

ISSUES



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Nominations Now Being Accepted for Safety & Health Awards 2000

The Workers' Compensation Commission is committed to lowering the incidence of occupational injury and illness. One of the means by which we hope to accomplish this is through the promotion of workplace safety and health programs, including the presentation of our annual Safety & Health Awards. Last year's award winners represented businesses and industries from all over Connecticut.

We applaud the efforts of our past win-

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EMPLOYERS: We're Here for You Too!

It is commonly acknowledged that good employees are one of the most important assets of a successful business or organization. Sometimes an on-the-job injury can rob an employer of a valued worker. The **Connecticut Workers' Compensation Commission, Rehabilitation Services (WRS)** wants to help employers retain injured workers in physically appropriate jobs.

One of the first steps taken in providing an injured worker with a rehabilitation program is to contact the employer of record. An inquiry is made about the availability of light duty and/or alternative work within the company. Funding for rehabilitation engineering, on-the-job training, and classroom training can be made available, in order to return the injured worker to the employer in a new position. Consider these examples of ways that WRS has worked with employers:

- A southern Connecticut valve company was able to retain an injured worker after WRS contracted for rehabilitation engineering services. The rehabilitation engineer made recommendations for job modifications which enabled the injured worker to keep her job. These changes included restructuring the duties of the position, re-organizing the workstation, and adding low-cost adaptive fixtures.
- An employee of an irrigation company was injured while working as an installer. WRS paid an on-the-job training fee to the employer for several months during which the worker was re-trained as a technician to service and repair irrigation systems.
- WRS was able to help an employer retain a valued worker when an injured machine operator was sent to school and taught to use Microsoft Office software. This individual then returned to the company as an administrative assistant.
- A roofing company has been able to keep an injured laborer by retraining him as an estimator. WRS will be paying the employer a fee for providing the employee with on-the-job training. In addition, they are planning to send him to computer aided drafting and design classes at a trade school, to give him the broad scope of skills needed for the estimating position.

When an employer can't accommodate an injured employee, WRS may assist that employee in obtaining new skills. Through on-the-job training with a new employer, or in classroom training, Workers' Rehabilitation Services will provide the employee with the skills he or she needs in order to become gainfully employed once again. The individual's aptitudes, past work and educational experiences, and vocational interests are taken into account prior to funding a training program. WRS will also provide assistance with resume preparation, planning a job search, interviewing skills, and more!

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Subscriptions to **ISSUES** are free. To receive a free subscription, call the Workers' Compensation Commission's Education Services in Hartford, CT at (860) 493-1500 or 1-800-223-WORK (toll-free in Connecticut).

Visit us on the World Wide Web at <http://wcc.state.ct.us>

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From the Desk of the Chairman

RE: Authorization for Treatment (Memo 2001-01)

Your attention is directed to Memorandum 98-08, which was issued on May 27, 1998, concerning authorized physicians and treatment that may be rendered. It has been brought to my attention by the Commissioners that this memorandum is not being followed as frequently as required. Please accept this reminder that adherence to said memorandum is required and that failure to adhere will result in whatever sanctions the presiding Commissioner deems appropriate pursuant to statute.

For your convenience, Memorandum 98-08 is restated as follows:

Once a physician is authorized to treat a patient under the Workers' Compensation Act, the physician may continue to treat the claimant without certification as long as the treatment is within the guidelines of the medical protocols. Copies of the medical protocols may be obtained from the Workers' Compensation Commission's Education Services at 1-800-223-WORK.

Authorization to treat a claimant presumes that the patient and physician are in compliance with Connecticut Workers' Compensation Commission law and its administrative regulations.

RE: Revised Official Connecticut Practitioner Fee Schedule effective February 15, 2001 (Memo 2001-02)

As Chairman of the Workers' Compensation Commission of the state of Connecticut, I am pleased to announce the publication of the revised *Official Connecticut Practitioner Fee Schedule and Billing Guidelines*.

This revised fee schedule provides a current and comprehensive reference that includes all changes to the current schedule. This update includes revisions of rules, updated fees and new CPT codes. It will enable health care providers to define their services in the most accurate manner, allowing for timely efficient reimbursement.

