



From Incident to Resolution: Winning Workers' Comp with Investigation & Strategy

Suzy Baker, Director of Claims
ATA Comp Fund
SBaker@ATACompFund.org
334.425.4218

Brent A. Tyra
Smith, Tyra, Haggard, & Simpson, LLC
Btyra@STTLaw.com
205.663.6929

THERE'S BEEN AN EMPLOYEE ACCIDENT OR INJURY... NOW WHAT?

When the injury is clearly undisputed:

- Is it an **emergency**?
- Report catastrophic claims to the Carrier ASAP via phone for early intervention
- Is telemedicine appropriate?
- Send injured worker to a work comp-approved medical provider
 - **Employer has direction of medical care in AL!**
- Arrange for a post-accident drug screen, even if they don't request treatment
- Submit a completed FROI to the carrier – *ideally within 24 hours of notice of injury*

THERE'S BEEN AN EMPLOYEE ACCIDENT OR INJURY... NOW WHAT?

When the injury is questionable:

- Supervisor interview of injured worker
 - *To determine the how, when, and why the accident occurred*
 - *Have supervisor document this conversation in writing using the employee's own words*
- If possible, obtain written statement from the injured worker
- Witness statements – the sooner the better!
- Surveillance video? Event recorder footage?
- Safety policy violation?
- Drug screen results

MEDICAL TREATMENT & PANEL OF FOUR

- General Rule – Employer has right to control medical
 - Exceptions: Emergency, Refusal to treat, Waiver of right
 - Carrier / TPA PPO provider recommendations
- Panel Of Four
 - “Physicians” & “Surgeons”
 - If employee is dissatisfied with employer’s selection
 - if further treatment or surgery is necessary

INITIAL INVESTIGATION OF THE CLAIM

Send as much of the following to the claims adjuster as quickly as possible to aid in the initial investigation:

- All written statements and accident reports
 - Police report, third party insurance info, internal investigation reports
- Names of all witnesses – *contact info too, if available*
- Surveillance / event recorder footage
- Drug test results
- Injured worker's personnel file including PJOMQ, medical notes, DOT physicals, jurisdictional agreement, owner/operator agreement, etc.
- Any relevant safety policies
- Injured worker's work status
- Payroll records for wage statement



STAYING IN TOUCH WITH THE CLAIMS ADJUSTER

- Inconsistent information from investigation
- Receiving income from another source
- RTW elsewhere
- Personnel / employment matters
- Disciplinary issues
- Disgruntled employee
- Issues with communication following accident
- Claims for unemployment, STD, LTD
- LOR or notice of suit, if received



MODIFIED DUTY RELEASE & THE RETURN TO WORK PROCESS

THE INJURED WORKER HAS TEMPORARY MODIFIED DUTY RESTRICTIONS... NOW WHAT?

RETURN TO WORK AT THE EMPLOYER

- Temporary duty work is offered by the employer & is **accepted** by the injured worker
 - Bonafide job offer
 - Injured worker is paid via payroll by employer
- Temporary duty work is offered by the employer & is **refused** by the injured worker
 - *Offers of Suitable Employment*
 - Contact Carrier ASAP as benefits may be suspended

ALTERNATIVE RETURN TO WORK (RTW) PROGRAMS

- Temporary light duty jobs at local non-profit organizations
- **Remote** work opportunities through an alternative RTW vendor... *don't shoot the messenger* 😊
- Injured worker is paid via payroll by employer & may be eligible for supplemental benefits through work comp

AFFIRMATIVE DEFENSES

- No Employment Relationship
- Statute Of Limitations
- Notice Defense
 - Statute – 5 days written notice / 90 days saving provision
 - Case Law – actual knowledge and verbal notice sufficient
- Willful Misconduct Defenses
- Fights, Assaults, and Aggressor Defense
- Intoxication From Alcohol/Impaired By Illegal Drugs
- Misrepresentation Defense

STATUTE OF LIMITATIONS

Compensation Benefits

- 2 years from the date of injury; or
- 2 years from the date of the last WC compensation payment
 - Light duty may be considered “compensation payment”

Medical Benefits

- None, unless the claim is settled

WILLFUL MISCONDUCT DEFENSES

- Willful misconduct of employee
- Employee's intention to cause injury/death
- Willful failure or willful refusal to use safety appliances provided by employer
 - Safety policies & procedures are *so important* here!

BEST PRACTICES FOR APPLYING WILLFUL MISCONDUCT

- Prepare written policy clearly describing safety rules and regulations **and have the employee sign this policy.**
- **Document** safety/training sessions where these policies are covered. Keep a log of attendees and documents distributed at these sessions.
- **Document** history of the employee's safety violations.
- Make sure that safety policies are regularly enforced.
- Preserve recordings, footage, and evidence related to alleged accident.
- Prepare Incident Reports and obtain statements.
- Have employee complete and sign document admitting he or she violated safety policy.

