

# 2008 risk management strategies

systems and strategies to support your business

## Accident and Injury Response: Investigations and Claims Management

With workers' compensation costs in California among the highest in the nation, it has become increasingly important for employers to focus on what they can do to manage these costs. This article, focusing on accident and injury response, is part of a series designed to provide practical advice and guidance to employers on managing their risk and controlling workers' compensation costs. Other articles in this series will feature accident and injury prevention and return-to-work programs.

While the best way to reduce workers' compensation costs is to prevent accidents before they occur, workplace hazards can never be entirely eliminated. An important part of your company's risk management strategy involves managing claims after an injury occurs. Reducing the cost of these claims will have a significant effect on your company's experience-modification factor ("ex-mod"), and therefore will directly impact workers' compensation rates over time. Here are three steps to take now to reduce claims costs in the future.

### > Plan your accident/injury response

The moment the employer receives a report of an accident or injury is the time to begin managing the claim effectively. Your company safety policy should include a requirement that employees report all accidents or injuries as soon as they occur, and should designate a particular individual in the company to receive these reports. Typically, the supervisor will be the first person to be notified of a workplace accident or injury. Do all of your supervisors know how to respond? What if the injury occurs during second or third shift when HR is not available to assist? And where do you send the injured employee for medical treatment? Read on for some tips on training your supervisors and designating a medical care provider.

**Train your supervisors.** Review your safety training program for supervisors and look for ways to reinforce this information on a regular basis, such as in

supervisor safety meetings. Supervisor training should include:

- ◆ The company's responsibility to provide medical treatment promptly for occupational injuries. Include an explanation of what is and is not an occupational injury, and exclusions from eligibility for workers' compensation benefits (e.g., intoxication; employees engaged in horseplay or voluntary off-duty activities; employees who were the instigator in a physical altercation or intentionally inflicted the injury; and in most cases, employees in transit to and from work).
- ◆ Where to send the injured employee for medical treatment, including the name, address, and phone number of the designated physician or clinic, hours of operation and directions. In the event of severe or life-threatening emergencies, supervisors should be instructed to call 911 or take the employee to the nearest medical facility.
- ◆ Whether and under what circumstances post-accident drug testing will be required, in accordance with your company policy.
- ◆ The information they need to obtain from the injured employee and how to document it, including date, time and place of injury, name of injured employee and job title, how the injury occurred, and any witnesses.
- ◆ The types of accidents/injuries that must be reported to Cal/OSHA within 8 hours (see Know your Reporting Requirements on page 2) and who to call within your company to report this information immediately, including after-hours contact info.
- ◆ How to conduct an accident investigation, if they will be responsible for conducting these investigations.

## Know Your Reporting Requirements

Accidents must be reported to Cal/OSHA within eight hours if they result in serious injury or death. Serious injury is defined as one resulting in hospitalization of more than 24 hours; loss or serious disfigurement of a body part; or hospitalization of three or more employees. Reports may be made by phone, fax, or both.

**Designate a medical care provider.** Under current workers' compensation law, the employer has the right to designate the physician for the first 30 days after an injury or illness (unless the employee has pre-designated a physician). This is an important first step in managing your workers' compensation claims and controlling costs, as it can help to avoid excessive medical treatment and reduce disability time. Look for a physician or clinic that specializes in occupational injuries, understands the workers' comp system, and is committed to returning employees to work at the earliest possible point in the recovery process. Make sure they are willing to take the time to understand the jobs performed by employees in your company and the types of modified duty that are available. You can ask for references from your workers' comp carrier or third-party administrator, or check with other companies in your industry.

Factors you will want to consider include: geographic proximity to your facility; operating hours compatible with your business; number of physicians on staff; and extent of experience with occupational injuries. Ask specific questions about their treatment of occupational injuries, such as the average number of visits per injury and the percentage of cases that involve a referral to a physical therapist or chiropractor, as well as the average length of time off work. If your company policy calls for post-accident drug testing, ask how the clinic will accommodate this. Visit the clinic on different days and/or at different times to get a sense of what your employees will experience when they go to the facility for treatment (is it crowded, is there enough parking, how long is the wait, does that staff seem courteous, caring, etc.).

