

# **Workers' Comp Update**

## ***Tactical Solutions for Conquering Your Workers' Compensation Challenges***

8:30 am – 9:00 am

### **Recent Developments in Case Law, Legislative Updates, and Emerging Trends You Need to Know to Remain in Compliance and Reduce Risks**

- An update on the legislative developments in your state laws to reduce liability
- Recent cases addressing coverage and compensability of claims: Answering the questions on who is covered and when coverage is in effect
- Examining third-party liability suits and allocation of subrogation in your state
- Discover how the latest workers' comp court decisions will impact your case settlements
- Determining the role of illegal drugs and alcohol abuse in an injury, and how they affect the claim

9:00 am – 10:00 am

### **Proactive Strategies to Manage Preexisting Injuries and Repeat Claimants While Avoiding Legal Landmines**

- Managing preexisting injuries with the legal use of functional assessments such as agility tests, job function tests, and postoffer medical exams to make safe placement decisions
- Successfully placing employees with preexisting injuries without opening your organization to discrimination claims
- Determining the acceleration, exacerbation, aggravation, and apportionment levels and how they affect a current claim
- Understanding repeat claimants to minimize risks of further injury and retaliation claims
- Working with your Employee Assistance Program or outside resources to reduce repeat claims from troubled employees
- Lawfully dealing with repeat claimants in settlement agreements to prevent future claims

10:00 am – 10:15 am: **Break**

10:15 am – 11:30 am

### **Malingering, Exaggeration, and Questionable Claims: Preventing, Recognizing, and Investigating Employee Fraud**

- Reducing malingering with an effective return-to-work program: Designing innovative light- and modified-duty plans
- Partnering with nonprofit organizations as an alternative to light duty to encourage employees to return to work quickly
- Taking advantage of independent medical exams and second opinions to reduce malingering
- Implementing legal methods of discipline when dealing with employee malingering and exaggeration
- Training managers and employees on timely injury reporting to catch questionable claims
- Proactively identifying and responding to suspected fraud to minimize costly claims
- Determining which aspects of a fraud investigation can help close a claim
- Conducting successful fraud investigations that will stand up in court

11:30 am – 12:15 pm

### **Getting the Inside Scoop on Workers' Comp Claims from the Other Side: What Claimants' Attorneys Can Tell You About Avoiding Litigation**

- Avoiding the most common mistakes employers make when dealing with injured employees that can result in costly liability

- Understanding what a plaintiffs' attorney looks for in cases to take to court: What your organization can do to avoid litigation
- Minimizing the difficulties in managing a disputed claim: Strategies for dealing with employees and their attorneys
- Determining the key issues when looking for a settlement: How to make it a win-win negotiation

12:15 pm – 1:15 pm: **Lunch on your own**

1:15 pm – 2:15 pm

### **Working with Your Medical Providers to Reduce Lost Time, Prevent Overtreatment, and Contain Medical Costs**

- Minimize the pain of dealing with doctors: How to ensure you are getting the information and responses you need from your medical providers
- Identifying the biggest risk factors in order to reduce orthopedic injuries in your workplace
- Understanding the causation of an orthopedic problem to ensure that it is a work-related injury
- Determining what an employee's diagnosis means to your organization: What constitutes repetitive motion? How much work is too much for a back injury?
- Recognizing the difference between chronic pain disorder, somatoform disorders, and malingering to determine an appropriate response
- Designing an optimum return-to-work program for injured employees by working with doctors to facilitate getting employees back on the job

2:15 pm – 3:15 pm

### **Avoiding the ADA, FMLA, and Workers' Compensation Overlap Trap**

- Determining whether an injury falls under workers' compensation, the ADA, or FMLA to ensure compliance
- Developing modified-duty and light-duty plans which return employees to work without exposing the employer to organizational liability under the ADA
- Identifying when a workers' comp injury can also be a serious health condition under the FMLA
- Creating integrated policies and procedures to ensure employees understand their rights and responsibilities under the ADA, FMLA, and workers' compensation laws
- Minimizing risk without violating the ADA: Determining if safety or reasonable accommodations come first when dealing with issues like intermittent explosive disorder
- Proper processes for terminating an injured employee without violating ADA or FMLA regulations

