

# Keys to Successful Claims Management

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Robert L. Conrad, CPCU, ARM  
Claims Operations Manager  
Pennsylvania Insurance Department  
Office of Liquidations, Rehabilitations and Special Funds

It's a fact; workplace injuries will occur. The question is: What can you, the employer, do to manage those claims? The answer is: Everything you can! Not only do workers' compensation claims cost employers millions of dollars per year in direct and indirect costs but, they often change the lives of injured employees and their families, for the worse. The Pennsylvania Workers' Compensation Act provides employers and employees with certain rights and responsibilities. It is to every business' benefit to understand the Act and to proactively take full advantage of what the Act permits you to do to manage your claims.

Whether you are a small employer or a large employer and regardless of whether you are traditionally insured or self-insured you, the employer, must take a proactive team approach to managing your claims. We all hear about the large claims that get out of control but, you should not forget about the smaller claims because, while small individually, cumulatively they still represent a significant cost to your business and you never know when one of those small claims will become much larger.

The employer must be the manager of the team. Remember, it is your money being spent to pay the indemnity and medical benefits for your injured employees. Your workers' compensation claims will cost you money and some will always haunt you. Proactive claims management is your best defense.

## Selecting Your Team

As manager of your team, you need to pick your team members. Suggestions include: (1) your management, (2) your adjuster, (3) your agent / broker, (4) medical providers, (5) defense counsel, and don't forget (6) the Act and (7) your employees.

Let's look at your team:

(1) Senior management must fully support efforts to manage workers' compensation claims. Without their support, your efforts, no matter how comprehensive, will not have the impact necessary to work. As the person responsible for managing your company's workers' compensation claims, you should develop a plan that you can both explain and sell to senior management. When they join your team, it becomes stronger.

(2) The adjuster may be your team's most valuable member. The adjuster should be experienced in the investigation and management of Pennsylvania Workers' Compensation claims. He/she should also understand your business and your desire to be actively involved in the management of your claims. If possible, meet the adjuster(s) who will handle your claims and discuss what you want to have happen. i.e. return-to-work programs, approval of denied claims. The adjuster has responsibility to make decisions that will dramatically impact your bottom line results. That impact can be positive or negative. Do everything you can to ensure the adjuster shares your proactive claims management philosophy and involves you in decisions concerning denials and the negotiation of compromise and releases with your employees.

(3) After your Agent or Broker sells you the insurance, you should expect him/her to provide you with information and support. Your agent/broker should be your voice to the insurance company. Don't be afraid to question decisions made concerning your claims. It is your right to understand decisions on compensability, reserves and claims management.

(4) The Workers' Compensation Act permits you to select a Panel of Medical Providers to treat your employees who are injured at work. This is an excellent first step to managing your new claims. The Act requires employees to treat with a member of your panel for the first ninety days. When selecting a Panel, you should consider the types of injuries typical to your business and then select qualified medical providers with those specialties i.e. orthopedic, optomologist, general practitioner. You should pick medical providers who understand workers' compensation and then you should help them understand your business and the jobs performed by your employees. An informed medical provider can reduce lengths of disability and return injured employees to transitional duty positions to help them work back to their pre-injury jobs and wages.

(5) Select a defense attorney that specializes in workers' compensation defense claims. The Act is very complex and it requires an experienced legal expert to guide you through the litigation process: petitions, appeals, hearings. Consider asking your peers at other companies for recommendations. Interview potential attorneys to ensure they know their business but also that you feel comfortable with them before you add them to your team.

(6) The Pennsylvania Workers' Compensation Act can be a star player on your team. The Act provides you with the strategy to develop your tactics. Let it help guide you through your rights and responsibilities and help you make the proper decisions to proactively manage your claims.

(7) Your employees should be important team players. Employers should conduct educational training for managers and supervisors to document your policies and procedures for reporting and investigating workers' compensation injuries. The earlier you can determine what happened and why it happened, the better your chances of proactively managing your claims. It is important for those responsible for reporting claims to know what questions to ask and not just complete the Employer's First Report. Versions of how an injury occurs can change over time. The best way to ensure reporting the actual information is to document it as soon as possible after the injury occurs. That is when everyone's memory is fresh and details are still factual.

## **Your Strategy**

Now that your team is selected, you, the manager, are ready to direct your strategy. Your first objective is loss prevention. An old claims man once said "It's far better to prevent injuries than to be expected to do damage control after a claim occurs." How very true that statement is. When a compensable claim occurs, it will have a financial impact on the employer and the

employee. At that point, all you can expect is to proactively manage the claim and the disability to reduce its cost.

When a claim does occur, the best practice is to carefully document the event, identify witnesses, determine the cause and obtain medical care for the injured employee. At that point, the employer relies upon the agent/broker to promptly report the claim to the insurance company and for the company to assign an experienced workers' compensation adjuster to conduct a thorough investigation. The quicker the claim is reported and investigated, the better the chances of reducing the cost of that claim. Ideally, claims should be reported within the first twenty-four hours after the injury occurs. If it is a serious injury, pick up the phone, send a fax or an email to the agent/broker to alert them that prompt action is necessary and ensure your employee receives prompt medical attention.

