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Top Employer Mistakes in the Claims Process

Introduction

Accidents are bound to happen in the work place. If we take the time to review our company procedures and protocols, it can be helpful in preventing unnecessary accidents. We will discuss common mistakes that occur throughout the various phases of the claims process, how to prevent them and if they occur, how to correct these mistakes.

I. Pre-Accident Mistakes

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 lines of defense in proper 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 contain the proper procedures for reporting accidents, including the time frame in which they must be reported, 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.

Safety Training

We frequently see injuries that 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 hassle. However, if the proper training and equipment is provided from the beginning, it will actually be more cost efficient than paying for costly workers' compensation claims and defense fees.

Often, employees are put to work without proper safety training. Since the employer is paying the employee, they want productive output rather than spending money to train them on safety. However, a couple days of training can go a long way in improving a safe environment with minimal accidents. Safety module videos, which require testing at the end, are helpful in training employees. If a large number of employees are hired at one time, a safety class for the entire group is helpful with testing at the end. Also, on the job training is invaluable to an employee to make sure they are working machinery properly.

We see employers that alter machines and remove safety devices as it alters the output of their 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 should walk the floor daily to make sure that the machines are in proper working order with no alterations. Necessary maintenance by vendors should be completed as well.

Similarly, we also see employers that do not provide proper harnesses, respiratory equipment, tie-offs, etc. because the items are too costly. This is an easy way to face sanctions and fines from OSHA if the proper safety equipment is not provided, as well as having the risk of costly accidents. 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.

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. In Indiana, if an employee violates a known, visible safety rule, that is grounds to deny the claim.

If an accident occurs because of one of these issues, we will not have a strong basis to deny the claim and will have to defend it appropriately. The issue 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. Mistakes Made Within 48 Hours of Reporting

Reporting

A number of employers believe that if the work accident is not reported, then it will save them on premiums and fines. They prefer to just send an employee on their own for treatment and pay for their treatment independently. Or, there is the theory that if the accident is not reported, then the accident did not happen.

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 must 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.

Once injured, employees are often told to work through the injury or wait a couple of days to see if the condition improves. These circumstances hurt the defense of the claim in that the employees' injury can worsen over the time that they are waiting or they can injure themselves outside of work and then claim it was from the original alleged work injury. However, without adequate, immediate medical attention and documentation, defending against these issues will be hard. It is best to send the employee to an approved medical provider that can document the injury and complaints from the initial date of injury.

On the other hand, some employers will just send all employees to the emergency room. This can involve costly and unnecessary diagnostic and emergency room fees. It is 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 will be more cost efficient than either having the employee treat on their own by 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 the employee either treats on their own or goes to the emergency room, it is best to promptly redirect employee to a medical provider of your choosing (where allowed) for evaluation to gain 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 important part of the claim process. This aids us in properly defending the claim over a year down the road, which is when we normally receive the claim. If the time is taken to complete these steps, it will save in costly defense fees and provide potential basis for denying the claim.

When an employee is injured, they normally do not obtain counsel right away. This is the perfect time to speak to them and obtain a recorded telephonic statement for their account of how the incident occurred. Once they obtain counsel, we normally cannot obtain a statement of the accident unless we depose the employee.

In speaking 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. Mistakes Made During Management of the Open Claim

Timely Filing of Forms

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.

In Indiana, a First Report of Injury must be filed 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 prompt payment of benefits and 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.

All too often, 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.

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.

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 offer should be made in writing to the employee. Total temporary disability benefits can then be terminated if work is available for the employee. However, employees will 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.

All too often, employers do not have leave of absence or return to work policies in place. This issues goes back to the important 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

Although it may seem expensive and time consuming to have these procedures and protocols in place, it is worth it for the employer to avoid these mistakes that will result in costly and drawn out litigation in the future.