This new publication is effective for medical services rendered on or after February 15, 2001, *regardless of the date of injury*, which are payable to health care providers authorized or permitted to render care under the Connecticut Workers' Compensation Act.

The exclusive distributor of the *Official Connecticut Practitioner Fee Schedule* is **Ingenix Publishing Group, 5225 Wiley Post Way, Salt Lake City, UT 84116**. You may order by telephone at **1-800-765-6023**. The price is \$75 for the printed version and \$295 for the ASCII diskette.

(EMPLOYERS continued from previous page)

WRS coordinators can be found in each of the Workers' Compensation Commission district offices. Referrals are encouraged early on in the workers' compensation process, so that rehabilitation may proceed in a timely, efficient manner. Employers, doctors, attorneys, claims representatives, and commissioners can make referrals to WRS. An injured worker can even self-refer. To be eligible for WRS the injured worker must have an accepted workers' compensation claim or an approved stipulation. There must also be medical evidence documenting the fact that he/she cannot return to their pre-injury job as a direct result of their compensable injury or occupational disease.

For more information, to make a referral, or to obtain a rehab request form, contact one of the rehabilitation coordinators in any of the eight district compensation offices or contact the Workers' Rehabilitation Supervisor in the Chairman's office in Hartford.

The Discontinuation of Benefits Notice: *Form 36*

In order to discontinue or reduce benefit payments for total or partial incapacity, an insurer or employer must first get approval from the workers' compensation commissioner in the district where the claim is filed. This is done by filing a Form 36 discontinuation notice. A copy is sent to the claimant and the appropriate Workers' Compensation Commission District Office, each by personal presentation or by registered or certified mail pursuant to Section 31-321 of the Workers' Compensation Act.

If the claimant does **not** call the district office to contest this cut-off of benefits, the commissioner will approve the Form 36 and the insurer may discontinue benefits *as of the date the notice is received*. (See additional information on this issue below.)

The Form 36 must either be signed by a Connecticut-licensed physician, or have a Connecticut-licensed physician's medical report attached to it. The physician should indicate the date that the employee is able to return to work and whether that return will be to his or her usual work, or to light or restricted duty.

The claimant should not contest a Form 36 discontinuation notice, unless there is clear medical evidence substantiating his or her continued disability status. **The claimant should only contest the form when his or her doctor disagrees with what it says AND will put that disagreement in writing.** (For example, if an employee agrees with the doctor's report releasing him or her for light duty work, but the employer is unable to provide work which fits the doctor's description of the claimant's work limitations, this is NOT a legitimate reason to contest the Form 36.)

A Form 36 does **not** necessarily mean that **all** workers' compensation benefits are being discontinued. Someone who is no longer temporarily totally disabled could receive the Form 36 to discontinue Temporary Total Disability benefits but still be eligible to receive Temporary Partial Disability or Permanent Partial Disability benefits.

If the claimant does request a hearing to contest the cut-off of benefits within the 10-day period, the commissioner *will not* approve the Form 36 and *benefits must be continued at least until the date of the requested hearing*. If the commissioner ultimately decides against the claimant, he/she could be responsible to pay back any of the benefits received up to that point.

Regarding the Effective Date of the Form 36

There are some insurance carriers and employers who continue to assert that a Form 36 may take effect *prior* to the date of its filing. In a number of opinions the Compensation Review Board has held that *a properly filed and approved Form 36 is not effective prior to the date the Form 36 is filed with the Commission*.

As the Compensation Review Board held in Bennett v. Federal Express Corp., No. 04023 CRB-04-99-04 (5-22-00):

We have often held that § 31-296 prevents a trial commissioner from declaring a Form 36 effective prior to its filing date where the claimant legitimately contests the cessation or reduction of his disability, even if the trier determines that the claimant reached maximum medical improvement significantly earlier. See, e.g., Jones v. Maaco of Greater Bridgeport, 3634 CRB-4-97-4 (Aug. 5, 1998); Torres v. Southern Connecticut Truck & Tire Center, 3144 CRB-3-95-8 (Feb. 5, 1997); Herwerth v. Groton, 3105 CRB-2-95-6 (Dec. 24, 1996), *aff'd*, 45 Conn. App. 922 (1997) (*per curiam*); Crowe v. DBD, Inc., 14 Conn. Workers' Comp. Rev. Op. 283, 1941 CRB-7-93-12 (Sept. 11, 1995). "The earliest date that a termination of benefits may become effective is the date on which the Form 36 is filed. Stryczek v. State of Connecticut/Mansfield Training Center, 14 Conn. Workers' Comp. Rev. Op.