Ok. You reported the claim. Now what? Your responsibility does not end there. That is only the beginning. Proactive claims management requires you to continue your due diligence by remaining in contact with the adjuster, communicating with your injured employee and with the treating medical provider. Make certain they all understand your interest in the proactive management of the injury. If possible, consider making transitional work available to help return the injured employee to your work environment. The adjuster and the medical provider need to know work is available and the medical provider needs to understand the physical requirements i.e. lifting, sitting, and bending.

Communicate with your injured employee and/or the spouse. Let them know you are concerned about the employee's welfare. Communication does several things that help proactively manage the claim. Periodic contact enables the employer to know the condition of the injured employee and how the treatment is progressing. It can provide warning signs of extended disability or potential malingering. If you have difficulty reaching the injured employee or the employee not returning phone calls that could be a sign of concern. Do not hesitate to share your concerns with the adjuster. Your calls may provide insight not otherwise available to the adjuster.

## **The Claim Progresses: Communication is Key**

After the initial investigation is completed and compensability is accepted, the employer should still remain actively involved in the management of the disability. Remain in contact with the adjuster. Know what is happening i.e. how is treatment progressing, what is the prognosis for return to work? You should also contact the treating medical provider to request the status of treatment and the prognosis for return to work. Call or visit your disabled employee. Let them know they are missed by you and their co-workers. This is a good opportunity to learn any concerns or issues that may exist so that you can report them to the adjuster.

## **Serious and Questionable Claims**

Sometimes a claim does not progress as initially expected. The disability extends, medical treatment intensifies and communication breaks down. You may want to consider adding new team members i.e. surveillance and an independent medical examiner.

Listen for rumors about the injured employee. Often co-workers will make comments about the injured employee being seen doing some activity that may seem to be outside of his/her physical restrictions. Stay in contact with the injured employee. You may be fortunate enough to have the injured employee make a comment that leads you to believe a problem exists. Remember, communicate with your adjuster and let him/her know about anything you think bears investigation.

Sometimes, it is appropriate to consider surveillance to document the injured employee's disability and to look for inappropriate physical activities. Those activities will be captured on video tape and can be used in the litigation process. An Independent Medical Examination (IME) is warranted to document or disprove the injured employee's disability and/or physical restrictions. This second opinion can influence the prognosis of the primary care provider and may provide the potential for transitional duty and even a petition to modify or suspend benefits.

## **The Litigation Process**

Some claims will not easily resolve. Some disabilities become prolonged controversies. Those claims may require your defense attorney to step forward. Proactive claims management sometimes dictates more aggressive tactics due to unresolved issues. This is the time to meet with your defense attorney, to seek his/her professional opinion. Explain the issues and obtain qualified legal advice. Then determine your preferred course of action. That could range from additional investigative techniques such as surveillance to filing a petition for review, modification or termination of benefits. Sometimes, it is valuable just to get the injured employee before a judge. Not only can that show the employee you are serious but, it can send a message to your other employees that you intend to proactively manage your workers' compensation claims.

The litigation process is an administrative function of the Pennsylvania Bureau of Workers' Compensation. Workers' Compensation judges are assigned cases to hear when either the employer or the injured employee has reason to believe the claim is not properly managed. The judge is an independent decision-maker who listens to both sides and then issues an Order that directs the claim. Typical issues include: denial, modification, suspension or termination of benefits. Your adjuster and defense attorney should take responsibility for this stage of the management of the claim but, as the employer, you should remain active in the resolution of the claim.

## **Red Flags / Warning Signals**

Frequently, when a claim starts going bad, there are red flags that should alert the employer. When any of the following occur, the employer should immediately contact the adjuster and request additional investigation:

- ✓ Disability prolonged past normal expectations
- ✓ Extensive medical care or multiple providers
- ✓ Difficulty contacting the employee
- ✓ Employee represented by legal counsel
- ✓ Rumors about the employee's activities
- ✓ Un-witnessed injury
- ✓ Difficulty getting medical reports from the treating physician
- ✓ Pre-existing conditions
- ✓ Gut instinct; Something doesn't feel right

## **Summary**

All Pennsylvania employers should take responsibility for the proactive management of their workers' compensation claims. They should select qualified professionals to work with them and to advise them. Even smaller employers should discuss their concerns with their agent/broker and express their expectations. While not all insurance companies may be

willing to involve the employer in their claims investigations, but, as their insured, you should make every reasonable attempt to get your carrier to keep you informed.

Workers' compensation is a major expense to employers but it can be managed if the employer remains proactively involved in issues such as compensability, disability, medical care and return to work. The Pennsylvania Workers' Compensation Act exists to protect employers and employees. Knowing the Act and using it to your maximum benefit can be a great risk management tool that can make a dramatic difference in the employer's bottom line. Remember another old claims philosophy, **"The Best Claim is a Closed Claim!"**