



# WORKERS' COMPENSATION FRATERNAL EMPLOYER RESOURCE GUIDE





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in a comprehensible manner. His extensive knowledge of the claims process is highly beneficial to his clients as well as insurance carriers.

For additional information, please contact a Claims team member below. We're happy to help with any questions you may have.

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# WE PARALYZE PERIL

At Holmes Murphy, we're always Thinking Ahead and looking for ways to bring you a fresh perspective on your unique property casualty challenges. In what follows, you will find information from what workers' compensation is to best practices to adhere to.

Holmes Murphy's team of loss control and claims management professionals is dedicated to helping you lead a workers' compensation strategy that not only protects your employees, but your bottom line. Don't hesitate to contact your Holmes Murphy team with any questions that may arise.

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## WORKERS' COMPENSATION IS

### Mandatory Insurance

In almost all states, employers must carry workers' compensation insurance for their employees. The benefits vary from state to state and are determined by each individual state or court system.

### Exclusive Remedy

Employees who collect workers' compensation give up their right to sue their employer, except in extraordinary circumstances. In return, the employer ensures workers receive the statutory benefits. Employees are free, however, to pursue appropriate third party recovery against another person or company that is responsible for the injury or illness. The employer may be entitled to some percentage of any recovery.

### No Fault

It doesn't matter who is at fault in a work-related injury as workers' compensation will still pay benefits. If an employee is injured due to their own carelessness or failure to follow standard safety procedures, they will still be able to collect workers' compensation benefits in most cases. However, some states will reduce the benefits if the employee is injured while ignoring a known safety rule or policy, or is under the influence of drugs or alcohol.

## BASIC PURPOSE OF WORKERS' COMPENSATION

- Ensure an employee who sustains a work-related injury will receive adequate medical treatment to bring about a rapid recovery without any cost to them
- Ensure an employee who sustains a work-related injury will have adequate means of support while they are unable to work
- Ensure an employee who sustains a work-related injury will be compensated through a monetary award for any permanent disability or loss of income benefits they sustain as a result of the work-related injury
- Ensure the dependents of an employee who has work-related death will be provided compensation
- Ensure the employee is not discriminated against by the employer and/or insurance carrier as a result of filing the claim

An injury is defined very broadly in most jurisdictions. In most cases, an injury is defined as a sudden unexpected occurrence, a cumulative injury, or occupational disease. In the absence of evidence to the contrary, the court presumes the injury to be compensable.

## EMPLOYEES ARE COVERED WHEN

Employees are covered for activities arising out of and in the course of employment. The location of the accident is of great importance, as accidents that occur on the organization's premises are generally covered under workers' compensation even if the employee is not performing their specific job. However, it should be noted that an injury or illness may not be covered simply because the employee became aware of the symptoms while performing their regular job.

Workers' compensation laws vary from state to state as workers' compensation is a state-driven product. Fraternal employers should know the basic rules and laws of their own state, as that knowledge can help determine companywide decisions. Not all injuries are to be deemed work-related and some examples of employer defenses are listed below. Most of these are state-specific.

## COMMON DEFENSES TO WORKERS' COMPENSATION

- Late reporting, as defined by each state
- Intoxication, drug use
- Willful violation of safety rules
- Initial physical aggressor rule
- Coming and going rule
- Horseplay, fights, assaults
- Personal deviation rule
- Recreational activities and social events
- Idiopathic personal to one's own health but not work-related

Depending on the employer's size and state jurisdictions involved, there can be multiple players in the handling of a workers' compensation claim. Fraternal employers should be familiar with the parties involved and how each can impact the handling of a claim.

- Employer
- Employee
- Agent - Holmes Murphy
- Insurance Carrier/Third Party Administrator
- Attorneys and medical community
- Workers' compensation judicial system

Strong communication is a key element of any successful claim and safety management program. This communication requires an effective partnership between the employer, the insurance carrier, and Holmes Murphy. What follows are guidelines for each of these party's roles and responsibilities.

## THE EMPLOYER

### Safe Work Environment

One of the greatest responsibilities you have as the employer is to ensure a safe work environment. This includes making sure the machines and employees operate in a safe manner, the materials are appropriate for the jobs to be performed, and the method of performing the job is consistent with the outcome desired.

### Early Intervention

- Report the injury in a timely, accurate fashion
- Complete a thorough accident investigation
- Notify the carrier of any information that might warrant further investigation
- Keep detailed documentation as the claim progresses

### Ongoing Open Claims

Communicate information regarding changes in the employee's medical status or work status immediately, including when:

- Full-duty release is given
- Hours are reduced
- Employee is complaining of increased discomfort
- Additional treatment/surgery is needed
- Employee is seeking an attorney
- There is information about potential outside activities

## CLAIM MANAGEMENT

An employer's successful claim management program has five key elements as described below. The roles and policies should be well-defined and documented to allow for a prompt, proper response to a work injury and the most favorable outcome.

