

Why Injured Workers File Suit

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Abstract

Workers' compensation was created as a no-fault system intended to benefit both the employer and the employee. In exchange for giving up the right to sue the employer, an injured employee agrees to be paid medical benefits and lost wages for compensable injuries. However, there is an increased incidence of litigation consuming an ever-larger portion of the worker's compensation dollar. **Some reasons include: 1. The employee feels a claim is unfairly denied. 2. No contact or "care" by the employer or the insurer. 3. There are unpaid bills or late checks.**

Workers' compensation was created as a no-fault system intended to benefit both the employer and the employee. In exchange for giving up the right to sue the employer, an injured employee agrees to be paid medical benefits and lost wages for compensable injuries. But, if no-fault is at the heart of our workers' compensation system, why is the incidence of litigation consuming an ever-larger portion of each workers' compensation dollar?

The employee feels a claim is unfairly denied. Many injured workers consult an attorney only after the insurance company has denied their claim. To create a sense of fairness in the process, insurance companies must strive to investigate each claim fully and objectively before making a decision. Employers can aid the process by providing complete injury reports to their insurer as quickly as possible, which helps the insurer make a fair and timely decision. If an injured employee seeks legal counsel, a complete investigation report will help support the defense of the claim.

No contact or "care" by the employer or the insurer. An injured worker naturally has many questions and worries about his or her livelihood, medical needs and the workers' compensation process once injured and out of work. Employers can help prevent uncertainty by promptly reporting the claim to their insurer and by providing investigation assistance, wage information and other details. Employers can also call injured employees to ask how they are doing, reminding them that they are valued and missed at the workplace.

Overbearing or intrusive contact by the employer. While contact with the employee during convalescence can have a positive impact if done properly, it can be equally detrimental if the employee perceives the contact as unreasonable. Examples of this include questioning the severity of the employee's injury, making excessive demands for documentation of the injury or making the employee return to work in a light-duty capacity when he or she is physically not ready.

Unpaid bills and late checks. Injured workers usually seek counsel from an attorney if they incur expenses, do not receive checks due them or receive collection notices from medical providers. Provider bills are often misdirected to the employee or employer instead of the insurer. Make sure your employees and their medical providers know where bills should be sent. Once again, the timely submission of wage information helps the insurer determine compensability, authorize medical treatment and prescriptions, and promptly begin payments.

Failure to talk about injuries before they occur. Employers can reduce their employees' uncertainties and fears about the consequence of injuries by explaining what the employee can expect prior to becoming injured. Orientation sessions and periodic discussion of workers'

compensation during safety meetings can help reinforce the company's concern for employees' health and welfare.

Lack of trust. If the employer does not honestly and openly answer injured workers' questions or if injured workers are denied timely access to benefits, is it any wonder that they turn to others for assistance with their claim? To help policyholders get answers to their employees' questions, ask the insurer to make sure injured workers have easy access to answers.

Lack of modified duty or harassment after return to work. Insurers often ask employers to consider providing a light-duty position to help injured workers return to work as soon as possible. It is very important to ensure that a doctor approves a light-duty assignment and the actual responsibilities are exactly as described. The assignment should not be developed to punish the employee for filing a claim, nor should the employee be asked to tolerate abuse from co-workers because of the injury or job modifications.

Employee dissatisfaction. Unhappy employees are more likely to find ways to avoid a timely return to work. If there are personnel or other issues that might impact an employee's motivation to get well and return to work, make sure the insurer knows.

The accident that should never have happened. By holding regular safety meetings, working with loss control consultants and having an action plan ready to respond when an accident occurs, an organization can help minimize the injury risk to its employees.

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