

The Changing Environment

Workers' Compensation & OSHA Compliance Impacts and Strategies for ACL Members

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Overview

Changing federal and state regulatory compliance matters are going to put an additional squeeze on ACL member agencies. With operational revenue continuing to be a challenge, understanding what new regulations agencies will face as well as changing workers' compensation programs.....

ACL members will need to know ways to help manage these expenses.

Agenda

- Workers' Compensation
- NYS Code Rule 59
- New OSHA Requirements
- Safety Programs
- Trends affecting Social Service agencies

Be Informed

Paying attention to Workers' Compensation can help the overall budget of your agency.

Paying attention to safety and compliance can help the overall budget of your agency

Any increase in Workers' Compensation premium or any fees associated with non-compliance ultimately takes away from your overall budget

The money saved can go towards new equipment, new associates, higher-paid employees etc.

Workers' Comp & Your MOD

What is it?

Direct Costs = Premium

Indirect Costs = Human Factor

Your Mod and how it affects your Workers' Compensation premium

Lower Mod = Lower Premium



Controlling Costs

- Adopt Return-to-Work programs
 - Preferred provider
 - Light duty
- Establish a safety policy
- Streamline reporting procedures
- Identify top loss sources
- Medical Management
- Claims Management
- Payroll Management
- Accident Investigation

Workers' Compensation Fraud



15 Warning Signs

The WC (workers' compensation) insurance system is a no-fault method of paying workers for medical expenses and wage losses due to on-the-job injuries. While the majority of WC claims are truthful, the National Insurance Crime Bureau reports that billions of dollars of false claims are submitted each year. To help you detect possible WC fraud, experience shows a claim may be fraudulent if two or more of the following factors are present:

1. **Monday Morning:** The alleged injury occurs either "first thing Monday morning," or late on a Friday afternoon but not reported until Monday.
2. **Employment Change:** The reported accident occurs immediately before or after a strike, a layoff, the end of a big project, or at the conclusion of seasonal work.
3. **Job Termination:** If an employee
 - Was the alleged injury reported?
 - Did the employee exhaust the benefits?
4. **History of Changes:** The claimant changes places of employment.
5. **Medical History:** The employee has a history of injuries.
6. **No Witnesses:** The accident has no witnesses to support the cause of injury.
7. **Conflicting Descriptions:** The employer's or First Report of Injury description differs from the claimant's.
8. **History of Claims:** The claimant has a history of multiple claims.
9. **Treatment is Refused:** The claimant refuses medical treatment.
10. **Late Reporting:** The employee delays reporting the injury.
11. **Hard to Reach:** You have difficulty reaching the employee.
12. **Moonlighting:** Does the employee work for another employer?
13. **Unusual Coincidence:** There is an unusual coincidence between the injury and the employee's need for personal services.
14. **Financial Problems:** The employee requests pay advances.
15. **Hobbies:** The employee has a hobby related to the injury.

Remember, these warning signs are only indicators of possible fraud. They do not guarantee that a claim is fraudulent.



WORK COMP INSIGHTS

Fighting Fraud with Special Investigation Units

Fraudulent workers' compensation claims are estimated to cost employers several billion dollars annually. Ranging from employees squeezing a few extra days off work to completely fabricated injuries, fraudulent claims can increase your premium costs and negatively influence your bottom line. To reduce costs associated with fraudulent claims, it is important you know how to detect signs of fraudulent activity. While you may not be an expert at fraud detection, there are resources you can turn to when you have reason to doubt the legitimacy of a claim.

Special Investigation Units
Many insurers have special investigation units (SIU) that are experienced in exposing fraud. Insurers recognize that while the average employer may be able to recognize some signs of a possible fraudulent claim, they may not have the resources or training to successfully investigate the situation. When you suspect the legitimacy of a claim an SIU can investigate, drawing on a wealth of experience and resources to discover and document any fraudulent activity that has occurred.

While large insurers often employ their own in-house SIUs, many smaller insurers use groups like the National Insurance Crime Bureau (NICB), whose purpose is to identify and stop fraudulent insurance activity, as their SIU.

Discovering Fraud
While SIU are always on the lookout for fraudulent activity, tips from employers are very important and can turn them on to potential cases of fraud that otherwise might have been missed. It is important that you keep an eye out for signs of fraud and alert your insurer's SIU when you find them. The following may be a red flag for fraudulent activity:

- The injury is not promptly reported
- The injury does not fit with typical duties performed by the employee
- The employee's account of injury differs from witness accounts
- There are no witnesses to the injury
 - Medical treatment seems excessive or lengthy for the type of injury
 - Employee regularly misses medical appointments

Do Your Part to Eliminate Fraud
While SIUs are there to help, not everything can be left up to them. It is important that you take proactive measures to eliminate fraudulent activity before it requires the attention of an SIU.

