

## Workers Compensation – A Primer

Carl J. Kotheimer, CPCU, ARM  
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### 19<sup>th</sup> Century Horrors

During the 19<sup>th</sup> century, as the Industrial Revolution proceeded and millions moved from farm to factory, workers were subject to horrific and disabling injuries at a rate never seen before. The consequences to families were devastating since it was not normal then for wives to work outside the home. The only relief injured workers could obtain was through litigation. Even so, employers had available what are known as “common law defenses” including”

- Contributory negligence
- Negligence of a fellow servant and
- Assumption of risk.

These defenses were regularly used by employers to defeat worker claims for injury on the job.

### 20<sup>th</sup> Century Reforms

In the early 20<sup>th</sup> century, the States began to adopt “workman’s compensation” laws in order to address this growing burden on workers and families. Now known as “workers’ compensation”, the new system contained two major components:

- Workers were provided certainty of medical care and disability benefits, but could no longer sue their employers.
- Employers gave up common law defenses, but could not be sued for damages.

The intent was a **no-fault system of equitable compensation** managed within an administrative rather than judicial structure. Employers were required to participate in the new benefit system, at first run by States and later through insurance companies. (In a few States the program is still run in a State program – OH, ND, WY, WA) The benefits vary by State; some states are more generous than others. The benefits are described as “statutory”, that is, the extent of medical care and the amount of disability benefit is prescribed by law. Generally, if an employer fails to purchase workers compensation coverage where it is compulsory, an injured employee may sue the employer. However, the employer will not have common law defenses available.

### 21<sup>st</sup> Century Requirements

For churches, State laws vary on the requirement to participate in the system. In some States it is voluntary while elsewhere it is compulsory. However, **if you are required to participate or participate voluntarily, you are confined to the workers compensation system to address injury.** You may not pay bills out of petty cash. You may not submit the claim as a General Liability/Medical Payments claim.

### ***Rating and Insuring***

Insurance rating for workers compensation is based on three factors:

- **Risk associated with job classifications** – Different rates apply to different occupations, the widest variation being between Clerical/Office and Construction related occupations. It is fraudulent to deliberately misclassify employees.
- **Payroll** – The rate for each job classification is applied to total payroll, including part time employees. No employee may be exempt. Payroll is usually estimated at the beginning of the policy term and then audited at the end of the term to arrive at the final premium.
- **Experience Modification** – Final premium is based upon the employer's actual claim experience. An average "experience mod", as it is called, would be 1.00. A bad claim experience might be reflected in an experience mod of 1.30. If the standard premium for your church was \$1,000, and you had an experience mod of 1.30, your total premium would be \$1,300. ***There is clearly an incentive for employers to attend to the safety of their employees.*** Dishonest employers sometimes try to avoid reporting injuries so that loss experience is under-reported.

### ***Covered Injury & Illness***

Generally, workers compensation covers injury or illness "arising out of and in the course and scope of employment." However, you, the employer, do not make the coverage decision. While representing the employer, the adjuster will make a decision about "compensability" based on (1) the facts presented by the employee and the employer and (2) the rules and precedents of the State. If the decision is disputed by the employee, the claim will be referred to a State run administrative review process or workers compensation judge. To be clear, the employer may not deny compensability by refusing to report a claim. In Ohio, for example, an employee may present a claim directly to the Bureau of Workers Compensation.

### ***Volunteers***

In most States, volunteers are exempt from workers compensation laws. However, a few states provide coverage for volunteers in one of two ways:

- The State requires that volunteers are eligible for workers compensation benefits, or
- Coverage for volunteers is optional and may be provided at the option of the insurance company or the employer.

You need to learn what the rule is for your State. **If your volunteers are eligible for workers compensation benefits, you must report their injuries. You cannot "hide the ball."**

### ***Medicare & Medicaid***

Whether volunteer or employee, if an injured person is Medicare or Medicaid eligible, workers compensation is the "primary" benefit. If Medicare has reason to suspect a workplace accident, they will insist upon a written denial of workers compensation eligibility before paying a medical claim. Especially for the benefit of your valuable volunteers, it is prudent to report a workers compensation claim so the volunteer can obtain documentation that other primary coverage is not available. Medicare is not obligated to know the current workers compensation law for the

50 states and will insist that the volunteer obtain proof of no coverage. This may be accomplished by a coverage denial letter from the employer's insurance company.

### ***Reporting and Investigation***

It is a long established principle that, once an injury has occurred, prompt reporting to the insurer is the most effective way to control the costs that follow. It is very important that the insurer and employer maintain contact with the employee and manage the care and treatment. The major objective is the earliest possible return to work.

Do the following:

- Pay attention to reports of injury to your staff and volunteers. Do not let them direct their own medical care if you think an injury is work related.
- **Report injuries to your workers compensation insurer as soon as possible.** You will need the employee's Social Security number and eventually payroll information. (In some States there are financial penalties for late reporting and late payment of benefits.)
- **Investigate** and understand the causes of the injury.
- **Stay in contact** with your employee throughout recovery
- **Cooperate with the adjuster** during investigation and stay in touch. If you believe there is fraud in a claim, help the adjuster with the investigation.
- **Provide opportunities** for early return to work. It is motivating to be working rather than doing nothing. (Remember, ultimate claim costs affect your experience mod.)
- Take steps to **prevent future injuries**

Note: Not all Insurance Board participants obtain workers compensation through the Insurance Board. You may need to contact your agent to be sure of where to report a claim.

### ***A Final Word***

Sometimes there are other things going on at work that are unrelated to an accident or injury. There may be temptation to join the employment controversy with the injury claim. There may be a desire to have a claim denied because it was the employee's fault or to "get even". This approach will usually be counterproductive, cause delay and drive claim costs up. While an employee may be disciplined for failure to comply with published safety rules, (s)he may not be punished for presenting a claim. To do so constitutes discrimination with employer liability consequences.

**Do not make workers compensation personal.** Success in workers compensation claim management requires attention to the facts and careful management of the medical treatment. **Remember, it is a no-fault system.** Workers compensation adjusters are well trained in the laws of your State and must act within those requirements.

The Insurance Board claim staff welcomes your questions about claim reporting and management. As an employer you must be engaged in the process.