



WorkSAFE Series: Effective Incident Management

Steve Summers, Field Service Manager - Claims



Employer Obligations

Medical Benefits

- The employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

Section 287.140.1



Employer Obligations

Temporary Disability (wage replacement)

- Payable after three lost time days
- Based on 66.67% of Average Weekly Wage
- Initial Disability to be Paid Within 14 Days

Section 287.160.1 & 2

- Not Eligible to Employees Receiving Unemployment Compensation
- Not Eligible to Employees Terminated for Post-Injury Misconduct

Section 287.170.3 & 4



Employer Obligations

Permanent Partial Disability

- Additional compensation in the form of a settlement, allowed for loss by severance, total loss of use, or proportionate loss of use of one or more members in the schedule of losses.

Section 287.190.1

- "Permanent partial disability" means a disability that is permanent in nature & partial in degree, demonstrated & certified by a physician and made in accordance with a settlement approved by an administrative law judge.

Section 287.190.6



Employer Obligations

Death Benefits

- Burial Expenses, not to exceed \$5000
Section 287.240.1
- Weekly Disability Benefits, paid to the surviving dependent spouse until death or remarriage, or dependent children until 18 years of age or 22 if enrolled in an accredited educational institution
Section 287.240.2
- Upon any remarriage, the surviving spouse is to receive a lump sum of 2 years of benefits
Section 287.240.4(a)



Effective Incident Management

Best Practices & Procedures Meant to Maximize Overall Claim Outcomes:

- Improved Medical Treatment/Outcomes
- Reduced Medical Costs
- Improved eMod
- Reduced Insurance Costs
- “Other,” Non-Occupational Claim Cost Savings



Effective Incident Management

Incident Management Program

An effective Incident Management Program requires a partnership between all parties:

- Employer
- Insurance Carrier
- Medical Providers
- Injured Worker



Effective Incident Management

Incident Management Program

Direct, control and manage both the injury & accident scene as soon as the loss occurs or upon notification.



Effective Incident Management

Incident Management Program

A company-wide plan of action, in place before accidents occur, meant to manage on the job injuries. An effective Injury Management Program should include:

- Drug & Safety Policies
- Thorough Accident Scene Investigation & Documentation
- Post-Accident Communication Between all Parties
- Pre-planned Direction of Authorized Medical Care
- Early Return to Work Program



Effective Incident Management

Incident Management Program

Every Missouri Employee Deserves a Safe, Healthy,
Drug-Free & Injury-Free Workplace

Employer Obligation?



Effective Incident Management

Incident Management Program - Drug Free Workplace

Implement a substance abuse policy.

- Post-Offer Employment
- Random
- Probable Cause
- Post-Accident (workers' compensation)



Post-Accident Drug Testing

Section 287.120.6

- Reduces wc benefits by 50% in instances an employee fails to obey any policy adopted by the employer relating to a drug-free workplace, with a positive post-accident drug test for non-prescribed controlled drugs or the metabolites of such drugs, by presuming that the injury was sustained *in conjunction with* such drug use.



Post-Accident Drug Testing

Section 287.120.6

- Forfeits benefits in cases where it is shown that the drug use was the *proximate cause* of the injury, or when the employee refuses to submit to an **employer** requested drug test.
 - In instances when under Missouri law the drug test constitutes legal intoxication (0.08% BAC)
 - Employer's policy must authorize post-injury testing



Post-Accident Drug Testing

SB 66, effective 08/28/2017

Adds the metabolites of non-prescribed controlled drugs (287.120.6). Provides a rebuttable presumption that the injury was sustained in conjunction with drug use if...



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- ✓ Initial testing was administered within 24 hours of the incident



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- ✓ Notice was given to the employee of the test results within 14 calendar days of the insurer receiving actual notice of the results



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- ✓ The employee was given an opportunity to perform a 2nd test of original sample



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- ✓ Notice was given to the employee of the test results within 14 calendar days of the insurer receiving actual notice of the results
- ✓ The employee was given an opportunity to perform a 2nd test of original sample
- ✓ The initial and any subsequent testing which forms the basis of the presumption was confirmed by mass spectrometry ...



