

Reinventing Workers' Compensation For Employers

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Several years ago, I was asked to be the keynote speaker at a breakfast forum for employers in the New Hampshire manufacturing sector. The topic was Workers' Compensation in New Hampshire generally and, more specifically, how to address the rising costs of workers' compensation premiums. Given the business and insurance climate at the time employers and insurance companies were feeling the pinch and costs of a tightening insurance market.

I began the task by asking the audience what they did when a shipment and a purchase order of (let's say) widgets arrived at their business. Each person confirmed that each widget was counted to ensure that the proper number had arrived, was inspected to ensure that the proper widget classification order had arrived and then made the appropriate adjustments to the purchase order before sending it for payment in the accounts payable department. There could not have been a prouder group of competent business people in the State of New Hampshire at that moment.

I next asked my audience to venture with me into the realm of workers' compensation. I asked what occurred when they received their premium bill for workers' compensation insurance. The room was now remarkably silent. With some prodding, cajoling and humor, the general response was that the premium billing was sent to accounts payable for payment without the same serious inspection and review afforded widgets. The justifications varied, but ranged from "I don't understand how workers' compensation premiums are calculated" or "I just pay the

bill" or "I send it to my insurance agent for an explanation who just tells me to pay the bill".

Beyond that I asked my now somewhat humbled room of manufacturing employers what the four fundamental rights afforded an injured worker were under the New Hampshire workers' compensation system. And while general characterizations of medical bill payment and lost wage reimbursement were mentioned, again not a single employer could articulate all four specific rights afforded or the methodology to determine those rights or benefits. Finally, I asked how many of the employers in the room had been to a contested Department of Labor hearing where they were represented by counsel of the insurance company's choosing, had met with counsel before the Department of Labor hearing and felt that they had been zealously defended at that hearing. Not a hand went up. A buzz ensued, then commotion growing to near hysteria grew in the room and I thought that the breakfast seminar would now last into dinner while the education continued.

The Problem with Workers' Compensation

This is not an uncommon experience for New Hampshire employers. Employers are poorly educated with respect to the workers' compensation system. Whether it is the fundamental rights and benefits afforded an injured worker in the workers' compensation system or how a premium is calculated, there is no readily available mechanism for employers to become educated, responsible and thus involved in the workers'

compensation process. There is no “support system” or “focus group” or “data base” that provides the education needed for employer’s to survive in the workers’ compensation system. There is no “hot line”. There is no “red phone” so that employer’s can make a call get sound practical advice. Even an employer’s insurance agent, who is proficient in procuring and placing an employer’s insurance coverage, may be unprepared to educate and answer the questions employers have regarding the workers’ compensation system.

So what’s an employer to do? How can an employer reinvent its process for workers’ compensation in its business? How does the employer get on a level playing field? Better yet, how does the employer take control of the workers’ compensation policy and practice in its business and be the driving force in its claims and in managing the costs of its workers’ compensation program?

The Solution

Here’s the bad news: there is no “magic pill” solution. There are several things that employer’s are able to do to educate themselves and establish a process for managing workers’ compensation that addresses risk, costs, and claims.

First, employers need to understand the fundamental rights and obligations imposed by the workers’ compensation system. The entitlements are specific, enumerated and in a real sense are adjudicated in a disciplined administrative process. An injury must arise out of and in the course of an employee’s employment. Employee fault is irrelevant. If an employee’s injury arises out of and in the course of employment, they are entitled to specific, enumerated benefits. Enumerated employee rights of a wage benefit, medical benefits, vocational rehabilitation benefits if the employee is unable to return to the type of

employment in which they were injured, and a permanent impairment award if there is a loss of strength or function due to the work-related injury. An employee is obligated to return to transitional alternative work, report any change in condition or earnings, keep the employer informed of their disability status and not engage in acts of deception or fraud in the workers’ compensation system. A detailed explanation of these benefits and obligations is beyond the scope of this article; however, suffice it to say there are resources available, such as the New Hampshire Department of Labor’s website.

An employer might ask why educate myself when I pay an insurance company to protect my company in the face of workers’ compensation claims. This is simply faulty thinking. If an employer is educated and informed about the process, then the employer can accurately review claims to ensure that they are being properly, timely and aggressively pursued. Frequent claims management meetings should occur. Frequent file reviews should occur. Frequent analysis and reporting with respect to activity on a claim must occur and employers must ensure that everything from average weekly wage benefits to permanent impairment calculations is properly calculated and completed.

Premium billings and audit reviews are another area in which employers are poorly equipped to respond to the demands (and expertise) of the workers’ compensation insurance company. Let’s return to our widget example. Roughly speaking, the number of widgets times their cost, equals the price of the widgets contained within a certain purchase order. Roughly speaking, the cost per \$100 of employee risk classification codes multiplied by the payroll in that class equals the amount of premiums due subject to an experience cost multiplier. The experience cost multiplier has the affect of exponentially increasing, or decreasing, the bottom line cost

of an employer's workers' compensation insurance premium based upon that employer's prior claims experience. It is fundamental that if the prior claims experience is high, or costly, or not properly monitored and managed by an employer or its representative, then the affect is to exponentially increase the cost of workers' compensation insurance. It is important to understand that when compared to the widget example it is the equivalent of paying exponentially more for the same number of widgets.

Again, however, "...what's an employer to do?" There are resources available through an employer's insurance agent or independent specialist who will focus on workers' compensation insurance premium billing issues. A better approach, however, is for an employer to educate themselves with respect to the claims process, the billing process, and the administrative process on which those claims exist to manage its way into less cost for workers' compensation insurance premium.

Finally, let's raise the topic of litigating workers' compensation claims. Disputed claims are heard by hearing officers at the Department of Labor. Make no mistake these are serious disputes in which significant dollars are at risk. Under most workers' compensation policies employers are entitled to a defense [lawyer] and indemnification [money paid] against claims. It is the insurance company money that pays the claim – in the first instance. It is the employer who pays the costs of litigation and defeat in litigation through claims experience and rising "MOD's" for years to come – three years specifically.

Typically employers barely know that there is litigation involving one of their employees in a workers' compensation matter until [if at all] days prior to a hearing at the Department of Labor. Attorneys for the insurance industry

are assigned files by adjusters. The attorneys have little time to effectively prepare other than reading the medical records sent with the file and [perhaps] a telephonic interview before the hearing day with you, the employer, who is paying for this process. And, it is no argument to say that the insurance company bears the risk of loss on workers' compensation claims and thus the level of representation belongs to and runs to the benefit [or not] of the insurer. A failed workers' compensation defense ultimately requires that claims are paid which is a bill that is paid by the employer.

Conclusion

In conclusion, the solution is simple: get involved, get educated, and be persistent. When there is a claim filed by an employee, call your agent and complain loudly until an adjuster and/or attorney contacts you and schedules a meeting to discuss the filed claim. Get involved in this process. Ask questions. Accept nothing without proof, such as medical records and copies of the law or regulations. Demand a justification like you would if there were widgets missing or the price was wrong on your purchase order. Demand to be part of the decision process. And, pay attention to your workers' compensation claims litigation.

If you are unable to do at least this then call a workers' compensation professional for information, insight, advice and action on your behalf.

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