

companion

A workers' compensation resource for employers served by SFM Companies

STAFFING UP, CAUTIOUSLY

Thinking about new employees, part-timers, subs, temps, freelancers or virtual workers? How to control costs and liabilities. What you need to take care of up front. *Page 8*



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The Work Comp Experts

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BRIEFS

'Responding to work injuries' webinar set for April 27

Policyholders are invited to attend a free 60-minute webinar presented by SFM on handling workers' compensation claims and common pitfalls to avoid.

The "Responding to work injuries" webinar, scheduled for 11 a.m., April 27, is designed especially for new SFM policyholders or claims coordinators new to handling claims.

SFM claims and legal experts will walk policyholders through their responsibilities in reporting work injuries and practices that save time and expense when injuries occur. A question-and-answer session will follow the interactive presentation.

Space is limited. Register at sfmic.com > Employers > Resources > Seminars and Webinars.

Policyholder meeting set; please return proxy ballots

SFM's annual policyholder meeting is scheduled for Monday, June 13 at SFM's Bloomington, Minn., headquarters.

Policyholders unable to attend the meeting in person are encouraged to contribute to the business of their mutual company by returning their proxy ballots by June 13.

Official notice of the meeting and proxy ballots are scheduled to be mailed to policyholders in mid May.

Balloting will be conducted for the board of directors and SFM's independent auditor.

73 percent of claims reported via the handy online form

Of the more than 19,000 First Reports of Injury submitted to SFM in 2010, 73 percent were submitted online through SFM's website sfmic.com.

A weekly record high was reached in February, when 80 percent of First Reports of Injury were submitted online.

Online reporting helps employers submit reports promptly and get claims off to a good start.

Workplace health grants awarded to SFM policyholders

Five SFM policyholders in Stearns County, Minnesota, have been awarded grants by the county for workplace health initiatives ranging from walking programs to fitness equipment.

The five are CentraCare Health System; College of St. Benedict; Kern DeWenter Viere Ltd.; Mother of

Mercy Campus of Care, and St. Cloud Independent School District.

The Stearns County Board awarded the grants as part of the Statewide Health Improvement Program. SHIP was created to help communities create systemic changes that encourage healthful behaviors and reduce obesity and tobacco use.

SFM physician is Top Doctor of occupational medicine

SFM in-house physician Dr. Beth Baker was recently honored as a 2011 Top Doctor of occupational medicine by *Minneapolis St. Paul Magazine*.

Dr. Baker, a member of SFM's team of physicians for 10 years, works in SFM medical case management to improve quality treatment outcomes and return to work.

Baker also is a staff physician and teacher in a residency program in environmental medicine at Regions Hospital, St. Paul. Baker is board certified in Occupational and Environmental Medicine, Medical Toxicology and Internal Medicine. She is on the board of directors of the American College of Occupational and Environmental Medicine and the board of trustees of the Minnesota Medical Association. Additionally, she chairs the Medical Services Review Board for the Minnesota Department of Labor and Industry.

Minneapolis St. Paul Magazine's Top Doctors, featured in the January edition, are chosen by their peers based on their work and the surveys of thousands of doctors and nurses.

SFM presents workers' comp expertise to industry groups

SFM legal and safety professionals are slated to present to various industry and trade organizations in the coming weeks.

SFM senior defense counsel Kathleen Bray and John Hollick are scheduled to present at the Minnesota State Bar Association's Workers' Compensation Institute in April. Bray is scheduled to present on ethics and Hollick on construction claims.

Strengthening loss prevention, reinvigorating safety committees, and "Hunt for the red elbow" relating to ergonomics are among the topics to be presented by SFM Loss Prevention Specialists Joe Morin, Luke Sammon and Gary Kaurala at the Minnesota Safety Council conference in May.

State-of-the-art upgrades to CompOnline coming soon

SFM policyholders soon will have access to industry-leading, state-of-the-art functions and analytic capabilities through SFM's CompOnline® Risk Management System.

New and upgraded features will give users the ability to:

- Customize their workers' compensation loss analysis and management reports.
- View current claims activity in a convenient dashboard overview.
- Sign up for email alerts on changes in claims status and reserves.
- Manage claims by location.
- Track progress on specific claims.
- Access prior First Reports of Injury.
- Look up policy and premium information.

Among the features redesigned for ease of use and enhanced options:

- Sign up to receive periodic reports on the organization's loss trends and loss history.