3:15 pm – 3:30 pm: **Break**

3:30 pm – 4:30 pm

### **Designing Employee Programs That Reduce Injuries and Increase Employee Participation: Health, Wellness, and Safety Programs**

- Identifying the critical proponents of successful safety programs to determine what works for your organization
- Applying a successful safety incentive program that increases accident prevention without incentivizing cheating and adding liability risks
- Implementing targeted safety programs: Auditing claims to make training risk-specific and prevent the most common accidents
- Conducting safety inspections to prevent back injuries and slips and falls that can impact your bottom line
- Reducing workers' comp claims by establishing a proactive wellness program to enhance employee health
- Integrating your wellness program with your health and safety programs to maximize your return on investment
- Successfully working with an aging workforce by using preventive strategies to reduce injury risks

4:30 pm: **Day 1 Concludes**

## **WORKSHOP DAY 2:**

# **Strategies for Successful Workers' Comp Claim Management to Reduce Liability Risks: Interactive Case Studies on the Most Challenging Workers' Comp Claims**

*Led by our experienced moderators, you will walk through a variety of scenarios to acquire the skills you need to handle your most difficult issues. From investigating an injury to handling preexisting injuries and questionable claims, these case studies have it all.*

8:00 am – 8:30 am: **Registration and networking**

8:30 am: **Program begins**

### **Case #1—Beyond the Basics: The First 24 Hours**

Kal Klutz is employed as a maintenance man for ABC Company. His job requires him to perform work on all 25 floors of ABC's building. There are both stairway access and elevator access to all 25 floors. On Tuesday Kal is called by his supervisor Bill Buster to check out a light switch on the 17<sup>th</sup> floor. Since he is on the 13<sup>th</sup> floor when he receives the call, and because he is trying to lose weight, Kal takes the stairs. After lunch, Kal tells Bill that when he went to check out the light switch on 17 he fell on the stairs and hurt his right knee. Bill calls you immediately because you are the WC coordinator and asks you what to do.

#### **DISCUSSION:**

- How should you respond to this call?
- How would you investigate this accident?
- What information should be collected?

### **Case #2—How to Prevent Minor Accidents from Becoming Major Pains**

Kal Klutz is employed as a maintenance man for ABC Company. His job requires him to perform work on all 25 floors of ABC's building. There are both stairway access and elevator access to all 25 floors. On Tuesday Kal is called by his supervisor Bill Buster to check out a light switch on the 17<sup>th</sup> floor. Since he is on the 13<sup>th</sup> floor when he receives the call, and because he is trying to lose weight, Kal takes the stairs. After lunch, Kal tells Bill that when he went to check out the light switch on 17 he fell on the stairs and hurt his right knee. Bill asks him if he needs any medical treatment and Kal tells him that he is fine. Bill does not report the incident to you, nor does he fill out any accident reports. Kal continues working for the next six weeks. After six weeks, Kal comes into your office and gives you an off-work slip and a surgical recommendation from Dr. Luvtakut for a meniscal repair.

#### **DISCUSSION:**

- How would you decide to accept or deny this claim?
- How would you investigate this claim?
- What information would you need to collect?
- How should Bill have handled the case originally?
- What would you do with Bill to ensure he reports injuries in the future?

### **Case #3—How to Prevent Minor Accidents from Becoming Major Pains**

Kal Klutz is employed as a maintenance man for ABC Company. His job requires him to perform work on all 25 floors of ABC's building. There are both stairway access and elevator access to all 25 floors. On

Tuesday Kal is called by his supervisor Bill Buster to check out a light switch on the 17<sup>th</sup> floor. Since he is on the 13<sup>th</sup> floor when he receives the call, and because he is trying to lose weight, Kal takes the stairs. After lunch, Kal tells Bill that when he went to check out the light switch on 17 he fell on the stairs and hurt his right knee.

