



2021 Workers' Compensation Retail, Restaurant & Hospitality Conference
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Compensability Now and Claims handling Post covid-19 Vaccine.

Work from home, telemedicine and other changes caused by the pandemic are here to stay. Our discussion will cover issues such as mandating your employees be vaccinated, setting your employees up for success while working from home and other interesting questions that are on the horizon post Covid-19.

Overview

This session will address all the benefits and potential pitfalls of the many ways our industry now conducts business because of the Covid-19 pandemic.

COVID-19 has impacted workers' compensation and the insurance industry in many ways. Many employers had to quickly adapt their policies and technology to enable their employees to work remotely. Telemedicine, already an emerging practice, became necessary to treat injured employees. Now the insurance industry must prepare for new questions involving Covid-19 vaccinations and anticipate other post-pandemic issues.

COVID-19 Compensability

How are states viewing COVID-19 compensability, from the reporting aspect through the legal nuances involved with causation and treatment?

Example: The state of Illinois has published several changes in rebuttable presumption the last year. This impacts employer's loss volume significantly as each must determine what will they submit to their carrier or TPA?

Vaccine Considerations for Employers

As we enter 2021 having (optimistically) finally reached a turning point in the COVID-19 pandemic with the approval and distribution of at least two viable vaccines, a popular question being asked is whether employers can mandate that their employees be vaccinated for COVID-19. From a purely legal standpoint, the answer is (perhaps stereotypically) not a definitive “yes” or “no.” The answer likely depends on the field or type of employment and whether one of two possible exceptions exist for the specific employee.

Under the Americans with Disabilities Act (“ADA”), an employer may require job applicants to undergo a “medical examination” once an offer of employment is made and before the applicant begins his or her employment duties. Likewise, medical examinations of *current* employees have been upheld under the ADA when the examinations relate to workplace conditions, as opposed to examinations that are unnecessarily broad and intrusive. Accordingly, to be a valid medical examination, it must be: (1) job-related; (2) consistent with business necessity or justified by a direct threat; and (3) be no broader or more intrusive than necessary. Examples of where a mandatory COVID-19 vaccination might satisfy this standard would be hospitals, nursing homes, outpatient clinics, and other similar medical facilities.

An employer can likely mandate COVID-19 immunization if doing so is necessary for or is related to the employer’s business and is narrowly tailored. However, an employee can request a reasonable accommodation to such a mandate for religious or medical reasons so long as granting the accommodation would not place an undue hardship on their employer or pose a direct threat to their coworkers or others.

Remote Workforce

An estimated 16 million U.S. knowledge workers started working remotely due to Covid-19 as of March 27, 2020; that number is likely much higher now. Productivity and communication take a hit when employees are new to working from home. The good news is that experience helps. Those who have been working from home for over a month have found tools and strategies to boost collaboration and work satisfaction. Nearly half of newly remote workers say that working from home has negatively affected their sense of belonging. But experienced remote workers show us that connectedness can improve over time.

In the wake of the COVID-19 pandemic many employees are utilizing either their own smartphones, tablets or laptops and other mobile devices or those provided by their employer to conduct business. While working remotely offers great flexibility and the ability to continue operating during the COVID-19 pandemic in a physically safe manner, it also poses additional data security risks. Employers and employees must be ever vigilant against cyberattacks, including phishing, malware, and other attempts by cybercriminals to exploit the often-rapid transition to a remote workforce. For those businesses that are new to remote work or even for those that consider remote work “old hat” it is a good time to either create, review or revamp security guidelines and policies governing remote work.

Remote work may be considered a new norm for organizations during the pandemic, but a move to remote work arrangements does not necessarily indicate that an organization has fully embraced the concept of flexible work. An estimated 42% of the U.S. labor force was working from full-time during the pandemic. Almost twice as many employees are working from home as at work.

Other research shows that an employer's approach to implementing remote work and similar forms of flexibility impacts overall perception of an employer's COVID-19 response. For example, an eight-week survey of workers earlier this year by ADP found that respondents' stress levels, productivity and work-life balance had generally begun to stabilize going into the first weeks of May. Moreover, 60% of respondents reported satisfaction with their employers' responses to COVID-19, but more than 60% of those who were highly satisfied with those responses believed their company was putting people first.

Certain worker segments may also support the idea of organizations re-examining their approaches to the workplace post-pandemic. A survey of global white-collar workers by staffing firm The Adecco Group found that respondents generally were in favor of hybrid work arrangements that allow for both telework and on-site work. Respondents also supported the concept of "results-driven" work over the concept of working set hours. Flexibility may especially appeal to groups of workers like those who are caregivers. HR Dive recently reported on practices for supporting caregivers, particularly those coordinating around school re-openings, including.

Telemedicine

There is a growing recognition that telemedicine can offer an ideal platform for companies looking to keep their workforce healthy. The recent increase in the adoption of telemedicine has begun to transform how patients obtain outpatient healthcare services. With benefits for both employers and employees, telemedicine is a service that more employers are including in their health plan coverage. Telemedicine has the potential to transform the workers' compensation industry by providing immediate assessment of a workplace injury, diagnosis, consultation, treatment, education, and care and case management, if applicable. However, when it comes to utilizing telemedicine, employers, medical practitioners and claims adjusters must strike a balance between the use of telemedicine and in-person care to ensure the best treatment outcome for injured employees.

For employers, the use of telemedicine can help mitigate both health insurance plan costs and claim costs. Telemedicine appointments generally bill for less than comparable in-office services. In addition, an injured employee can receive treatment at home or at the workplace, allowing for near-immediate return to work, if appropriate. Current evidence suggests that this works best for smaller, less severe injuries. Although there may be, in some instances, less oversight and supervision by healthcare providers (e.g., more emphasis on home therapy vs. supervised physical therapy), overall, the response from employers to telemedicine has been favorable.

From the employee side, the accessibility of telemedicine saves time by potentially eliminating trips to the emergency room, treatment clinics or doctor's offices. It is also convenient. This is especially true when seeking after-hours care, trying to manage childcare and/or work needs. Negative experiences with telemedicine from the employee perspective are usually tied to technology and connectivity issues. User experience is important, as well as ensuring that telemedicine is appropriate for the type of work-related injury involved.