

Workers' Compensation 101

An Entertaining Look at Workers' Compensation, a Review of Cost Drivers, and Some Thoughts on Comprehensive Reform

Who Am I and Why Do I Know So Much?

- ▶ Chuck Brady, Workers' Compensation Manager, Arctic Slope Regional Corporation
 - 35+ years in workers' comp claims
 - 9 years of adjusting Alaska workers' compensation claims
 - President of Workers' Compensation Committee of Alaska

What We Hope You Take Away

- ▶ A basic understanding of why workers' compensation exists as a benefit.
- ▶ A basic understanding of the benefits available to injured workers.
- ▶ Knowledge of the elements that drive costs in a workers' compensation claim.
- ▶ Some options for employers to control costs.
- ▶ Some thoughts about workers' compensation reform.

A Short History of Workers' Compensation

The roots of workers' compensation go way back to the swashbuckling days of pirates, when a mate received so many pieces of gold for a lost eye, so many for a lost leg, etc.



A Short History of Workers' Compensation

Prior to the establishment of workers' compensation laws, it was necessary for an injured worker to prove an injury occurred due to their employer's negligence before they could collect benefits. The results were long waits by injured workers, usually years, with no benefits while their negligence suits made their way through the courts. If employers lost, they faced huge judgments and legal bills as a result.

A Short History of Workers' Compensation

- 1884 - First modern workers' compensation system established in Germany
- 1897 - Great Britain

A Short History of Workers' Compensation

- 1904 - Massachusetts first state to enact workers' comp legislation
- 1907 - Illinois
- 1908 - Connecticut
- 1909 - New York
- 1963 - Hawaii

A Short History of Workers' Compensation

The original intent of workers' compensation was for employers to provide injured workers with specific benefits quickly, without regard to fault, and without the need for litigation. In exchange, employees gave up the right to sue their employers in court for damages.

An Overview of Benefits

- ▶ Medical benefits
- ▶ Time loss benefits
 - 80% of average weekly take-home pay
 - \$1,159.00 maximum TTD rate (2015)
 - 3-day waiting period
 - Temporary partial disability benefits
- ▶ Permanent impairment benefits
 - Based on AMA Guidelines, 6th Edition
 - \$177,000 for 100% disability

An Overview of Benefits

- ▶ Reemployment Benefits
 - Up to two years of training
 - Up to \$13,300 in costs (tuition, books, etc.)
 - Weekly stipend
 - Job dislocation benefit
- ▶ Death Benefits

What Makes an Injury Work-Related?

- ▶ There must be an employer/employee relationship.
 - Independent contractor (care, custody, and control)
 - Volunteers
 - Corporate officer coverage election
- ▶ Injury must arise out of employment and/or...
- ▶ Occur within the course and scope of employment.

Reporting Time Limits

- ▶ Anything reported within 30 days is timely.
- ▶ Presumption of compensability.
- ▶ Burden of proof is on the employer to prove an injury is NOT work-related.

Reporting Injuries

- ▶ An employer's responsibility begins when the injury is reported to or witnessed by someone in management.
- ▶ Make sure your employee gets needed treatment.
- ▶ Notify your insurance carrier immediately.
- ▶ Investigate the injury and forward the information to your insurance carrier.
- ▶ Complete the First Report of Injury and forward it to the Workers' Comp Board within 10 days.
 - Penalty for late reporting
 - Process may differ for EDI

Rules and Doctrines

- ▶ Going and Coming rule
- ▶ Commercial Traveler Rule
- ▶ Bunkhouse Rule and Remote Site Doctrine

Going and Coming Rule

- ▶ Generally speaking, the commute to and from work is not within the course and scope of employment.
- ▶ Generally speaking, the commute to work ends when you arrive on the employer's premises or get out of your vehicle.
- ▶ Generally speaking, the commute home begins when you get into your car or leave the employer's premises.

Going and Coming Rule

- ▶ Generally speaking, if an employee stops on the way to or from work to perform a work-related task, she will be considered within the course of employment for the duration of the time it takes to accomplish the task, including the necessary deviation in route.
- ▶ Commuting to and from work can be considered within the course of employment if it's done in a company vehicle.

Commercial Traveler Rule

- ▶ Generally speaking, when traveling on business, an employee is essentially covered 24/7.
- ▶ Injuries and illnesses not normally covered under workers' comp can be compensable when traveling.
- ▶ Jurisdiction is employee's home base or state of hire.

Bunkhouse Rule/Remote Site Doctrine

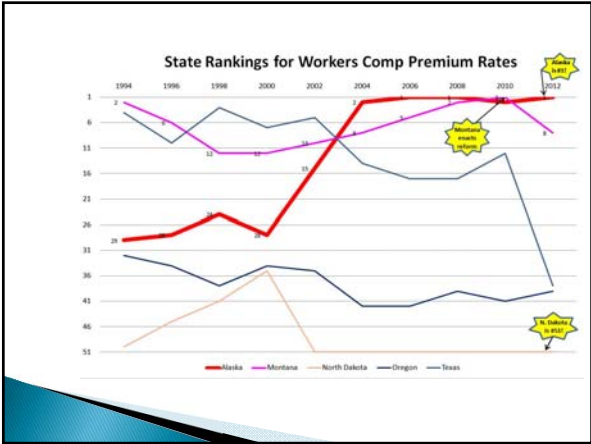
Generally speaking, an employee working at a remote site or housed at a specific site for the convenience of the employer is covered 24/7 for most injuries and illnesses. For the "Remote Site Doctrine" to apply, the employee's choice of activity and performance in that activity at the time of injury must be made as a result of having limited choices due to being at the remote site.

Affirmative Defenses

- I. Intoxication
- II. Horseplay
- III. Intentional and Self-Inflicted Injuries

What's Driving the Costs?

- ▶ Medical Benefits
 - No employer control of medical
 - No objective medical treatment guidelines
 - Over-prescription of narcotic medications
 - 74¢ of every benefit dollar is medical
 - Weidner v. Hibdon



What's Driving the Costs?

- ▶ Reemployment Benefits
 - Very little structure, no deadlines
 - Only 8% ever finish a plan
 - Most are settled for a lump sum of cash

What's Driving the Costs?

- ▶ Attorney Fees
 - Claimant attorneys drive litigation
 - Fees paid by employer
 - Paid time and expense at up to \$450/hr
 - Not unusual for attorney fees to exceed benefits owed

What's Driving the Costs?

- ▶ Workers' Compensation Board
 - No consistency in decisions
 - Hearing officers vs. administrative law judges
 - Results-driven

Alaska is #5 in Workers' Compensation Rates

- 1. California
- 2. Connecticut
- 3. New Jersey
- 4. New York
- 5. Alaska
- 6. Oklahoma
- 11. Montana
- 29. Alabama
- 43. Oregon

What Can Employers Do?

Not Much

Some Thoughts on Workers' Comp Reform

- ▶ Legislative Reform
 - Allow employer-directed care
 - Allow medical tourism
 - Initiate the use of objective medical treatment guidelines and utilization review (even California...)
 - Severely limit the use of narcotic prescription medications

Some Thoughts on Workers' Comp Reform

- ▶ Legislative Reform
 - Repeal the entire Reemployment Benefits statute, or...
 - Replace it with a voucher system.

Some Thoughts on Workers' Comp Reform

- ▶ Legislative Reform
 - Change how attorney fees are calculated
 - Pay attorney fees out of benefits and awards

Some Thoughts on Workers' Comp Reform

- ▶ Legislative Reform
 - Require mediation prior to trial
 - Replace the current system of hearing officers with administrative law judges

Questions?