

HUMAN RESOURCE ASSOCIATES

HR Consultants to Management

PERSONNEL NOTEBOOK

For Your Most Important Resource

WORKER'S COMPENSATION

FRIEND or FOE?

A few years ago, a small California based electric motor manufacturer determined that two of his 17 employees were unproductive and troublesome. He terminated them and began looking for replacements. The two employees, who claimed stress as a result of being fired, filed a job injury claim with workers' compensation (WC). Their WC claim was approved!

When word of this reached its insurance carrier, the WC coverage was canceled. The employer (who for 22 years had an almost perfect accident record) applied to several other carriers. But they all refused to provide the required WC coverage. None wanted to touch stress claims. The owner was then forced into the state's risk pool, which is required to accept those companies rejected by insurance carriers.

At that time he was already paying \$18,000 per year for 17 employees. As a risk, he would now be required to pay \$108,000 as an advance surcharge just to get into the pool! He couldn't do it, so, at the end of the year he terminated the other 15 employees and closed down the business.

In Louisiana, the state courts have ruled that all heart attacks on the job are compensable WC claims and that even workers who had been injured or killed playing "Russian Roulette" on the job would be paid under WC. A Minnesota study by Blue Cross and Blue Shield showed that doctors and hospitals were charging twice as much for injuries filed under WC as they were for the same injuries under non-WC cases.

The horror stories are endless. This once beneficial-to-all system has in many cases become a cancer that is killing thousands of honest companies. How did we get into this mess and what can we do about it? Let's start with the basics.

WHAT IS WORKERS' COMPENSATION?

Following the Industrial Revolution in the 1800's, tens of thousands of farm workers entered the cities for factory jobs. Untrained people in unfamiliar, unsafe environments resulted in widespread injuries to, and the deaths of workers. Although many laws were created to deal with the cause and effect of these injuries, the primary result was a flood of lawsuits against employers which overwhelmed and shut down the courts. Injured workers waited, unemployed, for years for cases to be settled. In addition, industrial companies were

being sued into bankruptcy thus reducing jobs and crippling the economy.

In 1911 the state of Wisconsin passed the first workmen's compensation law and by 1948 every state in the country had a WC plan on the books. The system, which compensates workers for the cost of injuries and the lost wages, was in fact, actually designed to protect employers. It was and is a no-fault system, under which, employers are required, through WC, to provide medical costs, lost wages and related costs for injuries or illnesses “arising out of, or in the course of, employment.” In return, employees give up the right to sue for those losses. WC became the “exclusive remedy” to resolve work-related injuries.

The system worked well through the 1940s, at which time wages began to increase significantly, but WC benefits did not. A worker making \$100 a week, who was injured, might receive \$40 a week in benefits. This gap continued to widen until 1970 when protests about low benefits became a national labor issue. In response, President Nixon created the National Commission on Worker's Compensation.

Two years later, the Commission recommended that Congress impose federal standards on employers nationwide unless the states increased the benefits and adopted their own standards. As a result, most states boosted benefits to workers and that ended the federal Commission. The increased benefits of course, quickly resulted in employers paying higher premiums. Eventually, the benefits stopped increasing and leveled off, but the costs and premiums kept growing. The average cost rose approximately 14 percent per year, every year, between 1980 and 2006, even though medical costs nationally (non-WC) increased only 10 percent during that same time.

Today, WC is the last non-premium, non-deductible, full-cost- paying insurance coverage in the country. It also serves as a life insurance policy because it includes a death benefit. For over 27 million Americans, it is the only health care they have and that may partly explain its overuse.

II .HOW DOES WC WORK?

You, as an employer, must provide coverage for all employees by paying the premiums to WC insurance carriers. Your rates are determined by your accident and cost experience. The more injuries, lost-time accidents and added medical and legal costs you have, the higher your WC premiums will be. If your experience makes you a risk, insurance carriers can refuse to cover you. You must then go to the state risk pool where premiums can be astronomical.

Risk pools exist in all but a few states. In Maine and Rhode Island during the '1990s, more than 90 percent all businesses were in the risk pool! Today, WC is mandatory in all but a few states, where it is elective. In those “elective” states the employer or the employee may reject the WC coverage, but in doing so, the employer is liable even if one worker's negligence results in the injury of other workers. Employers can be sued for any job related injuries.