- Early Claim Reporting
  - Carrier can start investigation
  - Do not delay while awaiting complete accident information
  - Appropriate benefits are initiated
- Accident Investigations
  - Determines the root cause for proper event learning
  - Corrective active can be taken
  - Changes should be communicated to the workforce
- Medical Management
  - Company physician is selected, where allowed
  - Occupational Specialists are utilized
  - Cost containment savings are realized
- Implement the Return to Work Program
  - Discuss modified duty timeline with supervisor
  - Identify modified duty jobs
  - Manage the transition from modified duty to full duty
- Communicate with Employee and Providers
  - Stay in touch with the employee and adjuster
  - Have clearly defined roles and expectations
  - Communicate the next steps

# CARE.FULLY.





The insurance carrier has a responsibility to provide opinions, resources, and options for resolution of the claim. They see that your best interests are protected and you only pay for what you owe under the state statute.

## Initial Investigation

- Accept or deny claims based on the information received by the employer, employee, and the medical provider
- Process payments for lost wages, medical bills, and other expenses
- Establish reserves that reflect the outcome given the facts of the claim

## Claim Handling

- The claim handler will make the most critical decision: to accept or deny the claim as being work-related
- Monitor the medical progress of open claims and work with the employer to return the employee to work as soon as possible
- Utilize tools such as second opinions, medical management, and surveillance when appropriate
- Maintain contact with employees who are missing time from work
- Notify you of major claim changes

## Claim Resolution

- Develop action plan for resolution
- Evaluate for the cost of the claim and sets claim reserves
- Utilize outside specialists to assist in resolution of claim such as Independent Medical Exams (IME), surveillance, and Nurse Case Managers
- Work with agencies such as Medicare to ensure compliance and avoid duplication of benefits
- Negotiate reasonable settlement based upon best available facts
- Close the file when the treatment, activity, and settlement is resolved



## WORKERS' COMPENSATION HOLMES MURPHY

Holmes Murphy is your advocate and will work with you and your carrier or TPA in bringing complicated claims and issues to conclusion. We hold a wealth of experience in claims, loss prevention, and other forms of insurance matters. Aside from working on your behalf, we can assist in establishing rules, policies, and procedures that act as a support to your claim and safety management programs.

We offer different strategies, tools, and resources to assist you in managing your safety program, controlling your claim costs, and educating your staff on workers' compensation claim management. Here are just some of the services available to you as a valued client of Holmes Murphy:

### Claim Advocacy

Once a loss has been reported, your Holmes Murphy Claims Service Consultant works with you and your carrier to ensure a prompt and fair outcome is communicated and reached. Ideally, you and your adjuster will work together for a desired result. When issues arise, your Claims Service Consultant works with you and the carrier to make certain the parties are aware of all related issues.

### Claim Follow-Up

This can include both simple follow-up as well as formal claim reviews. We are your claim advocate and part of your risk management team.

### Claim Consulting

Whether it's right after a loss has occurred, right before a settlement takes place, or even before a loss takes place, you can contact your Claims Service Consultant to discuss your questions and concerns. Our claims experience allows us to understand, decipher, and communicate with both our clients and their adjusters to help educate each on how to reach a desired outcome.

### Claim Source Analysis

When enough data exists, your Claims Service Consultant will drill down into the claim data to find trends in your loss history. This may include analysis by loss location, causation, effect, values and employee dynamics. This analysis will assist in your future loss prevention efforts.



There are four main benefits permissible by most workers' compensation statutes:

- Medical treatment
- Indemnity benefits
- Vocational rehabilitation
- Fatality benefits

## MEDICAL TREATMENT

Payment of the medical treatment an injured worker receives as a result of a work-related injury or illness is a benefit of workers' compensation. When an employee is injured they are entitled to payment of:

- All reasonable and necessary medical bills after application of a fee schedule or usual and customary review
- Mileage reimbursement for travel while treating for the injury or illness
- Prescription reimbursement
- Necessary durable medical goods

## INDEMNITY BENEFITS

Indemnity, or lost wage benefits are broken into four types. The type of benefits an employee receives depends greatly on their medical status, work status, and applicable statute. The most common wage replacement benefits are:

- Temporary Total – An employee is totally disabled, however the disability period will definitely end
- Temporary Partial – An employee is partially disabled, however the disability period will come to an end
- Permanent Total – An employee is totally disabled and the disability period is not expected to end
- Permanent Partial – An employee is partially disabled and the disability period may not come to end



# WORKERS' COMPENSATION INDEMNITY BENEFITS

Employees do not receive their full wages while collecting workers' compensation. Depending on the jurisdiction and type of benefit they're receiving, an injured worker usually receives approximately 2/3 of their gross average weekly wage.

