Workers’ Compensation
The Good, The Bad, The Ugly

The first 24 hours are critical. The employee may or may not seek legal counsel, which without a doubt is hard on your bottom line – attorney’s fees – settlements – all increase your workers’ compensation costs. Handling the claim from the initial injury time helps keep down Attorney penetration.

The sense of entitlement among workers may also play a role in whether or not the injury becomes more than an injury. It becomes a means for the employee and his family to take a vacation or take some time off of work, or a way for “injuries” that happened at home, while doing something on the side, become your responsibility. Many weekend movers have managed to “hurt” their backs on Monday right after a long weekend of lifting and shoving.

Never downplay the injury. Be concerned. Be a careful, helpful employer. Being angry or berating the employee at the time of the injury will only drive the employee away and into a litigation situation. Some states have greater Attorney penetration than others. Our laws make it possible for attorneys to view the Workers’ Compensation Injury Form report as it is filed. Contact the employee directly and ask the employee if they have consulted an attorney. If they will receive more benefits if they have an attorney. Many attorneys will have to “share” their settlements with the attorney and end up getting less. If the lawyer is a good one the Workers’ Compensation Carrier may pay the attorney’s fees. It makes the claim less expensive for you...

- Attorneys’ fees paid by the carrier
- Time off to testify at trial
- The length of time employee will be off work increases with Attorney penetration
- Employee is less likely to return to work before being cleared by the doctor

However, statutory limits on body parts set by the legislature and these are not changed by an attorney’s help; however attorneys try to prove that the Employer was negligent and contributed to the accident. The attorneys make money if they keep the case open, not by closing cases.

Having a complete accident report with all the information and all the witnesses is essential to prevent later problems.

Making sure that everyone involved gives their statement while it is still fresh on their minds. Use a tape recorder for the verbal statement, then transcribe it and have the witnesses and the injured person read and sign it.

After the injury and the medical care, keep in touch with the employee. Ask for doctor’s notes and work release information. Do not assume anything. If need be contact the doctor and ask for the progress report. Communicate with your Workers’ Compensation Adjuster; find out what has been said by the employee to the Adjuster.

You may not fire a worker who has filed a workers’ compensation claim UNLESS they fail to follow Doctor’s orders for returning to work. You must warn the employee before terminating employment. “Doctor So’n’So, said you were to return to work this date… We are pleased that you are making a speedy recovery. We have noted the restrictions your Doctor has given and are looking forward to seeing you on ……” If employee does not return to work as scheduled “Your return to work date has passed. Please notify us regarding returning to work…” You may not fire someone who disagrees with the Doctor and is pursuing legal remedies. It is less
expensive in the long run to handle the situation diplomatically than to threaten or cajole. Check with your carrier before making any decisions. Your carrier will know when to stop paying an employee who has been released to return to work.

Have in place a “Back to Work” Light Duty program. You can assign duties such as light filing, sorting, telephone work, some types of inspection jobs, internet research, etc. All of these help work the employee back into the workplace and keep employees from “malingering”

KEEPING A SAFE WORKPLACE helps prevent most accidents. TRAINING helps prevent accidents.

**Checklist for Workplace Injury Reports**

Supervisors and managers who are responsible for filing injury reports should have a checklist. The best advice for keeping track of a claim is document everything. Use a detailed report form to record and track the claim.

- **Find out about your employee**
  - Get all the pertinent information, including marital status and name of spouse; current address as well as previous addresses and length of time of each residence.
  - Using an accident form – fill out general, social security number and driver’s license number; date of birth, number of dependents, job classification and date of hire, state of hire
  - Inquire about the activity
  - Vehicle type, year, tag number

- **Find out about the injury**
  - Get all the information on the injury; time, date, place
  - Was it a serious injury – did death occur – time and date of death
  - What type of injury – part of the body, and any previous injuries reported
  - How and why it happened when machinery or tool was being used, what employee was doing when it occurred (lifting, walking, climbing…)
  - When was the injury reported
  - How long did the employee wait to report
  - Was a supervisor present and did supervisor report accident

- **Was claim filed**
  - Date filed and employer notified
  - When initial report and when
  - Form filled with insurance carrier and when
  - Form notified and case number

- **You will need**
  - Oral and signed statements from the injured party
  - All witnesses statements, with detailed information of exactly what they saw and when the injury occurred and what the employee was doing when it occurred
  - Average weekly wage report and rate of pay for carrier for lost time
  - Lost time records
  - Name of medical providers, copy of invoices, treatment provided

- **If employee secures an attorney, you will need**
  - Defense attorney - provided by Insurance Company
Complete records of all discussions and actions regarding the claim
Any evidence regarding fraud or malingering

WATCH FOR WARNING SIGNS

There are warning signs of fraudulent claims. You may not discriminate against any worker filing a workers’ compensation claim, but you can and should watch out for fraud and report it to the appropriate authorities.

These are some of the warning signs:

- An employee who has had many jobs for short periods of time may be a warning sign.
- The claimant has a history of workers’ compensation claims or liabilities.
- Employee brags about the number of times he or she has filed claims and won.
- Employee reports a claim on a Monday after a non-working weekend.
- Employee has recently been fired, demoted, or failed to be promoted.
- Employee has been asked to take early retirement.
- Employee leaves the state or moves right after injury.
- Employee refuses to answer calls or questions about the injury.
- There were no witnesses to the injury.
- Accident was not reported when employee claims injury happened – reports later claiming injury on the job.