

Treating the Whole Elephant

A Holistic Approach to Reducing Workers Compensation Costs

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Abstract

A well-designed workers compensation program can cut workers compensation costs by 20% to 60%. A program has to be comprehensive to work, and too often, those in charge rush to buy the latest new product before understanding the problem completely. Be sure to first understand why the costs are high, and then develop a comprehensive solution. Here is a holistic approach to reduce workers compensation costs: 1. Understand how bad workers compensation losses really are. 2. Set up the right corporate structure. 3. Actively monitor claims to promote return to work. 4. Understand what the third party administrator provides. 5. Control the post-injury process. 6. Have a return-to-work and transitional duty policy that applies to all occupational injuries. 7. Have a medical expertise. 8. Educate all levels of the company about new procedures. 9. Control fraud and system abuse. 10. Put claim-handling requirements in account instructions.

You have probably heard the story of the blind men examining an elephant. One feels the trunk and concludes that an elephant is like a snake. Another touches the side and believes the elephant is like a wall. The third feels a leg and thinks the beast is a pillar.

To succeed in workers compensation cost reduction you need to see the whole "elephant." A well-designed program can cut your workers compensation costs by 20% to 60%. But a program has to be comprehensive to work, and too often, those in charge rush to buy the latest new product before they understand the problem completely. Be sure you first understand why your costs are high, and then develop a comprehensive solution. If you want to reduce your losses quickly, do not take a "dart-board" approach.

First, Get the Real Story

The first step is understanding how bad your workers compensation losses really are. Since 80% of the program cost of workers compensation comes from losses, and 20% from premium and administrative costs, it is crucial to know your loss costs. You want to make sure you have a problem-occasionally, managers think they have a worse problem than they actually do. One large entertainment company this author worked with recently thought their workers compensation costs were too high, but when they compared their costs to national averages, they were half the national average. The company simply had not developed benchmarks that accounted for employees gained from a recent acquisition.

Consider analysing data that equalizes the number of employees. Cost per fulltime employee (FTE) offers a comparison of your company's divisions regardless of how many full- and part-time employees each has. The cost as percentage of payroll and cost as percentage of revenue allow you to compare your company to industry averages and establish baseline averages to use for future determination of progress. The return-to-work ratio tells what percentage of employees return to work quickly after an accident. Ideally, 90% of injured employees should return to work within the first four days after an accident. This is perhaps the most important measurement because it indicates the length of absence in each claim.

After reviewing data to determine your starting benchmark, select one or two measurements to convey success and progress to upper management and employees. No one wants to receive 200 pages of data, so make it concise-one page is preferable-with corporate statistics first, then each business unit's numbers shown individually. Senior management might prefer cost per FTE while the employees may relate better to number of lost workdays in their department. When employees understand that workers comp costs are consuming their potential raises, they will cooperate.

Set Up the Right Corporate Structure

The systemic way a company handles its work injuries is the most critical aspect of a solid workers compensation control process. The same process can, of course, be used for all absences in the workplace, including short- and long-term disability.

Who is responsible for work-related injury reporting and procedures at your company? Is this person familiar with risk management and workers compensation cost control? If not, he or she will need management support while learning the ropes. The manager should have adequate resources to become familiar with the types of services available to companies to tightly control the injury process. This knowledge can be gained by attending industry conferences that have relevant seminars and exhibitors providing a range of services.

The person responsible for managing workplace injuries should receive at least one monthly newsletter or magazine to better familiarize themselves with workers compensation issues. At some companies, the legal department is responsible for handling workers compensation claims, but the lawyers have not had the opportunity to learn risk management techniques. Having started in the risk management field as in-house counsel for a large international company, this author learned about risk management from the ground up; law schools do not normally teach risk management, and most lawyers do not know the field of risk management is a specialized occupation. Managers and in-house counsel often do not ask to attend conferences or subscribe to publications because they do not know these tools exist.

Your structure should fuse different departments into a workers comp team with one captain. The team leader should be a go-to person who has a strong workers compensation background. Determine which departments in your company deal with employee injuries and absences. All relevant departments should report to the same executive, usually the CFO. There must be communication among all departments that handle safety, personnel and/or human resources, labor relations and the medical treatment. A good starting place for inter-departmental communication is to have a session to discuss worker safety and injuries. Have each department bring any written materials and forms they use for reporting employee injuries and absences.

The people responsible for workers compensation must understand the operational side of their business. If they have not been out into the field to see the actual operations, the first step is head out to see what employees do every day. While it sounds almost too basic to put in writing, it is often overlooked.

It is important to have union buy in, so include the director of labour relations. Key contract provisions may need to be changed during the next negotiation. The labour relations department must coordinate closely with the risk management and medical departments, but it may be unaware of the important role it plays.