The average weekly wage is based on the employee's pre-injury earning capacity. The number of weeks used in determining that amount is dependent upon each state's requirement.

## VOCATIONAL REHABILITATION

When an employee cannot return to the employer at their pre-injury position or a permanent restricted position, the employer/carrier can be obligated to find a comparable job with another employer. The services available to an employee range from job placement assistance to placement in education or re-training programs.

While vocational rehabilitation is not appropriate for all cases, it may be considered in cases where the potential for a settlement exists.

## FATALITY BENEFITS

Fatality benefits are payments to a spouse, children, or dependents if an employee dies from a work-related injury or illness. This includes reasonable burial expenses.



# PREPARE.FULLY.



An effective modified duty program is a crucial component to controlling workers' compensation costs. If an employee is not allowed to return to work until they're at full duty, the insurance carrier has no choice but to pay lost wage benefits. However, if the employer is willing to find work that meets the employee's restrictions, the carrier will not have to pay lost wages or will pay a reduced amount.

Finding modified duty can be difficult in some work environments, but the reduced disability periods are well worth the effort involved.

Benefits of a Return to Work Program:

- Speeds up the healing and recovery process
- Enhances the likelihood of a return to full duty
- Keeps the employee productive and in the work routine
- Employees are less likely to develop the "disability syndrome" by staying home until 100%
- Allows the employee to recover on the job and sends out a clear message that the company cares about its injured workers and will ensure their employment
- Lowers workers' compensation claim costs which ultimately impacts your experience modification and your premium

Companies see the best results when the Return to Work Program is:

**Communicated.** Employees know the modified duty job assignment is temporary and the organization's goal is to get them back to their regular job as soon as possible.

**Progressive.** Restrictions are being evaluated at each follow-up appointment and the job is being adjusted to reflect changes in restrictions.

**Meaningful.** The organization avoids putting employees in meaningless "make work" situations. The modified duty job is as close to the person's normal job as possible.



# WORKERS' COMPENSATION RETURN TO WORK PROGRAMS

You will not want to wait until an employee has been injured to start thinking about opportunities for modified duty work in your workplace. The injury will be much easier to handle if you have already...

- Identified jobs, specific tasks within jobs, and special projects that can be handled by employees with restrictions
- Communicated your return to work policy to employees and supervisors up front
- Discussed your program with your medical provider

## How it Works

An employee is injured and unable to return to their regular job. The employer:

- Gets the specific restrictions from the medical provider - restrictions may limit certain activities or hours worked
- Develops a temporary job that accommodates the employee's restrictions
- Offers the job to the employee (verbally and/or in writing)
- Monitors the employee to ensure that restrictions are being adhered to
- Tracks the employee's medical progress and asks the medical provider to re-evaluate the employee's restrictions

## Return to Work Programs and Wages

Some employers find it difficult to decide what to pay any employee while working on modified duty. Holmes Murphy can discuss the plan with you to ensure the right solution.

## Paying the Employee's Full Wages

- Eliminates the need for partial payments to the employee
- Saves administrative time for both the employer and carrier
- Can eliminate or reduce any financial hardship

## Not-for-Profit Return to Work

Designed to provide a modified duty opportunity for injured workers in a charitable or volunteer organization when options are not available with the employer.

Ask Holmes Murphy to learn more.



# SUPPORT.FULLY.





The way the injury is initially handled has a powerful effect on the eventual outcome of the claim. Injured employees need to be treated fairly and with respect. Employers who do a poor job of this are more likely to alienate the employee and have a negative outcome.

## Take Care of the Injured Worker

- Determine the severity of the injury and focus on the needs of the employee
- Find out what happened and secure the accident scene

## Report the Claim

- The sooner you report the injury, the sooner the carrier can manage the claim
- Do not delay reporting the claim while awaiting complete information
- If the injury is reported late, determine the reason

## Seek Medical Care for the Employee

- Get the injured worker to the appropriate provider based on the type of injury
- Know the names of your preferred medical providers
- Call the medical provider

## Investigate the Accident

- Determine root cause
- Take corrective action
- Communicate the changes made

## Implement the Return to Work Program

- Discuss modified duty timeline with supervisor
- Identify modified duty jobs

## Communicate with Employee and Providers

- Stay in touch with the employee and adjuster
- Communicate the next steps

Once the injured employee has been cared for, the cause of the accident needs to be determined. When a company does not investigate an accident, it misses opportunities to correct issues that could potentially cause additional injuries or identify possible defenses for the current injury.

