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THE SAF SOURCE

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SC State Accident Fund's Quarterly Workers' Compensation News and Information Resource

SAF Obtains Fraud Conviction

The State Accident Fund, through the South Carolina Attorney General's Office, has obtained a conviction against a state employee for workers' compensation fraud. The claimant was indicted for making a false statement or misrepresentation in violation of SC Code of Laws Section 38-55-540 in June 1999 and made a Confession of Judgment in January of this year.

The claimant sustained a back injury in 1995 while moving a refrigerator from the wall as part of his job duties. The State Accident Fund accepted liability for the claim and began paying benefits in accordance with the South Carolina Workers' Compensation Law. The claimant was diagnosed with chronic low back pain and left leg radicular symptoms and a re-injury from the job-related accident. The treating physician suggested the claimant participate in the Chronic Pain Rehabilitation Program. The claimant did see the doctor at the pain clinic, but he chose not to participate in the program. It was also suggested that he have epidural steroid injections and he refused that also. As a result of the claimant refusing medical treatment and not participating in the Pain Management Program, the claims adjuster decided to schedule an evaluation to see if the claimant was at MMI (Maximum Medical Improvement) and if he sustained any permanent injury resulting from this accident. The physician concluded the claimant had reached MMI and assigned him a 20% whole man impairment rating.

Subsequently, the adjuster received a call from the employer who conveyed that the claimant may have been working at his wife's place of business. As a result of this information, the claimant was placed under surveillance. The surveillance did reveal the man was working and also that he was able to do things that he reported that he could not do. This included walking without the aid of a cane, the inability to bend over more than 20 degrees, unable to twist or bend to the side, unable to remove his shoes or drive a motor vehicle. The claimant's physician was provided a copy of the surveillance and asked to review its contents. The doctor responded that it appeared the claimant had been somewhat less than honest concerning his condition. He was able to enter and exit his truck without difficulty, his gait appeared normal, he was able to carry two bags of groceries simultaneously and so on. He was essentially able to walk freely and perform most daily activities with no apparent problems. The doctor stated that the claimant's disability and impairment rating would probably deserve reconsideration and changes.

Based on this information, the case was forwarded to the Insurance Fraud Division of the Attorney General's Office to review in the fall of 1997. In January 1998, SLED began investigating the case. In the meantime, the case was scheduled for a hearing before the Workers' Compensation Commission in March 1998. The surveillance evidence was introduced along with the surveillance investigator's testimony and correspondence from the claimant's physician. The Commission ruled that the SAF could stop payment of temporary total disability benefits and was entitled to credit of benefits paid. In January of this year, the claimant signed a Confession of Judgment in which he admitted that he made or caused to make false statements or misrepresentations in connection with the insurance transactions with the State Accident Fund with the intent of obtaining an undeserved economic advantage or benefit in the amount of \$1,000 or more. He received a three year suspended sentence and two years of probation. In addition, he was ordered to make restitution to the State Accident Fund and the Second Injury Fund of over \$14,000.

Because of the hard work of the policyholder, SAF Claims Adjuster and the Attorney General's Office, we were able to save the taxpayers of this state a good deal of money. Without this teamwork, it is possible that the claimant could have been declared totally and permanently disabled as a result of his original 20% whole person impairment rating and his claims of not being able to walk without a cane. His workers' compensation claim could have reached over \$75,000.

If you have reason to suspect workers' compensation insurance fraud, please feel free to contact your SAF claims adjuster at 803.896.5800.

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Interested in a 5% Premium Credit?

The State Accident Fund is now offering a five percent premium credit to those policyholders that have established a drug and alcohol free workplace policy in accordance with South Carolina Code of Laws Sections 41-1-15 and 38-73-50. To qualify, the employer's program must meet four main guidelines. The first is to have a substance abuse statement that is designed to assist employees with substance abuse problems and to also send a clear drug and alcohol free workplace message. Secondly, clear and concise notification of the program must be given to all employees. The next guideline requires the establishment of exact testing procedures. Finally, the program must establish test results confidentiality protocols.

Once an employer has established a program that meets the requirements set forth by South Carolina law, they will self-certify with the State Accident Fund that they are in compliance. Please note that the program must be certified annually. The credit will be applied at final audit and applied to the policy pro rata as of the date of certification by the employer.

If your agency is interested or has further questions about this premium credit opportunity, please contact our Policyholder Services Department at 803.896.5800.

Revision To Experience Modification To Be Implemented

The *National Council on Compensation Insurance* has recently revised the formula used to calculate E-Mods (Experience Modification). The State Accident Fund will be adopting this revision. The new formula reduces the dollar amount of **Medical Only** claims that will be included in the formula. Previously, the actual cost of these claims was included. The new formula uses only 30% of the cost of these claims in the calculation.

E-Mods resulting from this change and consequently some reduction in premium as a result.

Future renewals will incorporate this revision. Since this is only one element of premium determination it is **not possible at this time** to tell you exactly what impact this revision will have for your agency.