32, 34, 1765 CRB-2-93-6 (May 4, 1995). Although the commissioner may determine that a later date is more appropriate, he cannot make permanent partial disability payments commence retroactively to the date of maximum medical improvement if it occurs prior to the filing date of the Form 36." Torres, *supra*. The statute clearly places the burden on the employer or insurer to promptly file a Form 36 once it receives a medical report that purports to alter the claimant's disability status. *Id.*

A Form 36 must be filed in instances where the employer or insurance carrier intends to discontinue or reduce a claimant's compensation benefits and the claimant contends that his disability continues. We believe that a Form 36 notice indicating that a claimant's benefits are discontinued or reduced retroactively to a date prior to filing with the Commission misstates our case law. Worse, such statements are disquieting to an already injured worker. ***Thus, we anticipate any carrier or employer who is in the practice of asserting that a Form 36 will take effect prior to its filing date will discontinue such practice immediately.***

Save These Dates!!

October 18-19, 2001

From Novice to Expert:

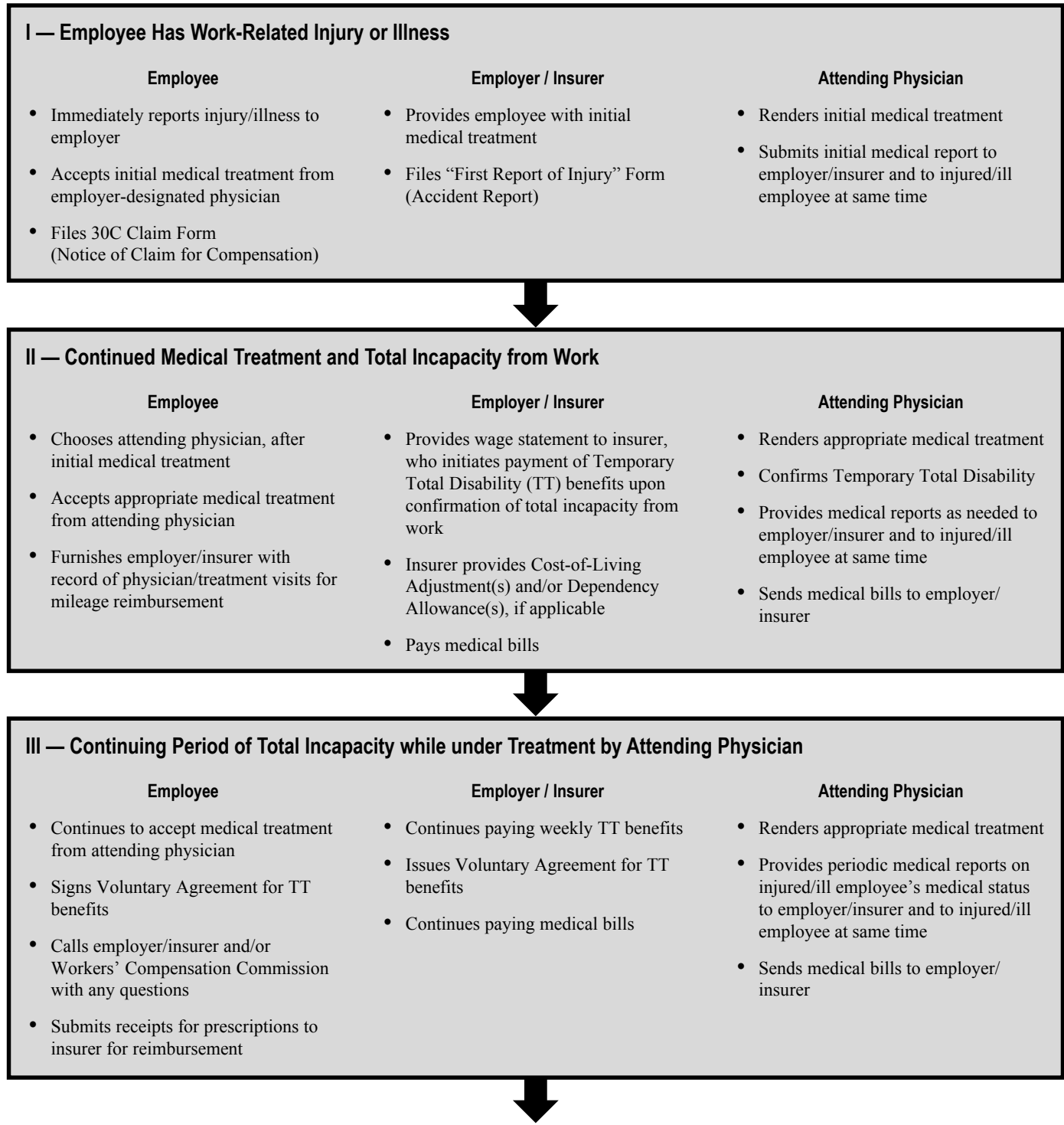
**"Getting the Workers'
Compensation System to
Better Work for You!"**