Strong workplace safety programs make it harder for dishonest employees to fabricate workplace injuries. Also, set strict injury reporting guidelines so you can monitor the claim from the onset. Finally, whether it is discovered by you or an SIU, vigorously prosecute all fraud-related cases. It is important to show that your organization will not tolerate any abuse of the workers' compensation system.

[B_OfficialName]
Your Workers' Compensation Partner

Controlling Costs Initiatives

Safe Patient Handling Act

Code Rule 59 & 60

Work with consultant to manage Workers' Compensation process



WORK COMP INSIGHT

General Industry Workplace Safety Regulation

FEDERAL

Provided by:
[B_Officialname]
[B_Address]
[B_City], [B_State] - [B_Zip]
[B_Phone] - [B_Webaddress]

Workers' Compensation Insurance

Workers' Compensation coverage (also called workers injury) on the job, including medical or lost wages and permanent disability or, in some cases, death benefits to dependents of employees who work-related accidents. Workers' compensation are different in every state, as individual state cost structures have impact the way they to claim, evaluate impairments, settle disputes, provide benefits, and control costs.

Background of Workers' Compensation Insurance

During the 18th century, the number of individuals during the workplace grew exponentially. As a result, the number of workplace accidents grew as well. At that time, the only way that injured workers could obtain compensation for their injuries was to sue the employer. Many legislative programs emerged early in the 20th century, focusing on compensating injured workers for their medical costs.

By 1949, all states had a system in place to compensate for injured employees. Under these systems, the employer was responsible for the cost of medical care and lost wages, and consequently, the employer gave a right to sue the employer for injuries. Currently, the only state where workers' compensation is not required for all employees.

As part of the insurance package, the insured workers' medical, rehabilitation and lost wages are paid for by the state or insurance carrier, if the injury leaves the

Managing Your Workers' Compensation Costs

Your workers' compensation insurance premium is based on a rating your company has, which is based on payroll, averaged for your industry and claims.

State's mission in monetary benefits through the private sector administrative employment activities—the highest level of monetary relief ever obtained by the EEOC through the administrative process.

(Continued on next page.)

First Quarter Shows Signs Hardening Insurance Market

Prices hardened and underwriting tightened in the commercial property/casualty market in the first quarter of 2012, according to The Council of Insurance Agents & Brokers' quarterly Commercial P/C Market Index Survey.

Large account pricing realized the largest quarter-to-quarter increase, but prices went up across the board, regardless of the size of the account or type of line.

- Small account pricing rose 4.2 percent, medium accounts increased by 4.9 percent and large accounts were up 4.1 percent.

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Safe Patient Handling Act

The New York Safe Patient Handling Act Program (NYSPHAP) allows a premium credit for New York employers in the healthcare industry.

Classifications that are eligible to receive a credit under the NYSPHAP may include, but are not limited to, the following classes:

8829 Nursing Home–All Employees

8833 Hospital–Professional Employees

8865 Alcohol or Drug Rehabilitation Facility-All Employees-& Clerical

8866 Assisted Living Facility-All Employees & Clerical

9040 Hospital–All Other Employees



NYS Workers' Compensation Board has authorized insurance carriers to give authorized agencies a credit for reducing manual handling of consumers.

Safe Patient Handling Act...cont.

"Safe patient handling" shall mean the use of engineering controls, lifting and transfer aids, or assistive devices by staff to perform the acts of lifting, transferring and repositioning health care patients and residents.

Requirements: Safe Patient Handling Committee – on or before January 1, 2016

Develop a Safe Patient Handling Program- on or before January 1, 2017

- Develop a Policy
- Conduct a Hazard Assessment
- Develop a process to match consumer with safe patient handling equipment
- Conduct initial and on-going training
- Develop incident investigation process
- Conduct annual performance evaluation
- Feasibility study when capital construction occurs
- Develop “Good Faith” processes

Carrier decides if all elements have been completed.

Code Rule 60

What is it?

