

Australian e-mail helps avoid potential fatality

After receiving an e-mail alert from Australia regarding a fire extinguisher that had exploded and hurled the canister nearly 66 feet, an Arizona Department of Occupational Safety and Health (ADOSH) compliance officer discovered a fire extinguisher on an Arizona jobsite that could have exploded at any time.

The compliance officer then sent e-mails to ADOSH colleagues saying if the information about the fire extinguisher had not been shared, he would have never caught this potentially fatal accident before it happened. The compliance officer attached photos from the Arizona jobsite that were very similar to the Australian incident.

“The sharing of safety information in a timely manner may have prevented this hazard from becoming a fatal mistake”, commented an article in the *ADOSH Advocate*.

According to the *Advocate* article, the alert from Australia contained the following information:



“A fire extinguisher located on a dozer exploded throwing the extinguisher approximately 20 meters (65.6 feet) from the machine. The brackets attached to the dozer had bolts protruding enough to induce wear and fatigue cracks on the cylinder itself which resulted in a catastrophic failure in the cylinder body. When installing the brackets to the machine,

care should be taken to ensure that no part of the cylinder is touching an area that may cause rubbing and wear on the cylinder body.”

“The day after this e-mail circulated,” the *Advocate* article continued, “an ADOSH compliance officer was on a jobsite and mentioned the fire extinguisher hazard to the general contractor and a subcontractor. When the officer and employers looked at a fire

extinguisher mounted on a forklift, one of the mounting bolts was not properly installed and was digging into the wall of the extinguisher, creating a gouge approximately 1/16th of an inch deep.”

The officer recommended:

- 1) Daily inspections of extinguishers for damage;
- 2) Checking brackets for protruding bolts;
- 3) Replacing cylinders and/or brackets if damage was detected; and
- 4) Installing rubber lining on the brackets to protect cylinder bodies.

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Impairment and disability

The words “impairment” and “disability” are frequently used interchangeably, but under Arizona law the two words have very different meanings. Impairment has been defined as “any anatomic or functional abnormality or loss.” On the other hand, disability – also known as loss of earning capacity – has been defined as occurring when an employee’s “actual or presumed ability to engage in gainful activity, including employment, is reduced because of impairment.” The definitions have been taken from the American Medical Association’s *AMA Guidelines*.

Thus, an employee who suffers impairment does not necessarily suffer a disability, or loss of earning capacity. However, impairment as defined by the *AMA Guidelines* is required, or the employee cannot be eligible for a loss of earning capacity (LEC) award.

For example in *Tsosie v Industrial Commission*, a grocery store stock clerk developed ischemic flexor tendon irritation in both his arms as a result of stocking shelves over a prolonged period of time. Following treatment, his claim was closed without any permanent impairment designation. While his treating physician stated that the claimant did not have an impairment consistent with the *AMA Guidelines*, the treating physician did assert that, on a prophylactic basis, the claimant should not return to his job as a stock clerk because his symptoms would return. As a result of the permanent work restrictions, the claimant maintained that he did have an impairment and was therefore entitled to an unscheduled permanent disability award. However, the Court of Appeals disagreed and stated “that the imposition of permanent work restrictions is [not] tantamount to a finding of permanent impairment,” which “is a prerequisite to the legal finding of permanent disability...”

Scheduled impairments

A.R.S. § 23-1044 (B) governs the amount of permanent partial disability payments for impairment to specified body parts, such as legs, hands, and fingers. According to the decision in *Ronquillo v Industrial Commission*, a scheduled impairment is conclusively presumed to have some effect on an individual’s earning capacity. If the requirements of A.R.S. § 23-1044 (B) are applicable, then the injured employee is limited to the scheduled remedy, regardless of how the impairment actually affects his or her earning capacity, as required in A.R.S. § 23-1044 (H).

However, under A.R.S. § 23-1044 (B) (21), if the employee is unable to return to the work that he or she was performing at the time of injury as a result of a “total or partial loss of use” of a scheduled body part, then the permanent partial disability (PPD) is determined based on 75 percent of the average monthly wage, not on 55 or 50 percent.

If the injured employee had no permanently impairing conditions prior to the industrial accident, only the physical location of the permanent impairment governs whether permanent disability benefits will be paid on a scheduled or unscheduled basis. For example, if an employee suffers a leg injury that ultimately results in a permanent impairment in the hip as defined by the *AMA Guidelines*, permanent disability benefits will be on an unscheduled basis. In other words, the site of the original injury or injuries is not a determining factor as to the type of PPD benefits to be awarded, but rather the area of the body where the residual impairment is located. (See *Roeder v Industrial Commission*.)

