

Dangers of Heat-Related Illness

Every year, Arizona workers subjected to extreme summer temperatures succumb to heat-related illness. These illnesses range in severity from minor dehydration to heat stroke, which can be fatal; each heat-related illness, however, is preventable. During the intense summer months, it is imperative that employers ensure that workers are aware of the dangers associated with heat-related illness, can identify the signs and symptoms related to such illness, and know how to prevent it from occurring.

According to the Arizona Department of Health Services (ADHS), nearly eight hundred people are admitted to hospitals each year due to heat-related illness. As a result, ADHS and the federal Occupational Health and Safety Administration (OSHA) recommend that employers hold interactive training sessions with staff to educate them on how to stay safe during the summer months.

Stages and Symptoms of Heat-Related Illness

It is important to understand the different stages of heat-related illness. While some stages may seem mild in severity, each stage is a health threat and should never be overlooked:

- **Thirst:** The body keeps itself cool by dissipating heat through the skin, and by perspiring, or evaporating fluids. If your body tells you that you are thirsty, you are already mildly dehydrated.
- **Heat cramps:** Muscular pains and/or spasms due to heavy exertion. These are caused by the loss of water and salt through sweating, and usually affect the abdominals or legs. Heat cramps can range from mild to very painful.



- **Heat Exhaustion:** Less dangerous than heat stroke, heat exhaustion typically occurs due to heavy exertion. Possibly due to humid conditions or too many layers of clothing, the body is unable to properly cool itself, causing decreased blood flow to vital organs, resulting in a form of shock. Symptoms of heat exhaustion include: pale skin, headache, dizziness and nausea.
- **Heat Stroke:** Heat stroke is also commonly known as sunstroke and is life-threatening.

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SUBROGATION IN WORKERS' COMPENSATION CASES

Subrogation is a legal concept that, in the workers' compensation context, allows an entity that has provided workers' compensation benefits to an employee who was injured as a result of a third party's negligence to pursue a claim against the wrongdoer for reimbursement of the total amount of indemnity and medical compensation paid. The injured worker's claim against the wrongdoer (or "tortfeasor") is subrogated to that of the benefits provider. In other words, the worker's right to a monetary recovery against the tortfeasor is secondary to the provider's right to a full reimbursement of the amount of benefits paid to the injured employee. By an analysis of Arizona's pertinent statutory law, a true understanding of a workers' compensation provider's subrogation rights can be achieved, as can an understanding of the circumstances in which only a limited monetary recovery can be effected.

A provider's right to subrogation in workers' compensation cases is outlined under A.R.S. § 23-1023 (A – E). These statutes simply state that if an entity must pay workers' compensation benefits to a worker injured as a result of a third party's negligence, the payer will have an automatic lien, encompassing the total amount of medical and indemnity benefits paid, against any money paid by the tortfeasor to the employee. In addition, A.R.S. § 23-1023 (D) mandates that the payer's lien is applied to "the total recovery less the reasonable and necessary expenses, including attorney fees, actually expended in securing the recovery." For example, in a case where an injured worker receives a \$15,000 settlement from a tortfeasor and his attorney is charging \$5,500 in fees and costs, the workers' compensation provider's lien could only apply to \$9,500 (\$15,000 less \$5,500). If the provider's lien amounted to \$4,500, the remaining \$9,500 would be reduced by that amount and the claimant would net \$5,000. In turn, the \$5,000 would constitute a credit for the provider against any additional indemnity or medical payments due if the claim is reopened in the future. This future credit prevents the injured worker from receiving a double recovery – workers' compensation benefits and money from the tortfeasor without an offset. Finally, the statute mandates that the provider has the authority to approve the disbursement of any settlement money to ensure that its lien is protected.

