

NM Comp Contractors Trust Annual Meeting
WCJ Rachel Bayless
A Perspective from the Bench

COMMON EMPLOYER MISTAKES OR OVERSIGHTS

- Refusing to accept notice of accident
 - This is illegal – See NMSA 1978, § 52-1-29(C) and 11.4.3.13(B)(3) (06/16/2016)
 - Must accept notice of accident even if believe the claim is false
- Thinking sending the worker to an emergency room or urgent care facility satisfies obligation to provide medical treatment
- Paying medical bills directly to avoid filing a claim
 - This is illegal – See 11.4.3.13(B)(5) (06/16/2016)
 - Usually does not go well – claim ends up being complicated and expensive
- Failing to advise worker of employer’s decision on initial selection of health care provider (HCP) – See NMSA 1978, 52-1-49 and 11.4.4.12 NMAC (HCP Rules)
 - Decision must be communicated in writing – verbal is not legally sufficient
 - Proposed WCA Regulations – Advise within 20 days of notice, or employer will be deemed to have made initial selection
- Failing to report the claim to insurer within 72 hours of receiving notice (actual or written) – See 11.4.3.13(B)(4) (06/16/2016) and when reporting
 - Failing to advise about employer’s decision on initial selection of HCP
 - Failing to make sure adjuster has point of contact to coordinate return to work
- Failing to have a written workers’ compensation policy or a drug and alcohol free work place policy – See 11.4.3.12 NMAC (06/16/2016) – Drug and Alcohol Rules
- Contacting worker’s HCP directly
 - This is a violation of law, unless (1) the worker gives consent (best practice to have in writing) or (2) all parties are included in the communication
- Failing to document details about accident
 - When / how accident reported to employer
 - Witnesses to accident – get statements
 - Details of contact with worker after an accident

SUGGESTIONS ON HOW TO AVOID LITIGATED CLAIMS

- Good News: Vast majority of claims resolve without WCA involvement, which is a good reflection on the predictable and deliberate design of New Mexico’s workers’ compensation system

- Common themes in disputed/litigated claims that reach a workers' compensation judge:
 - Worker feels forgotten or not taken care of. All the worker understands is "I got hurt at work and I should be taken care of"
 - Lack of communication
 - Between employer and worker
 - Between employer and adjuster
 - Between worker and adjuster
 - Employer washing their hands of worker – i.e., assuming their job is done after reporting the claim to the insurance company
 - HCP selection disputes – mostly stemming from lack of written documentation on who has initial right of selection
- Tips To Avoid Litigation
 - Unhappy, confused workers seek legal counsel – Be the worker's ally
 - Have a written workers compensation policy
 - Employer and worker are on the same page about responsibilities and expectations after an accident
 - Can advise on employer's decision on HCP selection before an accident
 - Avoid "Out of Sight, Out of Mind" Syndrome
 - Schedule a weekly "checking on you" call or meeting with the worker. Be invested in their medical recovery
 - Ask worker to bring in work restriction notes after each medical visit – this gives employer a heads up on accommodating restrictions
 - Communicate early and often
 - With the worker about status of medical care and work restrictions
 - With the Adjuster about status of medical care and accommodating work restrictions
 - Be cautious about communicating with worker's HCP
 - Have worker's written consent before
 - If communicating in writing, copy to all parties (worker, adjuster, etc.)
 - Don't try to influence the medical judgement of the doctor!
 - Be invested in getting the worker back to work
 - Be creative - Look for transitional duty
 - Part-time or temporary light duty is better than nothing
 - Document everything! Assuming a claim won't become litigated is a risky and costly assumption

FINANCIAL CONSEQUENCES OF NOT RETURNING WORKER TO WORK

- Lost investment in that worker and cost of training a replacement
- Claims cost is higher
- Higher claims cost translates into increased insurance premiums that stay with an employer for years in experience modifiers
- Example of indemnity claims cost when worker doesn't return to work (see handout)