Actively Monitor Claims to Promote Return to Work

Claims can quickly get out of control unless they are monitored aggressively from the moment they are filed. Rather than waiting until a claim hits the \$25,000 threshold, monitor all lost-time claims. Assign a person to make sure each injured employee gets medical restrictions so the business unit manager can assign a transitional duty job to the employee during the first few days after the injury.

Make this one step rather than two by giving each employee an injury treatment form to take with them on their initial medical appointment. When employees remain out of work, they become deconditioned and often lose their psychological motivation to return to work. Offer employees a transitional duty job immediately after the injury so they can gradually work back to full capacity.

If your company is a large organization with many locations and numerous open claims at each, you may need to consider having a return-to-work coordinator for each region. The number of coordinators will depend on your claims volume. Make sure all coordinators have enough claims to justify a full-time position but are not overloaded and thus unable to follow-up on each claim. Coordinators should not do the work of adjusters, but should facilitate transitional duty and guide management at each location.

Understand What Your TPA Provides

Companies often start the workers compensation improvement process by selecting a new third party administrator (TPA) without even realizing they are not using all of the current services of their current TPA or carrier. For example, one client was unaware its carrier had nurses who go to each unit to help identify transitional duty jobs. No one had ever asked whether this service was available and the carrier did not have a formal process to explain its services. For example, at many TPAs there is a comprehensive welcome kit that can be sent to each location; ask to customize the letters included in this packet. Ask what services are included in your TPA's "national rollout" and find out if they can participate in training activities. At some carriers, a pre-injury coordinator will contact each unit to explain the necessity of having a return to work program; they will provide transitional duty brochures in English and Spanish for employees explaining the process.

Before you start looking for a new claims administrator, hold a "Vendor Day" so you can examine the capabilities and services provided by your claims administrator; regardless of whether it is an insurance company or a TPA, you need to know all of its capabilities in detail. Have the claims administrator describe each of its services in a formal presentation; have your TPA come to your office to introduce and explain each service. Ask the TPA to bring examples of each report. For instance, ask to see a sample nurse case management report and an investigation report. Make sure you clearly state your expectation that you want the practice leader or a senior person who can explain everything about the services to attend. Include all services: medical cost containment, medical management, investigative, recovery and risk management information systems.

To prepare for Vendor Day, gather all literature from the claims administrator-have all sales brochures sent to you in advance-and review the response to request for proposal (RFP) if the claims administrator was selected through the RFP process. Familiarize yourself with each available service, learn its name and find out how much it costs. For example, is a nurse case manager a telephonic nurse case manager or a field-based case manager who will attend medical visits with the injured employees? Ask lots of questions. Is the case manager an RN, an LPN or a non-licensed person with on-the-job medical training? Before you can determine how effectively a service is delivered, you will need to learn the specifics of each service.

Take a tour of the claims handling office so you understand how claims are routed, how medical bills are processed, where the nurses sit and what resources the adjusters have available to them. Find out how many claims they handle, whether they are medical claims, lost time claims, catastrophic claims or whether they simply get the final medical bills and close the files. This helps you understand how the claims management process fits with the your company's oversight.

Controlling the Post-Injury Process

The employer must take charge. There must be a tight post-injury process that describes exactly what will occur after an injury. Most employers have no cohesive process for handling injuries. Thus, the employees decide which doctor they will go to and how long they need to be out of work.

Unfortunately, many employees try to stay out of work the entire time they are in any pain. But medical experts say injured employees should return to work as soon as possible because they will recover faster.

Agree on a post-injury procedure. Whom should the employee report the injury to? Who should take the injured employee to medical clinic? Will initial care be at a local clinic or at the hospital, or will that depend on the degree of the injury? Each detail of what occurs after the injury should be spelled out. Once the procedure is established, develop a useable format which invites the user to pick it up; a written policy kept only in a binder on the shelf will not work. Consider a wallet card or stacked steps in a laminated booklet. Use neon red labels on the telephone to describe emergency procedures.

Although many companies have good intentions and want to reduce their costs, they do not know how to do this. It is important to give managers a tool-kit with forms and sample letters, and explain how to closely manage each of their claims. An important part of any workers compensation program is an effective transitional duty program, yet many managers do not know how to get employees back to work in modified capacity if they are unable to return to their normal job until they are completely recovered.

A tool kit of resources should contain communication tools so the manager can communicate with their employees, their TPA, medical providers and with the corporate workers compensation manager. A few essential items are employee brochures, brochures to medical providers, transitional duty policies, transitional duty job banks or task banks.

Return-to-Work and Transitional Duty

Your company must have a return-to-work policy that applies to all occupational injuries. It should specify how long transitional duty will last, when transitional duty placements will take place, and mention injured employees will need to stay in touch with the workplace until they are back to work on full duty in their original job. It should state that injured employees should not exceed their limitations.