The new version of CompOnline is expected to be released in the second quarter.

Enhanced loss runs to be released soon; subscribe online

Enhanced loss runs soon will be available through SFM's CompOnline® Risk Management System. The new reports are slated to be sent to subscribing SFM policyholders in the second quarter.

Enhancements were made based on

policyholder feedback. The new loss runs will be more applicable to the size of business. For example, detailed loss runs will be sent to large employers with multiple claims, while small employers with few claims will receive a more basic loss run for ease of use.

Employers are encouraged to use the new loss runs as an effective risk management tool. If you are not currently receiving loss runs, you can subscribe through CompOnline at sfmic.com > Employers. Questions, call (800) 937-1181.



SFM recognizes the best of the best internally

SFM has awarded its internal Richard J. Marshik Service Excellence Award to a veteran SFM claims adjuster who says simply, "It's a team effort." But Claims Specialist Todd Wendinger is one of those special individuals who makes it all come together—including the expertise of SFM's physicians, nurses and attorneys—for the best

outcomes for employers and injured workers.

Wendinger, a resident of Lakeville, Minn., and a long-time SFM employee with 15 years of claims handling experience, holds a Bachelor of Science degree in Risk Management Insurance from St. Cloud State University and a Bachelor of Science degree in Accounting from

Metro State University.

The annual Marshik award, created in 2002, honors former Board Chair Richard Marshik, whose long-time leadership in service excellence now is recognized in individuals who add to the legacy of service excellence that has become SFM's hallmark.

Defense costs

Discrimination charges against employers escalate sharply

Workers nationally filed a record number of discrimination charges against employers in 2010, according to the U.S. Equal Opportunity Commission.

Charges were up 7 percent, continuing the sharp trend that has produced a 32 percent increase in charges against employers over the past four years.

The fastest-growing charges are disability discrimination and employer retaliation, up 62 and 61 percent in four years.

Charges of disability discrimination rose a steep 17 percent in 2010 alone. That follows recent federal legislation making it easier for employees to claim they are disabled.

Employer retaliation, now the most frequent charge and growing fast nationally, tends to be easier to establish before juries and results in higher settlements than most other allegations of discrimination, according to analysts.

Legal defense costs are high

Most cases against employers go no further than arbitration or administrative hearing. In those early stages of the legal process, legal defense costs typically run \$22,400 to \$40,500.

One of roughly every 10 cases against employers reaches a pre-trial settlement or goes to trial, generating employer expenses that typically run well above \$200,000.

Smaller firms are targets

The continuing sharp rise in charges is of special concern to small businesses.

More than half of employment practices lawsuits are against small businesses, which may be more vulnerable than larger firms due to lack of dedicated human resource professionals and formalized employment practices.

Protection through SFM

SFM offers insurance coverage for employment practices liabilities, including defense costs. It is specially designed and priced for small businesses and is easily available as an endorsement to the SFM workers' compensation policy.

Combining EPL coverage with workers' compensation under SFM provides advantages. For instance, when an employee files a claim, whether for workers' compensation or employment discrimination, the two risks can easily interconnect and produce a more complex situation. SFM's expertise helps significantly in managing and resolving the larger scope of interconnected issues to produce lower overall cost to the employer. This is additional value that SFM brings to employers.

SFM recently enhanced its employment practices services for EPL-insured employers, available online. This includes a new EPL resource center offering a legal hotline telephone number, employee training modules, model employment handbook policies and other useful employment resources for small businesses, available at no charge as part of SFM's EPL coverage package.

For information, please go to sfmic.com > Employers > EPL Coverage. ♦

Questions, contact SFM Underwriting Director Brian Bent at (800) 937-1181 ext 4344 or brian.bent@sfmic.com.

