

10 Things Employers Do To Mess Up Work Comp Claims

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Do and Don't – An Overview

- Internal Investigation & Reporting
- Red Flags
- Communicate with the Injured Worker
- Communicate with the Carrier
- Accommodating Restrictions
- Termination
- Claim Abandonment
- Claim Handling
- Refusal to Rehire
- Unrealistic Expectations



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Internal Investigation & Reporting

- Reporting the Injury
 - Obtain an accurate injury description from the Employee
 - Complete First Report of Injury (WKC-12)
 - Acknowledgement of injury reports
- Wages and other payments
 - 52-weeks of wages prior to the week of the claimed injury
 - Accurate Hourly Wage
 - Include other items of value (meals, lodging, etc)
 - Short and Long-Term Disability Payments
- Create the Paper Trail
 - Keep the Employee Involved
 - Document Everything
 - Personnel Files
 - Pre-existing restrictions, old injuries, etc.



Red Flags – Employer’s Know Best

- Red flags need to be communicated to the Carrier
 - Examples:
 - Time off request was denied
 - Work protocol violation
 - Substance abuse suspected
 - Conflicting statements
 - Conflict with superiors or co-workers
 - Potential Lay-Offs
 - Outside Activities/Hobbies
 - No Witnesses
 - Pre-existing conditions and/or comorbidities
- Red flags are not a basis for denying claims!
 - Tools to aid in the investigation



Communicate with the Injured Worker

- First Time Injuries
 - Most workers are not repeat “offenders”
 - Fear
 - Value and Appreciation
- “Bill of Rights”
 - Define responsibilities of the employee and Employer
 - Work toward mutually beneficial outcome
- Don’t Keep the Employee in the Dark
 - Longer healing time
 - Derails the claim



Communication with Employees (Cont’d)

- Return to Work
 - The end goal is to return the Employee to the pre-injury job as quickly as possible



Communicate with the Carrier

- Report the Injury
 - Timely reporting is key
 - File the claim with your carrier or TPA!
- Don't Omit Information
 - OSHA Violations
 - Chemical Exposures
 - Similarly Situated Employees
 - Policies and Procedures (Handbook)
- Salary Continuation vs. WC Benefits
 - Experience Rating Adjustment/Modification



Communication with Carrier (Cont'd)

- Salary Continuation vs. WC Benefits
 - Experience Rating Adjustment/Modification



Accommodating Restrictions

- Return to Work Assignments
 - Transitional tasks aimed at returning injured workers to pre-injury productivity
 - Control Costs
 - Longer time away = Less likely to return
- Permanent Restrictions
 - 85% Rule
 - Employee Refusal
 - Retraining



Termination – Do or Do Not

- Retaliatory Termination
 - Cannot terminate the employee because they filed a workers compensation claim
- Substantial Fault
 - Acts or omissions of an employee over which the employee exercised reasonable control and which violate reasonable requirements of the Employer
 - Does not include:
 - Minor infractions unless an infraction is repeated after the Employer warns the employee about the infraction
 - One or more inadvertent errors
 - Any failure by the Employee to perform work because of insufficient skill, ability, or equipment



Termination – Do or Do Not (Cont'd)

- Misconduct
 - One or more actions or conduct showing willful or wanton disregard of the employer's interests
 - Includes:
 - Knowing violation of drug or alcohol policy
 - Theft of the Employer's property or services
 - Conviction of a crime or civil forfeiture
 - Act or threat of harassment or physical violence at work
 - Absenteeism (depending on company policy)
 - Falsifying business records
 - Intentional violation of standard or regulation of the government (local and otherwise)
- Termination at End of Healing
 - Global release and resignation



Claim Abandonment

- So your carrier received a favorable IME opinion – Now what?
 - Does not mean the claim has ended
 - Other issues that need to be resolved
 - Stay Involved until the claim is closed



Claim Handling

- *"I reported the claim, I'm done"*
 - You still have an active role
 - Help determine what future activity is needed
 - Employers still have a major role in the process
 - How can Employers help?
 - Listen when other employees report suspicious activity regarding the claim
 - Monitor progress
 - Provide accurate job descriptions
 - Provide accurate job videos, if requested
 - Be available for questions



Refusal to Rehire

- Penalty Claim (102.35(3) Wis. Stat)
 - Is suitable work available?
 - Is that work within the employee's physical and mental limitations
- Exposure
 - Attaches directly to the employer
- Other Considerations
 - Intersection of WC, ADA, and FMLA
 - Reasonable accommodation and rehiring can prevent some issues



You're Re-Hired!



Unrealistic Expectations

- Keep emotions out of the process
- Business decisions affect both the bottom line and how the injured worker responds to you
- Engaged employers have realistic expectations



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QUESTIONS?

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