

WHEN AN EMPLOYEE MAKES A CLAIM

WHAT TO DO WHEN AN EMPLOYEE IS HURT ON THE JOB

Every year, approximately 27,000 Michigan workers suffer job-related injuries or illnesses that cause them to lose eight or more days of work. A substantial number of other workers suffer job-related injuries or illnesses that require medical treatment only or cause the employee to lose fewer than eight days of work. A prompt and appropriate response from the employer can hold down the cost of such claims.

The following are some suggestions:

Medical treatment should be promptly furnished for any work-related injury. State law requires that the treatment of a work-related injury shall include reasonable medical, surgical and hospital services and medicines, or other attendance or treatment as needed. Also, the employer's insurance carrier must provide dental services, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatuses and other appliances necessary to cure, so far as reasonably possible, and relieve the effects of the injury.

The state has established a maximum fee schedule that limits the amount health care providers can charge for their services to workers' compensation beneficiaries.

For information on these limits, contact:

Health Care Services Division
Workers' Compensation Agency
Michigan Department of Energy,
Labor & Economic Growth
P.O. Box 30016
Lansing, MI 48909
Phone: 517.322.5433
Web site: www.michigan.gov/wca

An employer has the option of requiring an injured worker to be treated, for the first 10 days following an injury, by a health care provider chosen by that employer. After 10 days of treatment, the worker is entitled to consult with a provider of his or her own choice. The injured employee can then continue treatment with that provider unless the employer or carrier demonstrates to the Workers' Compensation Agency that this choice is unreasonable.

The injury should be promptly reported to the insurance carrier (or your service company if you are a self-insured employer). An Employer's Basic Report of Injury (Form WC-100) must be filed with the Workers' Compensation Agency in the event of an injury resulting in more than seven consecutive days of lost work (or in the event of a death or a specific loss injury). These forms are available at www.michigan.gov/wca.

The Workers' Compensation Agency should be notified by the carrier (on Form WC-70I) once indemnity (wage loss) benefit payments have begun to the injured worker. Injured workers are entitled to benefits equal to 80 percent of their after-tax wages, up to a maximum amount equal to 90 percent of the statewide average weekly wage. The first payment is due on or before the 14th day after the employer received notice of, or had knowledge of, the injury or death. In most cases, this means the first payment will be due not more than 14 days following the day of the injury. The Workers' Compensation Agency has a calculation program available at their Web site, www.michigan.gov/wca.

Firms should stay in touch with the injured employee. When first injured, most employees are very fearful about their future and their ability to return to their job. This uncertainty can hinder their rehabilitation. Studies have shown that the longer an injured worker is off from work, the more difficult is the return to work, both physically and psychologically.

The employer can help speed up the healing process and rehabilitation by reassuring the injured employee that he or she is cared about and wanted back on the job as soon as possible. Some employers convey that concern and maintain the link to the work place by sending cards or flowers and encouraging their supervisors to visit injured employees in the hospital and at home.

Employers have also found great success in transitional work centers for injured or ill workers who cannot yet handle the demands of their jobs. This option can be made available to the workers whether or not the injury or illness is work-related. The goal is to help employees to gradually ease back into the rigors of an eight-hour shift as they heal, regain their strength or learn new job tasks.

Firms should learn from past injuries to prevent future injuries. Many employers have recognized the importance of injury and illness prevention in holding down the cost of both their workers' compensation and health insurance programs. Some companies have even established a health clinic to perform comprehensive health testing. The company then reviews the results with employees and encourages the use of appropriate diet and physical fitness programs.

In addition, others have adopted the use of ergonomics to redesign workstations and work operations. For example, it may be possible to add waist-high conveyors, vacuum lifts and positioning tools to prevent common back, wrist and hand injuries.

The objective of these efforts is to return injured or ill workers back to work as soon as possible and eliminate or drastically lower the disputed or litigated workers' compensation claims.

A firm should consider using outside vocational rehabilitation providers. Early intervention by trained vocational rehabilitation practitioners often facilitates a timely return-to-work and avoids problems of re-injury which often occur when a worker returns to work under coercion. Sometimes, it is helpful for employers to use an outside provider who is perceived by the worker as neutral and is willing to advocate for him/her.