Effects of prior disabilities on scheduled impairments

A.R.S. § 23-1044(E) has been interpreted by Arizona courts to require that an otherwise scheduled injury becomes unscheduled if, at the time of the industrial accident, the injured employee had a previous impairment that affected his or her earning capacity. Significantly, the previous impairment does not have to be from an injury or accident. It can even be from a congenital defect.

The following types of pre-existing impairments are presumed to have affected an injured employee’s earning capacity:

- 1) Pre-existing, severe non-industrial impairments that would be scheduled under Arizona’s workers’ compensation statutes.

This includes pre-existing impairments considered so great that a conclusive presumption is made that they affected the employee’s earnings capacity prior to the injury.

Examples include loss of one or both legs, loss of an arm or loss of sight in one eye.

- 2) Prior industrially related scheduled impairments from injuries adjudicated under Arizona law.

If a worker has a prior industrially related scheduled

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impairment that was adjudicated under Arizona law and then sustains another industrial injury in Arizona that results in another scheduled impairment, then the permanent disability benefits are provided on an unscheduled basis. The prior impairment is conclusively presumed to have affected the employee's earning capacity. It is irrelevant if the prior injury's impairment actually caused any loss of earning capacity. The conclusive presumption applies even if the first and second injuries pertain to the same extremity as long as the second injury causes increased impairment. For example, a 2003 left knee injury resulted in 5 percent impairment to the left lower extremity. Then, the employee sustained another work-related left knee injury in 2010 that results in an overall impairment rating of 8 percent to the left lower extremity with the additional 3 percent attributable to the 2010 incident. PPD benefits for the 2010 injury would be determined on an unscheduled basis.

If the worker does not have a current loss of earning capacity, a vocational rehabilitation bonus is paid by the carrier/employer in one lump sum, per A.R.S. § 23-1065 (B) (1). The bonus amount is determined by applying the impairment rating percentage to the schedule provided under A.R.S. § 23-1044 (B) and then multiplying the resulting number of months by either 50 or 75 percent of the claimant's average monthly wage, with the higher percentage used when a worker cannot return to his or her date-of-injury occupation. The rehabilitation bonus "shall be a credit against any permanent compensation benefits awarded in any subsequent proceeding."

If the worker is found to be entitled to unscheduled permanent disability (PD) benefits, the carrier/employer is solely responsible for paying the rehabilitation bonus on a monthly basis as outlined under the LEC award. However, apportionment is available for the remaining amount of the award, wherein the carrier/employer is reimbursed by the Industrial Commission of Arizona's Special Fund for 50 percent of the payments (A.R.S. § 23-1065 (B) (2)).

3.) Prior out-of-state industrial injuries with potential of "unscheduling" a normally scheduled Arizona injury.


If a worker sustained a prior industrial injury in another state, and if the injury was of the kind that would have been scheduled in Arizona, which was not subject to a final award or judgment by the respective state's workers' compensation administrative entity or higher court of law, then only a rebuttable presumption is applicable as far as the prior injury adversely affecting the claimant's earning

capacity (*PFS v. Industrial Commission*). The presumption is rebutted by evidence demonstrating that the employee had no difficulty either securing or retaining work prior to the industrial injury.

However, a conclusive presumption is applicable if the prior industrial injury in another state of the kind that would have been scheduled in Arizona was subject to a final award or judgment in the other state. As a result, the subsequent scheduled Arizona injury is automatically unscheduled for the determination of PPD benefits. (*Young v Industrial Commission*.)

4) Prior non-industrial impairments that if industrial, would have been scheduled with potential of "unscheduling" a normally scheduled Arizona injury. These impairments:

- Are only rebuttably presumed to have affected an employee's earning capacity prior to an industrial injury.
- Are demonstrated in *Vargas v. Industrial Commission*, wherein the claimant injured his right knee playing football, and, after surgery, worked as a cook for several different employers before injuring the right knee again in an industrial accident 14 years later. An administrative law judge (ALJ) issued an award based on the treating physician's testimony that only a 10 percent disability related to the latest injury while a 29 percent impairment related to the earlier injury. The claimant sought a review by the Arizona Court of Appeals asserting the PPD benefits should be determined on an unscheduled basis and that the ALJ erred in calculating the percent of the impairment. The Appeals Court disagreed saying the claimant was only eligible for a rebuttable presumption that the earlier injury adversely affected the claimant's earning capacity. The ALJ, the Court ruled, had considered numerous factors that reasonably rebutted the presumption, including the fact that the claimant had returned to his normal occupation after the earlier accident.