Post-Accident Drug Testing

OSHA Challenges !

- Recent 2016 OSHA ruling prohibited “blanket” drug testing meant to deter accident reporting.....
 - Post-accident drug testing cannot be retaliatory in nature
 - Post-accident drug testing permitted when there is a *reasonable possibility* that substance use was a contributing factor to the employee’s injury or illness



OSHA Challenges

However...

- Section 4(b)(4) of the Act prohibits OSHA from *superseding or affecting workers' compensation laws*.

29 U.S.C. 653(b)(4)

- If an Employer conducts drug testing to comply with the requirements of a state or federal law or regulation, the Employer's motive would not be retaliatory and the rule would not prohibit such testing.



OSHA Challenges

Further, OSHA provided scenario:

- Employer drug tests all employees who report work-related injuries ... to get a 5% reduction ... under the state's voluntary Drug-Free Workplace program. Employer drug tests Employee when she reports a work-related injury that could not reasonably have been caused by drug use, such as a bee sting or carpal tunnel syndrome.
- Did Employer violate section 1904.35(b)(1)(iv) by drug testing Employee?

No! Drug testing conducted pursuant to a state workers' compensation law, whether voluntary or mandatory, is not affected by new Rule.



OSHA Challenges

OSHA Memorandum of 10/11/2018most instances of workplace drug testing are permissible under § 1904.35(b)(1)(iv). Examples of permissible drug testing include:

- Random drug testing.
- Drug testing unrelated to the reporting of a work-related injury or illness.
- **Drug testing under a state workers' compensation law.**
- Drug testing under other federal law, such as a U.S. Department of Transportation rule.
- Drug testing to evaluate the root cause of a workplace incident that harmed or could have harmed employees. If the employer chooses to use drug testing to investigate the incident, the employer should test all employees whose conduct could have contributed to the incident, not just employees who reported injuries.



Effective Incident Management

Safety Policies

- Safe Workplace, Implement a Safety Policy
- If the employee fails to use safety devices provided by the employer or fails to obey safety rules, compensation is reduced by 25 - 50%.
Section 287.120.5
- Safety violation must be the cause of the injury



Effective Incident Management

Safety Policies

- Recent Court of Appeals decisions reinforce the statutory burden of proof on an employer in showing they “...made a reasonable effort to cause its employees to obey the safety rule”
 - Initial Employee Orientation Training
 - Signed Receipt of Employee Manual
 - Ongoing Safety Training Logs



Effective Incident Management

Incident Management Program

- Accident Investigation & Documentation

It is vital for an employer to have an internal investigation process in place to collect incident details, in order to prevent future occurrences and provide their insurance carrier with sufficient information to assist in the claim investigation and compensability determination.



Effective Incident Management

Incident Management Program

- Accident Investigation & Documentation
 - *Supervisor Investigation Form* - Identify causes of accident, identify witnesses, verify facts & employee details, and determine any safety violation. Was the accident preventable? Does the accident description make sense?
 - *Employee Statement* - Signed & dated by the employee.
 - *Witness Statements* - To confirm accident details.
 - *Corrective Action Form* – Document steps taken to prevent future occurrences. Places “ownership” of safety with supervisor. Conduct root-cause analysis.