A list of approved vocational rehabilitation facilities can be found on the Workers' Compensation Agency's Web site at www.michigan.gov/wca.

ACCOMMODATIONS—A STRATEGY TO REDUCE COSTS

Injury prevention is an important aspect of many companies' workers' compensation cost-containment programs. Two prevention strategies are accommodations and ergonomics.

Accommodations are changes or adjustments to a job or work environment that will enable a worker to perform the job. Types of accommodations include: making existing facilities readily accessible and useable; restructuring job duties or tasks; modifying work schedules; acquiring or modifying equipment or devices; providing readers or interpreters; and modifying exams, training materials or policies.

Ergonomics is the term used to describe a process of designing user-friendly jobs and eliminating job hazards that can cause injury and illness. Some jobs require awkward postures, use of excessive force or constant vibration. Making ergonomic improvements in the workplace can result in fewer injuries, reduced absenteeism, decreased turnover, increased efficiency, improved work quality, higher morale and lower workers' compensation costs.

Businesses can obtain more information on these strategies from Michigan Rehabilitation Services (MRS), a division of the Michigan Department of Energy, Labor & Economic Growth. MRS provides assistance and information to businesses that are considering workplace adjustments for their workers. This assistance is available at each of the MRS offices throughout the state. Call 800.605.6722 (voice) or 888.605.6722 (TTY) for office locations or more information. The initial consultation is free.

The state also operates the Michigan Accommodation Center with locations in Lansing and Farmington Hills. These centers use a comprehensive team approach to design and provide accommodations and ergonomics for specific employer needs. Services to businesses include:

- Work station and seating evaluations.
- Ergonomic risk factor assessments.
- Design and fabrication of custom accommodations.
- Assistive technology assessments.
- Complete follow-up on all services provided.

The Michigan Accommodation Center can be contacted in Lansing by calling 888.271.8337 (voice/TTY). The center's Farmington Hills office may be contacted at 877.901.7361 (voice/TTY). The Marquette office's telephone number is 800.562.7860(voice/TTY).

Also, the Jobs Accommodation Network can be contacted toll free at 800.232.9675 or www.jan.wvu.edu. This is a free service which provides the following types of information:

- Information on reasonable accommodations;
- Assistance in construction and renovation specifications;
- Ideas on how to change applicant interviewing procedures, job descriptions and employment policies; and
- Current information about other service agencies, training programs and funding sources.

WHAT TO DO WHEN YOU DISAGREE WITH A WORKERS' COMPENSATION CLAIM

Approximately 80 percent of claims for workers' compensation benefits are paid without any dispute over their legitimacy. However, each year more than 10,000 Michigan workers file claims that are disputed by their employers or by their employers' insurance carriers. Disputed claims have traditionally been resolved or disposed of by a variety of methods, up to and including a formal hearing presided over by a workers' compensation magistrate who renders a decision either awarding or denying benefits to the claimant.

In 1985, the Michigan Legislature passed a number of significant administrative reforms to make the decisions of magistrates more definitive, thereby discouraging the high rate of appeals that had clogged the old system.

Over the last few years, disputed claims have been resolved or disposed of as follows (year 2008 data):

- 66 percent were negotiated and settled, usually in the form a lump-sum payment;
- 16 percent were either withdrawn or dismissed;
- 13 percent were voluntarily paid by the employer or carrier,
- 5 percent were formally resolved by a magistrate.

Mediation

A mediation program was one of the alternatives created in the 1980s to resolve workers' compensation disputes. Mediation is an informal discussion process between disputing parties. Sometimes this takes place face-to-face, and other times it occurs over the telephone.

A mediator from the Workers' Compensation Agency holds conferences with the parties in dispute and works toward a voluntary resolution of their differences. The mediator's role is to assist the parties in the resolution process. Cases that cannot be resolved by mediation are assigned to the Board of Magistrates.

This system is intended to be less adversarial than the hearings held by magistrates. Mediators use a process that calls for early and complete exchange of information between an employee and employer (or insurance carrier) and an informal approach, rather than formal hearings.