Establish an open line of communication with the physician and clinic personnel. Identify who will be your main point of contact, and consider designating one physician who will see all referrals on their initial visit. Discuss the types of jobs in your company and physical requirements, modified duty that is available, and your company's post-accident drug testing policy, if applicable. Make arrangements for the provider to bill your company directly for first aid services [see First Aid or Medical Treatment? on top right] so that these costs will not affect your workers' compensation loss record or experience modification factor.

## First Aid or Medical Treatment?

If an injury requires only first aid, does not result in lost time from work beyond the day of the injury, and the employer pays the cost of treatment, the injury does not need to be recorded on the OSHA 300 Log. First aid is defined as any one-time treatment of minor scratches, cuts, burns, splinters, or other minor industrial injury (including up to two follow-up visits for the purpose of observation). This includes bandages, treatment for first-degree burns, simple removal of foreign bodies from skin such as by irrigation or tweezers, negative x-rays, and application of hot or cold compresses. Injuries which require stitches or butterfly adhesives, treatment for infections, authorization for prescription medication, treatment for broken bones, or admission to a hospital cannot be classified as first aid. If the injury requires diagnostic tests other than x-rays, treatment beyond three office visits, prescribed physical therapy or chiropractic care, or if the employee loses paid time on any day other than the date of the injury, it must be classified as a medical case.

### > Conduct thorough accident investigations

A prompt and thorough accident investigation can help to prevent future accidents by uncovering root causes so that they can be addressed. It can also provide a basis for investigating and contesting a potentially fraudulent claim, or establishing third-party liability, such as faulty or defective equipment. A complete accident investigation consists of three parts: interviewing the injured employee and any witnesses and obtaining written statements; inspecting the scene, including taking photographs and preserving any physical evidence; and preparing the written report, including identifying the probable cause of the accident and recommending corrective action.

#### **Interview the Injured Employee and Witnesses.**

Obtain a statement from the injured employee as quickly as possible following the accident or reported injury. A good first step is to ask the employee to provide a written statement (you may want to create a form that asks them to respond to specific questions), but it is equally important to follow this up with a personal interview to make sure that all areas are covered and to get clarification on key points. Ask the employee to describe their actions leading up to and including the accident (including the task being performed, work location, equipment used, weight of items lifted,

usage of Personal Protective Equipment (PPE), etc.). Ask them to reenact the incident for detail and clarification. Be specific in describing the nature of the injury/illness and parts of body affected (left, right, upper, lower). Ask for the names of anyone who might have witnessed the incident. Obtain their statements and conduct witness interviews, making sure to get the witnesses' full name, job title and phone number. Also obtain a statement from the employee's supervisor. Ask the injured employee, witnesses, and the supervisor how they think the accident or injury might have been prevented.

**Inspect the scene.** Conduct an inspection of the worksite, including machinery, supplies, ladders, products, tools, and wall and floor surfaces. Photograph the scene and/or secure evidence that may have been involved in the injury, such as a broken tool. Draw diagrams, including measurements or distance if applicable.

**Prepare the report.** The report will include written statements of the injured employee and any witnesses, summaries of these interviews, and a description of the accident scene, with photos and/or diagrams. From there, it is important for the accident investigator to analyze the facts and try to determine the cause of the accident. Where there is contradictory information from the injured employee and from witnesses, for example, the accident investigator should come to a conclusion as to which statements are the most credible and explain why. The report should identify the probable cause of any incident, for example: equipment malfunction, failure to follow safety procedures or wear PPE's, lack of proper training, etc. Finally, the report should recommend corrective action to eliminate workplace hazards that may have been discovered as a result of the injury or the investigation and prevent recurrence. Corrective actions could include changes to work environment, additional safety training, etc. A copy of the accident report should be provided to, and reviewed by, your company's Safety Committee.

**A note about fraud.** In conducting the accident investigation, consider: Did the injury occur as the employee stated? Do any workers' compensation exclusions apply (e.g., intoxication, horseplay, off-duty recreational activity, employee the aggressor in a physical altercation, etc.)? Did the employee say anything that could indicate a pre-existing condition? If you suspect that an injury is not covered or perhaps is fraudulent, advise your insurer immediately. A claim may be delayed for up to 90 days while its validity is determined, including withholding temporary disability benefits.