INTOXICATION/IMPAIRMENT DEFENSE

- DOT testing – 49 C.F.R. Part 40 – presumption of impairment
- Refusal to submit to post accident blood/urine test
- Proximate cause of injuries
- Burden of proof on employer

BEST PRACTICES: PJOMQ

Post Job Offer Medical Questionnaire

- Should include questions regarding:
 - Prior injuries / illnesses
 - Prior surgeries and surgical recommendations
 - Prior disability benefits, permanent restrictions, impairment ratings

Consider sending for post-hire physicals / evaluations

ATA COMP FUND / ALLIANCE INTERSTATE RISK
POST JOB OFFER — MEDICAL QUESTIONNAIRE

DATE: _____ POSITION: _____

NAME: _____

A. DO YOU EVER HAVE:	YES	NO	F. HAVE YOU EVER HAD:	YES	NO
Reactions to Medicines	___	___	Seizures or Convulsions	___	___
Reactions to Oils	___	___	Epilepsy	___	___
Reactions to Chemicals	___	___	Paralysis	___	___
Skin Rashes or Eczema	___	___	Numbness of Hands or Feet	___	___
			Double Vision	___	___
B. HAVE YOU EVER HAD:			Severe Headaches	___	___
Asthma	___	___	Migraine Headaches	___	___
Hay Fever	___	___	Dizzy Spells	___	___
Shortness of Breath When Walking	___	___			
C. HAVE YOU EVER HAD:			G. HAVE YOU EVER HAD:		
High Blood Pressure	___	___	Neck Injury or Pain	___	___
Heart Trouble	___	___	Back Injury or Pain	___	___
Heart Attack	___	___	Neck Surgery	___	___
Heart Surgery	___	___	Back Surgery	___	___
Fainting Spells	___	___	Knee Surgery	___	___
Varicose Veins	___	___	Shoulder Injury or Pain	___	___
Swelling of Ankles	___	___	Shoulder Surgery	___	___
			Rheumatism or Arthritis	___	___
D. DO YOU HAVE OR EVER HAD:			Fracture Break of Bone	___	___
Hernia	___	___	Knee Injury or Pain	___	___
Diabetes	___	___			
			H. MEDICINE/ DRUGS/ ALCOHOL:		
E. EYES:			Are You Taking Medicine Regularly	___	___
Do You Use Contacts or Eye Glasses	___	___	Are You Currently Using Illegal Drugs or Harmful Substance	___	___
			How Much? _____		
			How Often? _____		

I acknowledge that the Alabama Trucking Association Workers' Compensation Self-Insurance Fund/ Alliance Interstate Risk program mandates that if I refuse to submit to or cooperate with a blood or urine test after an accident, I shall forfeit workers' compensation benefits. INT. _____ subject to state-specific claim jurisdiction

I acknowledge that misrepresentation as to preexisting physical or mental conditions may void my Workers' Compensation benefits. INT. _____ subject to state-specific claim jurisdiction

Explanation of all yes answers, use back page if needed: _____

The undersigned understands that the Alabama Trucking Association Workers' Compensation Self-Insurance Fund ("ATA Comp Fund") and Alliance Interstate Risk program ("AIR") requires the execution of a post job offer medical questionnaire. The undersigned agrees to complete said questionnaire truthfully and agrees to allow the disclosure of it to the Company and/or ATA Comp Fund/AIR to determine whether the undersigned is fit for duty. For DOT covered drivers, under 49 CFR 391.11, the motor carrier makes the final driver fitness-for-duty determination.

The Genetic Information Nondiscrimination Act of 2008 ("GINA") prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. In order to comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Signature of Applicant: _____ Company Representative: _____

MISREPRESENTATION DEFENSE

“No compensation shall be allowed if, at the time of or in the course of entering into employment or at the time of receiving notice of the removal of conditions from a conditional offer of employment, the employee knowingly and falsely misrepresents in writing his or her physical or mental condition and the condition is aggravated or reinjured in an accident arising out of and in the course of his or her employment.”

Burden of proof is on the employer

SUGGESTIONS FOR HANDLING CHALLENGING CLAIMS

- Medical Records Sweeps
- Offer Light Duty Work at employer or through RTW vendor
- Identify Non-Compliance Issues - *terminate benefits for non-compliance*
- Push for MMI
- Utilize NCM
- Surveillance, social media sweeps
- Have trusted defense counsel

