

If sitting is the new smoking, should employers be held liable?

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Credit: Drexel University

Doctors have warned us for years about the health risks associated with sitting too much. Researchers have linked sitting for long periods of time to a number of health issues, including increased high blood pressure,

high blood sugar, excess body fat and cholesterol. They also warn that prolonged sitting increases the risk of cardiovascular problems and cancer. What does this mean for organizations whose employees end up sitting for at least eight hours a day? Should they be held liable for harms caused to employees in sedentary workplaces?

After an analysis of potential workers' compensation claims in sedentary environments across several states, Drexel University's Natalie Pedersen, JD, an assistant professor of legal studies in the LeBow College of Business, and Lisa Eisenberg, JD, a graduate of the Thomas R. Kline School of Law and current judicial clerk, claim employers should be held accountable because it will force them to reduce such harms in their work environments.

Pedersen and Eisenberg coauthored a paper that is forthcoming in the *Lewis and Clark Law Review*. Their analysis looked at the issues of sitting in the workplace and accompanying medical problems, and examined the structure of liability in the United States for workplace injury.

"As our workplaces have become more sedentary, our risk of adverse [health](#) outcomes has increased," said Pedersen. "Increases in technology have only exacerbated an already dire situation leaving a large portion of the American workforce sitting for most of the workday."

The authors looked at the practices of government entities and private companies that encourage healthier lifestyles among their employees. Denmark became the first country in 2014 to legally require employers to give workers the option of having a standing desk. While not going that far, Australia and Canada have taken on proactive campaigns to encourage employers to create healthier work environments. In the United States, the federal government and many states have focused on encouraging organizations to adopt healthy workplace practices and

institute employee wellness programs. The National Institute for Occupational Safety and Health and state occupational health administrations emphasize how beneficial such programs can be for employers due to the resulting reductions in [health care costs](#) and absenteeism as well as improved morale and productivity.

American Express, for example, offers a program that provides free health coaching, screening, assessment and nurse hotlines to employees while ConAgra gives employees a bonus health savings contribution for participating in health assessment. These efforts are designed to encourage employees to adopt healthy lifestyles but not force them to do so.

"While such programs are somewhat beneficial to an employee's health and well-being, they don't target the problem of inactivity at work," said Pedersen.

Some companies have taken things further and are experimenting with how to get employees moving while at the workplace. Even simple things could force an [employee](#) to move. Telenor, a Norwegian telecommunications company, reduced the number of coffee stations around the office to make employees move when in need of caffeine. At Zappos, an online apparel shop, employees are treated to "Recess Tuesdays" where playground toys are placed on the office's outdoor plaza and employees gather to play tetherball, volleyball, basketball and engage in other activities.

"Companies who are adopting these methods of mobilizing their otherwise sedentary workplaces are certainly ahead of the curve," said Eisenberg. "But what about the companies who are not? Are they setting themselves for potential workers compensation claims?"

"Statutory language generally deems a harm compensable if it arises out

of and in course of employment," the authors wrote. "Virtually all jurisdictions also require harm to be accidental, and that the accident can be reasonably traced to a time, place and occasion or cause in order to be compensable."

Establishing that the workplace was a cause of the harm can be a minefield. Sedentary workplace claims were rejected in most of the unusual exertion or special rules jurisdictions, according to the authors, but there have been cases that show courts may be willing to find that claimants have satisfied the requirements.

With the [national health care](#) debate continuing to rage and the growing public concern about rising health insurance premiums, the actual impact of sedentary workplaces on medical insurance markets should be closely examined, according to the authors.

"Forcing the employer to incorporate the full cost of employment, including the cost of injury or disease precipitated by a workplace that is designed for sitting for the majority of the day, will incentivize employers to change their [workplace](#) design as necessary in order to avoid liability," said Pedersen.

Provided by Drexel University

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