If none of the aforementioned presumptions apply, the employee must demonstrate that a preexisting impairment adversely affected his or her earning capacity prior to the industrial injury. Otherwise, PPD benefits will be provided on a scheduled basis. 

Court affirms judge used proper edition

An Industrial Commission of Arizona (ICA) administrative law judge (ALJ) was correct in using the *American Medical Association (AMA) Sixth Edition Guides* in determining whether an injured worker had sustained a permanent impairment, according to a recent decision by the Arizona Court of Appeal, District One.

The claimant's attorney had contended Arizona Administrative Code R20-5-113 (B), known as Rule 113 (B), requires the use of the "most recent edition," which the attorney claimed was the *Fifth Edition*. The attorney also contended the ICA "unlawfully delegated its rule-making authority to the AMA when it permitted the claimant's permanent impairment to be rated according to the *Sixth Edition*."

"We hold that Rule 113 (B) refers to the edition of the AMA Guides in effect at the time an injured worker is rated for the existence of permanent impairment, and that this is neither an impermissible delegation of authority nor a violation of Article 18, Section 8, of the Arizona Constitution," said the Court's ruling in affirming the ALJ's award and decision.

The claimant was Jesus Gutierrez, who was the employee of a framing company. In April 2007, Gutierrez was moving a stack of plywood when he experienced a pain in his right lower back. He filed a workers' compensation claim, which was accepted for benefits. After treatment, he was released to return to work with restrictions. SCF Arizona, the carrier, closed the claim with no permanent impairment, and Gutierrez requested a hearing.

Three hearings were held for testimony from Gutierrez, his treating orthopedic surgeon, Ali Araghi, D.O., and an independent medical examiner, Kevin S. Ladin, M.D.

Gutierrez claimed Dr. Araghi rated him with a 5 percent permanent disability based on the *Fifth Edition of the AMA Guidelines* while Dr. Ladin's testimony for no permanent impairment was legally insufficient because it was based on the *Sixth Edition*.

Dr. Araghi testified that Gutierrez had a pre-existing herniated L5-S1 disc that had been aggravated by the injury, resulting in a lumbar radiculopathy that had subsequently been resolved. He said pursuant to the *Fifth Edition* a resolved radiculopathy constituted a permanent impairment. He testified he had not

reviewed the *Sixth Edition*, but did not believe the permanent impairment rating had been changed. In fact, the *Sixth Edition* had eliminated the permanent impairment rating for a resolved radiculopathy.

Dr. Ladin testified he had examined Gutierrez in January 2008 and reviewed his medical records. At the examination, he said, Gutierrez complained of persistent low back pain that radiated to his right buttock and thigh. He said he noted the presence of "Waddell signs," which may be indicative of secondary gain and/or malingering. Dr. Ladin said he had reviewed Gutierrez's MRI films and did find a protrusion at L5-S1. However, he testified the bulging disc appeared to be indicative of degenerative disc disease, not the result of trauma. It was his opinion there was no ratable permanent impairment.


The ALJ entered an award finding Gutierrez's medical condition stationary with no permanent impairment.

Gutierrez appealed.

In its ruling, the Court of Appeals points out that Rule 113 (B) states: "The physician should rate the percent of impairment using the standards for the evaluation of permanent impairment as published by *the most recent edition* of the American Medical Association in Guides to the Evaluation of Permanent Impairment..."

The Court went on to state: "The AMA adopted the *Sixth Edition of the AMA Guides* in December 2007. A stated purpose of the Sixth Edition is to employ the latest evidence in diagnostic and clinical tests and the latest scientific research and evolving medical opinion provided by nationally and internationally recognized experts. At least ten states, including New Mexico, Wyoming and Montana use the Sixth Edition to rate permanent impairment.

"Accordingly, we conclude that the phrase 'the most recent edition' means the edition in effect at the time an injured worker's medical condition is evaluated for the existence of a ratable permanent impairment."

The Court found there was no "unlawful delegation of authority to the AMA because, although use of the AMA Guides is generally required, the physician rating the impairment retains some discretion whether to use the Guides." 



Heart Association recommends AEDs in public areas

The American Heart Association (AHA) strongly advocates that all emergency medical services (EMS) first-response vehicles and ambulances be equipped with an automated external defibrillator (AED) or another defibrillation device (semiautomatic or manual defibrillator). The AHA also supports placing AEDs in targeted public areas such as office complexes, sports arenas, gated communities, doctor's offices and shopping malls.

When AEDs are placed in the community or a business or facility, the AHA strongly encourages that they be part of a defibrillation program in which:

- Persons or entities that acquire an AED notify the local EMS provider.
- A licensed physician or medical authority provides medical oversight to ensure quality control.
- Persons responsible for using the AED are trained in CPR and how to use an AED.