A Symposium coming in the Fall sponsored by the Connecticut Workers' Compensation Commission to benefit the Disabled Worker Committee Scholarship Program

The Flow of a “Typical” Workers’ Compensation Case

This is a simplified chart reprinted from our *Information Packet* representing the basic steps through a “typical” undisputed workers’ compensation case. This includes the main events in the life of a claim and the corresponding actions taken by the injured/ill employee, the employer/insurer, and the employee’s attending physician.

[NOTE: Any given workers’ compensation case *may* or *may not* include any or all of the following steps (e.g., an employee may completely bypass Temporary Total Disability benefits and begin receiving Temporary Partial Disability benefits, if his or her injury only *partially* incapacitates him or her from work). Also, if an employee’s employer operates an approved Preferred Provider Organization, or PPO, then the appropriate statutes and regulations are in effect.]





IV — Medical Status Improves & Employee Becomes Capable of “Light Duty” or “Restricted” Work

Employee

- Requests light duty/restricted work from employer
- If unavailable from employer, performs a job search and contacts insurer to request Temporary Partial Disability (TP) benefits
- If attending physician indicates that restrictions are permanent, may apply to WCC’s Rehabilitation Services for help with job retraining and/or placement

Employer / Insurer

- Sends a Form 36 (Discontinuation Notice) to Workers’ Compensation Commission and to injured/ill employee for discontinuation of TT benefits
- Begins payment of TP benefits
- Continues paying medical bills

Attending Physician

- Reports injured/ill employee’s medical status and work restrictions to employer/insurer and to employee at same time
- Renders appropriate medical treatment
- Provides periodic medical reports, as earlier
- Sends medical bills to employer/insurer



V — Injured/Ill Employee Reaches Maximum Medical Improvement (MMI)

Employee

- Contacts insurer to reach agreement on Permanent Partial Disability (PPD) benefits for any permanent physical impairment
- Signs Voluntary Agreement for PPD benefits

Employer / Insurer

- Begins payment of PPD benefits
- May request an Independent Medical Examination (IME)
- Issues Voluntary Agreement for PPD benefits for any permanent physical impairment

Attending Physician

- Issues disability evaluation for any permanent physical impairment on Form 42 or in the form of a medical report to the Workers’ Compensation Commission, the injured/ill employee, and the employer/insurer, at the same time



VI — Employee Exhausts Period in which PPD Benefits are Paid (Specific Award)

Employee

- May request an Informal Hearing with a Workers’ Compensation Commissioner in a District Office to apply for additional discretionary wage differential “308a” benefits, just prior to the end of the period for which PPD benefits are paid

