ACD. Therefore, medical treatment to clear up the rash coupled with an emphasis on keeping the offending material off the skin may be all that is needed. Industrial hygiene assessment may recommend switching to a less irritating agent in the work process, job rotation to reduce exposure time or improvement of personal protective equipment (PPE) to reduce the exposure. From a prevention standpoint, it is always best to engineer a problem out of the process though this is not always technically possible or financially feasible. For PPE to be effective, it has to be the right type and used properly.

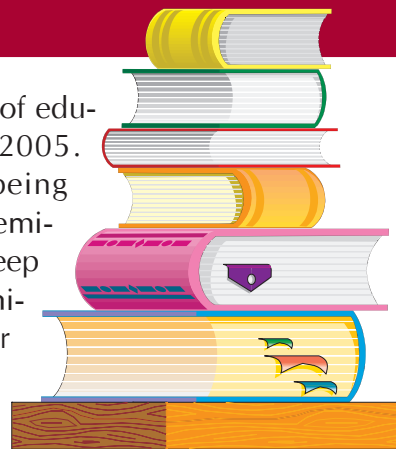
Based on exposure history there may be concern about ACD that requires further diagnostic testing. The issue with ACD is that once an allergy to a material exists even a small amount of exposure may result in continuation of the rash. Frequently, but not always, ACD requires medical removal from further exposure to the substance and in some cases the current workplace. In these individuals skin patch testing is appropriate to confirm ACD. Skin patch testing uses standardized allergen concentrations that are placed on the patient's back for two days. The patch test allergens are removed after two days and the skin observed for an allergic type reaction at the test site. It is the only way to objectively prove the existence of ACD. There are patch testing trays available for many common ordinary allergens, rubber chemicals, oils and coolants, isocyanates and acrylics to name a few.

If you would like additional information on occupational contact dermatitis, please call an OHG physician in your area.

Educational Opportunities for 2005

OHG will host a series of educational seminars in 2005. Topics are currently being planned. Some of the seminars will offer CE's. To keep abreast of the latest seminar information, visit our website periodically (www.OHGonline.org) and click on "Events".

If there is a topic that you would be interested in seeing OHG present, please email us at leslieh@hgala.org.



Precautions from page 1

occupational health provider for the particular incident. This information will be helpful in conducting an investigation following an injury.

A prompt investigation into the facts and circumstances giving rise to an on-the-job injury is important because information obtained during an investigation will often be needed to support the employer's position if an issue arises later as to the legitimacy of a claim or if a lawsuit is filed. Furthermore, employee-witnesses may leave and become unavailable, and memories may fade and change over time if investigation is postponed.

It is important to remember that the employer generally has the right to direct which medical providers an employee is entitled to seek treatment from. This is an issue that is usually handled by, or coordinated with, the workers' compensation insurance carrier. **An injured employee should be advised from the outset where initial treatment may be obtained and who should be contacted for subsequent or follow-up treatment. Unauthorized medical treatment is not a covered expense under the workers' compensation act.** Of course, in an emergency situation, medical treatment may be obtained by the employee as necessary for the employee's health and safety.

The results of a post-accident drug test, which is conducted pursuant to Department of Transportation standards, may provide grounds to deny workers' compensation indemnity benefits (but not medical benefits) if the drug test is positive for illegally used drugs. The Alabama Workers' Compensation statute requires that specific written notice must be given to employees, which describes the consequences of a positive drug test or the failure to submit to a drug test before this provision may be used against an injured employee to deny workers' compensation benefits. The implementation of a Drug Free Workplace Program under the Alabama Workers' Compensation Act may also entitle an employer to a discount on workers' compensation insurance premiums.

There are other steps that an employer may take to help prevent a minor injury from becoming major disability, and to detect and limit the potential for fraudulent claims; however, space limitations do not allow further discussion here. It is important to remember that the employer may control many aspects of the workers' compensation process by taking an active role in implementing written policies, training employees, and investigating potential workers' compensation claims promptly after they come to the attention of the employer.

Taking a few early precautions can go a long way in helping to avoid unnecessary problems in the future if a workers compensation claim is filed.

"The above information is for general guidance only, and does not constitute legal advice, or advice regarding any specific situations may require further research or inquiry before appropriate advice may be rendered."



DECATUR

1615 Kathy Lane, SW
Decatur, AL 35603
256/353-4325

HUNTSVILLE

1963 Memorial Parkway
Huntsville, AL 35801
256/265-7000

MADISON

9238 Madison Blvd., #200
Madison, AL 35758
256/774-7300

WELLNESS SERVICES

6767 Old Madison Pike #400
Huntsville, AL 35806
256/922-6699