Workplace Safety & Loss Prevention Incentive Program

- A financial benefit (credit) is exchanged to organizations for implementing certain programs.
- Hire a consultant to complete
- Timeframe
- Good for 3 years

Eligibility:

Pay at least \$5000 in Workers' Compensation premiums

MOD is under 1.3 for the year preceding the employer's application

Must implement one or more:

- Return-to-Work
- Safety Incentive Program
- Drug and Alcohol Prevention Program

Program Type	Program Year		
	Year 1	Year 2	Year 3
Safety	4%	2%	2%
Return-to-Work	4%	2%	2%
Drug and Alcohol Prevention	2%	2%	2%

Code Rule 59

What is it?

Workplace Safety & Loss
Prevention Evaluation

- Mod over 1.2
- Payroll over \$800,000
- Notice comes out quarterly
- Certain timeframe
- Need to hire a consultant
licensed with the DOL
 - written evaluation
 - site inspection

Evaluation:

12-question evaluation

Recommendations made

75 days from written
notice to have evaluation
completed.

Carrier re-inspect – after
6 months

End Results of Code Process

Code Rule 60:

Even if you change WC carriers,
the credit stays with you



Code Rule 59:

Failure to comply or implement
the recommendations – 5%
surcharge

An additional 5% surcharge shall
be charged by the insurer for
every subsequent policy period
where the employer is non-
compliant

Good news:

***Good for six years
after the evaluation
is complete!***

OSHA Changes for Providers

Electronic Recordkeeping No longer site-kept information

OSHA's Rule for Injury and Illness Recordkeeping Electronic Data Submission went into effect on Jan. 1st.

2 Major Provisions:

Establishments w/ 250+ workers must annually submit to OSHA 300 Logs, 301 Incident Reports 300A Annual Summaries

Establishments w/ 20 +workers in "High Hazard Industries" must annually submit 300A Annual Summaries



“High-risk Industries”

NAICS	Industry	NAICS	Industry
11	Agriculture, forestry, fishing and hunting	4884	Support activities for road transportation
22	Utilities	4889	Other support activities for transportation
23	Construction	4911	Postal service
31-33	Manufacturing	4921	Couriers and express delivery services
42	Wholesale trade	4922	Local messengers and local delivery
4413	Automotive parts, accessories, and tire stores	4931	Warehousing and storage
4421	Furniture stores	5152	Cable and other subscription programming
4422	Home furnishings stores	5311	Lessors of real estate
4441	Building material and supplies dealers	5321	Automotive equipment rental and leasing
4442	Lawn and garden equipment and supplies stores	5322	Consumer goods rental
4451	Grocery stores	5323	General rental centers
4452	Specialty food stores	5617	Services to buildings and dwellings
4521	Department stores	5621	Waste collection
4529	Other general merchandise stores	5622	Waste treatment and disposal
4533	Used merchandise stores	5629	Remediation and other waste management services
4542	Vending machine operators	6219	Other ambulatory health care services
4543	Direct selling establishments	6221	General medical and surgical hospitals
4811	Scheduled air transportation	6222	Psychiatric and substance abuse hospitals
4841	General freight trucking	6223	Specialty (except psychiatric and substance abuse) hospitals
4842	Specialized freight trucking	6231	Nursing care facilities
4851	Urban transit systems	6232	Residential mental retardation, mental health and substance abuse facilities
4852	Interurban and rural bus transportation	6233	Community care facilities for the elderly
4853	Taxi and limousine service	6239	Other residential care facilities
4854	School and employee bus transportation	6242	Community food and housing, and emergency and other relief services
4855	Charter bus industry	6243	Vocational rehabilitation services
4859	Other transit and ground passenger transportation	7111	Performing arts companies
4871	Scenic and sightseeing transportation, land	7112	Spectator sports
4881	Support activities for air transportation	7121	Museums, historical sites, and similar institutions
4882	Support activities for rail transportation	7131	Amusement parks and arcades
4883	Support activities for water transportation	7132	Gambling industries
7211	Traveler accommodation	7223	Special food services
7212	RV (recreational vehicle) parks and recreational camps	8113	Commercial and industrial machinery and equipment (except automotive and electronic repair and maintenance)
7213	Rooming and boarding houses	8123	Dry-cleaning and laundry services

What you need to be aware of:

IMPORTANT DATES

July 1, 2017

Affected employers must submit data from OSHA Form 300A.

July 1, 2018

Affected employers must submit data from OSHA Forms 300A, 300 and 301.

March 2 (2019 and beyond)

Affected employers must submit required data.