Bill interviews Kal and determines that he was carrying a clipboard and a screwdriver and was holding on to the railing. He is not sure what caused him to fall and was not aware of anything on the stairs. There were no eyewitnesses. Kal tells Bill that he did not fall down completely but merely struck his right knee on the nose of the stair. Kal writes a narrative and Bill inspects the stairs and sees no water or any other debris. He also notes that there is no defect in the stairs and takes a contemporaneous picture of the stairs.

Kal treats at an occ med clinic and is diagnosed with a right knee contusion. No follow-ups are scheduled.

### **DISCUSSION:**

- Since no follow-ups are scheduled, should you end your investigation? Why or why not?

Three weeks later Kal seeks treatment with Dr. Ikutalot. He tells the doctor that he was walking up the stairs when he slipped on construction debris on the stairs, causing him to twist his right leg and strike it on the stairs. He tells Dr. Ikutalot that he felt a pop in his knee when it twisted. An MRI is performed which reveals a meniscal tear as well as a ruptured ACL in the right knee. Dr. Ikutalot recommends surgery to repair the meniscus and to reconstruct the ACL. He opines that the injury is work-related.

### **DISCUSSION:**

- What aspects of this case could make it a noncompensable injury?
- How would you defend your case?
- What should be done at this point?

## **Case #4—Repetitive or Cumulative Trauma**

Polly Packer is 53 years old and has been employed by XYZ Manufacturing for two years. She is diabetic and is taking thyroid medication. For that entire two-year period, Polly has been employed as a packer. Her job requires her to pick parts off of carousels and pack them into boxes. The carousel bins vary in height from 3 feet to 6 feet. The parts vary in weight from a few ounces to 7 pounds. All parts weighing more than 2 pounds are located in bins that are at waist to chest level. Step ladders are used to pick parts in the higher bins. The number of parts she handles in any given day varies by order. She is given an hour lunch break and two 15-minute breaks in an eight-hour day. She comes into your office one day and tells you that she has been noticing pain in her neck and right hand for approximately two months. She has not sought any medical treatment.

### **DISCUSSION:**

- What should your investigation consist of?
- How should you handle Polly at this point?
- How would you return her to work?

## **Case #5—Dealing with the Ill or Injured Employee: Recognize When the FMLA, ADA, and Other Employment Laws Apply and Avoid Liability Headaches**

Bob, a 56-year-old warehouse worker, reported a back injury at work. He has been diagnosed with a back strain by your company clinic. Bob chooses to follow up with his family physician, who diagnoses L5-S1 radiculopathy and takes Bob completely off work. Bob is receiving physical therapy three times a week. After Bob is off work for six weeks, you obtain an IME opinion from Dr. Smith, a board certified orthopedic specialist, who states that Bob's work injury resulted in a back strain and that Bob has preexisting degenerative disc disease throughout his lumbar spine, most significantly at L5-S1. Dr. Smith

opines that Bob can return to modified duty with no lifting over 10 pounds, and that after three more weeks of physical therapy, he will be able to return to his regular job.

Your company has a modified-duty program and can accommodate this 10-pound lifting restriction. You offer Bob modified duty in the office of your facility. Bob will have to lift no more than 2 pounds in this position. Bob refuses to return to work in this modified position and obtains an updated note from his family physician which states Bob is totally disabled from work until his next exam which is scheduled to be in a month. Bob does not report to the modified-duty job and doesn't call off work for the first four days in a row that he was to work the modified duty. Your company has a three-day no-show/no-call policy that states that employees who do not appear for scheduled work and do not call in for three days will be considered to have voluntarily resigned their positions.

