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At a Glance

Law Talk: Arbitration vs. litigation

Prevent falls this autumn

Yes, you can be injured by your computer: avoiding carpal tunnel syndrome

... and more

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LAW TALK

By Abdulaziz, Grossbart & Rudman



Who determines if a dispute should be arbitrated or litigated?

First, one must understand that arbitration is consensual. That is to say that the parties must agree to arbitrate the dispute. Typically, arbitration might be written into the contract or can be agreed to by the parties sometime later. This case discusses who decides whether a dispute is arbitrated or litigated.

Patricia Sanford purchased a product through a call center. At the time she purchased the product, customers who called were offered a free trial enrollment in an entity known as "MemberWorks Membership Program." MemberWorks claimed that Sanford enrolled in its program and was sent a membership kit. Sanford also was told that included in that membership kit was an agreement containing an arbitration clause. Sanford did not cancel her membership at the end of the trial period.

MemberWorks began billing her for a membership

However, the Appellate Court stated that a challenge to the existence to a contract itself is an issue for the court to decide. The reason for that is arbitration is a voluntary matter.

fee because that was what was in the contract Membership Kit. Sanford claimed that she was unaware of the MemberWorks program dealing with arbitration, and filed suit against MemberWorks. MemberWorks filed a Motion to Compel Arbitration. Evidently, there was an arbitration provision in the kit and the initial agreement. The Trial Court found that Sanford was chal-

lenging the validity of the formation of any contract and therefore the issue should be settled by arbitration. The Arbitrator would have to decide the case.

However, the Appellate Court stated that a challenge to the existence to a contract itself is an issue for the court to decide. The reason for that is arbitration is a voluntary matter. The parties have to agree to arbitrate in order to have arbitration. Here, the court held that a court must determine that a valid agreement to arbitrate exists before it can order the parties to submit to arbitration. Therefore, before the issue of damages could be decided, the existence of a contract must be determined, and only thereafter, would either a court or an arbitrator decide the case.

MEDIATION SETTLEMENTS

Although arbitration is favored by the courts, there

are some deviations. In a past case, an arbitration provision that was negotiated by the parties during a formal mediation was not enforceable. The reason for that was that matters negotiated during a mediation are privileged. They are privileged because the courts want to be sure that the parties can say what they wish to say during the mediation and not have it come back and bite them. In order for the arbitration provision to be disclosed, the parties must expressly agree that the arbitration provision is part of the language that was negotiated. The language should be something similar to "This settlement is admissible and enforceable in a court of law."

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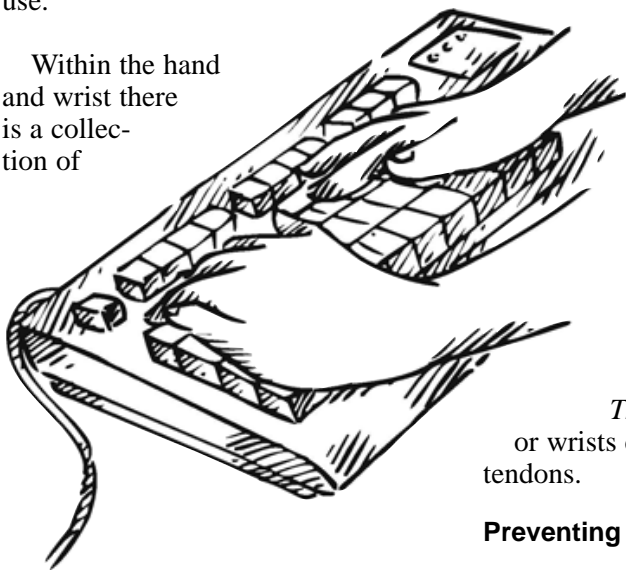
SAFETY MATTERS



Avoiding Carpal Tunnel Syndrome

Many more people use computers than they did just ten years ago. A by-product of this computer revolution has been an increased occurrence of carpal tunnel syndrome, or CTS. Continued, repetitive movements such as using a keyboard can damage the tendons that run from the hands to the forearms. If not dealt with properly, this damage progresses and causes extensive pain and limited hand use.

Within the hand and wrist there is a collection of



bones, tendons and nerves. This area is tunnel-shaped and not very roomy. If you flex your hand over and over again, as you do when you type, you cause these tendons in your wrists to rub against each other, leading to irritation. The irritation results in swelling, and those swollen tendons then press against what is called the median nerve, causing tingling, numbness and eventually significant

pain.

Causes of CTS

Several factors can lead to CTS:

Genetics - The smaller amount of natural lubrication you have in those tendons, the greater you are at risk.

Health/Lifestyle - Individuals with conditions such as diabetes, rheumatoid arthritis, hormonal changes (pregnancy or menopause), a high stress lifestyle, or alcoholism are prone to CTS.

Repetitive Motion - Repeated hand and finger flexing causes irritation.

Trauma - Damage to hands or wrists can cause swelling of the tendons.

Preventing CTS

While you can't change your genetics, there are several ways to prevent CTS. By monitoring your body positions and what activities you are doing with your hands, you can function somewhat normally if CTS is already present. But most importantly, you need to learn what proper ergonomics (work place design) and work habits can do to live free of CTS:



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<http://www.dir.ca.gov/dosh/PubOrder.asp>

Chairs - Wheeled, adjustable height chairs with armrests are ideal.

Tables - Choose a table or desk height that allows your arm to sit at a 90-degree angle to your body. 27 to 29 inches above the floor is recommended.

Wrist angle - Adjust your keyboard height, or use wrist rest, so wrists are aligned with forearms while working. Consider changing your style of keyboard, using a track ball or a different mouse if you cannot achieve this position otherwise.

