



2019 CLM Worker's Compensation Conference  
May 21-23, 2019  
Chicago, Illinois

### **Aggressive Claims Handling**

Work accidents are bound to happen in the work place in any industry. It is how we handle these claims from the beginning that will determine if they are manageable and cost efficient. We will discuss common strategies of how employers can be prepared to effectively resolve worker's compensation claims in an aggressive, yet highly professional manner.

#### **I. Preparing for Worker's Compensation Claims**

##### **Employee Handbooks and Company Procedure**

All too frequently, we do not see company handbooks available upon hire for an employee and many employees allege that they were never told how to report an incident and were unaware of how to report the incident. This results in late reporting, which can harm the investigation and defense of a claim.

One of the first strategies in aggressive claim handling is to make sure that an employee handbook is in place, which outlines the specific company procedures for reporting accidents. This handbook should be used throughout the initial training process for the employee and the employee should sign a document that they received this handbook. This handbook should explain the proper procedures for reporting accidents, including the time frames in which an accident must be reported, the necessary personnel to report the accident to and necessary paperwork which must be completed when an accident occurs. The handbook should also contain safety procedures, which we will discuss at length in our section regarding safety training.

The employer should also have visible posters available in the breakroom and by the clock in area that contain the necessary workers' compensation information and/or third party administrator contact information so an employee cannot allege that this information was not made available to them.

Also, medical panel posters should be visible so employees know how to handle basic first aid issues for minor accidents.

It is worth the time to either assist the employer or refer them to counsel who can help draft a handbook regarding reporting and safety procedures.

### **Proper Safety Training and Equipment**

Injuries generally occur because of lack of safety training, altered safety devices or lack of proper safety equipment. Some employers find the cost of providing these safeguards to be a burdensome or time consuming. However, if the proper training and equipment is provided from the very beginning, it will actually be much more cost efficient than paying for costly workers' compensation claims and defense fees.

Unfortunately, employees are often put to work without the proper safety training to do their jobs effectively. Since employers are compensating their employees, there is often a greater emphasis placed on productive output rather than safety. However, just a couple days of effective safety training can prove to be the work place a safer environment with minimal accidents. Reducing work place accidents is critical in not only preventing accidents from occurring but preparing for when they inevitably occur. Use of safety module videos that requires passage of a safety quiz at the end are very helpful in training employees, and acknowledges that they know the safety rules. Further, an employer should conducting regular safety classes for each department can be helpful at reducing work injuries and can be invaluable if employers must pass a basic competency quiz on the employer's safety protocols.

Each of these aids in employee safety AND creates the possible affirmative defense of employee's violation a known safety rule

Furthermore, employers or employees will alter their machinery or remove safety devices because it alters the output of the product. This should NEVER be allowed or approved. Many employees sustain (or) suffer amputations of various body parts due to this conduct. General Managers or risk managers (familiar with how the machines work) should walk the floor daily to make sure that the machines are in proper working order with no alterations. During these routine walks, these individuals should always discuss the how the machinery is operating and if the employees have any safety concerns. This assures that the machines are being operating properly and goes further in creating a narrative of creating a safe work environment. Lastly, the necessary preventative maintenance by vendors should be completed and documented as well.

Employers should *always* provide safety gear to its employees. Gear such as proper harnesses, respiratory equipment, tie-offs, etc. should always be provided and made available to the employees. Failing to do this creates an unnecessary risk of costly accidents and is an easy way to face sanctions and fines from OSHA if the proper safety equipment is not provided. When jobs are engaged, the foreman or supervisor of the job should ensure that all necessary safety equipment is provided for the employees to prevent injury. Further, the foreman and supervisors should ensure that the necessary safety equipment is BEING USED by the employees.

There should always be safety warnings should be placed in visible locations, such as in the breakroom, by the time clock and by any of the machines to which they are applicable. Employers should have a zero tolerance policy for any unnecessary safety risks or an employer's failure to use safety equipment. So in states like Indiana, where an employee violates a known, visible safety rule, we will have grounds to deny the claim. It will only bolster our denial when there is an attitude of absolute safety by the employer's policies and implementation of those policies.

