



National Workers' Compensation, Retail, Restaurant and Hospitality Conference  
May 12-14, 2021  
Chicago, Illinois

### **Recovered Worker Results in Empathy ROI**

Upon notice of a work injury, the employee is typically not represented by counsel and unfamiliar with the worker's compensation process. We will discuss how insurance companies can achieve better results through effective communication with, and education of, the injured worker and employer, as well creating an empathetic environment for the injured worker through the claim handling process.

#### **I. Initial Report of Claim**

##### **Why do employees hire lawyers?**

Employees often do not run to legal representation following a work injury. Typically, they seek representation following a dispute or perceived slight between themselves and either their employer or the insurance representative. It is worthwhile examining what causes an employee to seek out personal counsel. Trying to understand the employee's perspective and anticipate their perceived need to hire counsel can be beneficial in addressing concerns before they reach a head and, to the extent possible, eliminate unnecessary disputes.

Post work-accident is an emotional time for employees. Employees can be quick to be on the defensive and assume the worst. Often issues arise due to a lack of communication and/or a lack of understanding of the process. Understanding what triggers an employee's distrust is helpful to navigate the employee relationship and build rapport while doing so.

Of course, there will always be the employee who is already an expert and comes to the table with a jaded perception of the process. In some cases, it is in a claim's best interest for a difficult employee to retain counsel.

## **Initial Employee Interview**

Building rapport and educating the employee starts at the initial post-injury interview. An explanation of the claim representative's role in the first crucial step in building trust. Explain why a worker's compensation insurance carrier is involved. Explain how the employer and carrier are ensuring that there is coverage for all the benefits to which the employee is entitled. Explain that you are there to ensure that those benefits are available to Plaintiff throughout the process. The intent is to have the employee understand that a claim handler is not there to look for ways to deny benefits, but rather to ensure that the proper benefits are made available.

Rapport building continues by explaining the worker's compensation process from start to finish. Employee education also helps set expectations. An employee who is familiarized with the process is less likely to be upset when the time comes to terminate benefits, for example.

Ask the employee about his/her injuries allowing the employee to talk about their subjective condition. This gives the employee the opportunity to feel heard and understood. While beneficial from a rapport perspective, this also can give insight into how an employee may handle the injury moving forward (i.e., predisposed to excessive pain complaints, etc.).

Be clear on the goal of the process: to return the employee to MMI and get them back to work. This is for the benefit of the employee. Again, clarifying expectations from the start is important to avoid problems later.

Be sure to allow the employee to ask questions and raise concerns. In addition to building rapport and serving to further educate, an employee's questions will provide insight into the need for further education and the employee's feelings/perspectives on the worker's compensation process.

## **Establish the Roll and Responsibilities of All Players: Employee, Employer, and Insurance Company**

Equally as important as educating the employee is educating the employer. An employer does not play a passive role in the process and outlining expectations early on is crucial. This begins with initial document and information gathering, but also includes an early conversation about accommodating work restrictions. Returning an employee to work as soon as possible is beneficial for everyone. The employee can return to some degree of normalcy, and the sooner a return-to-work date is achieved, the more likely an employee is to return to work in a full capacity.

It should be stressed to both the employer and the employee of the importance of communication. If there are questions or concerns, they should be raised as they are discovered. For the employee, this provides an outlet that can maintain a feeling of having their concerns addressed. For the employer, this can help to eliminate potential issues before they become problems. For example, the implications of terminating an employee while receiving worker's compensation benefits may be a short-term solution for a difficult employee but can carry with its additional exposure down the road.

## **II. Medical Treatment and Ongoing Claim Handling**

### **Medical**

A large component of approaching a claim with empathy is understanding an employee's injury. Knowledge of the mechanism of injury, the effect of the injury to daily/work activities, and the expected course of care required for healing helps to connect with an employee and empathize with their experience. Of course, this is also invaluable to ensure appropriate treatment and identify treatment-seeking behavior.

### **Engaging the employee in recovery – specialized programs that address surgery concerns or are developed specific to injury or condition management.**

Oftentimes, patients facing surgery suffer from anxiety and have concerns about the procedure and their recovery. Nurse case managers can help patients prepare for and recover from surgery. These clinicians assist with the employee's health literacy, education regarding their surgery, preparedness reviews, strengthening exercises, and use of technology designed to facilitate the surgery nurse process. Daily lessons are carefully selected to improve pre-operative physical strength, nutrition and well-being, and address issues related to smoking cessation and home readiness.

Patients receive care paths that consist of tailored lessons that are most likely to result in high engagement and a positive result. Lessons may include resources to end harmful habits, such as tobacco use; creation of a nutritional profile that best promotes healing; daily exercises to further promote a successful recovery; and internal exercises to encourage relaxation. With the support of nurse case managers, injured employees facing surgery can be better prepared physically and mentally, and confidently steer themselves toward a faster recovery.

### **Telehealth and telephonic/virtual case management support – ways in which we can still engage the employee in their recovery despite limitations due to COVID or in a post-COVID world, ensuring efficiency in care models to reduce time away from work/avoid loss in productivity.**

Telemedicine is typically thought of as the virtual delivery of healthcare. In essence, a physician and patient communicate using video technology and electronic messaging. The widespread availability of mobile devices and significant technology advancements make telemedicine a viable care option for many patients today.

