

Workers' Compensation 101

A Look at the Origins of Workers' Compensation, an Overview of Benefits, and Some Thoughts on Comprehensive Reform



Who Am I?

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- ▶ Claims Manager for University of Alaska since 2006
Qualified self-insured employer
In-house claim handling for all University employees
- ▶ Alaska workers' compensation claims management for insurers and self-insureds since 1976



A Short History of Workers' Compensation

The roots of workers' compensation go way back to the swashbuckling days of pirates, which provided that a mate should receive so many pieces of gold or silver for a lost eye, so many for a lost leg, etc.



A Short History of Workers' Compensation

Pre-workers' compensation

- Negligence of employer - lawsuits
- Long waits by injured workers
- If they lost in court, huge judgments and legal bills for employers

A Short History of Workers' Compensation

- 1884 - First modern workers' compensation system established in Germany
- 1904 - Massachusetts first state to enact workers' comp legislation
- 1907 - Illinois
- 1908 - Connecticut
- 1909 - New York
- 1946 - Alaska
- 1963 - Hawaii

*Decisions of the Alaska Industrial Board going back to 1946, territorial laws prior to that going back to the 1920's

A Short History of Workers' Compensation

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

Each state has its own workers' comp laws--50 different jurisdictions

An Overview of Benefits

- ▶ Medical benefits
 - Treatment the nature of the injury requires
 - Employee choice of providers
 - No deductible or co-pay/coinsurance
 - Fees subject to regulation by Alaska Workers' Compensation Board
 - Health insurance plans exclude work injuries

An Overview of Benefits

- ▶ Time loss benefits
 - 80% of average weekly take-home pay
 - Spendable weekly wage
 - Hourly vs. salary
 - Disparity between wages and WC benefits
 - Temporary total disability - TTD
 - \$1,239.00 maximum TTD rate (2017)
 - 3-day waiting period
 - Temporary partial disability benefits - TPD

An Overview of Benefits

- ▶ Permanent impairment benefits
 - Based on AMA Guidelines, 6th Edition
 - \$177,000 for 100% disability
- ▶ Reemployment Benefits aka Vocational Rehabilitation
 - Up to two years of training
 - Maximum of \$13,300 in costs
 - Weekly stipend
 - Job dislocation benefit
- ▶ Death Benefits
 - Funeral benefits
 - Dependent benefits

Reporting Injuries

- ▶ Employer responsibility begins when injury reported to or witnessed by management
- ▶ Get treatment for the injured employee
- ▶ Notify your insurance company right away

Reporting Injuries

- ▶ Investigate the injury and forward the information to your insurance company or claim handler (TPA)
- ▶ Alaska Division of Workers' Compensation transition to paperless processes
 - Electronic data interface
 - **Process may differ for EDI**
 - Penalty for late reporting

Reporting Injuries

Dave is framing a building, working with hammer and nails. His attention is diverted as he's driving a nail, misses the nail and strikes his knee. The injury is witnessed by two other employees. He's not sure if he needs to see a doctor.



What should you do?

Reporting Injuries

Dave works as a carpenter. He comes to work on Monday walking with a limp and reports that he struck his knee with a hammer six weeks ago and says he has an appointment with his doctor in one hour. This is the first you've heard of it.



What should you do?

Reporting Time Limits

- ▶ Employee must report injury within 30 days
- ▶ Presumption of compensability
 - Exception for mental injury
- ▶ Presumption of compensability no longer attaches after two years

What Makes an Injury Work-Related?

- ▶ First--an employer/employee relationship
 - Independent contractors?
 - Alaska workers' comp regulations
 - IRS regulations
 - See WCCA publication resource page
 - Volunteers?
 - Can be voluntarily covered with limited benefits
 - What's your company's policy
 - Corporate officers?
 - Waivers needed
 - LLC members?
 - Must request coverage from insurance company

What Makes an Injury Work-Related?

Next--

- ▶ Injury must arise out of employment and/or...
- ▶ Occur in the course of employment.

What Makes an Injury Work-Related?

AOE-COE

A.S.23.30.395(2)

"...arising out of and in the course of employment includes employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities; but excludes recreational league activities sponsored by the employer, unless participation is required as a condition of employment, and activities of a personal nature away from employer-provided facilities"

Rules and Doctrines

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

Going and Coming Rule

Generally speaking-

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

Going and Coming Rule

- ▶ Interruptions in a commute to perform a work-related task
- ▶ "Deviation" works both ways
- ▶ Commuting in company vehicles

Going and Coming Rule

Michelle drives to work, parks her car, and begins walking to her office. It's cold and snowy and she slips and falls on an icy patch, landing on her out-stretched hand and injuring her shoulder. She is having difficulty raising her arm and her wrist is swollen.



Is her injury work-related?

Going and Coming Rule

Mitch pulls into his employer's parking lot, loses control of his vehicle and ends up on top of another one. His airbag deploys and he suffers multiple bruises to his face and torso.



Is his injury work-related?

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 might be when traveling
- ▶ Jurisdiction is employee's home base or state of hire

Commercial Traveler Rule

Joe is traveling from Anchorage to Fairbanks on a sales call and stops for lunch at the Talkeetna Roadhouse. While walking into the restaurant, he trips and falls to the floor, straining his ankle.