If an accident occurs because of an employer's failure to address any of these issues, we will not have a strong basis to deny the claim and will have to defend it appropriately. Safety issues should be addressed before there is an accident, or if an issue arises it should be corrected promptly so it does not occur again. It is also a good idea to consult with a safety specialist regarding your work environment to put necessary safeguards in place to prevent any of these issues.

## **II. What to do within 48 Hours of Accident Being Reported**

### **Reporting**

When an employee makes a claim of a work injury, this should be reported to risk management or a third party administrator **immediately**, or no later than 24 hours of the accident. This goes back to our prior discussion about making sure that employers and employees know the proper reporting procedures through the handbook and visible signs with reporting information.

Once the injury is reported, an incident report should be completed. Necessary paperwork should be completed promptly because as time goes on, memories fade. This incident report should include information regarding the employee, accident details and witness information. A First Report of Injury must also be completed in Indiana within 7 days of the incident and filed electronically with the Indiana Workers' Compensation Board. Many employers mistakenly believe that only an incident report is sufficient. It is not.

It is best to send the employee for adequate medical attention with an approved medical provider, which can document the work injury and complaints from the initial date of injury. Employees **should never** be told to work through the injury or wait a couple of days to see if the condition improves. Doing so will only hurt the defense of the claim and allow an employee to claim in that his or her injury worsened over the time that they are waiting. Or the employee will injure or reinjure themselves outside of work and then claim it is related to the original alleged work injury. Defending against these worsening or new injuries can prove very difficult without the right documentation and reporting by the employer. So in order to prevent such claims, send the employee for medical care immediately.

However, this does not mean that an employer should send all of its employees to the emergency room. This will mean costly and unnecessary diagnostic and emergency room fees. The key here is to send the employee for *adequate and immediate care*. Therefore it is usually

best to send the employee to a physician that deals with work injuries for initial evaluation rather than the emergency room.

It is best to get a medical facility in place that the employer deals with frequently for all of their initial workers' compensation injury assessments. This is more cost efficient than having the employee self treat, denying their treatment, or sending them to an emergency room. **The medical treatment will be controlled from day one, which will set the tone for the life of the claim.**

If an employee self treats or goes to the emergency room, without reporting to the employer first than he or she should be promptly redirected medical provider of your choosing (where allowed). That will permit for an initial evaluation and regain quick control of the medical treatment of the claim. Medical treatment throughout the claim will be discussed at greater length below.

### **Investigation**

The initial investigation of a claim is the most critical part of the process and sets the tone for the rest of the claim. It is invaluable while defending against the employee's claim a year after the injury occurred, which is when we normally receive the claim. If the employer takes the time to complete these crucial steps, it will not only save in costly defense fees but provide potential basis for denying a claim.

Generally speaking when employee is injured at work, normally he or she does not obtain legal counsel right away. At this point an claim adjuster's role in the claim is KEY in moving the case towards resolution. Claims adjusters should be aggressive and the first step is obtaining a recorded telephonic statement from the employee and document their account of how the incident occurred. Once an employee obtains counsel, we normally cannot obtain a statement of the accident unless we depose the employee and conduct other formal discovery (if permitted in the jurisdiction).

While discussing the claim with the employee, an executed medical authorization should be obtained. This will allow you to obtain the medical records for care related to the incident, but also help you determine if there are any pre-existing medical ailments which may have caused or contributed to the accident. An employee will often provide a history to a medical provider, which includes past medical providers. You can then use the authorizations to obtain all necessary records.

Witness statements must be obtained immediately. The incident report should have the names of the witnesses to the accident. These witnesses should provide either a telephonic/recorded or written statement of how the accident occurred. As time goes on, employees change employment or tend to forget facts. This is why it is important to get this information as quickly as possible.

If surveillance video is available, this should also be copied immediately after there is notice of the accident. This can provide important information as to how the accident occurred and any witnesses that were within the area.

If these steps are not taken initially, they are harder to complete successfully at a later date. Once an employee has an attorney, they will need to be sent discovery and deposed to obtain a statement of how the accident occurred or medical authorizations, which can take an extended amount of time, as opposed to doing this immediately post accident.

We can try and obtain witness statements months or even years post accident, but they will not be as easy to obtain or as accurate as if they had been obtained immediately post incident.

