

NEWS ALERT

WORKERS' COMP

Keep Injured Workers in the Loop to Cut Claims Costs

ONE OF the main goals in workers' comp is getting injured workers back on the job as quickly as possible, when it is safe to do so.

The key, experts say, is to help the injured employee better engage in the workers' comp system, so they have an understanding of the claims process and what to expect.

Successful employers advocate for the injured worker, instead of just giving them the standard booklets and then leave them until they are healed up enough to go back to work.

The workers' comp system is daunting

and when they don't hear from their claims adjuster or anybody at work about their case for extended periods of time, injured workers can get nervous. And if that happens, and they feel adrift, they may seek out legal counsel for their claim, at which point it can spiral out of control for the employer.

Forward-thinking employers focus on improving satisfaction among their injured workers. That can lead to less missed time from work and lower claims costs.

Early treatment

Studies by Rand Corp. have found that getting an early and accurate diagnosis and putting the injured worker on a treatment plan greatly helps them recover faster.

This fast-track approach has the added effect of letting the employee know the employer cares about their swift recovery.

Most important is getting the right diagnosis early, so the doctor can plan a course of treatment.

Speak openly

Once an employee is out on workers' comp, they can easily start feeling disaffected and lost. As an employer, you can help by keeping the employee in the loop.

If you are at any point planning to discuss the claim, the injured worker should be in on the conversation.

Your H.R. manager can keep them engaged through education and explaining the processes, thus complementing the work of the claims adjuster.

Advocacy

Some employers take steps to advocate for their injured employees through the workers' comp process and representing their interests before the claims adjuster.

Employers who have had the best success

meet the injured worker as early as possible to lay out the entire process for them, from the first doctor's visit (which they likely have had already at that point) to what to expect when dealing with the claims adjuster.

The main reason injured workers hire attorneys is that they don't understand the workers' compensation process. Acting as an advocate for the injured worker, and holding their hand through the process, will go a long way to easing their fears.

Third party administrator Sedgwick makes a point of working with injured workers before they undergo surgeries or other medical procedures.

They talk to them about what to expect during the recovery process, including the type of pain they may experience and what to do about it.

Monitor and explain treatment

The proactive employer will stay in touch during treatment and help the worker monitor their process. If the employer is engaged, the injured worker is more likely to stay on track

See 'Regimen' on page 2

CONTACT US



If you have any questions regarding any of these articles or have a coverage question, please call us at:

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Homeowner's Insurance and Lawsuits

IT IS COMMON for neighbors to disagree. One person may think that their outdoor dog barking at people passing by is an asset for keeping them safer from intruders. But, a neighbor who enjoys peace and quiet would think the dog is a nuisance.

Another neighbor may enjoy listening to his or her music at a loud volume, but others who live in the neighborhood will likely find it annoying.

Some situations may not be about noise. People who live in neighborhoods with a uniform appearance may hassle a new homeowner who decides to paint their house a clashing color.

Whether the source of the problem is noise or something else, disagreements between neighbors can escalate into lawsuits. Before this happens, it is important to know what types of provisions a homeowner's policy provides for legal issues.

Many people think that a homeowner's insurance policy covers most types of lawsuits filed against them. For this reason, people are usually not as careful as they should be about preventing them.

For example, consider a new homeowner who moves into a subdivision, replaces the existing fence with higher boards and paints them contrasting colors. If the subdivision has rules about the permissible colors and acceptable maximum height of fences, they will try to get the new homeowner to comply.

Homeowners who refuse may find themselves facing a lawsuit for violating the subdivision's code. The courts will likely favor the subdivision's rules, and a homeowner's policy will not provide coverage for the legal battle. Therefore, it is important to understand exactly what

legal issues are covered under the policy.

Loud noises, eyesores and changes are all issues that do not physically harm another person. While they may be annoying, they are not issues that would be covered by a homeowner's policy if they escalate into a lawsuit.

Always remember that a homeowner's policy offers protection for two types of liabilities, which are property damage and bodily injury. If the family dog bites someone on the property, a guest falls off a broken step or one of the kids breaks a visitor's car window, a homeowner's policy covers such issues.

Since coverage is limited to two types of physical damage, it is important to work as hard as possible to settle disputes with neighbors. For example, if neighbors complain about a barking dog, it may be best to enroll the dog in training or purchase a no-bark citronella collar.

Trim overgrown shrubs or trees that neighbors may complain about. Many people get angry and frustrated when a neighbor makes accusations or complains.

Anger is usually what causes people to be stubborn and refuse to compromise. Always listen to what neighbors have to say, and try to understand the situation from their perspective.

Use common sense to arrive at a solution that is favorable to both parties.

However, the best way to avoid anger and confrontation is to fix possible nuisances before neighbors complain. For additional information about avoiding problems and lawsuits with neighbors, call us. ❖



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Urge the Worker to Stay on Top of the Treatment Regimen

with the treatment regimen prescribed by the doctor.

This may involve coordination with the treating physician so that any physical rehabilitation is done with their job responsibilities in mind. A good therapist can also explain why certain exercises are necessary for the injured worker.

Also, urge the rehab center and the claims adjuster to ensure that the injured worker sees the same therapist every time.

Stay engaged

One way to speed the recovery process along, reduce litigation

and lower the chances of the injured worker becoming disaffected is to stay engaged with them.

You can communicate with the treating physician, claims adjuster and injured worker about the possibility of the individual coming back to limited or restricted duty.

Just remember, your engagement with the injured worker must be done in a way that best meets the person's needs.