### **DISCUSSION:**

- Should you lawfully terminate Bob for refusing the modified-duty position? Why or why not?
- What employment or leave laws should impact your decision?
- Can you apply the three-day no-show/no-call policy to terminate Bob?
- How would you defend against a wrongful termination or retaliatory discharge claim?
- How would Bob's refusal affect his right to medical benefits under workers' comp?
- How would Bob's refusal affect his temporary total disability payments?

### **Case # 6—Dealing with the Ill or Injured Employee: Recognize When the FMLA, ADA, and Other Employment Laws Apply and Avoid Liability Headaches**

Mildred, a 58-year-old production worker at XYZ Industries, suffered a compensable work injury to her right knee when she stepped off a 4-inch platform onto a piece of scrap material, twisting her knee. Her personal physician, Dr. Jones, has diagnosed a probable medial meniscal tear and ordered conservative treatment of a knee brace, physical therapy, and modified activities, including work restrictions that Mildred is to be allowed to sit or stand at work and stand no more than 15 minutes within each hour. XYZ gives Mildred a modified-duty assignment of inspecting parts as they near the end of the production line. This job allows her to sit on a stool and is much less physically demanding than her normal position. This inspector position is one that XYZ uses for modified duty only. It is not a permanent position.

The doctor's notes from prior to the accident include information showing that Mildred has osteoarthritis in her hips and that Dr. Jones had recommended a right hip replacement three months prior to the date of the accident. During physical therapy for the right knee, Mildred complains of pain in her hips. Dr. Jones orders whirlpool therapy for the hips along with continued therapy for the right knee. Mildred has had this therapy in the past for her osteoarthritis.

After ten weeks, Mildred's knee improves with conservative care and Dr. Jones discontinues physical therapy and the use of the knee brace. He states no further treatment for the knee is required and Mildred should return to him as needed for the knee. Also at this time, the company has obtained an IME opinion that Mildred's knee is at maximum medical improvement and that she can return to her normal work activities. After being informed that she should report to her regular job the next week, Mildred brings in a note from Dr. Jones stating that she cannot return to her regular job and that she should be kept in the inspector position. He puts "osteoarthritis" as the diagnosis on this off-work slip.

### **DISCUSSION:**

- Must the company accommodate Mildred's work restrictions for osteoarthritis? Why or why not?
- How would your response change if XYZ policy allowed for modified duty for nonoccupational illness or injury?
- What responsibility would the company have to accommodate Mildred under the ADA? If so, how long should the company accommodate Mildred?
- How would this situation change if XYZ allowed people to apply for and transfer to vacant positions within the company?

- If Mildred applies for another job, does the ADA require that Mildred be given priority over other applicants?
- If Mildred applies for another job in the company, is XYZ required to offer accommodations in a new position? Why or why not?
- If Mildred can no longer perform the essential functions of her position, should XYZ make accommodations for her? Why or why not?
- Would XYZ have any duty under the FMLA in this situation?

### **Case #7—Dealing with the Ill or Injured Employee: Recognize When the FMLA, ADA, and Other Employment Laws Apply and Avoid Liability Headaches**

Sylvester, a 28-year-old mechanic for Quick Oil Change, fell while working, striking his head on the floor. He was treated for a closed head injury and concussion. Quick Oil Change has learned that Sylvester had six episodes in the past where he passed out and collapsed or fell. None of these prior episodes occurred at work. Sylvester's doctor diagnoses syncope from an undetermined cause and recommends further testing to determine the cause. Sylvester's doctor keeps him off work while this workup is pending. Sylvester is complaining of headaches, sensitivity to light, dizziness, and being lightheaded. His normal job requires that he work on and around car jacks that lift the vehicles he works on to heights of up to 8 feet.

Quick Change Oil obtains an IME opinion that the fall was the result of Sylvester's syncope and was not caused by Sylvester's work. The IME doctor offers no opinion on Sylvester's ability to work. Based on Sylvester's doctor's notes and the IME, Quick Change Oil denies Sylvester's workers' compensation claim based on accident and causal connection. Sylvester is notified of the denial and that benefits, including TTD, are terminated. Sylvester has no sick time or other disability benefits that he can use.

