

Defending Workers' Compensation Claims: *An Employer's Guide*



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Executive Summary

From the employer's perspective, workers' compensation is a system designed to inject predictable cost-controls regarding claims from injured workers. While high-risk industry employers such as coal mining and construction are required to have more money than low-risk industry employers, neither are exempt from workplace injuries that can impose heavy financial burdens.

As one of the most expensive line items for most businesses, control of workers' compensation is possible. An essential factor is identifying legitimate claims and those that should be denied. Costs include defense preparation against deniable claims, possible litigation and payable claims.

This white paper provides a guide for HR professionals, attorneys, and safety and risk management professionals who are actively engaged in the workers' compensation process. Discussion includes the employers' responsibility regarding workplace safety, as well as defending and denying claims. Employers will understand the necessary framework for gathering evidence to defend claims and responding to fraudulent claims.

Employer Responsibilities for the Workers' Compensation Program

Specific laws that govern workers' compensation programs vary from state to state. However, there are general procedures for which all employers are responsible to make sure the program runs smoothly. The first and most obvious responsibility is to maintain a safe workplace for employees. Doing so can preempt injuries on the job.

If an employee is injured, every employer must complete a First Report of Injury form that is forwarded to the workers' compensation insurance carrier. If medical attention is required, the employee must be allowed to see a doctor as soon as possible.

Throughout the investigation process, employers must cooperate with the carrier and attorneys. Often, this will include providing documentation from the injured employee's personnel file and payroll history. Timely assistance for all requests is essential to the claims procedure.

When the injured employee is physically able to return to work, the employee must allow him or her to resume employment. Penalizing or terminating the employee for filing a workers' compensation claim is illegal. Any employer found violating the law is subject to civil or criminal charges.

Abuse of the workers' compensation system is a common occurrence among employees. Some may exaggerate symptoms; others may lie about how an injury occurred. It is in employers' best interest to assist the state workers compensation board with reducing the number of fraudulent claims.

Important Questions to Ask

Asking the right questions when a claim is initiated can curb incidents of fraud. The following five questions to consider will help employers determine the legitimacy of a claim for workers' compensation.

1. Was there recent adverse employment action involving the injured employee? An employee might file a fraudulent claim if he or she thinks a termination or layoff is imminent. A recent disciplinary action, negative performance evaluation or being denied a promotion could be a warning sign.
2. Does the timing of the claim appear suspicious? One of the most obvious signs that a claim is fraudulent is delaying the initial report. While some states have statute of limitations that give employees some leeway for reporting, excessive delays should raise questions. Filing a claim close to an anticipated layoff or seasonal shutdown is also questionable. Employees who are injury prone at the start of a seasonal work shift, those with child care issues or a recently denied vacation are other warning sign to observe.
3. How many claims has the employee filed in the past? Similar to timing, the prior claim history of an employee should be examined. Repetitive claims for injuries to the same body part could indicate other medical issues. Claims involving extended absences from work, multiple claims within a short time frame and heavy medication use while recovering should be questioned.
4. Are there red flags surrounding the circumstances? A common element of fraudulent claims is that no one else witnesses the incident or injury. Without any other questions, this is a major red flag. Contradicting witness statements require further investigation of potential fraud. Additionally, employers should pay close attention to claims that occur in peripheral areas in the workplace such as the parking lot or break room.
5. What are activities of the employee outside work? Preexisting conditions or injuries from high-risk or sporting activities may lead to workers' compensation claims. In some cases, an employee claims a work-related injury when he or she was injured away from work. Secondary employment is another reason to review a suspicious claim. An employer should not be responsible for an injury that occurred at a different company.

Initial Investigation of Workers' Compensation Claim

A thorough, complete and expedient investigation of a workers' compensation claim is necessary even if there are no red flags. Typically, the employer should have a trained person that is responsible for every step of the investigation. Involving multiple employees may cause confusion and an inefficient investigation.

The initial interview with the employee begins the workers' compensation claim process. During this meeting, the majority of facts are gathered to help the employer either proceed with the claim or defend against it.

Arising Out of Employment/Course of Employment

The purpose of an AOE/COE claim investigation is to determine the facts of an on-the-job injury allegation. A complete investigation should establish whether the employee was injured during a work-related activity in the course of employment. Likewise, the investigation will also reveal of a third-party or non-work activity caused the injury.

Generally, an injury arises out of employment when risk to the employee is not common to the general public. While this appears to be easy to determine, more details are required in certain situations. To illustrate, an employee might suffer an injury after falling down the steps. If the handrail is in good condition and the steps are of normal shape and size, the risk to the employee is the same as the general public. In contrast, a defect in the steps or the employee falls down the steps while carrying a large box may constitute a payable claim.

