

Welcome to the summer edition of Performance News!

In this issue we share information about unexpected exposures related to Social Media use, pre-hire testing that will help your company avoid workers' comp claims, and what to do if your company is targeted for a government investigation. Please call if we may help with your risk management needs.

The Scott Team • 1-800-365-0101 • www.scottins.com

When Bad Things Happen to Good Companies

What can you do to prepare your company for the possibility of a government investigation?

In the wake of the financial crisis, government involvement and heightened regulatory oversight in the private sector have increased exponentially. This trend will continue for the foreseeable future. Accordingly, it is important to take proactive steps so that your company possesses all of the necessary tools and experience to protect itself no matter the situation.

If a company becomes a target of a government investigation, it could have significant long-term consequences. Typically, these investigations arise from an inadvertent discovery of potential wrongdoing by an employee or by the company itself that could put the company at risk for liability to a governmental entity or private party. Discovery of this conduct can quickly give rise to federal or state prosecution, administrative actions, private litigation and an onslaught of negative media attention. These types of investigations can involve anything from tax fraud investigations and environmental compliance investigations to enforcement actions to assess penalties for failure to comply with government or industry standards or regulations.

So what can a company do to prepare for an investigation? Taking proactive measures to ensure compliance with regulations and industry standards is paramount. Preparing for, and budgeting for, potential investigations before an issue arises can help a company not only minimize the costs associated with an investigation, but also potentially alleviate painful and unnecessary steps in the process.

In many cases, an internal investigation is the vehicle by which the government builds a case. A company may, therefore, conduct its own internal investigation once wrongdoing is uncovered (or even suspected) and compile a report to submit to the government explaining the potential wrongdoing or exposure. This allows a company to self-assess the potential offense and present the facts to the government in a positive and persuasive light, showing that the company has taken its own measures to ensure that the wrong is remedied.

It is also advisable for companies to implement detailed policies and guidelines to incentivize employees to comply with regulations and standards while maintaining an effective and profitable business strategy. Employees can become torn when presented with a situation where they must either comply with the regulations in their industry or meet a deadline imposed by their company in an effort to maximize profits. Creating clear guidelines enables employees to avoid difficult situations, ultimately diminishing the potential for violations. It also presents a picture that the company is a compliance-driven entity that takes the law seriously.

Should a company become aware of a possible wrongdoing or the likelihood of a government investigation, securing competent legal counsel quickly is of the utmost importance. An attorney may be able to communicate with government authorities to express goodwill on the part of the company and can analyze the situation at hand and evaluate potential risk. Even absent a pending investigation, counsel can work with a company to develop proactive measures that may ultimately preserve both the company's finances and reputation.

- Catherine Huff and Justin Lugar – *Cate and Justin are attorneys at Gentry Locke Rakes & Moore in Roanoke, Virginia. Gentry Locke attorneys practice in a wide range of areas, including criminal and government investigations.*



Catherine J. Huff
540.983.9460



Justin M. Lugar
540.983.9324

Gentry Locke Rakes & Moore, LLP
10 Franklin Road SE, Suite 800
Roanoke, VA 24011

Avoid Workers' Comp Claims – Pre-hire!

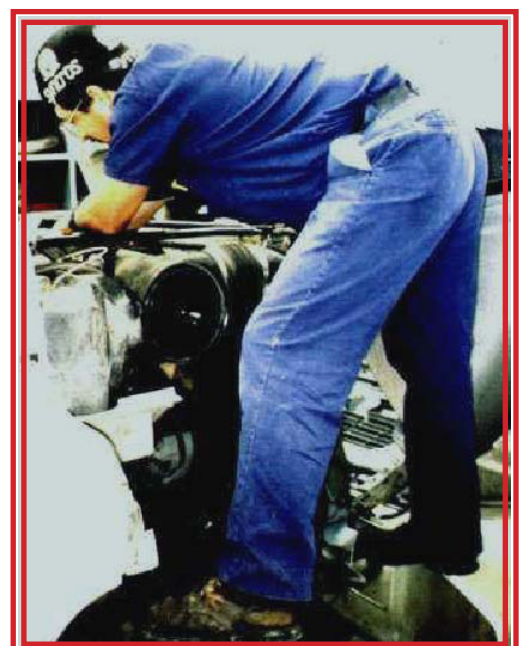
Scott Insurance places additional CRT machines, matching workers' physical capabilities to the job demands.

Workers' compensation costs are on the minds of many employers this summer. The current trend of rising rates in workers' comp premiums and the increasing costs of medical care have a direct, negative impact on an organization's bottom line. Controlling these costs is vital.

At Scott, our goal is to help our clients reduce their exposure to loss and reduce their demand for insurance. Several years ago, the Scott Risk Performance Group identified Cost Reduction Technologies and their isokinetic technology – the CRT machine – and formed partnerships with the company and occupational medical centers in Greensboro, Richmond, and Lynchburg. Employers in those areas are now using the CRT machines to measure an individual's agility and physical capacity to perform a specific job, pre-hire. Predicting and avoiding many workers' comp claims is possible!

