

A welder wearing a dark protective helmet with a clear visor, a heavy brown jacket, and black gloves with orange accents is working on a steel structure. Sparks are flying from the welding point. The background shows a large industrial building under construction with a steel frame.

Workers' Compensation

Ten Mistakes Employers Make
When it Comes to Worker's
Compensation Administration



1

Not reporting injuries, alleged injuries, and/or pain complaints.

This is one of the most critical subjects employers deal with when it comes to workers' compensation.

Every state obligates employers to report every potential injury even remotely connected to any employee seeking or inferring a need for medical attention. Not reporting a potential injury is essentially denying the employee their legal rights.

Employers and supervisors do not have the right to decide what should or should not be reported to a carrier when it comes to employee injuries. This includes complaints, which may not specifically mention any injuries. Some states allow for "stress and psychic" claims that have ambiguous dates or far-reaching periods covering multiple years, which could lead to potential issues down the road.

Additionally, some states allow employers to pay a claim directly within specified limits, which does not inoculate the business from the requirement of reporting it to the carrier, based on both state and federal mandates. An employer paying out-of-pocket for a claim is another subject with separate consequences. However, the associated reporting guidelines is clear regarding the avoidance of waiving legal rights.

Employers who err on the side of not reporting potential injuries may encounter bigger workers' compensation struggles in the future.

2

Failure to conduct sufficient accident investigations.

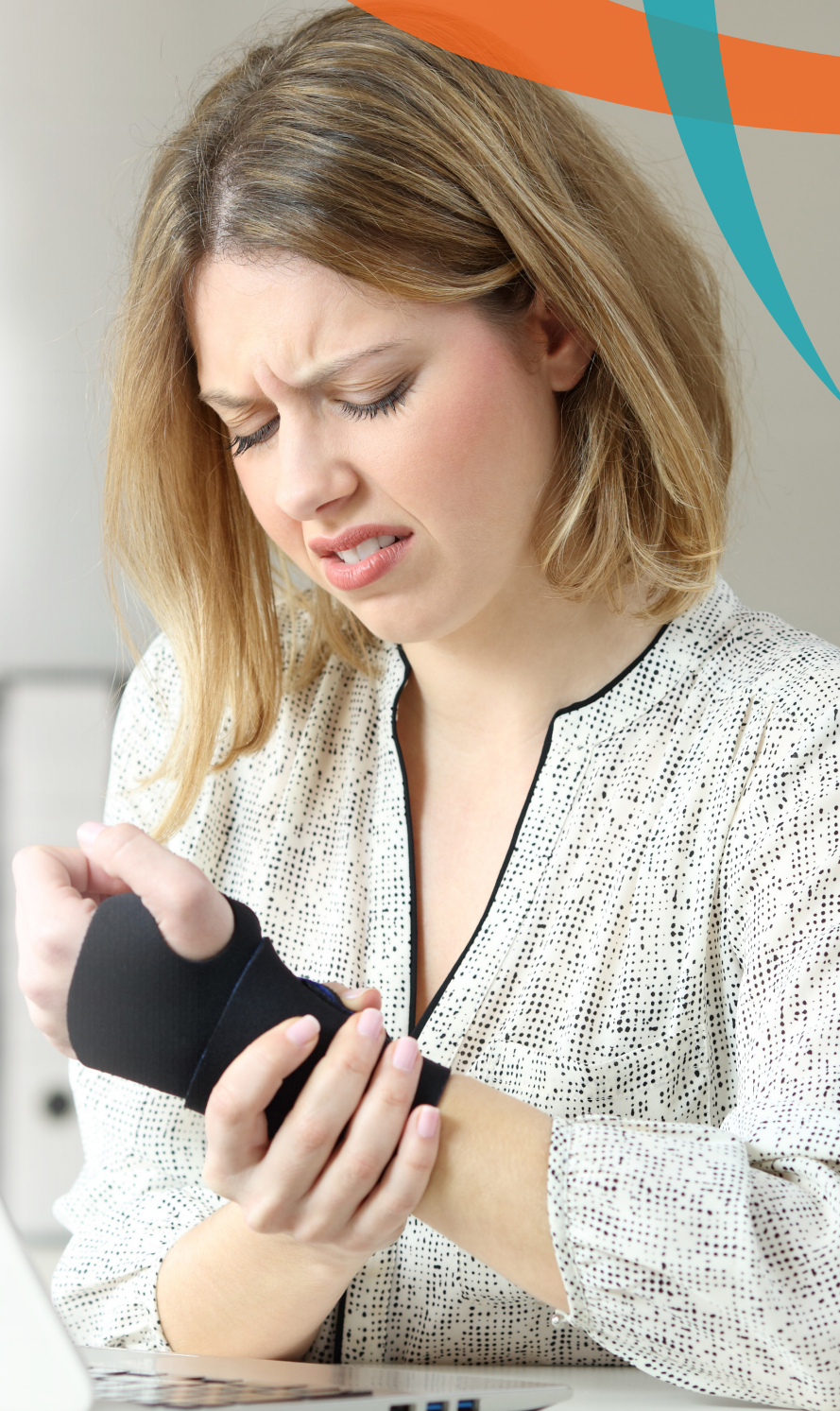
Failing to properly conduct an employer-generated post-accident, incident, or alleged injury investigation does not position the employer well when it comes to workers' compensation claims.

Three critical investigation steps must take place for every accident, injury, or pain claim submitted by an employee:

Supervisor Report: Conducted by the employees' supervisor and submitted immediately to management.

Witness Statement(s): This step is crucial to the workers' compensation claim process. These statements require a physical signature and date by each person, who may have witnessed the event identified in the claim report.