Also, if there is friction between the worker and a superior, make sure it's not their superior that's engaging with them during this process. ❖

CITATION RULING

OSHA Can Go Back More Than Five Years for Repeats

OSHA CAN look beyond five years to assess “repeat violations” when considering the penalties against an employer for breaching workplace safety regulations, a U.S. appellate court has ruled.

Repeat violations can be assessed at 10 times the amount of a safety violation, which makes the ruling a game-changer for companies who have been cited more than once, even if that citation was issued more than five years ago. It increases the stakes for employers who until now chose not to contest more routine violations because of the cost of defending them.

Under OSHA regulations, the maximum penalty for a serious violation is \$12,934, but if it’s not the first time OSHA has cited the employer for the infraction, the maximum fine balloons to \$129,336.

Up until 2015, the agency would typically not look back more than three years when deciding if a violation was a repeat. But in 2015, OSHA changed that period to five years in the field operations manuals for its inspectors.

Despite those changes, the U.S. Second Circuit Court of Appeals ruled in February this year that the field operations manuals are not legally binding and that OSHA is not restricted from going further back than five years to establish repeat violations.

The court made the ruling in the case of a company called Triumph Construction Corp. that had been cited in 2015 for a repeat violation, and which OSHA had fined based on Triumph receiving a prior citation for the same infraction more than three years earlier.

Triumph challenged OSHA’s authority to go back more than three years to establish a repeat violation, saying that doing so was “arbitrary.”

But the court stated that the earlier guidance of three years and the new guidance of five years were not actually binding on the agency because neither the Occupational Safety and Health Act nor OSHA regulations actually set time limits on issuing repeat citations.

What you can do

The best option for employers is to make sure they are in compliance with all OSHA regulations in the workplace in the first place, and have all the required safety precautions in



place to reduce the chances of workplace incidents.

For employers that have been cited before, it’s of utmost importance that they continually pay special attention to safety issues for which they’ve already been cited. Now that this ruling has set a precedent, it could open up all employers to repeat violations no matter how long ago they were cited for the original infraction.

The law firm of Fisher Phillips, in a blog on the lawsuit, recommends that employers who may have been reluctant in the past to challenge a citation, should consider doing so if they feel they have a good-faith defense. If they are successful in fighting the citation, it cannot be used as the basis for a repeat violation.

“The cost-benefit analysis for contesting non-repeat citations has changed. If an employer previously believed that contesting a \$12,500 serious citation was not worth the legal cost, the risk of being hit with a repeat violation \$125,000 several years down the road may tilt the balance toward contesting those lesser citations,” Fisher Phillips wrote.

The law firm said that employers should be especially vigilant about contesting citations that involve “a routine activity, task, or equipment where a repeat [violation citation] is more likely to arise in the future.”

It also emphasized the importance of maintaining comprehensive records from prior OSHA inspections and citations and documentation about actions taken to fix the problem, in order to avoid citations for the same hazards in the future.

“This will hopefully prevent the issuance of a repeat citation, no matter what the repeat time period OSHA may attempt to enforce,” the firm wrote in its blog. ❖

Be Sure to Tell Us About Any Material Changes

ONE MISTAKE that many policyholders make is failing to notify their insurance broker about material changes that could affect their coverages for a number of different types of insurance.

Various events should trigger you to inform your carriers. And depending on the type of change, it could cut across different lines of insurance, like workers' comp and employee benefits.

If you have had any material changes recently, you should read this.

Workers' comp

Hiring new employees – While you don't have to notify your insurer every time you are hiring someone, you may want to consider it if you are adding a number of new staff in a short period of time.

Insurers will often conduct policy audits to catch changes in personnel and may send a notice to collect additional premium for the new hires. But if you don't want any surprises and risk of misclassification, it's a good idea to reach out to your insurer about these changes.

Ownership changes – If you and your partners are claiming an exemption for workers' comp coverage as owners of the company, and if there is a material change – like adjusting corporate structure or ownership – you must file the correct documentation with your workers' comp carrier. Contact us, we'll get the correct documents filed.

This is critical if there is an ownership change in the middle of the policy year. If you don't notify the insurer and assume a new owner will be exempt like the one they replace, you could be in for a surprise.

If the carrier doesn't know about the change, it could treat the new owner as an employee and demand collection of back premium to the date they entered the picture.

In California, this is especially important now in light of recent legislation.

Before AB 2883 and SB 189 were signed into law, if an insurer discovered during final audit or midterm that a policyholder's

entity had changed to a corporation from a sole proprietorship and the owner had previously been exempt from coverage, the insurer would simply endorse the policy with the corrected entity type and legal name and then exclude the owner again.

As a sole proprietor, the individual was not covered on the policy and, as the only officer of a corporation, the owner would still be eligible for exclusion.

Under the new laws, this is no longer possible. In order to exclude qualifying individuals from workers' compensation coverage, the organization must file a signed waiver from each of the qualifying individuals requesting to be excluded.

Insurers cannot backdate waivers. So, if there are ownership changes or structural changes to the entity type, the owners who want to be exempt from coverage must file new waivers with the insurer.

Employee benefits

For employee benefits, you need to notify us of new hires or recent terminations within 30 days. Health insurers have strict rules for retroactive changes. Follow the guidelines when adding new employees to your company health plan.

Employees may leave a company and new workers may take their places. Dependents may change from time to time. As such, you need to periodically review the group health insurance plan to make changes to the number of people covered in the plan. You can contact us or your insurer when you need to make these updates.

Personal lines

If you've had renovations or purchased any expensive items that you should list on your policy to ensure they are covered, contact your insurer.

And if you purchase a car, contact the insurer before driving it.

Also, if you are accumulating more assets you may want to consider revisiting your life insurance policy as well, to see if you need to increase the limits as your net worth increases. ❖