What is an AED?

The AED is a computerized medical device. An AED can check a person's heart rhythm. It can recognize a rhythm that requires a shock, and it can advise the rescuer when a shock is needed. The AED uses voice prompts, lights and text messages to tell the rescuer the steps to take.

AEDs are very accurate and easy to use. With a few hours of training, anyone can learn to operate an AED safely. There are many different brands of AEDs, but the same basic steps apply to all of them. The American Heart Association does not recommend a specific model.

Why is notifying the local EMS provider important?

It's important for the local EMS provider to know where AEDs are located in the community. In the event of a sudden cardiac arrest emergency, the 9-1-1 dispatcher will know if an AED is on the premises and will be able to notify the EMS provider as well as the responders already on the scene.

Why should a licensed physician or medical authority be involved with an AED program?

This is a quality control mechanism. The licensed physician or medical authority will ensure that all designated responders are properly trained and that the AED is properly maintained. This professional also can help develop an emergency response plan for the AED program.

Why should people who are responsible for operating an AED receive CPR training?

Early CPR is an integral part of providing lifesaving aid to people suffering sudden cardiac arrest. CPR helps to circulate oxygen-rich blood to the brain. After the AED is attached and delivers a shock, the typical AED will prompt the operator to continue CPR while the device continues to analyze the victim.

What are AHA emergency care guidelines?

AHA has established guidelines that emphasize the importance of CPR in the sequence of rhythm analysis and CPR when using AEDs. When AED pads are applied to the chest, the device analyzes the heart rhythm, delivers a shock if necessary, and analyzes the heart rhythm again to determine whether the shock successfully stopped the abnormal rhythm.

After one shock, the AHA guidelines recommend that responders provide about two minutes of CPR, beginning with chest compressions, before activating the AED to re-analyze the heart rhythm and attempt another shock.

Studies have shown that the first AED shock stops the abnormal cardiac arrest rhythm more than 85 percent of the time and that a brief period of chest compressions between shocks can deliver oxygen to the heart, increasing the likelihood of successful defibrillation. The guidelines also recommend that healthcare providers minimize interruptions to chest compressions by doing heart rhythm checks, inserting airway devices, and administering of drugs without delaying CPR.

If AEDs are so easy to use, why do people need formal training in how to use them?

An AED operator must know how to recognize the signs of a sudden cardiac arrest, when to activate the EMS system and how to do CPR. It is also important for operators to receive formal training on the AED model they will use so that they become familiar with the device and are able to successfully operate it in an emergency. Training teaches the operator how to avoid potentially hazardous situations.

Can anyone buy an AED?

AEDs are manufactured and sold under guidelines approved by the Food and Drug Administration (FDA). The FDA may require someone who purchases an AED to present a physician's prescription for the device.

The police are the first responders in my community. Officials are reluctant to have them carry and use AEDs for fear of potential litigation. What legislation is currently in

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effect to protect first responders who use an AED?

If the person is a trained and licensed Medical First Responder (MFR), an established standard of care is outlined in law, and those operating within these guidelines are protected under these laws. These same guidelines pertain to the personnel in your EMS system. If they are not trained and licensed MFRs, check with your city/town attorney to determine if lay rescuers are given limited liability immunity. If not, they may not be protected from litigation. Entities should seek legal counsel before implementing a defibrillation program.

How much does an AED cost?

The price of an AED varies by make and model. Most AEDs cost between \$1,500 and \$2,000.

What steps should be taken by a city or town to buy an AED for its premises?

Any person or entity wanting to buy an AED may first need to get a prescription from a physician. The AED should be placed for use within an AED program that includes these elements:

- Training of all users in CPR and operation of an AED. This can be achieved through the AHA's Heartsaver AED Course.
- Physician oversight to ensure appropriate maintenance and use of the AED.
- Notifying the local EMS provider of the type and location of AEDs.

Can AEDs be used on children?

Children over age 8 can be treated with a standard AED. For children ages 1 through 8, the AHA recommends pediatric attenuated pads that are purchased separately.

Which AED model does the AHA recommend?

The AHA does not recommend a specific device. All AED models have similar features, but the slight differences between them allow them to meet a variety of needs. The AHA encourages potential buyers to consider all models and make a selection based on the buyer's particular needs. The local EMS system can help you with this decision.



How can I enroll in a CPR or AED class?

The AHA offers CPR and AED training through its network of Training Centers. To locate a Training Center near you, call 1-877-AHA-4CPR.

What kind of training on AEDs is available?

The AHA has developed a new Heartsaver AED Course that integrates CPR and AED training. The course is less than four hours long.

