HR 201 – Dealing with Lingering Workers’ Compensation Claims

• Workers’ Compensation fraud and malingering cost companies increasing amounts of money each year
• The United States Chamber of Commerce has estimated 10% of claims are fraudulent

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HR 201 – Dealing with Lingering Workers’ Compensation Claims

• We will discuss warnings signs and provide some practical tips to help prevent or alleviate malingering behavior
• Reasons injured employees magnify their symptoms and attempt to delay returning to the worksite

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Red Flags for Workers’ Compensation Fraud

There is no way to identify fraud without proof, but there are warning signs. Contact your Workers’ Compensation Carrier immediately if you see two or more of these indicators:

- **Disgruntled employee**: The employee has a motive to manufacture the details of the claim. What is going on at work, are there performance issues, were they denied vacation time, demoted or fired.

- **Employee is hard to contact**: Employee may be working a second job while collecting benefits. This is called “double dipping” and constitutes fraud.

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Red Flags for Workers’ Compensation Fraud

- **New employee**: Statistically, the newer employee is, the more likely the claim is fraudulent, especially if other red flags appear.

- **No witnesses**: Make note of alleged accidents with no witnesses, particularly if the employee’s duties typically do not have them working alone.

- **Varying accounts of the accident**: The injured employee may describe the event differently to the employer, medical provider, and Workers’ Compensation carrier. Witnesses’ accounts differ from the injured employee’s account.

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Red Flags for Workers’ Compensation Fraud

- **Injuries that occur on Fridays or Mondays**: Injuries that occur on Fridays or Mondays may merit a closer look, especially if there are other warning signs.

- **Missed Medical Appointments**: Injured employees missing appointments with medical providers is another warning sign. Anyone who is truly injured is more likely to keep medical appointments in the interest of recovering in a timely fashion.
10 Tips to Help Prevent Workers' Compensation “Lingering”

Educate your staff. Employees should receive training regarding policies and procedures.

1. Show employees you care about them.
2. Maintain a safe work environment.
3. Educate: Inform employees about their workers’ comp rights.
4. Establish procedures for reporting accidents.

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5. Handle employees who have been fired with caution.
6. Publicize your stance against fraud.
7. Investigate immediately.
8. Pave the way for a smooth return to work. Transitional Work programs are essential to getting injured employees back on the job, in their own or another department that can accommodate their limitations.

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9. Don’t be an unwitting part of the problem. Be aware the following actions may be considered fraud.
   – Knowingly providing false or misleading information regarding entitlement to benefits to discourage an injured employee from filing or pursuing a claim.
   – Knowingly giving false information that causes the carrier to deny the claim that should be paid or pay benefits that are not due.
   – Knowingly giving false information for the purpose of reducing the premium, rate or cost of your workers’ comp insurance.
10 Tips to Help Prevent Workers' Compensation “Lingering”

10. Protect yourself by acting responsibly.

CONTROL COSTS

- Employers and insurers have traditionally relied on tighter medical management and “get tough” approaches.

- Employers are seeking new ways to minimize costs and control malingering. They are taking steps to prevent employees’ attitudes from souring during their recovery, to build a culture of concern and safety consciousness, and to intervene earlier in injury management.

Why are those new approaches needed? Consider these two stories of disability episodes gone awry...
CONTROL COSTS

• A vocational nurse at a hospital slipped & fell in a puddle of water in the hallway, herniating a disc in her back. The ins. carrier approved epidural blocks in her physical therapy, but it didn’t reduce the pain. When she didn’t return to work within the prescribed time frame, the carrier asserted she was malingering. This disturbed & embarrassed her.

• The employee retained an attorney who represented her winning add’l workers’ comp medical benefits incl. back surgery, & referred her to mental health counseling. She returned to her job after being out 3 weeks longer & the co. incurred considerable legal and counseling costs.

CONTROL COSTS

• A Southern U.S. defense contractor had an employee whose job required lifting + twisting, developed carpal tunnel syndrome during a 12-yr period. He received rehabilitative & wage-replacement benefits, & was told, “Don’t come back until you’re fully recovered.”

• The employer never checked up on the employee who, after 6 weeks, became fearful about returning to work & resentful because he felt forgotten. He rec’ed workers’ comp payments 2 mos. longer than was necessary, a result of management’s lack of involvement in his recovery.

CONTROL COSTS

➢ “With the opportunities to circumvent the system today & the availability of guaranteed benefits for injury, employees can find ways of avoiding the return to full employment, especially if they feel management has adopted an ‘us vs. them’ attitude.” – Dr. Lawrence T. Woodburn of California Consulting Grp. in La Jolla, Calif.
WHY EMPLOYEES MALINGER

- Employees may fake illness or disability or procrastinate in returning to work to:
  i. Collect benefits and income without having to work
  ii. Retaliate against an employer
  iii. Avoid returning to work because of a psychological separation created by an extended disability episode.