Sylvester returns to work three days after the notice of workers' compensation denial and has a note from his doctor releasing him to full-duty work. The manager at Quick Oil Change is concerned about Sylvester's ability to perform his job and whether he is safe to be in their facility.

#### **DISCUSSION:**

- Can Quick Oil Change lawfully keep Sylvester from working? Why or why not?
- What legal steps can Quick Oil Change take to assess Sylvester's work abilities?
- How do the ADA and any local disability laws affect Quick Oil Change's ability to investigate Sylvester's condition?
- What company policies might affect this situation?
- How could Quick Oil Change work with the IME in this situation?

### **Case # 8—Disciplining a Workers' Comp Claimant: What Is Legal?**

Janet Pia has worked for Omni Corp., a manufacturer, for 15 years. She has had run-ins with every supervisor she has worked with. Janet is loud, pushy, and thinks everyone has an easier job than she does. Janet gets her coworkers upset over what she claims is management's poor treatment of workers. She has been disciplined for insubordination, violation of safety rules, attendance issues, and poor work quality. Janet was recently suspended for talking back to a supervisor. She was told that the next discipline incident will be her final step and she will be terminated.

Omni has instituted numerous safety rules for its production area to prevent employee accidents. One of these rules is that all workers must wear steel-toe shoes while on the production floor.

Four days after returning to work from her suspension, Janet injures her right foot when a sharp tool is dropped on her toe, cutting through her shoe and injuring her big toe. As her supervisor is helping Janet to the first aid station, he notices that she is not wearing steel-toe shoes. He asks her why she isn't wearing the proper foot gear, and she replies that her work shoes hurt her bunions. The supervisor tells Janet that he is going to write her up for not wearing steel-toe shoes. Janet responds that the supervisor should drop dead and mind his own f\*\*\*'n business.

## **DISCUSSION:**

- How should Janet be disciplined for her behavior to the supervisor?
- How should Janet be disciplined for not following safety procedures?
- Would you terminate Janet for either of these offenses? Why or why not?
- How would her behavior affect her workers' comp claim?

### **Case # 9—Disciplining a Workers' Comp Claimant: What Is Legal?**

Ross, a 60-year-old carpenter for Nails Corp., fell off a scaffold from 10 feet, landing on his right leg. He fractured the leg and required an open reduction and months of physical therapy. Following several months of modified duty, he has been returned to full-duty work, with limited bending and stooping, and no crawling. These restrictions are within his regular job.

Since his return to work, Ross has been refusing to do certain assignments and tasks, always claiming that the task would hurt his leg. For several months, his coworkers and supervisor were very understanding and allowed Ross to have his choice of assignments. Since his return to full duty, the supervisor feels that Ross should do the work assigned to him without complaint. Three times this past week Ross has refused to perform a task that the supervisor assigned and has gone and taken a "break" until another worker has completed the task. Ross has also been leaving early, claiming that his knee is hurting and he needs to go home to ice it.

The supervisor wants to stop this behavior.

## **DISCUSSION:**

- What actions can the supervisor take in response to Ross's refusal to do assignments?
- How should management address these concerns?
- What policies would help prevent this behavior?
- What should Nails Corp. do if Ross brings in a note from his doctor regarding the days he refused to work?

### **Case # 10—CSI Workers' Comp: Getting to the Bottom of Preexisting Injuries**

Jack was hired by ABC Company two months ago. He has now claimed a workers' comp injury to his back, stating that he lifted a heavy box and felt a "pop" in his back. He has been treating for three weeks with a chiropractor. He has been off work. Jack's boss at ABC is suspicious of this accident for several reasons. First, Jack requested a back belt the day before he reported this accident. Jack stated at that time that his doctor said it would help his back.

## **DISCUSSION:**

- In your state, can ABC obtain Jack's medical records from prior to the accident? If yes, what is the best way to obtain records?
- How can an employer in your state determine if Jack made prior WC claims?
- What should ABC do at this point?