Employee Statement: The employee statement should include as many details as possible regarding the incident. It is important to stress that only facts should be included in the report that address how, what, where, why, and when.



3

Failure to screen applicants.

Careful and diligent applicant screening is essential to making sure qualified employees are hired for specific roles. Insufficient applicant screening could lead to more injuries or higher premiums in the future.

Proper screening procedures should include:

- › Drug testing
- › Occupational Disease Exemption Job Description/Essential Functions of the Job form Post-offer medical questionnaire (workers' compensation is exempt from HIPAA and privacy)
- › Clinic stress test where physically demanding job duties such as those requiring routine daily exertion exceeding 50 pounds

4

Failure to have an adequate drug and alcohol program.

State and federal policies are regularly updated when it comes to acceptable drug use, which could conflict with a business's workers' compensation, risk management, and safety standards. Businesses should still establish and enforce a drug and alcohol-free workplace.

Some states allow premium credits for establishing an approved certified drug and alcohol program. If not, the employer should publish a definitive statement supporting a drug and alcohol-free workplace.

There are certain limitations on drug testing but none that preclude pre-hire, random, cause, or suspicion-based testing when supported by a written program with guidance. However, "when individuals with substance abuse disorders receive treatment and recover, absenteeism decreases by 36% and work turnover decreases by 13% as compared to a person with an active substance use disorder."

It is important to note that "post-accident" testing is acceptable when it involves a motor vehicle accident, a single event injury, or where there is reasonable cause to believe drugs contributed to the accident.



5

Failure to have an active return to work or light-duty program.

An experience modifier and premium cost is a function of medical, lost time wages, and/or defense expenses detailed for each claim. Lost time wages is the only element of within an employer's control. Light-duty policies are aimed at greatly reducing an employee's time away from work.

6

Terminating an employee while on leave for a workers' compensation

Making the decision to terminate an employee while they are on leave due to a workers' compensation is not an easy one. The employee is still entitled to receive workers' compensation benefits; however, it is likely the attorneys on both sides of the case will need to get involved to ensure the claim comes to a proper and timely resolution.

It is important to remember that the workers' compensation system is intertwined with labor laws designed to specifically benefit employees. If the business has the option, it is often better to suspend the employee without pay pending an investigation rather than straight terming the employee. To succeed, the employer needs to only identify a justified reason for the suspension.

7

Using uninsured sub-contractors paid as a 1099 and/or cash under the table.

While workers' compensation is considered no-fault, it is important to remember that employers working with 1099 contractors (written or not) or paying cash for miscellaneous labor are always on the hook for serious injuries. The only acceptable employer protection is that of securing a valid certificate for workers' compensation from a 1099 vendor where employees are specifically covered by the policy.





Failure to exercise proper duty to care.

Duty to care is an employer obligation upon which workers' compensation court decisions are based and it is effective when combined with OSHA's General Duty Clause. Employers have a duty to care for and about their employees, which means that they should take steps to ensure the health, safety, and well-being of every employee. Demonstrating concern for the physical and mental health of workers should not be seen merely as a legal duty but as a key factor in building trust and reinforcing the employers' commitment to employees while improving retention, boosting productivity, and enhancing employee engagement.

Legally, employers must abide by relevant health and safety and employment law, as well as the common law duty of care. They also have a moral and ethical duty not to cause, or fail to prevent, physical or psychological injury, and must fulfil their responsibilities with regard to personal injury and negligence circumstances.

Requirements under an employer's duty of care are far reaching and may manifest themselves in many different ways, such as:

- › Clearly defining jobs and undertaking risk assessments
- › Ensuring a safe work environment
- › Providing adequate training and feedback on performance
- › Ensuring that staff do not work excessive hours
- › Providing areas for rest and relaxation
- › Protecting staff from bullying or harassment, either from colleagues or third parties
- › Protecting staff from discrimination
- › Providing communication channels for employees to raise concerns
- › Consulting employees on concerning issues.

An employer can be considered to have breached their duty of care by failing to take reasonable actions to keep the employee safe from harm. Employees also have responsibilities for their health and well-being at work. For example, employees are entitled by law to refuse to undertake work that deemed unsafe without fear of disciplinary action.



Failure to provide a positive workplace culture.

It is incumbent on management to foster a positive, supportive, and productive workplace culture. This can be done by openly emphasizing or promoting what is desired, wanted, or expected on a regular basis, versus allowing a workplace to deteriorate into negative energy that destroys even the best of employer intentions.

Establishing the right culture begins by simply publishing with visible and audible promotion what is expected of every employee when at work and/or whenever employees interact with other. There are ample sources and methods available to keep workplace culture front and center. When it comes to workers' compensation do not allow the negative attitudes or mindsets to have an impact on the larger, productive workplace.

10

Failure to provide a safe workplace.

Workplace safety is necessary and forces compliance with tens of thousands of regulations, often becoming a heavy burden for many employers. Finding a workable medium is vital to generating consistent safety results.

Keep safety 100% relevant to exposures and always document what is being done to ensure nothing is inadvertently overlooked.

Federal law requires employers to:

- › Have safety rules
- › Make the rules understandable
- › Monitor the rules and update periodically to maintain compliance
- › Enforce the rules using a progressive discipline program up to and including suspension without pay and/or termination

Enforcement is critical to developing the right safety culture in every workplace. Employers have a duty to care by creating a safe and healthy workplace; however, employees are responsible for following safety rules and supporting safety in the workplace.

When it comes to workers' compensation, employers are responsible for verifying everything to ensure they are compliant with both state and federal regulations as it pertains to employee and workplace safety. Employers must manage their workplace in the best way possible to ensure they are covered from every angle.



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