We are pleased to announce that in the last year we have also placed CRT machines in Knoxville and Roanoke, with expectations to place them in Hickory and Charlotte in the very near future.

Following is a little information on our partner, Cost Reduction Technologies.



Cost Reduction Technologies

- The founding management of CRT has more than 70 years of ergonomic and physical therapy experience. They also have a scientist on staff who is the most highly noted authority in America in the field of isokinetic technology and research.
- CRT's technology measures muscle strength and range of motion for knees, shoulders, and lower back.
- Using patented measurement equipment and a proprietary algorithm CRT can predict a person's fitness for duty and susceptibility to a sprain and strain injury.
- This ADA compliant technology allows companies to:
 - Predict and avoid serious strain and sprain injuries before you hire
 - Objectively establish return to work or fitness for duty readiness
 - Validate a treating physician's work restrictions

Uses for the CRT Tests

Pre-employment — a strength and agility test that matches an applicant's physical capability to the job's physical demands.

Post-injury assessment — testing that will validate existence of injury and provide guidance to treating physician after a worker reports a strain or sprain injury.

Fitness for duty — objective testing that ensures that a worker has attained the strength to safely perform regular job functions prior to returning to work following work related or non-work related injury or leave.

Functional Capacity Evaluation — an objective, thorough measurement typically conducted following a severe injury or when the worker's rehabilitation and recovery is slower than expected.

Pre-separation baseline — testing that is performed before retirement, layoff, facility closure, or other termination to establish the employee's baseline physical condition in case the separated employee files a workers' compensation claim.

If you have an interest in learning more about this technology please contact your Scott Risk Advisor.

Social Media - The NOW Frontier!

Social media use is everywhere, but the repercussions of misuse are just beginning to come to light.

Everywhere you turn, people are talking about social media. From celebrities tweeting, old friends reconnecting on Facebook, and employees getting LinkedIn with their colleagues, social media is on the rise (except for that Facebook stock). Countless articles have been written on how companies can build their brand and reach new segments of the market by utilizing social media. A recent study conducted by the Society of Human Resource Management found that 68 percent of responding organizations were currently engaged in social media activities meant to reach external parties. With the increase of businesses using the internet, and specifically social media, the number of lawsuits stemming from social media has risen. As companies continue to utilize social media to increase business productivity and create a cyber footprint, the exposure to loss grows.

Along with the increases in revenue that companies have seen due to social media, there has been a steady increase of problems and lawsuits arising from the use of social media. Recently, Francesca's Holdings, a women's clothing line, fired its CFO following postings he made to his Twitter and Facebook account concerning company business. The company claimed that the CFO violated company rules and guidelines regarding social media use. No wrongful termination lawsuit has been filed (yet). Other companies are facing potential lawsuits stemming from their use of social media during the job application process. Many companies use social media to search job applicants under the guise of character evaluation. In some situations, companies have asked for username and passwords to review online accounts. Courts are still working out the legality of this practice and determining if it is an invasion of privacy, while some states, such as Maryland, have prohibited the practice.

Cyber bullying, once thought of as isolated to school aged kids, is beginning to creep into the workplace. The bullying can take the form of emails, texts, or even intimidating posts on a Facebook account of a co-worker. For an employer, determining the appropriate response to these cases is difficult, especially since the bullying may have taken place "off the clock." Regardless of when the bullying takes place, it can cause ripples in the work place through lost productivity or eventual workplace violence. These lawsuits have not made a huge impact on employment practices claims for hostile work environment or harassment yet, but in a world where employees "friend" or "follow" each other across multiple social media sites it's easy to see them on the horizon.

Another legal area that is proving difficult to navigate involves trade secrets and confidential information. While it makes sense to enact a sweeping social media policy to avoid the loss of trade secrets and confidential information, that solution may cause other problems, such as running afoul of the National Labor Relations Board (NLRB). The NLRB has recently issued its own interpretation of how the National Labor Relations Act (NLRA) applies to social media. The interpretation was in response to several companies who had fired employees for leaking "work-related" information on social media. The NLRB concluded that employer policies should not be so sweeping as to prohibit activity which is protected by federal labor law, such as discussion of wages or working conditions among employees; however, the NLRB also concluded that an employee's comments on social media which are mere gripes are not protected.

With all the current exposures and the legal uncertainty surrounding social media, companies may find the task of risk management difficult. The first step for the organization is to assess its exposure to social media. This analysis goes beyond the IT department and should include human resources. The next step is to develop a company policy regarding the use of social media, including acceptable and unacceptable behavior. The policy should be developed by legal counsel well versed in social media law to make sure your company policy does not violate labor laws. Finally, the company should talk with its insurance agent regarding coverage. Most basic commercial general liability policies contain limited coverage for advertising or personal injury; however, much of the exposure associated with online and social media use is covered under a separate cyber or privacy liability policy.

Even if your company has not fully utilized social media, obtaining professional advice to understand the unexpected associated liability issues is the first step toward protecting your company.