

SAWC PROGRAM CONFERENCE 2016

WEST VIRGINIA WORKERS' COMPENSATION

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**“Alone we can do so little;
together we can do so much.”**

-Helen Keller

Presentation Goals

- To provide a basic overview of the average West Virginia Workers' Compensation claim.
 - Briefly discuss the benefits available to claimants under a workers' compensation claim.
 - Generally address claim costs for benefits.

What laws govern West Virginia Workers' Compensation?

- Statute: West Virginia Code Chapter 23 - W. Va. Code 23-1-1 et al.+

— <http://www.legis.state.wv.us/>

Regulations

- 85 C.S.R. § 1- Claims Management and Administration
- 85 C.S.R. § 5 - Permanent Total Disability
- 85 C.S.R. § 8 - Workers' Compensation Policies, Coverage Issues, Policy Defaults and Related Topics
- 85 C.S.R. § 12 - Compromise and Settlement of Workers' Compensation Issues
- 85 C.S.R. § 15 - Vocational and Physical Rehabilitation
- 85 C.S.R. § 20 - Medical Management of Claims, Guidelines for Impairment Evaluations, Evidence, and Ratings, and Ranges of Permanent Partial Disability Awards
- 85 C.S.R. § 21 - Managed Health Care Plans
- 85 C.S.R. § 27 - Qualified Rehabilitation Provider

Types of Claims

An overview

Defended Claims

- Occupational Injury
- Occupational Disease
- Occupational Pneumoconiosis
- Occupational Hearing Loss

Common Protests

- Denial of Compensability
- Temporary Total Disability Closure or Reopening Denial
- Medical Treatment Denial
- Vocational Rehabilitation Denial
- Permanent Partial Disability Award
- Permanent Total Disability Threshold

Compensability

- Bases for Denial:
- No injury in the course of (time, place) and resulting from (causation) covered employment (job duties):
- Untimely as not filed within 6 months of the date of injury.

New Injury Claim

- Claims Adjuster must rule on claim's (other than OP) within 15 working days of receipt of properly completed form.
- Claims Adjuster may toll the time to rule on compensability during evidence gathering process.
- Claims Adjuster needs all related documents from the employer immediately upon receipt of a claim.

Compensability Factors

- Did the claimant immediately seek medical treatment?
- Did the claimant give immediate notice (within 2 working days) to the employer of the alleged injury?
- Did anyone witness the alleged injury?

Compensability Factors Cont.

- Lock claimant into a story regarding the alleged injury.
- Have a designated safety manager or request an insurance carrier investigator.
- Detailed account including photos.

Compensability Factors Cont.

- Does the employer have photos of the accident scene?
- Did the employer investigate and obtain statements?
- Is there a prior work-related injury history?
- Is there information related to non-compensable conditions?

Temporary Total Disability

- TTD paid until the claimant reaches maximum medical improvement (MMI) or is released to return to work.
- TTD suspended upon finding of MMI, release to return to work, or abuse (engaging in activity).
- TTD closure after 30 days following suspension - claimant may protest this order.
- Receive TTD if unable to work more than 3 calendar days following date of injury.

Temporary Total Disability Cont.

- Current weekly TTD maximum rate in WV is \$787.06.
- Typical simple back sprain receives TTD for at least 4-8 weeks, which equals \$3,148.24 - \$6,296.48.
- MRI done in majority of low back claims.

Medical Treatment

- Approve medical treatment that is reasonable and necessary for the compensable condition(s).
- Rule 20 at 85 C.S.R. §20 provides guidelines for medical treatment of specific conditions - duration of reasonable care, diagnostic testing, etc.

Medical Treatment Decisions

- Treatment request must be made by an approved provider within network and approved as a treating physician.
- Must be related to a covered condition.
- Has there been a finding of MMI?

Managed Health Care Plans

- 85 C.S.R. § 21 authorizes private carriers to employ the use of a Managed Health Care Plan. Includes minimum plan standards and requirements.
- Contains a “grievance” procedure.

Managed Health Care Plans Cont.

- The claimant or medical provider may file a grievance to denial for treatment.
- Zurich's Managed Care Organization (MCO) refers the grievance for review by a medical provider (UR).
- The medical provider gives an opinion on treatment requests.

Narcotics

- Pain management with scheduled medications is not uncommon in injury claims.
- Oxydone prescriptions increased 588% from 1997 - 2005. Methadone prescriptions increased 933% during the same timeframe.
- United States uses 80% of world's opioids and we have only 4.6% of world's population.

Narcotics Cont.

- Earlier opioid use in a workers' compensation claim leads to higher overall costs.
- More opioids prescribed in a claim - medical and indemnity costs increase.
- Adverse long term use including immune system suppression.

Narcotics Cont.

- 3 out of 4 workers' compensation patients will get a prescription for opioids based on a 2014 study.
- Increase based on physician's lack of time/knowledge and drug company misinformation.
- Patient knowledge and entitlement.

Narcotics Cont.

- Control costs with monitoring database and rehab measures including urine drug test.
- Mandatory tapering of narcotics.
- Pushing for caps on amount of Medicare Set-Aside for opioids.
- Employer should have close relationship with treating physicians.

Vocational Rehabilitation

- It is a shared goal to return an injured worker to suitable gainful employment.
- Return to the same employer with or without retraining to pre-injury or different job with modifications of either.

Return To Work Statistics

- Return to Work (RTW) programs can help control workers' compensation costs.
- The longer an employee is off work, the harder it is to return to full duty employment.
- Employees who return to work in a modified or alternate duty capacity are likely to recover more quickly and with less impairment.
- RTW early improves productivity and morale.

Return To Work Statistics Cont.

- Return to work programs:
 - Written policy;
 - Identify a few people that will work on RTW with the employee;
 - Supervisors instead of HR persons;
 - Specific job descriptions;
 - Create a bank of jobs that you can do with certain restrictions.

Return To Work Statistics Cont.

Job offer letters:

1. Released to RTW - list restrictions;
2. Job coming back to - pre-injury or new;
3. Salary - hourly wage;
4. Contact person from the employer;
5. Time frame to contact the employer;
6. Start date for RTW;
7. Copy letter to claimant's counsel, if applicable;
8. Include a line at the bottom for the employee to sign if he/she is accepting the offered position.

Return To Work Statistics Cont.

- Early intervention with claims management meetings.
- Statistics show that 90% of workers want to come back and be kept engaged.
- Employees can save their vacation/sick pay if RTW in transitional work.
- Would you return an employee to work if you were assessed a weekly fine during time off?

Return To Work Statistics Cont.

- RTW at modified duty. If the pay is less than the pre-injury wage, workers' compensation claim pays 70% of the difference between pre-injury and post-disability wage.
- Workers' compensation claim would pay much less than the rate that could be paid of nearly \$800 per week.
- 50% chance to RTW if off 6 months; decreases to 25% if off 12 months.

Permanent Partial Disability

- PPD ratings are done under AMA Guides, Fourth Edition, for all injuries.
- Rule 20 provides PPD rating categories.
- OP, hearing loss, psychiatric, and loss by severance are covered by specific statute or guidelines.
- Each % of PPD costs 4 weeks at the disability rate - current weekly maximum is \$550.94. 1% at max rate is \$2,203.76.

Permanent Partial Disability Litigation

- PPD protests are the most common.
- Each Independent Medical Evaluation (IME) or physician review costs money under the claim.

QUESTIONS?