AED Inspections

AEDs should be regularly inspected to assure readiness. Part of the inspection is to determine that the pads and battery are within their expiration date. AED electrode pads or batteries that are beyond their expiration date may not function correctly.

Why do AED pads expire?

The AED electrode pads are comprised of tin and gel. Over time the adhesive gel properties will break down and the pads will no longer be usable. Also, if the pads are opened and not used and the pads are exposed to air, then the pads will deteriorate much more quickly.

Why do AED batteries need replacement?

AED batteries also need to be replaced at regular intervals. How do you know when to replace your AED battery? Most AEDs will have built in indicators that will let you know when the AED battery needs to be replaced, or in some instances you will replace it at a pre-determined time following installation. Many AED owners mistake the date on the battery as an expiration date. Typically the date printed on the AED battery is an "install by" date and not the expiration date. The life of a battery varies by manufacturer. The shelf life of an AED battery is typically around four years, but using the defibrillator, running battery insertion tests, and training with the machine can all reduce battery life and power. Defibrillator batteries are often replaced sooner than needed because of concerns that the battery may be depleted or weakening.

A reminder

It is always a good idea to have a spare AED battery and AED electrode pads on hand. 🌸

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ADOSH reports that all equipment-mounted fire extinguishers are being inspected.

“Fire extinguishers can present a hazard if not handled and stored according to manufacturer’s instructions,” says the *Advocate* article. “Fire extinguishers are designed for the specific purpose of providing a safe and efficient safety tool to be used only in the fighting of fires. Improper or careless use may cause severe bodily injury and/or property damage.”

The *Advocate* offered the following safety tips on the care and use of fire extinguishers:

- Canister contents are under pressure. Do not puncture, incinerate, or discharge into another person’s face.
- Do not store at high temperatures above 120 degrees F or 49 degrees C.
- Keep extinguishers away from small children.
- Do not use if the extinguisher appears to be damaged or corroded.
- Avoid inhaling the extinguishing agent.
- Avoid inhaling smoke and fumes because all fires release toxic substances that are harmful.
- Do not remain in a closed area after using a fire extinguisher; evacuate the area immediately and ventilate thoroughly before re-entering.
- Although extinguishing agents are non-toxic when used properly, contact with them may cause irritation to eyes, nose, throat, and other allergic symptoms.

“Storing or mounting fire extinguishers outside or against a building can expose them to temperatures higher than the threshold 120 degrees F,” says the *Advocate*. “Extinguishers mounted on south and west facing walls have discharged when overheated, and cylinder damage must be assumed. Likewise, fire extinguishers left in the sun or in vehicles can overheat as the summer ambient temperatures soar.”


On care and maintenance, the website *Fire Extinguisher: 101* says, “Fire extinguisher maintenance is important for everyone’s safety. You must ensure that:

- The extinguisher is not blocked by equipment, coats or other objects that could interfere with access in an emergency.
- The pressure is at the recommended level. On extinguishers equipped with a gauge, the needle should be in the green zone – not too high and not too low.

- The nozzle or other parts are not hindered in any way.
- The pin and tamper seal, if it has one, are intact.
- There are no dents, leaks, rust, chemical deposits and/or other signs of abuse/wear. Wipe off any corrosive chemicals, oil, gunk etc. that may have deposited on the extinguisher.
- Some manufacturers recommend shaking your dry chemical extinguishers once a month to prevent the powder from settling/packing.
- Fire extinguishers should be pressure tested (a process called hydrostatic testing) after a number of years to ensure that the cylinder is safe to use. Consult your owner’s manual, extinguisher label or the manufacturer to see when yours may need such testing.
- If the extinguisher is damaged or needs recharging, replace it immediately!

In explaining the difference between inspection and maintenance, *Fire Extinguisher 101* says:

“An inspection is a ‘quick check’ to give reasonable assurance that a fire extinguisher is available, fully charged and operable. The value of an inspection lies in the frequency, regularity, and thoroughness with which it is conducted. The frequency will vary from hourly to monthly, based on the needs of the situation. Inspections should always be conducted when extinguishers are initially placed in service and thereafter at approximately 30-day intervals.

“Fire extinguishers should be maintained at regular intervals (at least once a year), or when specifically indicated by an inspection. Maintenance is a ‘thorough check’ of the extinguisher. It is intended to give maximum assurance that an extinguisher will operate effectively and safely. It includes a thorough examination and any necessary repair, recharging or replacement. It will normally reveal the need for hydrostatic testing of an extinguisher.” 



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COMP TIMES

is published quarterly by
Arizona Municipal Risk
Retention Pool (AMRRP)

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Scottsdale, AZ 85260
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