Increase in charges filed with EEOC against employers			Charges ranked by frequency in 2010	
	1 year (2010)	4 year (2007-10)	Cases may involve multiple charges	
			% of cases	
Disability	17%	62%	Retaliation	36%
Retaliation	8%	61%	Race	36%
Religion	12%	49%	Sex	29%
Age	2%	41%	Disability	25%
National origin	2%	36%	Age	23%
Race	7%	32%	National origin	11%
Sex	4%	25%	Religion	4%
Equal pay	11%	21%	Equal pay	1%
Total charges	7%	32%		

—U.S. Equal Employment Opportunity Commission



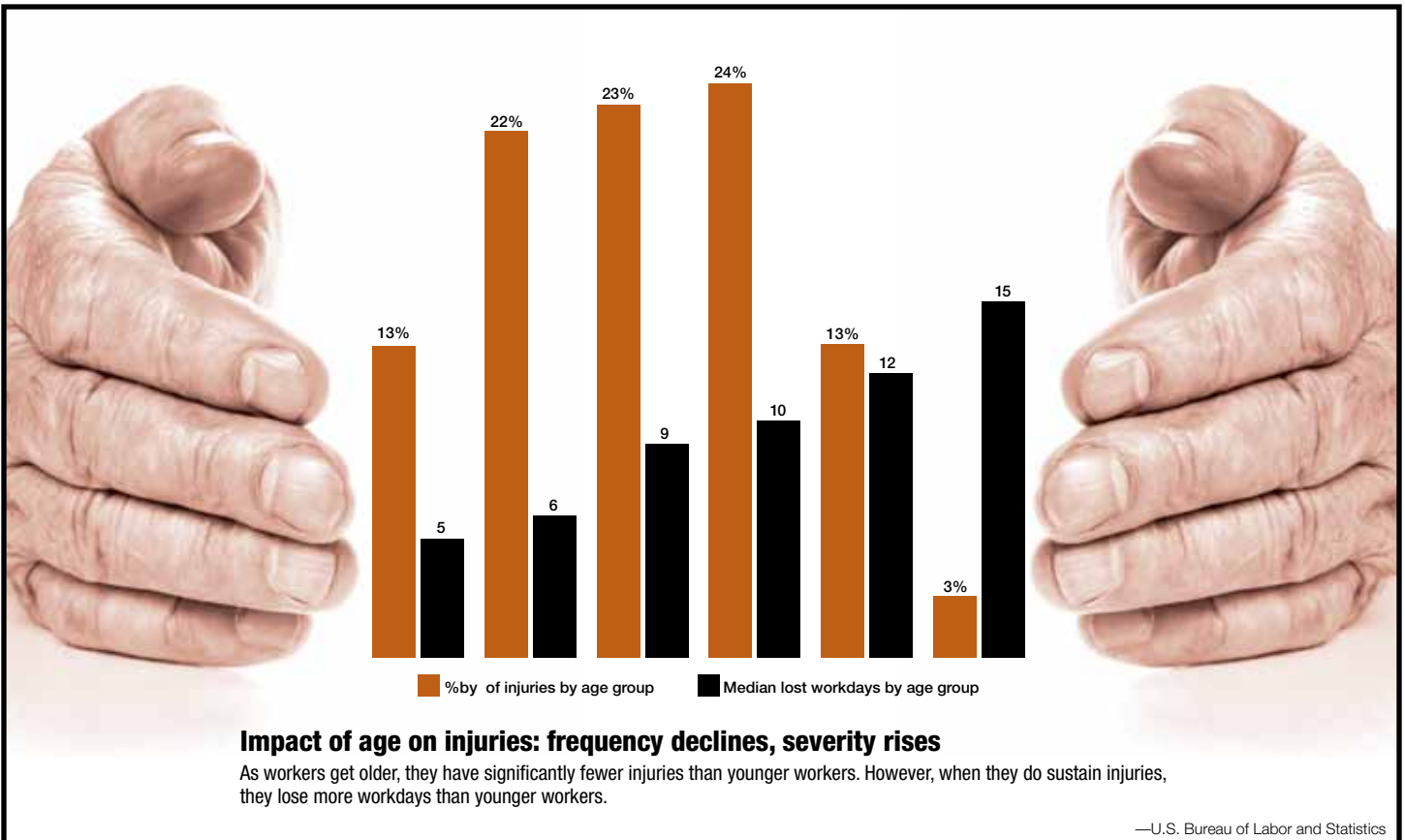
Hiring minors

Be aware of the laws, safety concerns when hiring summer help

Employers gearing up to begin hiring summer help, including minors, should know the state's laws regarding the type of work minors can perform, hours they can work and machinery they can operate.

SFM's resources, like the "Hiring minor employees" *CompTalk*, can help you better understand federal child labor laws and those in your state.