However, in order to effect an equitable settlement and/or avoid the risk of not obtaining any subrogation recovery, certain circumstances will arise that compel a provider to accept a partial recovery of its lien and even possibly waive its right to a future credit. These circumstances include the following:

- The tortfeasor has low liability policy limits. This frequently occurs in cases involving automobile accidents, where the tortfeasor has the state-mandated minimum coverage of \$15,000 or only a slightly higher amount. Serious injuries can result in the payment of workers' compensation benefits that grossly exceed the tortfeasor's available coverage. In these situations, the provider must negotiate with the injured worker or his or her attorney to allocate the available funds among the amount of its lien, the attorney's fees and costs, if applicable, and the net recovery for the injured worker.
- The liability of the tortfeasor is questionable. In cases where proving a tortfeasor's legal responsibility is difficult, effecting a settlement resulting in only a partial reimbursement is more favorable than continuing with litigation where the outcome is uncertain and could potentially conclude with an adverse ruling and a \$0 recovery.
- Some degree of responsibility for causing the accident can be asserted against the injured worker and/or the employer. Since Arizona is a pure comparative negligence state where a proportionate share of liability for causing an accident is assigned to each involved party, a finding of comparative negligence against the injured worker and/or the employer can result in a reduction of the total monetary award by their respective shares of liability, as well as the potential for grossly reducing or eliminating entirely the workers' compensation provider's lien. Therefore, it is prudent to accept a diminished reimbursement rather than face the possibility of receiving an even smaller recovery or none at all in continuing litigation.
- When negotiating with the injured worker or their attorney in one of the aforementioned situations, providers are allowed to waive their right to a future

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Industrial Commission Releases 2010 Annual Report

The Industrial Commission of Arizona (ICA), the agency that regulates the state workers' compensation system, has released its 2010 Annual Report. In addition to revenue data, the ICA keeps a detailed record of workers' compensation claims and the associated injuries, as well as inspection and citation statistics from the Arizona Division of Occupational Safety and Health (ADOSH). Items of note contained in the report:

- The ICA received 96,700 work comp claims in 2010, a decrease of approximately two thousand claims from the previous year.
- Municipality-employed workers filed the most claims, followed by private-sector employees. State government employees filed the least amount of injury/illness claims in 2010.
- The majority of workers' compensation claims were filed by employees in the services industry. The retail and construction industries ranked second and third, respectively. Operators and fabricators led lost workday claims by profession.
- While the most commonly cited injuries were of "miscellaneous" nature, overexertion was the most frequently cited cause, followed by contact with object(s). Of these "contact" claims, the floor/ground

was the most frequently cited "object", with persons, plants, (or) animals ranking second.

- On average, the ICA issued 12,994 work comp awards per month.


ADOSH is responsible for regulating workplace safety, conducting compliance inspections/investigations, and issuing noncompliance citations. ADOSH conducted 973 inspections in 2010. Compliance inspectors found that the most frequently violated standard was the Hazard Communication standard, also known as the "Right to Know" standard. A violation of this standard occurs when an employer fails to properly notify workers of potential job hazards through Material Safety Data Sheets (MSDS), chemical labeling, and first aid kit/equipment placement or availability. ADOSH issued 338 citations for violation of the Hazard Communication standard in 2010.

ADOSH also investigates all workplace fatalities to determine if there were any safety or health standard violations which caused or contributed to an employee's death. Of the 35 fatalities investigated in the 2009-2010 period, 46 percent were due to strike/crush incidents, 20 percent to falls, and 17 percent to electrocutions.

The Industrial Commission's complete annual report can be accessed at www.ica.state.az.us. 

Industrial Commission Announces Increase in Lost Wage Benefits

The Industrial Commission of Arizona recently announced a 3.6 percent increase in the maximum average monthly wage to be utilized for work-related injuries. The increase will take effect on January 1, 2012, and will affect claims for all injuries

occurring on or after that date. The increase in the maximum average monthly wage will result in an increase in the maximum weekly rates for temporary total disability (TTD). 

	2012 Maximum	2011 Maximum	Increase
Average monthly wage	\$4,062.29	\$3,920.75	\$141.54
Weekly TTD rate	\$623.28	\$601.51	\$21.77
Weekly TTD rate (w/dependents)	\$629.02	\$607.32	\$21.70

Arizona Summer Elevates Bite/Sting Risk

The Arizona Poison and Drug Information Center experiences an increase in call volume each summer, particularly in the amount of venomous insect and snake bite calls. Arizona, especially the warmer, desert climate, is home to numerous insects, snakes and other reptiles, many of which are venomous. Employees should be made aware of these dangerous critters, where they are most likely to be encountered, and what to do if they are stung or bitten by a venomous reptile or insect.