Surveillance video is normally erased after 30 days, so obtaining this video immediately is important as not much can be done to recover it once it is deleted.

### **III. The Claim is Open, Now What?**

#### **Always File Forms in a Timely Manner**

Depending upon which state in which the coverage is based, there will be numerous forms that must be completed and filed with the state pursuant to their workers' compensation laws. It is important that in every phase of the claim, these forms are timely filed.

For example in Indiana, a First Report of Injury must be filed with the Indiana Worker's Compensation Board within 7 days of notice of the accident.

Forms may be filed for additional time to investigate the claim and denial of the claim. If the claim is accepted, an Agreement to Compensation must be filed if total temporary disability benefits are being paid. In Indiana, a Notice of Termination of Benefits must be filed when total temporary disability benefits are stopped for any reason. If an employee reaches maximum medical improvement and this form is not filed, the carrier will have to continue paying total temporary disability benefits until the form is filed.

It is best to consult with legal counsel for any questions regarding filing of necessary forms in your state.

#### **Medical Treatment and Management**

Employees tend to not get counsel involved if their claim is running smoothly, which includes both (1) prompt payment of benefits and (2) providing necessary medical care. If an employee suffers a severe injury, it is best to get a nurse case manager involved right away. This will make sure that the communication lines stay open between the employee and carrier and that the medical treatment plan is being followed by the employee.

Unfortunately, communication is lost with the employee and they cease treatment or being to treat on their own. This presents issues when they return and seek medical treatment from the carrier, as they could have treated excessively or not enough, which worsened their condition and then cost the carrier more money in medical treatment down the road. One the

employee reached maximum medical improvement, move the case towards closure. This will prevent the employer from getting legal counsel to review their claim.

It is our right to direct medical treatment in Indiana, so we should take advantage of that situation to have control and make sure that the proper treatment is being provided to get the employee to maximum medical improvement as soon as possible. It is important to obtain the medical reports in a timely manner, which a nurse case manager can help facilitate.

Once the employee has treated on their own or obtained their own opinion, we will most likely end up obtaining an Independent Medical Examination through the Workers' Compensation Board to help determine the treatment plan for the employee going forward.

It is important to stay on top of the medical care from the beginning so we can get the employee the medical management they need to reach maximum medical improvement.

However, please remember that maximum medical treatment is not necessary for an offer of settlement to be made to the employee.

### **Employee's Return to Work**

Once the employee is given work restrictions, they can return to work if it is available with the employer. If work is available, an expressed offer should be made *in writing* to the employee. Once the offer is made; total temporary disability (TTD) benefits can then be terminated if work is available for the employee. (In Indiana if these benefits are terminated you file the state form with the Board.) However, employees often argue that they never received the job offer within their restrictions, which is why it is important to send the offer in writing so we have evidence of the availability of the position and will not have to continue to pay total temporary disability benefits.

Once an employee returns to work with restrictions, we often see employers not comply with the restrictions, which can result in the employee suffering further injury. The carrier or defense counsel should make certain that the employer has the work restrictions and will comply with the work restrictions. If they do not have work within the restrictions, then weekly benefits must continue to be paid.

Employers should always have leave of absence or return to work policies in place. Provide these policies to the employees and document their acknowledgment. This goes back to the important purpose of an employee handbook, which should lay all of this information out for an employee at the beginning of employment. If work is available and the employee will not return to work, the employer needs to be able to terminate the employee and not face legal consequences. Any write up of the employee for failure to follow the policies should be included in their personnel file.

Employers sometimes terminate employees prior to reaching maximum medical improvement. This can be done for various reasons, but is sometimes retaliatory in nature against the employee for bringing the worker's compensation action. This will expose the employer to a potential action before the Equal Employment Opportunity Commission.

We can often try and negotiate a general release and voluntary resignation should issues arise surrounding a premature termination. We always advise our employers to consult with counsel prior to termination to make sure that they are not exposing themselves to additional liability.

### **Conclusion**

The key to aggressive claims handling begins with an employer's preparing and implementing policies that create the safest work environment possible and having procedures in place when an employee inevitably gets injured. These procedures should always include directing the employee to immediate medical care and conducting an investigation of the accident.