Employee Privacy

The final rule allows OSHA to publicize the electronic data it collects from employers on a public website. For this reason, the final rule also stipulates that certain personal identifying information must be omitted from electronic submissions mentioned above. Specifically employers should *not* submit:

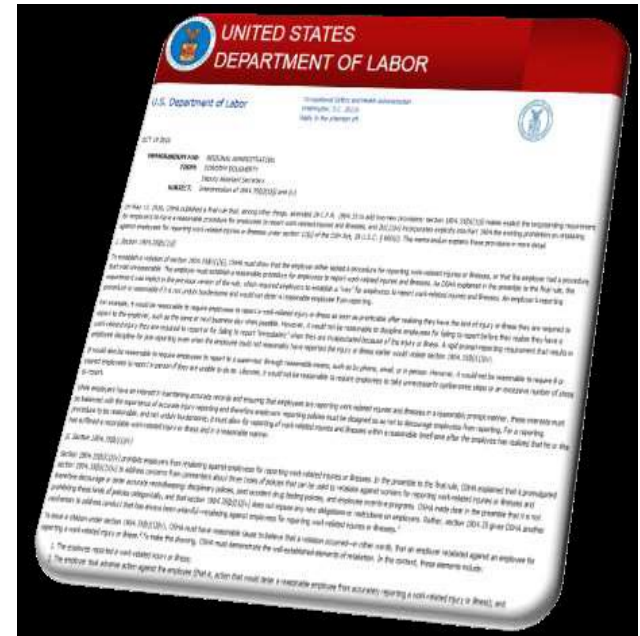
- Employee Name
- Physician Name

What else is in the rule?

Reporting Procedures and Anti-Retaliation Provisions

Went into effect on December 1, 2016

- Require employers to inform employees of their right to report work-related injuries and illnesses free from retaliation;
- Clarify that work-related injury and illness reporting methods must be reasonable and should not deter or discourage employees from reporting health and safety incidents; and
- Prohibit employers from retaliating against employees for reporting work-related injuries or illnesses.



Anti-retaliation.... continued

After an employee is injured an employer can be cited for:

- Employer may be cited for unreasonable reporting policy
 - disciplining an employee for not reporting in a timely manner
 - perceived retaliatory effect for reporting injuries
- Post-injury Discipline Policies – Discipline for violating vague rules
“(e.g., “not working safely” or “not maintaining situational awareness”)

OSHA “Recommended Practices for Anti-Retaliation Programs” issued on January 13, 2017

- Post-incident Drug Testing. no more blanket drug testing –Drug Testing can seem retaliatory
 - * **ok if: pre-employment
random
test to comply with another law (DOT)
when required by a WC carrier (including premium reduction for
accident drug testing)**
- Safety Incentive Programs – Cannot reward or deny benefit or bonus based on injury rate (e.g., DART rate)

End Results of OSHA Final Rule

To comply employers should:

- Begin recording incidents electronically instead of on paper
- Inform employees of their right to report workplace injuries and illnesses and that the employer is prohibited from discriminating or retaliating against employees for reporting injuries and illnesses
- Determine whether their safety incentive programs may potentially deter reporting. Any incentive programs that are rate-based will likely need to be altered to behavior-based incentives as OSHA suggests, unless this aspect of the rule is enjoined by the court
- Review their drug testing policies and remove any blanket post-accident testing policies, other than post-accident drug testing required by state or federal laws or regulations, unless this aspect of the rule is enjoined by the court
- Ensure work and safety rules are clearly communicated and applied consistently

Training Sessions & Written Programs

OSHA Topics

OSHA Reporting and Recording
GHS (Updated Hazard Communication Standard)
Bloodborne Pathogen
Fall Protection
Emergency Action Planning
Fire Extinguisher/Fire Prevention Plan
Hearing Conservation
Lockout/Tagout
Loss Control Maintenance Training – PPE, machine guarding, etc.
Hot Work Training
Respirator Safety

Non-OSHA Risk Management Topics

Defensive Driving/Distracted Driving
Safe Service of Alcohol
New employee orientation
Safety Mentoring (for Managers)
Accident Investigation
Kitchen Safety
Loss Control Safe Lifting (Ergonomics)
Safety in the Workplace – Change unsafe behaviors and work smarter
Workplace Violence
Janitorial Training (housekeeping, ergonomics, slip, trip & fall)

What's next?

RFI for Proposed Rule - Prevention of Workplace Violence against employees

- Evidence indicates that the rate of workplace violence in the industry is substantially higher than private industry as a whole.
- OSHA issued an RFI to determine whether a standard is needed to protect healthcare and social assistance employees from workplace violence.
- They wanted to know the extent and nature of workplace violence in the industry and the nature and effectiveness of interventions and controls used to prevent such violence.
- Submit comments on or before April 6, 2017.

Any additional Trends you see emerging?

Thank you!

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