



## 2012 Essential Guide Article



### Proactive Management of Workers' Compensation Claims

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Workers' compensation systems across the country are funded entirely by employers whose employees are insured under the regime. While most employers pay premiums to the workers' compensation boards based on their business activities, some employers bear the full costs of workers' compensation claims, as well as an administrative charge levied by the compensation board ("the Board"). Both of these cost allocation systems allow employers to control their workers' compensation costs. Those that pay premiums may be eligible for refunds or surcharges depending on how their actual claim costs compare to their expected claim costs. Those that pay dollar-for-dollar for claims bear any increase or decrease in the employee's claim costs directly. Therefore, it is in the best interest of all employers to proactively manage their workers' compensation claims, with a goal to decreasing workers' compensation costs and increasing profitability.

Here are a few tips and tricks to help your organization improve its workers' compensation claims management system:

#### **1. Actively participate in the Early and Safe Return To Work process.**

Immediately after a workplace incident occurs, communicate with the employee and the employee's health care practitioner to evaluate the functional abilities of that employee. If the employee has any functional restrictions as a result of the workplace incident, determine whether the pre-injury job can be accommodated. Then, review job descriptions of other functions performed within your organization and consider current job opportunities available to determine whether suitable work can be

offered. If suitable work is available, communicate that to the employee as soon as possible, in writing, with a copy to the Board.

If suitable work is not immediately available, continuously review the needs of your organization to identify potential opportunities for suitable, modified duties as they may arise so as to minimize the employee's loss of earnings, and benefits paid by the Board. Again, once opportunities are identified, communicate this, in writing, to the employee and to the Board as soon as possible.

By ensuring an early and safe return to work, the employer contributes to the recovery of the employee, while simultaneously reducing its workers' compensation claim costs.

#### **2. Exercise your right to appeal in a timely manner.**

Depending on the subject matter in dispute, the timeline for appealing a decision of the Board can range from 30 days to three years. In order to ensure that these appeal deadlines are met, it is best to respond to any such decisions with a brief objection letter immediately after they have been received. This ensures that your right to appeal is protected, even if you don't decide to exercise it.

Aside from the objection, it is also useful to provide the Board with a summary of the reasons why you disagree with their decision. This might include reference to relevant policy documents, the legislation itself, or facts specific to the claim. This information should be cogently and succinctly summarized to allow the decision-maker to understand your logic and, hopefully, agree with your position.

Be sure to ask for claim file access from the Board as well.

The Board is required to provide you with this information, and it often contains useful information to assist with the ongoing adjudication of the issues in dispute.

### **3. Identify cost saving opportunities.**

Workers' compensation legislation allows employers to remove or transfer claim costs from their accident cost statements in the appropriate circumstances. These circumstances include issues of entitlement, cost relief, or transfer of costs. If your organization questions the validity of the claim, or its work-relatedness, it is often wise to challenge the employee's entitlement to benefits under the workers' compensation regime. This is best achieved by communicating your concerns to the Board, preferably in writing, and ensuring that you receive a timely response. Alternatively, if you do not question the validity of the claim but are concerned that it may have been enhanced or prolonged by a pre-existing condition or a prior injury, your organization may be eligible for cost relief of up to 100% of the cost of the claim. While the Board has an obligation to review active claims for cost relief, employers are wise to raise these concerns with the Board, in writing, to ensure that cost relief is applied in appropriate circumstances in a timely manner. Finally, where the workplace incident was caused by the negligence of the employee of another organization, an employer may apply to have some or all of the accident costs associated with that incident transferred to the at-fault employer. These three approaches are often used by employers to successfully remove some or all of the claim costs of a workplace incident from the accident cost statement.

### **4. Implement and use a Workers' Compensation file management system.**

A file management system can be as simple as a standard form with blank fields for your human resource professionals to enter relevant information about the claim, make notes about the progress of the file, and identify deadlines that bind the organization. Once implemented this central repository of information has proven to increase

the efficiency and effectiveness of human resource professionals and it is also helpful to external service providers such as lawyers retained to assist in the management of your workers' compensation claims matters on appeal.

When integrated with software products such as Microsoft Outlook, a workers compensation file management system can also serve as a task manager and an automatic reminder to ensure that tasks are completed and deadlines are met.

Proactive management of your organization's workers' compensation claims can result in a significant reduction in your workers' compensation claims costs and may even result in a rebate for one or more accident years. Gowlings' professionals have significant experience assisting employers in managing their Workers' Compensation claims both at the operations level and on appeal. Gowlings has also recently launched the WSIBLAW Outsourcing™ Services platform to assist employers with the proactive management of their workers' compensation claims. With our proprietary software system, COMPASS™, our work can be seamlessly integrated into your organization, allowing you to participate in the adjudicative process at your convenience.

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For further information on how Gowlings can assist your organization in proactively managing its workers' compensation claims, please contact Norm Keith at [norm.keith@gowlings.com](mailto:norm.keith@gowlings.com), 1-866-862-5787 ext 85699, Ryan Campbell at [ryan.campbell@gowlings.com](mailto:ryan.campbell@gowlings.com), 1-866-862-5787 ext 83558, David Marchione at [david.marchione@gowlings.com](mailto:david.marchione@gowlings.com), 1-866-862-5787 ext 84378, or Cathy Chandler at [cathy.chandler@gowlings.com](mailto:cathy.chandler@gowlings.com), 1-866-862-5787 ext 87351.