

10 QUESTIONS ON WORKERS' COMPENSATION CLAIMS

QUESTIONS

ANSWERS

<p>ONE:</p> <p>INVESTIGATE BUT COMMUNICATE: What are the first steps to take in order to minimize the likelihood of the employee hiring an attorney and making the claim a litigated one?</p>	<p>Time can be both your friend and enemy, depending on the scope of your initial efforts. Upon learning of a potential injury, it is manifest that CSU immediately conduct the initial investigation into the facts of the injury while <i>simultaneously communicating</i> with the employee. For injuries beyond first aid, provide a claim form (DWC-1) and then communicate with the employee with an offer to refer for medical care without delay. As you investigate, continue to communicate with the employee, preferably in-person or by telephone. Workers' Compensation is complex and riven with forms and process, so demystify and explain the next steps</p>
<p>TWO:</p> <p>COORDINATE TO IMPACT: How does coordination with other CSU departments positively impact a workers' compensation claim?</p>	<p>Workers' compensation can be a bridge to other actions made against CSU, including Labor Code 132(a) -retaliation claim, a civil claim for disparate treatment under FEHA, wrongful termination and others. It is essential that the workers' compensation administrator communicate with HR, Safety, claims counsel and others in order to make a seamless handing of the workers' compensation claim and therefore reduce risk exposure to claims outside of WC</p>
<p>THREE:</p> <p>GOALS BEYOND REGULATIONS: What is the value of having leading claims goals beyond workers' compensation regulations?</p>	<p>Claims handling should go beyond basic regulatory compliance. The claims administrator should have THREE goals up front: (1) Providing immediate access to quality medical care; (2) Careful explanation of the system and process ahead; (2) Returning the employee to work, either on a transition, modified or unrestricted basis. This means providing assurance and reassurance to the injured worker and providing positive goals beyond benefits</p>
<p>FOUR:</p> <p>PSYCHIATRIC CLAIMS: Are psychiatric claims different than physical injuries and if so, to what extent?</p>	<p>These claims have different rules:</p> <ul style="list-style-type: none"> • Minimum six months employment • Limited by post-termination • Causation is based upon "actual events" • Predominant causation (51%) or. • Substantial causation (35-40%) in limited cases

	<ul style="list-style-type: none"> • Good faith personnel actions defense • No permanent disability if secondarily caused by a physical injury with exceptions
<p>FIVE:</p> <p>THE VALUE OF SETTLEMENT AS THE BEST CLAIM OUTCOME?: Why should most workers' compensation claims settle rather than be decided by the Workers' Compensation Appeals Board?</p>	<p>The WCAB was intended to be a benefit delivery vehicle, not an adjudicatory body. Trial outcomes are inconsistent and often unpredictable. The system is also tilted in favor of providing benefits. A settlement, either in a lump sum (compromise and release) or with an open future medical care award (stipulated award) is generally preferable, since it removes the uncertainties and ongoing expenses associated with continuing litigation</p>
<p>SIX:</p> <p>SETTLEMENT CONSIDERATIONS: What should be considered before resolving a claim by compromise and release?</p>	<p>There are a host of considerations which need to be factored into the settlement equation:</p> <ul style="list-style-type: none"> • Potential retirement status • Social Security Disability and the MSA • Conditional payments and Medicare • Is the employee continuing to work? • Collateral benefits such as disability policy • Liens from group health provider • Global settlement to include potential FEHA and other employment law issues
<p>SEVEN:</p> <p>INVESTIGATION AND TIME? After receiving a completed and signed claim form (WC-1), how much time is there to investigate?</p>	<p>A claim is deniable based upon a legal issue, factual dispute or a medical determination. Under Labor Code 5402, for most claims, the administrator has 90 days (plus 5 more days if served by mail) to investigate and then make a decision to accept or reject the claim or it becomes presumptively compensable. This is the so-called delay period. Get statements from the employee, potential witnesses and consult with HR if there are allegations of job stress. Consult with defense counsel for potential grounds for denial and even obtain proposed denial language</p>
<p>EIGHT</p> <p>DRIVERS OF LITIGATION? What are the most common drivers for litigation?</p>	<p>The most common drivers for litigation are:</p> <ul style="list-style-type: none"> • Untimely referral for medical treatment • Medical facility not able to accommodate fast appointment • Not being available by telephone • Untimely contact with employee • Gaps in communication • Insufficient follow-up • Complex and confusing benefit notices • Denials based upon generalities or conclusions not explained

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<p>NINE:</p> <p>SHARE KNOWLEDGE WITH OTHERS: Why should various CSU departments share information and how does this impact a claim?</p>	<p>Injured employees are affected by their injuries often beyond the pain and limitations; The workers' compensation system needs to work in coordination with other CSU departments, so that the communications to the employee are consistent and in harmony. This especially important on issues relating to return to work and work modifications</p>
<p>TEN:</p> <p>REASONABLE ACCCOMODATION: Is it necessary to coordinate a return-to-work opinion from a WC primary treating physician with HR, in order to satisfy FEHA mandates?</p>	<p>There will likely arise a scenario in which the workers' compensation primary treating physician releases the employee back to work with either temporary or permanent work limitations, consistent with medical findings that result in work restrictions on a medical basis. However, the claims administrator needs to be mindful that return-to-work issues are handled differently under FEHA, which mandate an interactive process, In order to result in a legal accommodation. Therefore, the accommodation process needs to work in a coordinated manner, so that the WC restrictions are also channeled properly into the FEHA requirements calling for an interactive process</p>