Through its investigation, ABC determines that Jack has had treatment for bulging discs in his back for over seven years. ABC has obtained treatment records and radiology studies from prior to the date of the accident.

## **DISCUSSION:**

- How can ABC use an IME in this situation?
- What information does the IME need in this case?
- What opinions are necessary from the IME to defeat causation in your state?
- How would a prior pending back claim with another employer impact ABC's liability in this case?

### **Case # 11—Recognizing Fraud and Malingering and Taking Action to Fight Back**

Polly has been off work for eight weeks following surgery for what her employer, Mikaki, Inc., has accepted as a work-related right carpal tunnel release. Polly is a clerical worker whose duties include keyboarding, filing, and answering phones. Mikaki had expected Polly to be off for about six weeks and is disappointed to learn that Polly's surgeon, Dr. Goalong, has written her off work until at least her next appointment, which is in a month. All of Dr. Goalong's notes have documented Polly's good result from surgery and therapy, and so the continued off-work release seems odd to the WC managers at Mikaki. To date, Polly has only been seen by Dr. Goalong, and no IME was done. Mikaki has a modified-duty program and can accommodate almost any work restriction.

Polly's coworkers have been grumbling about the extra work they have while Polly is off, and a few have made comments to their supervisor that Polly is taking advantage of Mikaki. Prior to the surgery, Polly was a star of her church's bowling team, and the supervisor has heard a rumor that Polly is back at bowling.

#### **DISCUSSION:**

- How should Mikaki investigate the possibility of a return to work in a modified capacity? Can they contact her treating physician? What else could they do?
- What can an IME offer in determining whether Polly is actually capable of returning to work?
- How would a nurse case manager be useful in this situation?
- What investigation should take place with Polly's coworkers?
- How should Mikaki react to the bowling team rumors?

Now, assume that Mikaki has obtained videotape surveillance of Polly bowling with her right hand and giving high fives to her church teammates. The tape includes video of Polly using the computer for the automatic scoreboard, as well as carrying her bowling bag and driving her car.

#### **DISCUSSION:**

- Strategically, what is the best use of that videotape for Mikaki?
- Should Mikaki show the tape to Polly? Polly's doctor? An IME? Why or why not?
- How should Mikaki work to terminate TDD benefits, based on this video?
- How can Mikaki use the video evidence in connection with an IME?
- How should you handle this type of fraud?

### **Case # 12—Recognizing Fraud and Malingering and Taking Action to Fight Back**

Brand X runs a modern manufacturing plant with state-of-the-art machinery and hidden surveillance cameras throughout the public areas of the facility. Faye Kerr has worked for Brand X for six days when she reports a work injury. She claims that she tripped on an electrical cord near the time clock when she was punching in, injuring her right ankle. She leaves work to consult her doctor and brings in a doctor's note the following day stating that she has to be off work and that she needs surgery for a torn ligament in her ankle.

Faye's supervisor comments to the WC Coordinator that Faye always wore calf-high work boots, and he can't see how she could have so seriously hurt her ankle.

#### **DISCUSSION:**

- What investigation at Brand X should be done?
- What medical records should the investigator be interested in?
- How should you treat Faye to avoid claims of retaliation?

Assume that a tape from a surveillance camera by the time clock shows Faye arriving at work on the date of accident, clocking in, and walking towards her work station without incident. Medical records obtained by Brand X show that Faye had been diagnosed with a torn tendon a month before starting work at Brand X, but she didn't have surgery as she was unemployed at the time and couldn't afford it.

**DISCUSSION:**

- How can Brand X use the surveillance video?
- How should Brand X discipline Faye for this fraudulent claim? Why?
- How could an IME be useful in this case?
- What options does Brand X have regarding what it considers WC fraud?
- How is fraud prosecuted in your state?

**Final Question and Answer Discussion**

Take these last few minutes to wrap up any questions you have and get feedback from the facilitator as well as your HR colleagues.

4:30 pm: **Program concludes**