Another AOE example is when a store clerk must squat to rearrange products on a lower shelf. An injury that occurs during this duty could fall under a workers' compensation claim. On the other hand, an office clerk or secretary who picks up a piece of paper that was dropped may not be payable.

Answers to questions regarding the time, location and circumstances surrounding the injury are important for establishing course of employment. Usually, the injury must occur during the course of a work-related activity that benefits the employer. For a COE, the employee's injury must occur within the scheduled work shift and in a reasonably acceptable place where the employee performs his or her duties.

This is thoroughly explored during the initial interview to determine if the injury occurred on the work site. If not, the investigator should question why the employee was not on the premises at the time of the injury. Additionally, the investigator should collect more details to explain why the employee was not on company premises or working during his or her normal shift.

The early stages of the investigation should document all facts surrounding the claim. This will include documenting the alleged injury and collecting witness statements. The initial steps for an effective investigation will include:

- Statement from injured employee: a description and the circumstances surrounding the injury
- Background and employment history of injured employee
- Medical history, recreational and athletic activities of injured employee
- Information from injured employee's personnel file: education, evaluations, disciplinary actions, grievances
- Identify and interview witnesses; eyewitnesses, supervisor
- View the accident/injury scene

An accident/injury report form is a helpful tool to guide the investigation. Pertinent details related to the injury can be collected with this single document. Generally, the accident/injury report form should include identifying details about the employee: full name, social security number and date of birth.

The date, time and location of the accident are also listed on the form. A narrative of the job-related task being performed by the employee when the accident occurred is included. Additionally, the form should list names of witnesses, if anyone saw the accident.

Equally important is when the accident was first reported. The name(s) of the person to whom the accident or injury was reported is an essential fact. The form should also identify whether first aid was administered.

Written statements from the injured employee and witnesses can help to preserve crucial facts. After identifying the wage rate and lost work time, the employee and supervisor should sign the form before forwarding it to the workers' compensation insurance carrier. Accident reports must be submitted within three days of the accident/injury.

A written job description of the employee's position and responsibilities provides details of what the job entails. This is essential to have when a formal claim for workers' compensation is filed. A key issue for an employer is whether the employee can return to work and continue in the same position held prior to the accident. The physical nature of the job and the employee's condition will if this is possible.

Generally, the trained employer representative acts as the liaison between the employee, physicians and the employer's insurance carrier. This person will gather copies of all medical reports related to the accident and coinciding bills. The insurance carrier will also need copies of these records.

This interaction continues if a formal workers' compensation claim is filed. Any letters and notices from the employee's attorney regarding the claim should be submitted to the insurance carrier. Exaggerations and false statements often cloud the right for an employee to file a claim.

Questionable claims for workers' compensation can be thwarted with an effective investigation that begins as early as possible. Proper investigation and documentation helps to establish the validity of the claim.

Employer Defenses to Deny a Workers' Compensation Claim

Generally, the Workers' Compensation system is a no-fault insurance program where employees can receive benefits regardless of negligence or who is at-fault. However, there are some defenses to claims that employers can establish. While most injuries are covered, employees are not free to cause self-inflicted injuries or not follow safety guidelines and collect compensation benefits.

There are valid reasons to deny a workers' compensation claim. Specifics may vary by state, but usually include the following common defenses:

- Employee was intoxicated when the injury occurred
- Employee started a fight or was committing a crime when the injury occurred
- Self-inflicted injury
- Failing to use safety appliance provided by the employer
- Failing to follow written safety rules
- Employee was injured during horseplay with coworkers

Employee Intoxication

While the scope and requirements vary among states, employee intoxication is commonly allowed as a defense when a workers' compensation claim is filed. Most states place the burden of proof on the employer that the employee was intoxicated when the injury occurred. However, states differ on whether intoxication was the sole or contributing cause of injury.

In other states, unless there is contrary evidence, proof that the employee was intoxicated is enough to presume this was the cause. Further, if the employee became intoxicated while performing activities that the employer benefited from, the intoxication defense will not apply.

Drug tests are typically the most reliable tool for employers to establish intoxication after an injury. This is why medical attention soon after the injury occurs is essential for an employer defense.

Another variant in state laws is the level of blood alcohol necessary to establish an intoxication defense. Eyewitness accounts and other evidence may also demonstrate that intoxication led to the employee's injury.