To download or order resources, go to sfmic.com > Employers > Resource Catalog > Search Catalog and type "minors" in the search box. ♦



Coordinating laws

How FMLA and ADA come into play when you are dealing with a work



By Kathleen S. Bray
SFM Senior Defense Counsel
Lynn Scharfenberg and Associates

When an employee suffers a work injury, that same injury may also satisfy the definition of a “serious health condition” under the federal Family and Medical Leave Act (FMLA), and may satisfy the definition of a “disability” under the federal Americans with Disabilities Act (ADA).

Coordination between workers’ compensation, the ADA, and the FMLA raises many questions for employers. This addresses several of the most common.

Family and Medical Leave Act

Employers must provide eligible employees up to 12 work weeks of leave during any 12-month period if the employee is unable to perform the functions of his job because of a serious health condition, as defined by the FMLA.

The employer may require medical certification from a medical provider confirming the medical necessity for the leave and that the employee is unable to perform the essential functions of the job. Any information received in relation to benefit plans or employment-related disability policies, including workers’ compensation, may be considered in determining the employee’s entitlement to FMLA leave. An employee’s entitlement to FMLA leave is not affected

by failure to provide information required for non-FMLA benefits.

An employee may take or employers may require concurrent use of accrued paid leave, including workers’ compensation leave, with the unpaid FMLA leave. The employee still must satisfy the employer’s requirements for taking such paid leave concurrent with the unpaid FMLA leave.

Group health insurance coverage is maintained while the employee is on FMLA leave, on the same terms as if the employee was working. Other laws, contracts or policies might obligate an employer to maintain additional benefits while an employee is receiving workers’ compensation benefits.

Before returning an injured employee to work, an employer may require a fitness-for-duty certificate from a healthcare provider. At the time the FMLA designation notice is provided, the employer must notify the employee that a fitness-for-duty certificate will be required, and also provide a copy of the essential functions of the job that the fitness-for-duty exam will address.

An employee on FMLA leave is not required to accept a light-duty job offer. Any time the employee spends performing light-duty work is not counted against the employee’s FMLA leave entitlement. If an employee declines light duty, the employer will have to determine whether the employee continues to qualify for FMLA leave. If so, an employer may not terminate the employee for absenteeism or take any other actions prohibited by the FMLA until the employee’s entitlement to FMLA leave has been exhausted. If the employee unreasonably rejects an offer of light duty, workers’ compensation benefits may be suspended.



Workers' compensation case

Americans with Disabilities Act

ADA considerations may arise throughout the course of a work injury, requiring an employer to perform an ADA reasonable accommodations analysis to evaluate return-to-work possibilities. The ADA Amendments Act of 2008 became effective Jan. 1, 2009. As this article went to press, the Equal Employment Opportunity Commission (EEOC) published the final regulations to implement the ADA Amendments Act of 2008.

A "disability" under the ADA requires either: (a) a physical or mental impairment that substantially limits one or more major life activities; (b) a record of such an impairment; or (c) being regarded as having such an impairment. The 2008 amendments liberalized how the statutory definition of "disability" is interpreted. Significantly, even if an impairment does not impair a major life activity, the employee is protected by the Act so long as the employee was "regarded as" disabled because of the perceived impairment. These broadened definitions are likely to more frequently implicate injured workers.

In determining whether the employee is substantially limited in performing a major life activity, the employee is compared to most people in the general population. Examples of categories of major life activities are: performing manual tasks, walking, standing, lifting, bending, sitting, and reaching.

Employers who still have a return-to-work policy requiring employees at "full duty" or "restriction free" before returning to work, should revisit that policy. Recent settlements resulting from suits brought by the EEOC against employers demonstrate the EEOC's intent to aggressively enforce the liberal intent of the ADA.

In one suit, the EEOC alleged the employer violated the ADA by failing to allow employees with disabilities to return to work without a full-duty, no-restriction doctor's release. While an employer can require an employee to bring in a medical slip or prove that she is capable of physically performing the essential functions of the job, employees are often able to perform the necessary duties even though they are not "restriction-free."

In another suit, an employee claimed disability discrimination after the employer terminated him at the end of his workers' compensation leave. The employee continued to experience disability from his

work-related injuries, but alleged he had repeatedly tried to return to work and was never provided any reasonable accommodations to facilitate his return. The EEOC claimed that the employer terminated employees on leave without considering reasonable accommodations or reasonable extensions of their leaves.