The Agency provides mediation services in an attempt to resolve at least the following types of disputed claims:

- Claims covering a closed period of time, where the employee has returned to work subsequent to the injury in question.
- Claims for medical benefits only.
- Claims in which the claimant is not represented by an attorney.
- Any other claim the Agency believes will be successfully settled through mediation.

To begin the hearings process, claimants or their counsel must file an Application for Mediation or Hearing (Form WC-104A) with the Workers' Compensation Agency. That application must contain factual information regarding the date of the injury, the nature of the injury, the names and addresses of any witnesses (excluding anyone working for the same employer), the names and addresses of any doctors, hospitals or other health care providers who treated the injury and the names and addresses of any other employers the injured party currently works for or has begun working for since the injury occurred. In addition, the claimant must provide the insurance carrier with any medical records in his or her possession that may be relevant to the claim.

The Agency then sends a copy of the application to both the employer and the insurance carrier. Within 30 days of receiving a copy, the carrier must file a written response with the Agency. The carrier may:

- A. Decide the claim is legitimate and voluntarily start to make payments, or
- B. Challenge the claim through a formal response, including disagreements on specific factual information provided on the claimant's application. The carrier's response must also provide the claimant with any medical records it has that are relevant to the claim.

In 2008, mediators held hearings on 2,779 cases and resolved 51 percent of the disputes.

Board of Magistrates' Hearings

If a claim cannot be resolved informally, the dispute will be scheduled for a formal hearing before a magistrate. These hearings are similar to, but less formal than, a trial in a court of law. Witnesses must testify under oath and a record of the proceedings is kept. Testimony of physicians is usually taken by means of sworn depositions, rather than given in person at the time of the trial.

The injured worker has the responsibility to prove his or her right to benefits by showing greater evidence in favor of the claim than against it. The magistrate will render a written, legal decision deciding the merits of the claim, thus granting or denying the payment of benefits.

A magistrate's decision may be appealed to a five-member Workers' Compensation Appellate Commission. The appealed decision is reviewed by either a panel of three commission members or by the full commission.

A decision of the Appellate Commission may be appealed to the state Court of Appeals, and ultimately to the state Supreme Court; but such appeals are infrequently accepted by these courts.

Specific questions should be referred to:

**Workers' Compensation Agency
Michigan Department of Energy,
Labor & Economic Growth
P.O. Box 30016
Lansing, Michigan 48909
Phone: 1-888-396-5041
Web site: www.michigan.gov/wca**

The booklet, **An Overview of Workers' Compensation in Michigan**, is available upon request from this agency. The booklet and other helpful information are also available on the Web site.

REDEMPTIONS

Historically, 55 to 65 percent of all disputed workers' compensation claims have been settled by use of redemptions. Because redemptions are used so often to settle disputed claims, it is important for employers to understand their rights when a redemption is proposed.

A redemption is a negotiated lump sum payment (or series of payments for a set period of time) that redeems the employer and insurance carrier's liability for an injury or illness under dispute. In most cases involving redemptions, the employee believes the injury or illness to be work-related, but the employer believes the injured employee is not injured (or ill) or that the injury (or illness) is not work-related. A redemption is NOT considered to be an admission of liability.

All redemptions must be officially approved by a workers' compensation magistrate at a formal hearing. If an insurance carrier wants to redeem or settle a workers' compensation claim, the carrier must notify the employer in writing at least ten business days prior to the hearing on the proposed redemption.

The insurance carrier's written notice must include the following:

- A statement of the employer's right to object to the proposed redemption.
- The time and place of the hearing.
- The amount and conditions of the proposed redemption agreement.
- Instruction on requesting a private informal conference to discuss the proposed redemption. The name and phone number of the insurance carrier's representative responsible for the case in question must also be included.

The following conditions must be met before a redemption agreement will be approved by a workers' compensation magistrate:

- The redemption serves the purposes of the act, is just and proper under the circumstances and is in the best interests of the injured employee.
- The redemption is voluntarily agreed to by all parties. If an employer does not object in writing or in person, the employer is considered to have voluntarily agreed to the redemption.
- The injured employee is fully aware of his or her rights under the Act and the consequences of the redemption agreement.

Each party to a redemption must pay a \$100 fee to help defray the administrative expenses of the Workers' Compensation Agency.