## > Proactively manage open claims

Claims management is too important to be left solely in the hands of your company's workers' compensation carrier or third-party administrator. Statistically speaking, the longer a case stays open, the more it's

likely to cost, and open claims carry reserves (to cover future expenses) which have a major impact on workers' compensation premiums. Employer involvement in the claims management process, including maintaining on-going communication with both the injured employee and the Claims Manager, can expedite the processing and closure of claims, bring injured employees back to work sooner, and avoid excessive medical treatment or compensation overpayment.

**Stay in touch with injured employees.** Focus on concern for his/her full and speedy recovery and return to work, and be prepared to provide benefit information and answer any questions he/she may have about benefits and when the benefits will be provided. Injured employees may worry about medical bills and about their income if they are not working. You can help by reassuring them that all injury-related medical bills will be paid, and that the company is committed to bringing them back to work as soon as possible. If the employee has missed more than 3 days of work, they are eligible for temporary disability benefits, which must be paid within 14 days of the date of injury. Call to make sure they have received their first check. Call on a regular basis thereafter to make sure they are receiving their disability payments, and that they are satisfied with the medical treatment being provided. Be sure to also convey that they are missed, and that the company is committed to bringing them back to work. Ask for their ideas about modified work, or accommodations that would enable them to return to their regular jobs. Employees who are receiving their benefits, and who feel that their company cares about their recovery and that they will have a job to return to, are less likely to seek an attorney to pursue their legal remedies. *Note: These communication suggestions apply to employees who are not represented by counsel. For employees who are represented by counsel, the employer may have conversations with the employee but cannot discuss any issue in dispute or harass the injured employee. In most cases, all contact should be between the attorney and the workers' compensation carrier or TPA claims representative.*

**Manage your Claims Manager.** Establish in advance a designated company representative who will be responsible for maintaining contact with the Claims Manager assigned by your workers' compensation carrier and/or third-party administrator ("TPA"). The Claims Manager is likely to have a large caseload and be working with multiple employers. A proactive focus on communication on the part of the employer can help to expedite the processing of claims, including medical treatment and payment of benefits; ensure agreement on the future handling of claims including referrals for investigation or to an attorney; and avoid compensation overpayment or extended periods of disability. Consider using a Case Manager (a registered nurse) for claims that require significant medical supervision. The Case Manager will review the treatment plan for medical necessity; monitor treatment and make recommendations to the treating physicians;

advise the Claims Manager on medical management issues; and consult with the employer and employee on modified duty options.

Schedule regular claims review meetings (at least once per quarter, face-to-face is best) to review all open claims, discuss options, and agree upon a course of action. Focus on older claims and be aggressive in moving them to the next step, getting the reserves reduced, and closing the claim. Keep a close eye on rising medical costs, particularly where there is a change in treating physician and/or additional body parts are added to claim. Plan to refer complicated or contentious claims to an attorney early in the claims process to maintain control and reduce the overall costs of the claim. If feasible, plan for your company's designated safety representative to attend all hearings and trials, since they are often the ones most familiar with the facts of the claim.

By planning your accident/injury response, conducting thorough accident investigations, and proactively managing claims, your company will be taking an active role in controlling the cost of workers' compensation claims. But effectively managing accidents and injuries when they occur is only one part of an overall risk management strategy. A comprehensive risk management strategy begins with a focus on accident and injury prevention, and includes a dedicated return-to-work program. Ask about other articles in this series focusing on these related topics.

## How Your Staffing Service Can Help

For workers' compensation purposes, the staffing service and the client are considered "joint employers" of the temporary employees. The staffing service as "primary employer" is responsible for providing workers' compensation coverage, while the responsibility for providing a safe working environment is shared. Make sure your supervisors know what to do if a temporary employee is injured and where to send them for medical treatment, since it may be a different facility than the one your company uses. Report injuries to your staffing service as soon as possible (ask if your staffing service has an after-hours hotline for this purpose).

If a temporary employee is injured on assignment, the staffing service will come out to your facility to conduct an accident investigation. This should be a cooperative process, since information gained in the course of the accident investigation can help to make a safer working environment for all employees. Since the accident occurred at your company's workplace, it must be recorded on your company's OSHA log, even though it will not be part of your company's claims history.