Have a transitional duty job bank available. It is easy to have managers, supervisors and employees identify tasks and jobs that can accommodate employees who may be on restricted duty temporarily. Once a medical restriction is permanent, have human resources and departments determine whether they will provide permanent job restrictions under the ADA. Be creative and flexible in designing transitional duty work. Have tasks that are limited in length as well as in range of motion and activity. Make a wish list to get your job bank started. Never be punitive; try to make all tasks productive. Doing one task for a few hours, then another task for a few hours can provide valuable services to your company, albeit services which are not normally eight hours in length.

If the manager is making the offer of transitional duty, provide that person with samples of letters and give instruction of how to notify the employee of the transitional duty positions.

Is There a Doctor in the House?

Having medical expertise available allows you to offer employees a better safety net of care. Plus, it deters those who would stay out longer than necessary.

A corporate medical director or medical consultant will be a key member of your team. A physician, either part-time or fulltime should review claims, have doctor-to-doctor contact and serve as a medical resource. Claim reviews should include the medical director and be proactive rather than just a review of large losses. We sometimes forget we are dealing with medical matters; thus, our expectation that adjusters will be able to make medical judgment calls is unrealistic.

When a treating physician (the one treating the employee's injury) does not have prior medical records or a full medical history, they may rely on a version of events provided by the employee regarding the cause of the injury. When an employee's first treatment takes place in the emergency room, those records must be obtained and reviewed. It is during that initial visit, when the employee is focused on treatment of the injury-rather than the claim-that the most accurate recollection of events is likely to be made.

When a doctor reviews records they will look for what is missing. For example, are there other possible causes of the symptoms that may not be in the records for the current injury? Complex medical situations often have been ongoing for years and a review of those records can determine whether this injury is a new injury or a recurrence of an old injury that is the responsibility of a past employer. One claim showed on an old MRI a prior fracture which was the cause of current pain but it would not be realistic for an adjuster to be able to detect this. Complex medical situations require medical expertise on a proactive basis. Have the medical director look for other possible causes of soft tissue injuries.

A medical director will review all injuries if he or she is onsite. If the doctor is on call, he will review all lost-time claims and all independent medical examination reports. Prior to claims being sent for IMEs, the medical director should review the file to make sure pertinent medical records are included. Often, adjusters are not able to determine if the length of absence is disproportionate to the injury; ask your medical director to determine appropriate length of disability for all lost time claims. If your TPA has an MD, see if you can use this doctor proactively rather than just for utilization review.

If a treating doctor indicates one of your employees is unable to perform transitional duty tasks or an employee is uncooperative with transitional duty, it is worth having the medical director telephone the treating physician to discuss the injury doctor-to-doctor. A doctor-to-doctor contact will be much more helpful, and faster, than waiting for an IME. So while it will cost more per hour to have an MD review the file and make that phone call, doctor-to-doctor contact gathers more information and cooperation than nurse-to-doctor contact because it is peer-to-peer communication; this will save many additional indemnity payments for lost wages because the employee will return to work much faster.

Rolling Out Your Program

When implementing change, you must educate all levels of the company about the new procedures. The way training occurs will be different for each level of the organization. Determine what you want managers to do differently, and then write up training objectives based on those actions. For example, do you want them to accompany injured employees to the clinic, help the employee fill out the work status form and then meet with the employee weekly to discuss physical abilities and improvement? If so, then perhaps during training you should have slides that discuss this, then develop an exercise that allows the manager to simulate that activity. Have the managers practice conducting a weekly meeting to allow them to become confident in their ability while demonstrating they understand the purpose of the meeting.

Exercises are designed to test whether the participants have mastered the material you wanted them to learn. They must be planned carefully and not be used to simply fill time. If you are training RTW coordinators to monitor claims, have them think of a list of questions to ask the adjuster about the status of the claim, and then have managers interview each other to practice the activities they will soon have to do to monitor claims activity. Finally, they can actually telephone the adjuster while an experienced coordinator observes and coaches during the trial call.

Moving forward can be challenging with the many other tasks you may have, so establish a timetable that lists tasks, the person responsible and completion dates. Discuss progress during a standing weekly conference call or meeting. With some team members being offsite or in other

regions, you will probably make the weekly meeting conference calls instead of face-to-face meetings. By establishing a set timetable, the process will continue moving forward.

Controlling Fraud and System Abuse

A strong injury-management program must have resources to identify fraud and system abuse and must use all resources to stop claims that are not compensable. While outright fake claims where employees stage an injury are rare, they do occur; however, what is more common is employees staying out of work longer than medically necessary or not participating in transitional duty. Your return-to-work policy should make participation in transitional duty a requirement of employment at your company. Use progressive discipline up to and including termination if an employee refuses to participate.