Policies concerning return-to-work or physical requirements for the job should be reviewed in light of these recent settlements and changes to the ADA. ♦

Lynn, Scharfenberg and Associates, SFM's in-house legal firm, can be reached at (800) 937-1181 ext 4450.



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Thinking about new employees, part-timers, subs, temps, freelancers or virtual workers? How to control costs and liabilities. What you need to take care of up front.



Planning some measured steps to grow your organization? Maybe take on a few new employees? Or, to staff for the valleys instead of the peaks, maybe look at alternatives to full-time hires?

New employees: What will you expect of them?

32 percent of injuries involving lost workdays are sustained by employees who have been on the job less than 12 months, according to the U.S. Bureau of Labor Statistics for the four years 2006-2009.

That's startling. It is also generally due to two things—bad hires and lack of training.

Sound hiring practices lead to lower business costs and better workers' compensation experience. Here is a brief list of fact-checking to do before making a hiring decision. To do your due diligence, you may need to upgrade parts of your hiring process:

- Application form that is up to date as a legal document.
- Criminal background check.
- Educational degree verification.
- Driving record check.
- Reference checks.
- Social Security number verification.



32 percent of injuries involving lost workdays are sustained by employees who have been on the job less than 12 months.

Missteps in your hiring can be costly. SFM has worked with thousands of employers in these situations, and you can learn from their experiences.

- Job description outlining the job's physical requirements.
- Drug and alcohol test.
- Pre-employment physical.

For pointers on each of these, see the January 2010 *Companion* at sfmic.com > Employers > Resources > Publications.

Off on the right foot

Consider training one of the most important things you can do for your new employees:

- They need to know how to do their jobs safely.
- They need to understand your expectations for safety and behaviors.

Getting new employees off on the right foot with safety is part of your safety culture and a key step in controlling your organization's business costs relating to injury. The benefits continue long term.

Training for new hires should be part of your plan for expanded operations, not an afterthought.

As an SFM policyholder, you are welcome to take advantage of hundreds of SFM training and educational resources at no charge. See the SFM Resource Catalog, safety video library, and the online employee training courses. Go to sfmic.com > Employers > Online Services.

Part-time employees: What if one is injured?

Their benefits under the law surprise some employers.

Take Weltbruch School. One of its part-time workers was Jean, who worked evenings as a custodian. Jean sustained a serious low-back injury one day while emptying trash. Nearly two years and many medical visits later, including independent medical exams, Jean was still unable to work. She received wage-replacement benefits to compensate for her lost workdays. In addition, Jean was entitled to wage-replacement benefits for her other job—a daytime assembly line job at a local manufacturing plant, where she had worked until the back injury. By law, if an injured worker is regularly employed in two part-time jobs, then the incomes are combined to determine the worker's average weekly wage and subsequent wage-loss benefit payments. The result, as the school administrator was surprised to learn, was that the wage-loss benefits paid to Jean under the school's workers' compensation policy were much higher than expected based upon Jean's combined wage rate from both part-time jobs.

States differ

This is how compensation for second jobs generally works in Minnesota. However, it is not the case in some other states, like Wisconsin. But Wisconsin allows for situations where a part-time worker receives workers' compensation benefits that are based on full-time pay rather than actual part-time pay.

Bottom line

Hiring part-time workers may involve greater liability—rather than lesser—if the employee is injured.

Training is especially important. Part-timers need just as much training for the job as full-timers.

In addition, you as an employer may want to be aware of your part-time employees' other jobs, particularly if they involve physical labor and risk of injury.

Using outside workers: Step 1 is getting the right documents from them

Get the right documents before work begins. That includes documents showing coverage in the case of injury.

Typical story

A builder subcontracted part of a construction project to a small cement firm. The cement firm's employee, hard at work one day, smashed his thumb with a sledge hammer. Months later, the employee was still off work. His workers' compensation benefits for wage replacement and medical bills were \$20,000 and mounting.

The builder had assumed the cement firm carried coverage for work injuries.

But, surprise. The cement business carried no coverage. In Minnesota, the law is clear in situations like this: Liability falls to the general contractor. As a result, many months of expensive wage-replacement benefits were paid to the injured cement employee by the builder's workers' compensation policy, impacting the builder's future premiums.

Important steps you need to take

Engaging outside help is becoming a bigger issue for employers. Many in this hesitant economy are staffing up without upping their staff. Instead, they are engaging temporary employees, freelancers, subcontractors, consultants, and outsourced services.