RATTLESNAKES

There are 17 different subspecies of rattlesnake found in Arizona, all of which are venomous. Rattlesnake venoms are complex poisons that vary in chemical composition and potency. Perhaps our state's most widely recognized rattlesnake, the Arizona Diamondback displays all of the characteristics most common to the species: a triangular shaped head, a facial pit, cat-like pupils, foldable fangs and, of course, a rattle.

Rattlesnakes in Arizona are most active and encountered most often from early April to late October. While sighting a rattlesnake in Arizona is common, most bites do not occur without provocation. The Arizona Poison and Drug Information Center reports that of all snakebite cases they receive, 50 to 70 percent of the bites were caused by a person trying to kill, capture, or harass a rattlesnake. Employees should be instructed to watch where they put their hands and feet, especially at night, when snakes are most active during the summer months, and to never attempt to move or handle a dead snake- reflex strikes with venom injection can occur for several hours after a rattlesnake's death.

If a rattlesnake bite does occur, prompt medical attention is recommended. Important tips to remember:

- **Don't** use ice or electricity at the wound site.
- **Don't** apply a tourniquet or suction.
- **Don't** give alcohol or medication.
- **Don't** attempt to capture the rattlesnake.
- **Don't** wait to see if symptoms occur or worsen.
- **Do** relax and restrict movement; use of a splint can be effective in reducing the spread of venom.

- **Do** remove tight clothing, shoes or jewelry from the affected limb.

While modern medical technology has reduced rattlesnake bite-related deaths to less than 1 percent of bite victims, serious symptoms, including anaphylaxis, are possible and professional medical attention should be sought immediately.

SPIDERS

The two most commonly encountered venomous spiders in Arizona are the Black Widow and the Brown Spider.

Black Widow- A large, asymmetric web indicates the presence of the Black Widow spider. The mature female of the species is globe-shaped and shiny, with long legs and an orange or yellow "hourglass" marking on the underside of the abdomen. The male is smaller, brown-colored, and not a significant threat

to humans. The Black Widow is resistant to many insecticides, and will bite if she feels that her web or eggs are in danger.

A bite from a Black Widow is initially painful, with little or no local reaction. Pain, cramping, or stiffness may occur in the shoulders, back or abdomen. A bite victim may also develop nausea, vomiting, or anxiety.

If bitten by a Black Widow, the site should be cleaned well with soap and water, and the affected area should be raised to heart level, if possible. A cool compress and over-the-counter pain medication can be administered to relieve minor symptoms; those experiencing severe symptoms should seek medical attention.

Brown Spider- The Brown Spider we find in Arizona is often mistakenly referred to as the Brown Recluse spider; the Brown Recluse resides only in the Midwest. The Brown Spider is light tan to dark brown, with a violin-shaped marking on the head or chest region. The Brown Spider is non-aggressive, and hides in dry, dark, quiet areas. Most bites occur when construction materials or protective clothing in which the spider has taken up residence are disturbed.

A bite from a Brown Spider is not initially painful, but will

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Court Clarifies Presumptive Compensability Evidence Requirements

Each of our fifty states has adopted statutes affording special compensability criteria for police officers and firefighters who develop certain diseases as a result of their unique employment. While most of these laws involve illnesses of the heart or lungs, as well as certain types of cancer, statutes vary widely from state to state as to the specific types of disease covered and the type of evidence necessary to affirm or rebut the presumption that the employment played a causal role in development of the particular illness.

Arizona's version of this type of law, A.R.S. § 23-901 (B-E), is applicable only to firefighters and peace officers, and covers "brain, bladder, rectal or colon cancer, lymphoma, leukemia or aden carcinoma or mesothelioma of the respiratory tract" resulting in disability or death. The statute, which applies only to "full-time" workers, defines "firefighter" as an employee "who was regularly assigned to hazardous duty", while "peace officer" is defined as an employee "who was regularly assigned to hazardous duty as part of a special operations, special weapons and tactics, explosive ordnance disposal or hazardous materials response unit". The statute can also apply to retired firefighters and peace officers, provided that the claim for workers' compensation benefits is filed on or before their 65th birthday.

If a firefighter or peace officer develops a covered illness, it is "presumed to be an occupational disease...and is deemed to arise out of [the] employment". However, in order for this presumption to apply, *all* of the following criteria must be met:

- The firefighter or peace officer passed a pre-employment physical examination with no evidence of cancer;
- The firefighter or peace officer was assigned to hazardous duty for a minimum of five years; and
- The firefighter or peace officer was exposed to a known carcinogen, informed his/her employer of the exposure, and the carcinogen is "reasonably related" to the development of cancer.