#### What is the Intent of the Investigation?

The purpose is to find out the root cause of the accident and determine what the company can do to prevent similar accidents in the future.

#### How Should the Investigation be Conducted?

The investigation needs to take place quickly, while the details of the accident are still fresh in witnesses' minds. The investigation should be completed no later than 24 hours after the accident and should include the employee, witnesses, and supervisor.

#### How Should the Supervisor Investigate the Accident?

The supervisor needs to look at the work area where the injury occurred and interview the injured employee and any co-workers that might offer insight as to what happened. Interviews should be held one-on-one in a non-threatening environment and should contain open-ended questions. The key is to find out what happened, not assess blame for who's responsible.

#### What Happens Once the Investigation is Completed?

You'll want to share any findings with the insurance carrier as it may assist them in determining compensability. If there is any reason to believe the employee's injury did not occur at work, it's important that this information be shared with them as quickly as possible.

If there's a process or procedure that needs to be changed to prevent further accidents, the company should take prompt action. That's why the timing and location of the accident investigation are so important.

#### Was Another Party at Fault for the Accident?

The supervisor should recognize the potential for subrogation. Subrogation is the right for an insurer to pursue a third party that caused an insurance loss to the insured. This is done as a means of recovering the amount of the claim paid to the insured for the loss. Identifying potential subrogation could mean reimbursement back to the employer for another party's negligence.

## MEDICAL ONLY CLAIMS

Medical only claims are usually straightforward to manage, as the employee isn't missing time away from work.

Things to keep in mind

- Keep track of the employee's medical appointments
- Send copies of medical reports to the carrier
- Do not hold on to medical bills sent to you by a medical provider
- Raise any issues of excessive medical treatment or unnecessary diagnostic tests

## LOST TIME CLAIMS

These claims can be more difficult to manage because the employee is losing time from work and, therefore, much harder to monitor. The employer's goal should always be to return the employee to work as soon as medically possible.

**If you don't take control of the claim, the employee will!**

Maintain Close Contact

- Stay in contact with the employees who are disabled and out of work. Let them know they're missed and you want them to return as soon as medically possible.
- Note any unusual factors that may influence the injured employee's motivation or possible activities that may contradict the current treatment plan.
- Note any changes in the employee's attitude about returning to work.
- Encourage the employee to visit the workplace and share news about the company as it helps the employee feel connected.
- Keep track of the employee's medical appointments. Discuss the employee's progress regularly with the employee, medical providers, and insurance carrier.
- Inform the carrier of any missed appointments and/or requests to change physicians.

# WORKERS' COMPENSATION THINGS TO AVOID

## WORKERS' COMPENSATION RED FLAGS

"Red Flags" refer to potential indicators that a claim could become problematic. As the employer, you need to be aware of these red flags so you and the insurance carrier can aggressively manage these claims.

Some common examples of potential red flags include:

- Incident occurs near a layoff, holiday, or weekend
- Accident is not witnessed and reported late
- The description of the accident is vague or inconsistent
- Short term employee with little to no vacation time
- Injury occurred in an area outside the employee's normal work area
- Incident occurs at the start of workday
- The employee has a history of moving from job to job
- The employee is having financial trouble
- The employee has no other form of insurance
- The employee is a poor performer or disgruntled
- Injury is reported shortly after time off work was requested

## Common Pitfalls for Employers

- Not letting the insurance company play the bad guy. Let the insurance carrier investigate the accident and make the claim decision. Give them all the information available but allow them to make the actual compensability decision.
- Losing contact with the employee while on disability. This allows for job uncertainty to set in and to questions about what's going to happen next. If you don't talk to the injured employee, they will talk to someone – most likely an attorney.
- Not understanding your rights as an employer. Learn the basic laws of workers' compensation in your state and ask questions. Know your role in the process and what you can and cannot do – direct care, IME, wages needed, etc.
- Not providing medical care immediately. This can extend the healing and/or treatment period. The employee can become disgruntled and seek their own physician or seek an attorney in order to get treatment.
- Not having a selected company physician. Where permitted, having a company physician allows you to gain early control of the treatment plan and the physician can be an advocate for your Return to Work program.
- Employees are not allowed to return until 100%. This increases the disability period and the lost wages paid. It can allow the "disability syndrome" to set in by having the employee lose touch with co-workers and their work setting.
- Not staying in contact with the claim adjuster.
- Incomplete accident investigations. This allows for information to be missed. The root cause is not determined and similar accidents may not be prevented.
- Not getting Holmes Murphy involved when there are issues, questions, or concerns.

# EXECUTE.FULLY.





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