Each of these has issues to watch out for when it comes to protecting your organization from liability for their work injuries. The story about hiring the cement man is typical, and it applies to all industries. When hiring someone who will be working independently, be sure the person is covered for work injuries. He or she will need to produce a certificate of insurance. Keep a copy. This is legal protection for you.

If the person works alone, he may or may not carry workers' compensation insurance.



If he does, you will need to get from him an insurance certificate showing workers' compensation coverage in force at the time you engage him. You can double-check his workers' compensation insurance through state agency online look-up databases. Most state labor departments have them. Minnesota's, for instance, is at www.inslookup.doli.state.mn.us.

If he does not have workers' compensation insurance, then (1) verify that he meets your state's legal criteria to be considered an independent contractor, and (2) get from him an insurance certificate for general liability with adequate minimum limits of coverage.

For the first step, your state labor department should have a brochure or website information to help guide you. The criteria are pretty straight-forward. In Minnesota, for example, a person in the construction industry must meet nine criteria to be considered an independent contractor for purposes of workers' compensation liability. A person in trucking must meet seven conditions. A person in any other trade

must meet five conditions relating to:

- Right to control performance.
- Method of payment.
- Furnishing tools and materials.
- Control over the work premises.
- Right of discharge.

In Minnesota, if you are hiring a sole proprietor to do construction work, ask for his Independent Contractor Exemption Certificate, issued by the state. This will verify that he has met all of the conditions to be an independent contractor.

If this documentation is new territory for you, it is worth your while to invest the time to understand and apply it as you engage outside people to do work for you. Consult with your employment attorney.

For more on hiring subcontractors, go to sfmic.com > Employers > Resource Catalog.

Beware of scanty contracts

Unfortunately, there are many of these out there. They are either deliberately or unwittingly silent on important legal considerations including coverage for workers' compensation. You may run into these when engaging temporary help, for example.

Have contracts reviewed by your employment attorney before you sign.



Temps, freelancers, independent contractors, consultants, outsourced services—each of these has issues to watch out for when it comes to protecting your organization from liability for their work injuries.

Using virtual workers: With efficiency come special considerations and responsibilities

They work at home, may own their own equipment, and are becoming a more important source of production for lean organizations.

Outsourced

Small businesses and start-ups, in particular, are finding virtual workers a way to accomplish specific projects, assignments and fixed-price work. Generally, they are outsourcing to freelancers and independent contractors, who they likely will never meet in person. The advice at right on using outside workers applies here.

Employees

Another realm is telecommuters—your employees who work online instead of onsite. While that may reduce your overhead, it does not reduce your responsibilities. What's different is how you manage those responsibilities and the special considerations of accommodating a home working environment.

You are still responsible for work-related injuries, for example. The rule of law that asks whether an injury occurred “in the course and scope of employment” applies to employees who work from home just like it does to those who work in your office.

During the interview, ask about the home office setup. Is the desk height adjustable? How about chair height? Address any issues in your plan for this employee.

Go out and inspect the employee's proposed home office. You or someone skilled in safety and ergonomics should make sure the desk surface, chair height, back support, keyboard and monitor are positioned correctly. Check lighting, cords, smoke detectors.

You want your virtual employees to have work spaces that meet the same health and safety standards as the work spaces for employees in the office. ♦



SFM Resource Catalog Employers' top picks

1. Video Lending Library safety flicks
2. “Return-to-work: A basic policy”
CompTalk
3. “Educating your supervisors”
CompTalk
4. “Stretching Works @ Work” materials
5. “Four points to safe lifting” employee guide
6. “You were injured at work... now what?” brochure
7. “Slips, trips and falls”
5-Minute Solution
8. *SFM Employer Kit*
9. “Employee handbook policy”
CompTalk
10. “Break the injury cycle”
5-Minute Solution

Download these and hundreds more resources at sfmic.com > **Employers > Resource Catalog**



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How to contact SFM

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Toll-free (800) 937-1181
Metro area (952) 838-4200
Fax (952) 838-2000

To report a claim

Online
Toll-free (800) WC-CLAIM
Metro area (952) 838-2020

Lynn, Scharfenberg & Associates

Toll-free (800) 937-1181
Metro area (952) 838-4450

Your claims information

CompOnline® www.sfmic.com
Phone (952) 838-4200

Safety programs (952) 838-4309

CompRehab Inc. (952) 838-4400

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