Failure to Use Safety Appliances and/or Follow Safety Rules

Employers should have a safety policy in place before the incident occurs. Strict adherence and enforcement of the policy is also required to use as a defense in a workers' compensation claim. Proof that the employee was aware of the policy is also important for this defense. Usually, a signed statement by the employee acknowledging receipt of the policy will suffice. The final element for a failure to follow safety guidelines defense is showing that the employee violation was willful and intentional.

Horseplay

In most jurisdictions, workers' compensation is not paid when an employee who is responsible for horseplay is injured. A claim is denied because horseplay does not benefit the employer and the employee is not "on the job" while engaged in this activity. A practical joke also falls into this category.

Injury Occurred Away from Employment Site

A common workers' compensation fraud is an allegation of an injury occurring at work when in reality the employee was injured somewhere else. This type of claim will be denied when the investigation reflects that the employee's injury occurred when he or she was not at work. Workers' compensation claims are only covered when the employee is at work and performing job-related duties.

Commuting to and from Work

Injuries that occur during an employee's commute to and from a fixed location are not covered. The only time a claim is approved while an employee is traveling is if he or she is providing a benefit to the employer. For instance, an office manager could have an automobile accident while running company errands such as buying supplies from an office supply store.

Late Injury Notice

Each state requires timely notification to the employer by the injured employee as soon as possible after the injury occurs. The only difference is how “timely” is defined; it can vary from immediate notification to up to two years. Generally, later notices are acceptable because some occupational diseases might not manifest quickly. Additionally, an employee might experience latent injuries after an accident. Employers could deny a claim for late notices without an excusable explanation.

No Medical Justification for Injury

The medical provider will release an employee to return to work once he or she has reached maximum improvement. In situations where the employee does not want to return to work, he or she may want to continue medical treatment. An independent medical examination will confirm whether continued medical treatment is justifiable. Future workers’ compensation benefits are usually denied if the examination proves that the employee is well enough to return to work.

Unapproved Medical Provider Treated Employee

Nearly half of the states allow employers to select the medical provider for an employee’s work-related injuries. Benefits are denied if the employee receives treatment from a medical provider that the employer did not approve.

No Medical Treatment After Injury

Essentially, workers' compensation benefits are not paid when the employee does not receive medical treatment. Simply calling off sick with an explanation that he or she suffered a back injury on the previous work day is not sufficient evidence. Staying at home to nurse an injury does not meet the legal standards for a claim. Medical treatment is required to verify the cause and extent of the injury.

Lack of Documentation that Injury was Work-Related

In most cases, a claim for workers' compensation benefits is denied when the medical provider cannot determine if the injury was the result of work performed by the employee. Progressive injuries such as carpal tunnel or hearing loss could be part of the aging process. Conventional wisdom of non-medically trained people might assume that carpal tunnel comes from work functions. An additional medical evaluation is often sought when initial documentation is insufficient to support a work-related injury. Eventually, the cause of the injury is identified; if it is work-related, benefits could be approved.

Preexisting Conditions

Most jurisdictions will not approve a workers' compensation claim when a preexisting condition is aggravated by job activities. As an example, an employee could have a degenerative disc disease in the spine or lower back region. Regular job activities might aggravate this condition and lead to increased back pain. Without a specific event that causes pain from this preexisting condition, the employer can deny a workers' compensation claim.

Techniques for Uncovering Potential Fraud

Unfortunately, billions of dollars are spent on fraudulent claims each year in the U.S., according to the National Insurance Crime Bureau. Employers may outsource fraud investigation to a professional investigator or the insurance carrier may hire a private company. Investigators may employ several techniques to uncover workers' compensation fraud.

Surveillance – Using video, audio and other surveillance devices, investigators can determine if the employee's injury is as serious as claimed.

Interviews and research – By interviewing friends, family and coworkers, more information may reveal the extent of the employee's injury.

Background checks – A professional investigator may check medical records to verify whether the employee is injured. The background check may also include checking to see if the employee filed numerous workers' compensation claims prior to the current incident. This should also reveal any previous convictions for fraud. **Gathering evidence** – all of the evidence gathered by the investigator will help employers deny illegitimate claims and prosecute fraud.

Fraudulent Workers' Compensation Claims

Fraudulent claims have many financial repercussions for employers. Workers' compensation insurance premiums increase. The employer also loses money for lost time while the employee is out. Conversely, the employer pays overtime to other employees when it is necessary to cover the lost time in productivity. Time spent by management and witnesses to the incident costs additional time for interviews and hearings.

Essentially, there are two forms prominent forms of fraudulent claims. One example is a legitimate workplace injury that is later exaggerated for additional time and benefits. Another is an injury that either did not occur at all, or did happen during work.

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