- Malingering is pervasive. In a study of low-back disability, John Frymoyer, M.D., dir. of the McClure Musculoskeletal Research Ctr at the Univ. of VT. “Psychological & work environmental factors are far more accurate predictors of disability than physical factors.” The attitude of injured workers toward their job, manager, and co-workers carries greater weight in the occurrence of chronic disability than the severity of the injury itself.

WHY EMPLOYEES MALINGER

- No one knows for sure what the dollar costs are for employers, insurers, and state workers' compensation systems but it’s suggested that malingering is commonplace:
  - Nearly 80% of high-cost permanent partial disability claims involve an attorney, according to the National Council on Compensation Insurance. Lawyer involvement indicates employee resistance to returning to work.
  - One study found that employees who “hardly ever” enjoy their job tasks are 2.5 times more likely to report a back injury than those who “almost always” do.

WHY EMPLOYEES MALINGER

~ Mental Stress ~

- Claims for gradual mental stress, which suggests an inability to cope with working conditions & balance work & family demands, now account for 15% of all workers' comp claims. Stress claims have an average disability period of 39 wks, compared with 24 wks for traumatic injury claims, & they incur 52% higher costs.
WHY EMPLOYEES MALINGER ~ Behavioral Disability ~

- Most of the attention has focused on addressing disability from the medical side, but the solution must go beyond providing more or better medical care.

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WHY EMPLOYEES MALINGER ~ Behavioral Disability ~

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- We are only beginning to address the behavioral component. If a company has 1,000 employees, on average, 40 of them will file for short term disability during 1 year. Of that 40, 6 will have a behavioral disability such as depression. Of the remaining 34, many will have secondary behavioral issues.

WHY EMPLOYEES MALINGER ~ Behavioral Disability ~

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The longer an employee is out on physical disability, the likelier behavioral issues will come into play. Even a single episode of malingering is very expensive, because an employer will typically pay $3 - $4 in insurance premium adjustments for every claim dollar.
PREVENTION OF MALINGERING

- Building and maintaining a positive organizational culture is one of several strategies.
- The worst mistake an employer can make is to say or suggest that a worker is "faking it."
- We have learned over and over that the best way to "select out" malingerers is to go ahead and provide treatment accompanied by psych counseling. Faked claims then disappear very quickly.

EARLY INJURY MANAGEMENT

- Also reduce the likelihood of malingering by maintaining periodic contact with injured workers.
- Let them know they are not forgotten and are valued at work.
- Offer supportive services; maintain positive contact between the employer and worker.
- Involve the line supervisor.
- Early injury management can prevent "disability syndrome," a psychological & emotional stagnation during which an injured employee gradually comes to feel incapable of working. Studies found that without positive communication from the employer, the chances of returning drop by 50% if an injured worker is not back within 90 days.
- An injured worker may regard gestures of goodwill as prying, attempting to deny benefits, or encouraging a premature return to work.
- An employer may go overboard by being too understanding of the employee and end up becoming an enabler of longer-term disability.

Employee Assistance Program

- "Detached" solution: Use an employee assistance program to offer support.
- EAP counselor can routinely contact injured workers, offer individual + family counseling to help them understand the psychological & emotional changes associated with disability.
- This contact lets the injured worker know the company is interested in his or her well-being & looks forward to the person’s return, while not applying pressure to return too early.
- This type of supportive intervention is particularly important for single workers, who may lack social supports.
Return-To-Work Plan

- A return-to-work plan formulated by the injured empl. + supervisor, then implemented by an EAP counselor or other case mgr., reduces the probability of relapse by creating a “comfort zone” for the returning worker.
- A plan for a gradual return to full productivity, provides education about problems that may arise, & provides a forum to negotiate special accommodations.
- Important to restoring productivity during recovery from behavioral disorders, since the employee may have alienated coworkers because of the disability & may need to rebuild bridges.

COORDINATING THE PLAYERS

The final strategy is coordinating activities among managers and professionals in the workplace and those in the health care community and insurance industry.

- The players function as isolated silos in the person’s recovery, leading to redundant services and confusion.
- Formal integration can now begin to occur between the parties. A single case may include an HMO, a managed behavioral-health care firm, an EAP, a workers’ comp nurse, the employee’s immediate supervisor, and various treatment providers.

Steps Employers Can Take To Prevent Malingering

- Before an injury occurs:
  - Supportive organizational culture where employees feel they are full partners
  - Educate supervisors & other employees on the costs of disability & lost work time.
  - Promote a safety culture

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Steps Employers Can Take To Prevent Malingering

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- Early Involvement in Injury Management:
  - Encourage the supervisor to periodically contact the injured employee.
  - Involve an EAP practitioner, case manager, or other individual in a supportive role.
  - Involve a psychologist or psychiatrist in the treatment process where appropriate.

- During the Recovery:
  - Ensure that disability benefits accommodate a partial return to work.
  - Allow a light-duty return to work until the injured employee fully recovers.
  - Integrate the various players in the treatment & return-to-work processes.