All site managers and claims managers should know the red flags of fraud. Employees who show unwillingness (rather than inability) to participate in return-to-work programs are most likely exaggerating their claim. When employees on workers compensation are not available during normal working hours to come in for regular weekly meetings or safety meetings, this may indicate they are working elsewhere or engaged in an activity that is inconsistent with medical disability. When employees are out of work during school vacations, it may mean they would rather be home with their kids or hit the beach or the ski slope. If an employee uses a cane or grimaces in your presence, you should have an investigator verify he or she is doing the same when you are not present. Does the employee try transitional duty tasks that should be within his or her capability and then leave work shortly after beginning the task? That is a red flag.

If you do not have a doctor reviewing your claims proactively, make sure your TPA knows about medical tests that indicate malingering. Doctors use Waddell Signs and other standard medical tests to distinguish real from exaggerated disability. For example, a positive straight-leg raising (SLR) test shows inconsistent response to physical activity and indicates symptom exaggeration. Most adjusters, however, know only a few or none of these tests. Or worse, they think a positive test result validates the existence of an injury. Only a medical doctor trained in occupational medicine will be familiar with these tests and can use them to inform another doctor about possible fraud.

Use all of the many ways to combat fraud. Have a strong anti-fraud statement in your employee brochure; mention this policy in orientation materials and talks for new employees. Have all injured employees report to and visit your company doctor immediately upon injury. While they may want to be examined by their own physician (and have this right under some state laws), you can require your employees to visit your company doctor too. If the doctor is off-site (for instance, at corporate headquarters), have the employee call the physician to discuss how the injury occurred, how severe it is, what the treatment will be and when he or she will be returning to work. The company doctor can discuss transitional duty options.

Surveillance can be used to confirm that injury symptoms are always present. If an employee is uncooperative with transitional duty, order surveillance immediately. Know the difference between an activities check and sub rosa investigation and order surveillance. For an activities check the investigator may ask the neighbours what activities they have observed the claimant doing; for a sub rosa investigation, there is an investigator following the claimant and observing public activities without the claimant's knowledge. Make sure the investigator gets a videotape spanning a cross-section of times over several weeks. Give your investigators guidelines on which days to observe the claimant. For example, begin the investigation on the day of a medical appointment because that is when the claimant will be leaving the house.

If things do not add up, do not give up; continue to work closely with the investigator and adjuster. Read all investigation reports and view all videotapes. Sometimes, if you know the employee you may be able to fill in details to help the investigator. You can confirm that the person in the

videotape is your employee. If you have a photo of the employee, show it to the investigator; if not, give the investigator a detailed description of the employee, including home address and vehicle.

Using investigators has benefits beyond gathering evidence to confirm injuries or dispute disability. When word gets around that your TPA uses private investigators, it deters would be malingerers.

Put Claim-Handling Requirements in Account Instructions

Account instructions are used by field adjusters to guide their handling of your company's claims. Account instructions are referred to by several names and acronyms: Special Handling Instructions (SHIs) or Special Account Claim (SAC) Instructions. Make your account instructions very detailed. Include information about your return-to-work program, your medical-management preferences, when to contact your corporate medical department and how to contact payroll. If you are self-insured or have a high-deductible program, ask the TPA for authority on reserving, settlement and selection of counsel. Do not settle for having a consultation on these important issues since it is your money.

Specify that you want copies of all investigation reports. All IME reports should be e-mailed or faxed to your medical director for review. Prior to an IME, you can have your company doctor review the medical records in the file so he or she can request specific information from the IME doctor. In many cases, an IME may be unnecessary if the medical director can telephone the treating physician to clarify why the employee is not responding to treatment or why the doctor has indicated "no work" status.

Make sure your TPA will not compromise any liens that have been filed on your behalf in claims against product manufacturers or other third parties that are liable for an employee injury. If you retain the right to authorize settlement of claims, you should also retain the right to authorize any waiver or reduction of liens.

Make sure the account manager at the TPA discusses your requirements with adjusters who will be handling your claims. Get acquainted with the adjusters and develop a good working relationship with them. You will want them to assist in meeting your goal of 90% return to work within four days. The more frequently you speak with them, the more help they will provide.

If workers compensation is like the elephant mentioned at the start, you will not get far by just treating an injured trunk or a sore foot. Indeed, just dealing with one symptom can make matters worse. Instead, take a step back to identify the root causes and how all systems are interacting. Then, you can prescribe a comprehensive treatment that enlists line managers, employees, medical providers, human resources, corporate communications, investigators and the claims administrator.

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Rebecca A. Shafer is an attorney and risk consultant who consults on national and middle-market accounts. She is an industry leader in the field of cost containment and her workers compensation cost containment programs typically result in a 20% to 50% overall reduction in loss costs.