Employer / Insurer

- Pays additional wage differential “308a” benefits, if directed by a Workers’ Compensation Commissioner at an Informal Hearing
- Continues paying medical bills

Attending Physician

- Renders further medical treatment, if necessary
- Sends medical bills to employer/insurer



VII — Injury or Surgery Causes Disfigurement and/or Scarring

Employee

- Just prior to a year after the date of the injury or surgery which caused the disfigurement or scar, contacts Workers’ Compensation Commission District Office to request scar/disfigurement evaluation by a Workers’ Compensation Commissioner

Employer / Insurer

- Makes payment for scar or disfigurement award, if directed by a Workers’ Compensation Commissioner

Attending Physician

- NONE

CRB Update: *Heart & Hypertension Benefits Fringe Benefits under §31-284b*

In *Kelly v. Bridgeport*, 61 Conn. App. 9 (2000), cert. denied 255 Conn. 933 (2001), the Appellate Court addressed the issue of whether a retired police officer who qualified for benefits under Sec. 7-433c was entitled to continued health insurance and life insurance coverage pursuant to Sec. 31-284b *after his indemnity payments had ceased*.

The relevant facts of this case were not disputed. The claimant suffered a myocardial infarction in 1991, and received weekly benefits pursuant to Sec. 7-433c through March of 1995. The claimant took disability retirement effective from the date of injury, and continued to have prescription medication and semi-annual doctor's visits on account of his heart condition paid by the employer after his weekly workers' compensation payments ceased. The employer cancelled his group health insurance in 1996, arguing that claimant no longer qualified under § 31-284b, as he was no longer collecting indemnity payments.

At the time of the claimant's injury, § 31-284b(a)¹ provided as follows:

In order to maintain, as nearly as possible, the income of employees who suffer employment-related injuries, any employer, as defined in section 31-275, who provides accident and health insurance or life insurance coverage for any employee . . . shall provide to such employee equivalent insurance coverage . . . while the employee is eligible to receive or is receiving workers' compensation payments pursuant to this chapter, or while the employee is receiving wages under a provision for sick leave payments for time lost due to an employment-related injury.

In *Kelly v. Bridgeport*, 3761 CRB-4-98-1 (March 11, 1999), the trial commissioner ruled that although the claimant was not currently receiving indemnity benefits, the medical bills being paid by his employer constituted compensation

benefits. Thus, the claimant was receiving compensation payments within the meaning of § 31-284b. Accordingly, the commissioner ordered the employer to reinstate the claimant and his family to the group medical benefits that were in effect at the time of his injury, and ordered the employer to reimburse the claimant for the out-of-pocket expenses that resulted from the cancellation.

The board affirmed, reasoning that the definition of "compensation payments" in § 31-284b includes medical benefits in addition to indemnity benefits. The board disagreed with the employer's argument that there is a clear distinction between "compensation payments" and "medical benefits" under the Workers' Compensation Act. The board explained that at the time of the claimant's injury, § 31-293 stated that "[t]he word 'compensation,' as used in this section, shall be construed to include not only incapacity payments to an injured employee and payments to the dependents of a deceased employee, *but also sums paid out for surgical, medical and hospital services* to an injured employee . . ." P.A. 91-32 repealed that version of § 31-293 as of July 1, 1991, substituted a new version in its place, and moved the definition of "compensation" to its present location at § 31-275(4), which contains the general definitions for Chapter 568. The new, expanded definition of "compensation" still includes medical and surgical aid, as well as "payments made under the provisions of section 31-284b." The board cited cases where the state Supreme Court explained that P.A. 91-32 was intended to be a technical amendment. The board therefore found no merit to the respondent's contention that the § 31-293 definition was inapplicable to the instant case.

The Appellate Court reversed the board, explaining that the definition of compensation presently in Sec. 31-275(4) should not have been applied to this case, because at the time of the 1991 injury, that definition was located in Sec. 31-293, and only applied to that particular stat-

ute. The Appellate Court agreed with the employer's argument that when his indemnity benefits ceased, the claimant was no longer receiving "compensation payments" within the meaning of Sec. 31-284b. The court held: "Construing the statutes as they existed at the time of the [claimant's] injury, we conclude that the term 'compensation payments' as used in Sec. 31-284b(a) does not include payments for medical care after the indemnity compensation period has ceased." *Kelly*, supra, at 16.