Is his injury work-related?

Commercial Traveler Rule

Mike is working a 3-week job in Orlando, Florida. One Saturday he decides to make a trip to Walt Disney World and spends most of the day on his feet. At the end of the day, his right foot is really sore. X-rays show he has a stress fracture.



Is his injury work-related?

Bunkhouse Rule/Remote Site Doctrine

- ▶ Employees at a remote site or housed at a specific site for the convenience of the employer covered 24/7 for most injuries and illnesses.
- ▶ Employee's activity due to limited choices at the remote site.
- ▶ Employer-sanctioned activities at employer-provided facilities

Bunkhouse Rule/Remote Site Doctrine

Mark was working at Denali National Park as a cook. He arrived at the beginning of the season and got set up in employee housing. His first night in employee housing he rolled over in his bunk and fell out, fracturing his left wrist.



Is his injury work-related?

Bunkhouse Rule/Remote Site Doctrine

While Dennis was working on a crew building an airport runway extension in Akutan, he was terminated for cause and sent home. During his trip back to Anchorage, he was getting off a ferry and tossed his bag up onto the dock, injuring his left shoulder. When he got back to Anchorage an MRI determined he had a torn rotator cuff and he filed a claim for injury.



Is his injury work-related?

Bunkhouse Rule/Remote Site Doctrine

Bob works for a drilling company on the North Slope and one day at work he doubles over in pain. He's taken to the clinic and it's determined he had an attack of appendicitis and is flown off the slope so he can get treatment.



Is his injury work-related?

Bunkhouse Rule/Remote Site Doctrine

Bob recovers from his appendicitis and returns to his job on the North Slope where he works two weeks on, two weeks off. After his shift one day, he and a bunch of guys organize a basketball game. He takes a 10-foot jumper and coming down from the shot he's fouled, falls to the floor and strains his left knee.



Is his injury work-related?

Affirmative Defenses
to presumption of compensability

Intoxication

- Burden of proof is on the employer
- Need proof of intoxication (drug screen)
- Injury must be causally related to the intoxication

Affirmative Defenses
to presumption of comensability

Horseplay

- Burden of proof is on the employer
- Often difficult to prove without witnesses
- Employer-sanctioned activity?

Affirmative Defenses
to presumption of compensability

Intentional and Self-inflicted Injuries

- Burden of proof is on the employer
- Need proof the injury was intentional
- Safety violations
- Suicide

Return to Work Programs

Why have a return to work program?

- Positive impact on employee morale
- Provides for a more stable workforce
- Reduces the possibility of fraud and malingering

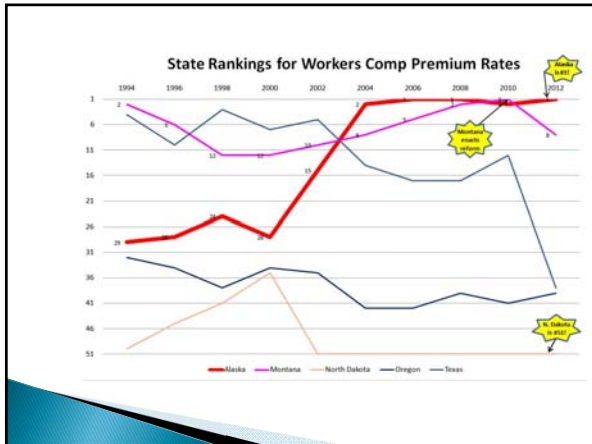
Return to Work Programs

May reduce both claim costs and "hidden costs"

- Hiring temporary replacements
- Overtime costs
- Retraining costs
- Loss of production and related costs
- Medical costs
- Workers' comp wage replacement benefits
- Legal costs

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's Driving the Costs?

- ▶ Medical Benefits
 - 77¢ of every benefit dollar is medical
 - No employer control of medical
 - No objective medical treatment guidelines
 - Over-prescription of narcotic medications
 - 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
 - Employees' 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

Some Thoughts on Workers' Comp Reform

- ▶ Medical Treatment
 - Permit employer choice of providers
 - Initiate the use of objective medical treatment guidelines and utilization review (even California...)
 - Limit the use of narcotic prescription medications

Some Thoughts on Workers' Comp Reform

- ▶ Reemployment Benefits (Voc Rehab)
 - Repeal the entire Reemployment Benefits statute, or...
 - Replace it with a voucher system
 - Do not allow voucher to be converted to cash

Some Thoughts on Workers' Comp Reform

- ▶ Attorney Fees
 - Change how attorney fees are calculated
 - Pay attorney fees out of benefits and awards
 - No more time and expense

Some Thoughts on Workers' Comp Reform

- ▶ Litigation Reforms
 - Require mediation prior to hearing
 - Replace the current system of hearing officers with administrative law judges

Your turn--

Questions?

Links and Resources

Alaska Department of Labor and Workforce
Development Workers' Compensation Division

<http://labor.state.ak.us/wc/home.htm>

University of Alaska Statewide Risk Services
Return to Work Program Guide

<http://www.alaska.edu/risksafety/download/rtw.pdf>

Workers' Compensation Committee of Alaska

<http://www.wccak.org/>

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