

Has the Affordable Care Act Led to Employers Treating WorkComp Claims Like Crime Scenes?

BY DAVID R. LENG

Workers' Compensation fraud has been around, one way or another, since the first slacker hurled a spear at a Woolly Mammoth and then complained to the tribe leader he couldn't go out on the next hunt "because he hurt his back", when in reality he'd rather just hang around the cave painting on the walls.

A free "vacation" has long been a motivation of WorkComp fraud, as is monetary rewards. But the Affordable Care Act (a.k.a. ACA, a.k.a. Obamacare) has dumped millions of additional bodies into the healthcare system, putting a significant strain on each citizen's budget. The U.S. Department of Health and Human Services weighs in with the disturbing news that the physician supply will increase by only 7% by 2020, and starting in 2015, the estimated doctor shortage will be approximately 63,000. By 2025, the shortage could be as high as 131,000, primarily due to the impact of additional users coming into the healthcare system. According to the U.S. Department of Health and Human Services, "This collision of care needs and the shortage of both primary care and specialist physicians could greatly impact the delivery of healthcare in the Workers' Compensation marketplace."

The end game is as healthcare costs rise for individuals, and doctors find themselves conflicted over where they can be better compensated, we may very well be seeing a rise in fraudulent claims. As Stacey Cheese, Claims Manager of East Coast Risk Management, a licensed TPA and a claims manager for over 1,500 employers states, "We have seen a dramatic increase in questionable or "red flag" claims as the ACA has been phasing into place, and identifying the true cause of an injury is becoming a larger and larger area of focus in our Workers'

Compensation claims handling process."

Case in point: An employee tells his supervisor Monday morning that he hurt his back climbing down a ladder. He's instructed to go to the ER to seek treatment. Since it's easier to put toothpaste back in the tube than it is to accurately diagnose the cause of a back injury, the physician takes the employee's word for it hook, line and sinker, particularly knowing he will make a higher fee treating a WorkComp injury than dealing with health insurance. Typically, the treating physician makes decisions about the work-relatedness of a condition. Reimbursement rates set under the ACA tend to be lower than reimbursement rates under Workers' Compensation systems. Workers' Comp plans pay providers for services received; therefore, there is an incentive for providers to prefer Workers' Comp payments. Let's face it, the first question the doctor's admission person asks is, "Was this injury related to an auto accident or work related?" Talk about leading the witness.

However, in this instance, maybe the employee hurt his back sliding into second base during a Sunday afternoon softball game but says it happened on a Monday morning simply because his employee benefits doesn't have a disability program or maybe his employer went to a deductible program as their health insurance premiums were through the roof. The bottom line is that the employer is going to be unfairly paying the freight, while watching his premiums and Experience Mod go up and his revenue go down as productivity slows with workers not on the job.

According to Richard Victor, Executive Director of the Workers' Compensation Research Institute, the ACA has made high-deductible general health insurance plans common, while



increasing the possibility of classifying uncertain claims, including accidents involving soft-tissue injuries, as Workers' Compensation incidents. The logic was that selecting the Workers' Compensation classification both allowed for the claimant to avoid what would likely be a high deductible amount under their health insurance plan and for the healthcare provider to be paid under the fee schedule or other fee-for-service system of the Workers' Compensation system for that state.

With so much at stake, it is becoming increasingly important not to take every workplace injury at face value. Every job incident should be treated like a crime scene—think of it as WorkComp CSI.

First, you need to be aware of certain red flags, particularly in the case of a remote injury, where an employee gets a soft-tissue injury (back, neck, etc.) away from work but say they were hurt on the job. And if you suspect this is the case—an employee has come to you saying he strained his back lifting a box in an area where he was working alone and unsupervised—now is the time to undertake your “workplace forensics” by utilizing the following steps:

1. Have the injured employee immediately put in writing the facts of the injury.
2. The job supervisor needs to do a thorough investigation of the accident scene, walking through and noting each and every aspect, in order to verify the story of how the accident happened. Keep detailed records and make sure to take pictures of the scene.
3. Talk to fellow employees. Did they see anything when the injured party reported to work (was he limping when he punched in, walking gingerly, complaining of pain while holding his back, etc.)?
4. Was the injured employee acting disgruntled in the time leading up to the injury, upset at the company, making threats, etc.? Has the injured employee been a discipline problem? Review the history of any employee who reports an injury, even if there's no evidence of wrongdoing.
5. Document the use of safety equipment such as hard hats,

gloves, goggles, safety harnesses, etc.

6. Is there any video surveillance available in the area where the accident occurred? Is there evidence on social media (i.e. Facebook, Twitter, YouTube) that the injured worker may have been hurt off the job, perhaps a YouTube clip of him skiing into a tree the day before? Often, these tips come from coworkers who grow weary of carrying an extra workload while their coworkers stay home.

7. Finally, repeat Step #1. There's a reason why police investigators ask suspects numerous times to repeat a story. Because it's hard to fabricate something *exactly* the same each time you repeat it. Do the employee and witness statements, and the account conveyed at the doctor's office, all align?

8. As a last case scenario, particularly if the potential damage to the company appears to be significant, you could hire a private investigator well-versed in Work Comp matters to do the so-called heavy lifting.

So what are the potential consequences this law might produce for the Workers' Compensation marketplace? If the ACA results in higher cost plans, larger deductibles and limited doctor and healthcare providers, workers could stray out of this system and into the Workers' Compensation realm. The higher deductibles may help reduce an employer's premium, but many do not realize that when the employee cannot afford to pay the deductible itself, there will be repercussions. Many employees are defaulting on payment to doctors and medical facilities, causing them additional financial problems when creditors call and credit scores plummet. Employers should help ease the situation by educating employees on how and why they should adequately fund their Flex Spending Accounts or Health Savings Accounts.

Still, the best advice is to be diligent in your investigation of every incident. It's a sad state of affairs that employers can no longer give their workers the benefit of the doubt when an incident occurs, especially with so much at stake. But this is the hand business owners have been dealt with so much potential monetary risk sitting on the table. It's just up to them to do their due diligence in order to determine if those cards turn out to be a winning hand or one that forces them to fold.



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