Furthermore, the court found *Crocetto v. Lynn Development Corp.*, 223 Conn. 376 (1992) to be controlling. In that case the issue was whether a subsistence allowance provided to the claimant under the workers' rehabilitation program established under Sec. 31-283a constituted "compensation payments" within the meaning of Sec. 31-284b therefore triggering mandatory health insurance coverage. The Supreme Court determined that the subsistence payments under the rehabilitation program did not constitute "compensation payments" within the meaning of § 31-284b, and thus held that the employer was not required to provide health insurance during that period. The Appellate Court in *Kelly*, stated, "we conclude that the payments received in this case are less like compensation than the ones in *Crocetto* and therefore do not trigger § 31-284b benefits." *Kelly*, supra, at 19. The court in *Kelly* did not address an arguably fundamental distinction between the benefits being compared, namely that the subsistence payments in *Crocetto* were "not authorized by statute or by administrative regulations." *Crocetto*, supra, at 381.

NOTE: The Appellate Court's decision was based upon the language of the relevant statute sections *as they existed at the time of the claimant's 1991 injury*. Section 31-284b(a) has since been amended, and (as explained above) the definition of "compensation" which was in § 31-293 is now codified in § 31-275(4). See *Kelly*, supra, 61 Conn. App.

(continued on next page)

Excerpts from Our Safety Committee Series

ARM AND HAND PROTECTION 1910.138

General Requirements

Employers shall select and require employees to use appropriate hand protection when employees' hands are exposed to hazards such as those from skin absorption of harmful substances, severe cuts or lacerations, severe abrasions, punctures, chemical burns, thermal burns, and harmful temperature extremes.

Employers shall base the selection of the appropriate hand protection on an evaluation of the performance characteristics of the hand protection relative to the task(s) to be performed, conditions present, duration of use, and the hazards and potential hazards identified.

Basic Requirements of the Program

- No single glove will protect against all workplace hazards.
- Protective devices should be selected to fit the job. There is a wide assortment of gloves, hand pads, sleeves, and wristlets for protection against various hazardous situations.
- The work activities of the employees should be studied to determine the degree of dexterity required, the duration, frequency, and degree of exposure to hazards, and the physical stresses that will be applied.
- Machine guards, barriers, and work procedures may eliminate the risk of injury to employees' hands and arms.
- Employees must be trained how and when to use the protective gloves, and know the limitations of the clothing used.

CONFINED SPACE 1910.146

General Requirements

This section contains requirements for practices and procedures to protect em-

(CRB Update continued from previous page)

at 14, fn. 4; and at 16, fn. 5

¹ We note that it has been ruled that § 31-284b does not apply to private employers. Luis v. Frito-Lay, Inc., Supreme Court, Docket No. SC 14536 (order, April 27, 1993); see also Civardi v. Norwich, 231 Conn. 287, 298-99 n. 14 (1994).

ployees in general industry from the hazards of entry into permit-required confined spaces. Any space, which by design, *has limited openings for entry and exit; unfavorable natural ventilation which could contain or produce dangerous air contaminants; and one which is not intended for continuous occupancy, is a confined space.*

The hazards encountered and associated with entering and working in confined spaces are capable of causing bodily injury, illness, and death to the worker. Accidents occur among workers because of failure to recognize that a confined space is a potential hazard.

Basic Requirements of the Program

- The employer shall evaluate the workplace to determine if any spaces are permit-required confined spaces.
- If the employer decides that its employees will not enter permit spaces, the employer shall take effective measures to prevent its employees from entering the permit spaces.
- If the employer decides that its employees will enter permit spaces, the employer shall develop and implement a written permit space program.
- The employer shall inform exposed employees of the existence and location of, and the danger posed by, the permit spaces.