| | | | |
|--|--|--------------------------------------|--|
| Date _____ | | MeM MISSOURI EMPLOYERS MUTUAL | |
| WORK COMP DECLINATION OF MEDICAL TREATMENT | | | |
| EMPLOYER INFORMATION | | | |
| Employer: _____ | | | |
| Treatment Authorized by: _____ | | | |
| Title: _____ | | | |
| Telephone Number: _____ | | | |
| INJURED EMPLOYEE INFORMATION | | | |
| Employee: _____ | | Social Security Number: _____ | |
| Job Title: _____ | | | |
| Department: _____ | | Location: _____ | |
| Date of Injury: _____ | | Body Part Injured: _____ | |
| Work Comp Insurance Carrier: Missouri Employers Mutual Insurance: 1.800.442.0593 | | | |
| TREATMENT DECLINATION | | | |
| I am <u>declining</u> my employer's offer of authorized medical treatment to cure and relieve the effects of the injury I am claiming to have sustained at work on _____ [insert date]. I understand that by declining my employer's offer of medical care, any treatment I obtain on my own will be at my own expense.* | | | |
| I also understand that if I reconsider and am interested in receiving authorized medical care, I must advise my employer as soon as possible. | | | |
| Employee Signature _____ | | Date _____ | |
| * If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense. Section 287.140.1 | | | |
| REMARKS | | | |
| Submit completed form to: | | | |
| Missouri Employers Mutual Insurance P.O. Box 1810, Columbia, MO 65205 Fax: 1.800.442.0597 Email: claims@mmei-ins.com | | | |





Effective Incident Management

Incident Management Program

- Accident Scene Documentation
 - Photographic Documentation – Preserves & documents the accident scene, providing evidence towards the causes of the incident. Can also document a lack of any cause or defect!
 - Machinery Involved – Any product liability.
 - Third Party Involved – Any *subrogation* potential.
 - Safety Violation – Any potential safety penalty on the part of the Injured Worker



Effective Incident Management

Incident Management Program

- Post-Accident Communication w/ your Employee
 - This Employer-Employee relationship continues even in cases of attorney representation. Communicate Leave of Absence policies, FMLA requirements and other fringe benefits. Coordinate these benefits!
 - Treat your injured employee like any other employee. Post-injury misconduct which results in termination, no longer results in the employee becoming eligible for reinstated Temporary Disability benefits.

Section 287.170(4)



Effective Incident Management

Direction of Medical

Avoiding Uncontrolled Losses.....

*If you are not directing medical treatment, you're
experiencing uncontrolled losses*





Effective Direction of Medical

Take Advantage of the Missouri Statute:

If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense.

Section 287.140.1



Effective Direction of Medical

Avoiding Uncontrolled Losses

- Direction/Control of Medical Provides the Opportunity to Promote:
 - Improved medical treatment for Missouri injured workers
 - Treatment that is timely delivered
 - At reduced medical costs for Missouri employers
 - Improved overall claim outcomes
 - “Other,” non-occupational claim cost savings



Effective Direction of Medical

Avoiding Uncontrolled Losses

- Pre-planned Direction of Authorized Medical Care
 - Designate an occupational health provider for all initial medical treatment
 - Ensure all supervisors and staff are trained in and aware of the authorized medical provider – Including evening and weekend shifts!
 - Make sure authorized medical treatment is offered in all instances (Priority #1)



Effective Direction of Medical

Avoiding Uncontrolled Losses

- Pre-planned Direction of Authorized Medical Care
 - If treatment is not specifically offered, you as the Employer run the exposure to unauthorized medical billing
 - And uncontrolled medical results in ineffective occupational treatment for the Injured Worker and increased claim costs (medical severity) for the Employer



Effective Direction of Medical

Designated Occupational Health Providers

- For all authorized initial (non-emergency) medical treatment
- Provide adequate training to supervisors & employees and post notice of the Designated Occupational Health Provider



Effective Direction of Medical

Designated Occupational Health Provider

- Trained in the treatment of occupational injuries



Effective Direction of Medical

Designated Occupational Health Provider

- Trained in the treatment of occupational injuries
 - Avoid the use of family physicians, etc., untrained in Occupational Health
 - Not the Emergency Room
 - Provides appropriate, effective and timely (efficient) occupational medical care



Effective Direction of Medical

Designated Occupational Health Provider

- Benefit from a working relationship with your Occupational Health Provider so the medical provider is knowledgeable of and assists in:
 - Your modified duty program
 - Your post-accident drug policy
 - Your employee's essential job functions/physical requirements
 - Your pre-employment screening



Effective Direction of Medical

Why the Focus on the Costs of Medical Treatment Within Workers' Compensation?

