

Keep Claim Costs in Check

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Despite continued improvement in administering workers' compensation claims, Ohio has fallen behind in getting injured workers back on the job.

Over the past four years, the percentage of injured workers who return to work within a year after their injury has dropped from 75 percent to less than 69 percent. This high percentage not only increases claim costs, but deprives the workforce of the injured workers' talent and experience. In addition, the cost of long-term claims administered by the Ohio Bureau of Workers' Compensation is the worst in the nation. Eight years after the date of injury, BWC has more than 45 percent of the total claim costs left to pay—an indication of extended disability and prolonged medical treatment. The national average is only 17 percent.

To combat these drains on Ohio's economy, BWC designed "Destination: Excellence," a new rating plan that rewards employers that successfully bring employees back to work in a modified capacity or collaborate with medical partners to find alternative job options for injured workers.

All employers, not just state-fund employers, should take steps to reduce the risk of injury in the first place, as well as to improve the outcome when injuries do occur. From the first day on the job, a new employee should be made aware that the company places a high priority on safety. The company's written safety policy should be an integral part of the orientation program and periodic safety trainings. Incorporating these tips and the ones listed into regular claims management practices will benefit employers and employees alike.

1. Provide a workplace free of illicit drugs and alcohol. Ohio offers a discounted premium for companies that promote work environments free of drugs and alcohol. Employment policies providing for random drug screening and zero tolerance for positive results are a powerful deterrent to drug use.

2. Insist on timely reporting of all injuries, no matter how minor. Every claims manager can remember "the one that got away;" the twisted knee or back sprain that didn't seem serious enough to require medical attention and, therefore, was not reported. Then, months later, it's diagnosed as an acute condition needing prolonged time off work. By the time the claim is finally reported, it's often too late to conduct a meaningful investigation.

3. Investigate each claim before accepting it as valid. Conduct a thorough investigation when the claim is first reported. Review the incident report carefully. Check for discrepancies in timing. Consider whether the mechanism of injury seems reasonable. Interview the claimant and any witnesses to the injury. You may discover that an employee's back strain likely resulted from landscaping his yard over the weekend, not toting his 10-pound toolbox around on Monday morning. Even though a condition may first manifest itself at the workplace, it doesn't establish the important claim criteria of being "a causal connection with employment." The Workers' Compensation Act is only intended to protect employees against risks and hazards incident to the performance of their duties.

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4. Understand when to call in legal counsel.

The General Assembly designed Ohio's workers' compensation system to be "user friendly." It doesn't require legal counsel every step of the way. In many hearings, both the employer and the injured worker are represented by lay persons, not attorneys. The Ohio Supreme Court ruled that lay persons may communicate the employer's areas of concern and point out documents relating to those concerns without running afoul of the prohibitions against the unauthorized practice of law. However, the court's decision precludes lay representatives from making a legal argument, commenting on the evidence, determining the legal significance of a fact or examining witnesses—acts that clearly constitute the practice of law. Where the defense of a claim hinges on witness testimony, retaining legal counsel is desirable. Similarly, only an attorney can argue that the statute of limitations bars a claim or that an intervening injury has broken the causal connection between the industrial injury and claimant's current disability/need for treatment. When the facts are complicated and multiple physicians have offered conflicting medical opinions, an attorney is often best equipped to present a clear and persuasive narrative in support of the employer's position.

5. Make thoughtful use of independent medical examinations.

Most workers' compensation claims require a diagnosis from a physician. After the initial allowance of a claim, an independent medical opinion can be useful in determining whether proposed treatment is medically



necessary. An independent medical examination is also warranted when an injured worker continues to be certified as temporarily and totally disabled long after the usual healing period has elapsed. Even if the injured worker still requires ongoing care, a non-treating physician may determine that no further functional or physiologic improvement may be expected and the allowed condition has reached maximum medical improvement. Based on the independent medical examiner's report, the employer can move to terminate temporary total disability compensation following an Industrial Commission hearing.

6. Emphasize the importance of early return to work.

Studies have shown that early return to work improves claim outcome, even if the employee returns to a different job. Offering light-duty work while an employee recovers demonstrates the employer's commitment to the

employee's full recovery. Communication with treating physicians is essential to accomplish this goal and assure that offered transitional work complies with the employee's restrictions. The treating physician should approve a detailed job description of the light-duty work before the employee begins transitional employment. Further, the job description should inform the physician about the employee's work with machinery or other hazards, so the treating physician can assess whether the injured worker's use of pain medication precludes certain work-related activities. Transitional work also may provide a convenient venue for physical therapy, occupational therapy or other modalities to enhance recovery. 📌

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