Entering a Confined Space

- Before an employee enters a permit space, the internal atmosphere shall be tested with a calibrated direct-reading instrument for:
 - ▶ oxygen content,
 - ▶ flammable gases and vapors,
 - ▶ potential toxic air contaminants.
- There may be no hazardous atmosphere within the space whenever any employee is inside the space. Forced air ventilation, from a clean source, shall be directed to ventilate areas where an employee will be.
- The atmosphere within the space shall be periodically tested. If a hazardous atmosphere is detected during entry each employee shall leave the space immediately.

Duties of the Attendant

- The attendant should remain outside the space during entry operations.
- The attendant should be trained in the requirements of the program; hazards that may be faced during entry; use of atmospheric testing devices; behavioral effects of hazard exposure; and, the mode, signs or symptoms and consequences of the exposure.
- The attendant must monitor conditions, *inside* and *outside* the permit space, which could pose a hazard to the entrants.
- Attendants must communicate with authorized entrants as necessary to monitor entrant status and to alert entrants of need to evacuate.
 - ▶ The attendant may summon rescue and other emergency services.
 - ▶ It **IS NOT** the attendants' duty to enter the confined space *for any reason*, including emergency rescue.

Rescue and Emergency Services

Employers shall designate and select a rescue team or service that:

- has the capability to reach the victim(s) within a time frame that is appropriate for the permit space hazard(s) identified;
- is equipped for and proficient in performing the needed rescue services;
- employers shall inform each rescue team or service of the hazards they may encounter.

Employers whose employees have been designated to provide permit space rescue and emergency services shall:

- provide affected employees with the necessary personal protective equipment;
- train affected employees to perform assigned rescue duties;
- train affected employees in basic first aid and CPR; and,
- ensure affected employees practice making permit space rescues at least once every 12 months.

Retrieval equipment/systems shall be used whenever possible to facilitate non-entry rescue.

(Award Nominations continued from page 1)

ners and invite YOU to participate in the nominating process for our 2000 Safety & Health Awards. The following are some examples of the kinds of achievements we will be considering. Do not feel limited by the descriptions listed, as they are just examples. Any progressive, innovative and, above all, effective, program will be considered for one of our awards.

There are five awards in each of the three categories, which will be given for Safety and/or Safety & Health achievement.

- a. Large business/company with over 500 employees
- b. Mid-Size business/company with 200 to 500 employees
- c. Small business/company with fewer than 200 employees

Nominations for the Safety or Safety & Health Award are based on 2000 Calendar Year, Lost Workcase Incidence Rate.

The Safety Award

This award is for the business or organization that has made a significant contribution in the field of occupational safety in Connecticut.

Criteria:

- Have an established and effective safety and health committee in place. Copies of safety committee meeting minutes from the previous year must be submitted.
- Demonstrate a reduction in lost time accidents of at least 10%, which must be below the industry

standard. Include 2 or 3 digit Standard Industry Code (SIC) and submit OSHA 200 logs from 1999 and 2000.

- Include copies of all safety and health activity programs and/or safety manual.
- No safety citations (serious or willful) issued by Federal OSHA in the previous year.
- List and provide examples of any programs in place that promote safety in the workplace.

The Safety and Health Award

This award is for the business or organization that has made a significant contribution in the field of occupational safety and/or occupational health in Connecticut.

Criteria:

- Include all of the criteria for the safety award
- Establish a worksite wellness program which deals with at least five (5) health-related topics that may include (but should not be limited to):
 - blood pressure checks
 - cholesterol screening
 - drug and alcohol counseling
 - ergonomic evaluation
 - weight loss programs
 - flu vaccinations

If you have any questions or need clarification on any of the above award requirements, please call Paul King at (860) 493-1569.

Nominations MUST be received by May 31, 2001

When nominating an organization for an award, PLEASE INCLUDE: all of the above criteria, supporting documents, and a list of the accomplishments of the nominated organization. Also, include the name, address, and phone number of the contact person of the organization you are nominating. *(You may nominate yourself, a client, a professional consultant or a safety & health organization.)*

SEND NOMINATIONS TO: Paul A. King, Workers' Compensation Commission, 21 Oak Street - 4th floor, Hartford, CT 06106