Telemedicine is frequently touted for its convenience. It eliminates travel time to a physician's office and can save time and expense. It is an excellent means of care for those in rural or remote areas as well as those who are physically challenged or lack access to transportation.

While telemedicine is not appropriate for every situation, it can be an effective source of care for minor injuries such as acute strains/sprains and abrasions. Virtual visits can also be

effective for follow up and progress reports. Patients can describe changes to their condition, and physicians can observe movement, flexibility, and some forms of healing. Telephonic or virtual case managers can also 'remote in' to appointments or follow up with all parties after the telemedicine visit to assist with addressing the diagnosis and treatment plan, ensuring the injured worker understands the plan of care, and that follow up care and work status are provided by the physician. Undoubtedly, this emerging method of healthcare delivery will become increasingly common and a more pervasive form of service delivery in the future.

**Clinical advocacy models – centered around the 'whole person'; case management support, mental health as a key component, engaging with the employee early on with RTW efforts.**

Advocacy has helped reframe the workers' compensation conversation. Transparency and communication have become central to many successful programs. Employers are providing the necessary care, resources, and information that will benefit injured worker recovery with a focus on both physical and mental health. Advocates often connect with the injured worker at the onset of injury to explain the process, answer questions, and level-set expectations. This approach has made a monumental difference in repositioning workers' compensation as a benefit and instilling confidence needed for recovery and return to work.

**TTD and Return to Work**

Again, early education and expectation handling is imperative for a smooth claim process. Keeping the employer involved the process, primarily by working with them to get the employee back to work and educating them on the process, is essential.

Likewise, ongoing communication with the employee ensures that issues are addressed before they snowball. Let the employee know how/why TTD/PTD works and is calculated. Make sure they are aware that the sooner they return to work; the sooner they will be able to receive their full pay.

**Problem Shooting and Addressing Common Complaints Before They Occur**

There are several common triggers for a previously issue-free claim to go south quickly. These include delays in TTD and medical/pharmaceutical authorization, returning to work with restrictions, off-sight temporary employment, the denial of non-work-related medical conditions, and the termination of benefits.

Delay in benefits is a perhaps the most common complaint and cited reason for why an employee hires counsel. Unfortunately, delays are often unavoidable due to many different reasons. Diffuse a potential conflict by explaining how a request for a prescription is handled, for example. Explain the many actors and steps that must be accomplished to get the medication approved and ready for the employee to retrieve from the pharmacy. Emphasize understanding in the hardship this may cause but explain that any delay is not an intentional dereliction of duty, or an attempt to ignore the employee's needs/benefits.

Focus on educating the employee in the process and address the common issues that may need to be addressed as the claim progresses. Be clear on what to expect before it happens and emphasize that the process is not something that is created by the insurance company or employer, but rather is a detailed “instruction manual” written into law to ensure all injured workers are provided with the benefits to which they are entitled.

### **III. Settlement and Closing a Claim**

#### **Wrapping up Medical**

Keeping expectations in check is critical to avoid conflict when it comes time to end medical treatment. As a rule of thumb, it is never a good idea to surprise an employee with the termination of treatment. The conversation starts with the initial employee interview and a discussion of the end goal. As treatment progresses, keep the employee informed of projected MMI dates if they are known.

When a finding of MMI and PPI is made, make sure the employee is notified via telephone/in person in addition to serving them with the appropriate written notice. This will present the opportunity to immediately address questions and concerns and will assist to stave off issues before they become problems. This also continues the theme of rapport. An employee will be more willing to sign off on settlement if they feel heard and not blindsided with any changes in benefits.

#### **Settlement and Settlement Discussions with the Employee**

Be clear on how a settlement is structured and the basis for value. Make it clear that the degree of permanent impairment is not an esoteric number that is conjured by the insurance company or the employer, but rather is strictly determined by the applicable laws of the state. Again, these laws have been written to ensure that employees receive uniform compensation. Make the employee understand that they are owed this compensation and we want to ensure that they receive it as required and in a timely fashion.

Be sure to know your preferred method of settlement before discussing with the employee. A settlement for just the impairment rating is easier to explain than a settlement on a full and final basis. For either, be sure to communicate the parameters of agreement. If a full and final settlement is preferred, be sure to let the employee know that defense counsel will need to be involved to draft the agreement. Again, this is because counsel is required by law to submit the agreement and are simply involved to help facilitate the process.

#### **Return to Work.**

Different scenarios will dictate how the return-to-work process proceeds and the accompanying conversation with the employee. For example, if an employee is released to return to work without restrictions, this is the best-case scenario, and the employee will likely be permitted to return to their previous pre-injury position. This may differ if the employee is released with restrictions that require accommodations.

If an employer cannot accommodate an employee's restrictions, it may be necessary to explore other options, such as a general release with a voluntary resignation. This is not something typically handled by the insurance claim adjuster, but if the employer is willing to contribute a dollar amount towards settlement in this manner, it can help lubricate a full and final settlement, protect the employer from future litigation, and assist in making the employee feel compensated for their inability to return to their position.

## **Conclusion**

Approaching a claim with empathy with a focus on communication and education can greatly decrease claim complications and conflict. Developing rapport with the employee and keeping them informed of what to expect and why, will serve as a cost saving measure for the overall cost of a claim and creates a more positive experience for all involved.