- Medical treatment is the #1 claim outcome as perceived by the Injured Worker
- Medical costs are on the rise, both in terms of severity and as a percentage of overall total claim costs



Return to Work Program

Known by Many Names:

- Early RTW Program
- Transitional Duty Program
- Light Duty
- Modified Duty
- Temporary Work Assignment



Return to Work Program

A work assignment, temporary in nature, which safely accommodates the authorized physician's work restrictions and provides the employee with continued and active employment during their recovery.

- Temporary in duration
- Provided during recovery/treatment
- Occupational medical conditions
- Maintains injured worker activity



Return to Work Program

Benefits of Early RTW

- Promotes lower insurance premiums through reduced disability and medical costs
- Promotes improved medical outcomes for the Injured Worker



Return to Work Program

Benefits of Early RTW

- Decreased indemnity costs



Return to Work Program

Benefits of Early RTW

- Decreased indemnity costs
 - Temporary Total Disability ends when an Injured Worker returns to work, resulting in lower indemnity reserves with your insurance carrier.



Return to Work Program

Benefits of Early RTW

- Decreased indemnity costs
- Lower premiums for Policyholders through better controlled workers' compensation costs



Return to Work Program

Benefits of Early RTW

- Decreased indemnity costs
- Lower premiums for Policyholders through better controlled workers' compensation costs
- Improved medical outcomes



Return to Work Program

Benefits of Early RTW

- Decreased indemnity costs
- Lower premiums for Policyholders through better controlled workers' compensation costs
- Improved medical outcomes
 - Injured Employees who return to work early seek less medical treatment and realize improved medical outcomes. Some studies have suggested that “unemployment is at least as important as disability in health outcomes of claimants.”

Source: ACC Review – Return to Work,
Issue 27 April 2006



Return to Work Program

Benefits of Early RTW

- Decreased indemnity costs
- Lower premiums for Policyholders through better controlled workers' compensation costs
- Improved medical outcomes
- Non-Occupational benefits for the Policyholder and Injured Worker, through cost savings from replacing/retraining, job retention/maintained employment, etc.



Return to Work Program

Short Term Absence – Opportunities!

Missouri Experience Rating Adjustment

- NCCI Rule Adoption, effective July 1, 2011
- Medical-Only claims reduced by 70% towards your experience rating calculation (weighted at 30%)

Effective RTW within 3 days may result in a medical-only claim and avoid indemnity....

- 70% Discount towards eMod Calculation
- Directly & favorably impact eMod!



Return to Work Program

Long Term Absence - RTW Statistics

If someone is out of work for 6 months

- Only a 50% chance of achieving RTW

If someone is out of work for 1 year

- Only a 25% chance of achieving RTW

If someone is out of work for 2 years

- Virtually no chance of achieving RTW

Source: Bureau of Labor Statistics



Return to Work Program

Common Resistance/Pushback:

- I must have my employees at Full Duty
- They're only going to get hurt again
- I have a union shop
- I'll never get Executive, Supervisor, etc., buy-in

Let's Hear the Excuses!



Return to Work Program

Sample Transitional Duty Jobs...

- Perform regular job function subject to work restrictions
- Clean & improve premises, work-sites
- Light painting, grounds keeping duties
- Sort & inventory supplies/parts
- Clean/repair tools & equipment
- Spotter or flagman
- Dispatch, answer phones
- Clerical, address correspondence, filing
- Receptionist

You can “float” the Injured Worker to another department, location or even shift!



Return to Work Program

Alternative RTW Programs

Outside volunteer placement

- Red Cross
- Food Bank
- Other non-profit organizations

MEM/Paradigm Partnership

- Administers the outplacement

MEM RTW Coordinator

- Individual assistance working directly with MEM Policyholders towards specific RTW challenges

Questions?

Confidence at Work.



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Thank You!



Next Month: Strategies to Improve Incident Investigations & Claim Outcomes

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