Elbow angle - Raise your seat height if your arm angle is less than 90 degrees. Lower it if it is more than 90 degrees.

Waist angle - Your waist should be 90 degrees to your legs when seated. If it is less, raise chair height. If the angle is greater, lower the chair height.

Feet - Feet should touch the floor. Use a footrest or different chair if this is not the case.

Work habits - Take a short break every 10-15 minutes. Vary your tasks as much as possible.

Stretching - Strengthen and stretch your hands often.

Clench your fists, hold, then spread your fingers out and hold. Repeat.

With outstretched arms, repeatedly raise and lower your hands.

Rotate your wrists repeatedly.

Diet - Include vitamin B6 in your diet.

Although cases of CTS have increased as office jobs increase, extensive keyboard use does not have to lead to CTS. It's amazing how creating safe work areas can make such a difference. CTS is a serious condition, but fortunately it is preventable.

Take steps to prevent falls

Not only is an employer required to inform workers of the hazards they may encounter, but they must also provide the proper equipment to protect against those hazards.

Every time a worker takes a step that worker is at risk for a fall. In fact, falls are a leading cause of injury and death in the construction industry. Falls generally occur because of an unsafe condition, and unsafe behavior or a lack of safety awareness. They can also result from unstable working surfaces, misuse of fall protection equipment or human error. If you want to reduce the risk of falls in your operation, take steps to reduce the risk factors which exists in your operation.

The first step in fall prevention is to raise worker awareness of fall hazards through training. Let workers know that falls can occur on the same level, to a lower level, by jumping to another level or by falling from a vehicle or equipment (transport vehicle, forklift, boom, ladder, etc.) Train new workers in your company's fall prevention and protection procedures. Instruct workers to be cautious on walking surfaces, to use handrails, and to avoid overreaching while standing on ladders or scaffolds. Educate workers on good housekeeping practices, including keeping walkways, platforms, scaffold planks, and stairways clear of obstructions, tools, cords, and general debris. Provide instruction in all fall protection equipment. Then periodically, review training with all workers.

Not only is an employer required to inform workers of the hazards they may encounter, but they must also provide the proper equipment to



protect against those hazards. Studies have shown that the use of guardrails, fall arrest systems, safety nets, covers, and travel restriction systems can prevent many of the injuries and deaths that result from falls. Employers should ensure that not only personal fall protection/arrest equipment is used properly and consistently but that other equipment

such as ladders, scaffolding, guards etc have been properly constructed and maintained.

Before beginning a new job, a qualified person should inspect the work site to locate possible fall hazards. Steps should be taken to correct unsafe fall conditions by eliminating the hazard, blocking access to the hazard or posting warning signs alerting workers to the hazard. Once work begins, supervisors should periodically conduct a walk-through of the site, observing work habits to detect improper practices that may result in a fall and making sure all equipment on site is used properly and kept in good condition.

It's also the workers' responsibility to keep themselves safe from falls. They are responsible for attending and understand all fall prevention training and for following all recommended safety procedures. Workers should be responsible for properly using, caring for or replacing damaged fall protection equipment. It is also their responsibility to maintain fall hazardous awareness. Losing focus for even a moment could result in a serious fall.

Employers can keep workers in step with fall reduction by identifying and eliminating potential fall hazards; providing fall protection systems and equipment - training workers in their proper use and care; educating workers to recognize unsafe conditions; and providing education in safe work practices and recommended safety procedures.



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Recovery Act changes to SBIC program mean increased funding available for small businesses

Small businesses that would otherwise have difficulty securing private equity or venture capital may find funding easier to get as a result of changes made as part of the American Recovery and Reinvestment Act to the U.S. Small Business Administration's Small Business Investment Company program.

"The Recovery Act expands SBA's venture capital program to increase the pool of investment funding available to the Small Business Investment Companies licensed by SBA," said SBA Administrator Karen G. Mills. "We believe those companies will be better equipped by these changes to help sustain and grow small businesses for their next important growth steps."



SBICs are privately owned and managed venture capital firms which are licensed and regulated by SBA. SBICs use a combination of funds raised from private sources and money raised through the use of SBA guarantees to make equity and mezzanine capital investments in small businesses. There are approximately 338 SBICs with \$17.4 billion in capital under management.

The changes made as part of the Recovery Act are:

* The Recovery Act makes SBICs eligible for greater SBA guaranteed funding and requires SBICs to invest 25 percent of their investment dollars into "smaller" businesses. Also, the amount of funding an SBIC may invest in a single small business is set at 10 percent of an SBIC's total capital rather than the previous limit of 20 percent of an SBIC's private capital only. This translates to an effective 50 percent increase in funding available to a single business by an SBIC.

* Maximum SBA funding levels to SBICs will increase up to three times the private capital raised by the SBIC, up to a maximum of \$150 million for single SBICs, or up to \$225 million for multiple SBICs that are under common control. The cap for all licensees was set at \$137.1 million before the Recovery Act.

* These limits are even higher for SBICs that are licensed after October 1, 2009, that certify that at least 50 percent of their investments will be made in small businesses located in low-income areas, up to \$175 million for single licensees and up to \$250 million for jointly controlled multiple licensees.

* Changes made to the SBIC program under the Recovery Act are permanent.

Industry associations have commended SBA for these changes and SBA continues to encourage new SBICs to apply for licensing and actively participate in the program.

The SBIC program was created to stimulate the growth of America's small businesses by supplementing the long-term debt and private-equity capital available to them. Since the SBIC program's formation in 1958 through April 2009, it has invested approximately \$56 billion in more than 106,000 small businesses in the United States. For more information about the SBA's Investment Division and SBIC program, go to www.sba.gov/INV or call 1-800-U ASK SBA.

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