A.R.S. § 23-901 (B-E) "does not apply to cancers of the respiratory tract if the firefighter or peace officer has smoked tobacco products".

While the burden of proof is reduced for firefighters and peace officers who develop certain illnesses or cancers, sound evidence is still required in order to invoke the statute's presumption of compensability. A recent decision by the Arizona Court of Appeals (Division One) clarified the requirements necessary to raise that presumption. In *William Hahn v. Industrial Commission*, a City of Phoenix firefighter had been assigned to at least five years of hazardous duty during his 19 years of employment with the City. He was repeatedly exposed to toxins, which he reported to his employer on 41 occasions. In 2008, he was diagnosed with colon cancer and subsequently filed a claim for workers' compensation benefits. The claim was denied, disputed by the claimant, and set for a series of hearings before an Administrative Law Judge (ALJ) at the Industrial Commission of Arizona (ICA).

After receiving testimony from several physicians, the ALJ ruled that the claimant was ineligible for the presumption of compensability afforded by A.R.S. § 23-901.01. The ALJ ruled that the claimant had failed to present evidence demonstrating that any of the three known carcinogens he had been exposed to were "reasonably related" to the development of colon cancer. The ALJ also stated that "the evidence tends to point to other non-industrial risks as being more predominant, such as having a significant family history of rectal and colon cancer, and early discovery of pre-cancerous polyps (mother, sister, and brother)". The claim for benefits was denied, and, after a request for review resulted in the ALJ affirming her prior decision, the case was litigated before the Arizona Court of Appeals.

The claimant contended that the ALJ had misconstrued A.R.S. § 23-901.01, and was therefore entitled to the statutory presumption that his development of colon cancer was directly related to his exposure to toxins while working as a firefighter. The claimant asserted that presenting evidence that the applicable toxin was "reasonably related" to the development of colon cancer was unnecessary since the statute was intended "to clarify that a firefighter need only prove that he was exposed to a...carcinogen, not that the carcinogen has been shown to cause the particular cancer contracted"; to interpret the statute otherwise would eliminate its legislative

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Heat-Related Illness continued from page 1

The body stops producing sweat, causing internal temperature to rise. Failure to properly return the body to normal temperature may result in brain damage or death. Symptoms of heat stroke include vomiting, disorientation, throbbing headache, high body temperature (sometimes as high as 105 degrees), weak pulse, shallow breathing and seizures. A person suffering from heat stroke is in extreme danger, and 911 should be called *immediately*.

First Aid for Heat Emergencies

The first step to recovery is to cool the body. Get the victim to a cooler place and have them drink small amounts of water every 15 minutes. Avoid letting them drink too quickly; this can induce vomiting. Be sure to avoid beverages with alcohol or caffeine; these will worsen the symptoms. Remove or loosen tight clothing and apply cool wet cloths. Watch for difficulty breathing or worsening of symptoms. Seek medical attention immediately if the victim refuses water, vomits or loses consciousness.


Prevention

The key to helping employees avoid heat-related illness is to make prevention mandatory. Employers should instruct their staff to take the following precautions:

- **Dress for the heat.** Workers should wear lightweight, light-colored clothing. When possible, loose-fitting clothing should be worn to allow the body to properly cool itself.

Hats that shield the face and neck from direct sunlight should be worn when working outdoors and sunscreen should always be applied to exposed skin.


- **Drink plenty of water.** The Arizona Division of Occupational Safety and Health (ADOSH) standards require employers to provide sufficient cool drinking water for employees. Workers that spend time outdoors are advised to drink one to two liters of water per hour that they are outside. Workers should take regular water breaks even if they do not feel thirsty, and should avoid alcohol and caffeine, as these aid in dehydration.
- **Avoid long periods of sun exposure.** Employers can erect shade structures to provide a place for employees to take breaks and rest out of direct sunlight.
- **Take regular breaks.** Employees should take frequent breaks to rest and cool off, and should be advised to seek shade and rest immediately if they show symptoms of heat-related illness. Strenuous activity, if unavoidable, should be done during the coolest time of day, usually before 7 a.m.