So, WC is a no-fault system that pays the worker regardless of who is to blame and the worker cannot sue. That means that WC is still the “exclusive remedy” available to workers seeking compensation for work-related injuries. Employers may not discriminate against or refuse to hire an individual *because* he/she has filed WC claims. Many employers see hiring someone with a history of WC claims as a risky act. They fear that the employee may fraudulently claim an injury or be re-injured. But WC investigators are pretty good at spotting

fraudulent claims and the penalties for filing false claims can include jail time. Some states have a special fund to reimburse insurance carriers for benefits paid to workers who suffer a recurrence or an aggravation of a previous injury.

Workers' compensation has six basic objectives:

1. To provide sure, prompt and reasonable income and medical expenses to work-accident victims, or income benefits to their dependents, regardless of fault
2. To provide a single remedy and reduce court delays, costs and workloads arising out of personal-injury litigation
3. To relieve public and private charities of financial drains arising from uncompensated industrial accidents
4. To eliminate payment of fees to lawyers and witnesses as well as time-consuming trials and appeals
5. To encourage maximum employer interest in safety and rehabilitation through an appropriate experience-rating mechanism
6. To promote the frank study of causes of accidents (rather than concealment of fault) thereby reducing preventable accidents and human suffering

One question that is often asked when companies try to better understand WC is, "Why not just use the employee's medical insurance plan to cover the injury?" The reason is that the two programs are not intended to do the same thing so they have been designed quite differently. WC even provides more coverage than does the newly mandated 2010 federal health care plan.

WHAT CAN EMPLOYERS DO?

- First, learn how the system works!
- Form or join local coalitions with other employers.
- Negotiate Preferred Provider Programs.
- Use Utilization Standards for medical procedures.
- Investigate suspected fraud cases.
- Go to WC hearings to represent your interests.
- Establish a database for accident review.
- Establish better safety standards and training based on those findings.
- Use mediation for disputes, not the courts.
- Bring injured workers back to work quickly. Reduce lost time.
- Use modified duty and reduced work schedules to bring injured employees back sooner.
- Communicate with the injured employee regularly. Offer to help and to accommodate their situation where you can.
- Maintain good employee relations. People, not conditions, cause over 80 percent of all accidents.
- In most states you can pay WC payments on straight time worked only! Do not pay on overtime, holidays, vacations etc. Pay on total straight time worked, not on gross payroll.
- Seek to reclassify your WC job group. The premium on "driver" classifications is higher than on most "repair job" classifications.
- Seek a discount from your WC carrier if you feel that you have a low level of accidents and little lost time. They won't offer it; you have to go after it!
- Pay small claims yourself instead of filing the claim for benefits. Report the accident, but pay the small claim yourself.
- Have all medical bills reviewed for mistakes and overcharges. You will find them!

- Try to speed up the process. Don't sit back and wait it out.
- Treat injured workers with respect and courtesy, not as the enemy.
- Invest time, interest and money into safety training. Appoint a safety director. Dig out safety problems and solve them.

A few words about return to work and light duty. Many states now provide benefits and support to employers who return the worker to the job with no lost time. That can be a great help in keeping your WC premiums down.

Insurance carriers advise employers to set a goal that 95 percent of all injuries are back to work within one-to-four days, unless medically unable to work at all. The new therapy for WC injury doesn't even recommend light duty. Studies show that employees who go back to work on light duty take much longer to recover and many never fully do. Doctors are recommending that injured employees strive to quickly regain their previous levels of activity to avoid permanent loss of some abilities.

A free 25 page Return-To-Work Kit for small businesses is available from the Texas Mutual Insurance company at <http://texasmutual.com>.

There is a chance that in the future, worker's compensation will be brought in under the umbrella of the national health care plan. Doing so could resolve some of these problems, but most of this work will still have to be tackled locally.

As an employer at a Washington D.C. conference on worker's compensation shouted "It's not lawyers compensation, It's not doctor's compensation, Damn it, it's worker's compensation!"

In next month's *Personnel Notebook* we will review the current interpretation of the newly mandated health care bill and how it may affect worker's compensation.

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