More information on OSHA's heat-illness prevention and employee training can be accessed at www.osha.gov/SLTC/heatillness/index.html. 

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credit against the amount of the employee's net recovery. A waiver can help in obtaining an equitable settlement in the more difficult cases, and can be applied against future medical benefits, indemnity payments, or a combination of both. Negotiating tactics can include agreeing to waive all forms of future credit in exchange for a full lien reimbursement, or an insistence on maintaining the future credit, but making an offer to accept a reduced monetary recovery.

The pursuit of subrogation recoveries is an important aspect of proper workers' compensation claims management. An employer's workers' compensation insurance premiums should not be increased when an accident is totally caused

by a tortfeasor and subrogation is factually, legally, and economically viable. When the provider obtains a complete recovery of the monetary benefits paid, the claim is no longer a part of the employer's premium modification calculation used to establish future insurance costs. However, employers must be cognizant that numerous situations will arise where a complete recovery is simply not possible. As a result, after a provider has negotiated the best possible settlement option available for one of those types of cases, employers should understand that any amount of recovery is better than none at all, since even a partial reduction can potentially aid in reducing their future workers' compensation insurance rates. 

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usually become so within a few hours. Over time, the bite wound will develop into a “bull’s-eye lesion”, classically characterized by a round, white wound against a red, inflamed background. A Brown Spider’s bite can take months to heal completely, and may leave a scar requiring cosmetic or reconstructive surgery.

If bitten by a Brown Spider, the wound should be kept clean to prevent an infection from developing; medical attention should be sought immediately.

SCORPIONS

There are 30 species of scorpion found in Arizona; only the Bark Scorpion is regarded as a threat to humans. The Bark Scorpion is one of the smallest species, reaching only one to two inches at maturity, but it is the best climber of all scorpions. The Bark Scorpion has a light-colored, segmented body and a long, thin tail. The venom-filled stinger sits at the end of this tail, which a scorpion can flick over its body to strike a target at rapid speed.


The Bark Scorpion is sedentary by day, seeking shelter in crevices or under rocks or construction materials. The Arizona Poison and Drug Information Center reports that most stings

during evening hours occur when the scorpions emerge from their shelters to find food; day-time stings are usually a defensive result of their shelters being disturbed. Employees should be instructed to use caution when clearing refuse, moving construction materials, or relocating rocks, wood, or concrete.

A scorpion sting will usually cause moderate pain and localized swelling, with the affected area often becoming sensitive to temperature or touch. If stung by a scorpion, basic first aid measures are usually sufficient:


- Clean the area with soap and cold water,
- Apply a cold compress to minimize swelling,
- Elevate the area to heart-level, if possible, and
- Use over-the-counter pain medication for minor discomfort.

Small children and adults with severe symptoms should seek immediate medical attention.

For more information on reptile or insect bites or stings, the Arizona Poison and Drug Information Center can be reached state-wide, 24 hours a day, at 1-800-222-1222. 

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purpose- to enable firefighters who develop certain forms of cancer after exposure to known carcinogens to obtain workers’ compensation benefits by eliminating the burden of proving a causal connection between the exposure to a toxin and the development of cancer. The court strongly disagreed with the claimant’s argument and upheld the ALJ’s initial ruling, stating that in order to invoke the statutory presumption, evidence must be submitted demonstrating that “the carcinogen is *reasonably related* to the cancer”. The court offered that had the claimant submitted any medical evidence showing a *general, causal connection* between colon cancers and at least one of the three toxins to which he had been exposed, the presumption would have been applicable, eliminating the need to prove that a specific exposure had *caused* his cancer.

Furthermore, the court expounded that the statute, as written, does express the legislative intent of lowering the burden of proof for firefighters or peace officers who develop certain forms of cancer; the higher evidentiary standard of demonstrating “a direct causal connection or proximate cause” between exposure to carcinogens and development of cancer does not apply. Instead, due to A.R.S. § 901-01.01, a claimant need only prove that a *general causal link* exists between exposure to carcinogens and development of cancer, which is clearly a lesser burden of proof. Arizona’s statute, while carrying certain restrictions, still attempts to accomplish the goal encompassed by this type of law in each state: the ensured and swift acquisition of workers’ compensation benefits for firefighters and peace officers whose dangerous public employment responsibilities expose them to unique risks of developing serious illnesses. 



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