Those policyholders that are subject to experience rating will see a reduction in their

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Terminations During Workers' Comp Claim

Several times a week, the legal and claims staff receive calls asking for advice about the legalities of terminating injured workers and the ramifications that may have on the pending workers' compensation claim. We generally do not give advice about this topic as it goes beyond the scope of our responsibility, handling the workers' comp claim to disposition. The termination of an employee is a human resource function and there is a broad spectrum of opinion among the different government entities dealing with this topic.

There are several intertwining legal concerns you may want to review and take into consideration before you make the decision to terminate. First, always consult with your human resource department before you act. Most agencies have policies and procedures dealing specifically with terminations. Make sure you follow those policies to avoid a successful grievance by the terminated employee against your agency. If you have access to an agency attorney, consult with that person also to make sure you have complied with any legal concerns.

The Family and Medical Leave Act of 1993 (FMLA) and the Americans with Disabilities Act (ADA) may have an impact on your decision to terminate. Under the FMLA, for a covered employer and employee, an employee may take up to 12 work weeks during any 12 month period for, among other things, a serious health condition that makes the employee unable to perform the functions of his job. The employee has a guaranteed reinstatement to a job if he is able to return to work prior to the exhaustion of the 12 weeks, maintenance of health insurance benefits during the FMLA and protection against penalties or discrimination for using FMLA leave. Under the FMLA, the employer must inquire why an employee was absent and determine if the situation qualifies for FMLA leave. The employer must communicate to the employee that the absence qualifies for FMLA leave. The complete text of the FMLA can be found in United States Code 29 U.S.C. Sec. 2601.

Any person involved with terminations or return to work issues should also be familiar with the ADA. This law prohibits an employer from discriminating

against an otherwise qualified employee with a disability if the disabled employee can perform the essential functions of the job with or without a reasonable accommodation that does not place an undue hardship on the employer. A "disability" under the ADA is a physical or mental impairment which substantially limits one or more of the major life activities of the individual. "Major life activities" include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. "Reasonable accommodation" means an effective accommodation. Possible accommodations include job restructuring, part time or modified work schedules, reassignment, modification of equipment and other options. "Undue hardship" is defined by regulations as excessively costly, substantial, disruptive or would fundamentally alter the nature or operation of the business. According to EEOC statistics, back impairments are the most common workplace disabilities. The full text of the ADA can be found in the United States Code 42 U.S.C. Sec. 12112.

One final note regarding employment actions during a workers' compensation claim. South Carolina Code Section 41-1-180 prohibits retaliation against an employee based upon the employees' institution of or participation in proceedings under the Workers' Compensation Act. However, the final sentence of the statute states that the failure of an employer to continue to employ an employee who receives compensation for total disability is in no manner to be considered a violation of this law.

This employment area of law is ever changing and quite difficult to administer especially when the leave issues are commingled with a workers' compensation claim. There is a federal Internet website that deals more extensively with the above issues at www.lib.umich.edu/libhome/Documents.center/federal.html. Familiarity with these laws will hopefully assist you in making the best decision possible for your particular agency and employee.

Employee Involvement in Workers' Compensation

Editor's Note: *This article is reprinted with permission. It was written by Mary Ann Humphrey and appeared in the June 1998 issue of On Workers' Compensation.*

As most employers and employees are very much aware, there are often two quite different perspectives of workers' compensation. Employees may claim that they are treated with a lack of concern and respect when they are injured on the job, and they may believe that the company cares only about reducing the amount of money spent on claims. Managers may perceive that employees exaggerate injuries in order to be off work and use the system for personal financial gain or to avoid disciplinary problems.

"For managers, one of the more difficult concepts of workers' compensation is that it is a no-fault system," says Paul A. Stasz, manager of workers' compensation at International Paper Company (IP) based in Memphis, Tennessee. "With management, the issues are seen as control and cost. With employees, the issues are anger and fear. They may be angry that they were injured and they are afraid they've lost something, or afraid it's going to cost them money."

International Paper Company was experiencing these opposing attitudes at several of its sites. At a bagpak plant there were a number of problems. The complaints included injuries as minor as lacerations. The disability claims were out of control. The employees didn't trust the company doctor and were selecting their own physicians.

When confronted with these problems, IP decided to involve employees in the solution. It created Workers' Compensation Area Teams. The basic idea was placing ownership and responsibility for developing and monitoring a consistent program with the employees.

"Particularly in the bigger facilities we recognize the difference between what we all acknowledge intellectually but do not practice uniformly: the employees are an integral part of the workers' compensation system," says Stasz. "The workers want to be involved and will take on the challenge and do it very well." A team of employees from each facility is selected to develop a workers' compensation program that is understood by all employees and in compliance with state law. A team's mission is to develop, implement, and maintain a consistent program and to ensure that employees who are injured on the job are provided with the best medical care and resources available to recover and return to work.

One of the keys is maintaining direction, but not control, and extending to associates the freedom to try different solutions, some of which may fail, but all of which will inform future courses of action, Stasz notes. "One of the pleasant surprises about using a team structure is that the way employees utilize the system is not necessarily the way management would have considered," says Stasz. For instance, one of the Area Teams sends two co-workers to an injured employee's house to reassure him or her that the company is still interested in their welfare and to provide support. They bring food and flowers, or even baby-sit the kids, if needed. "They're practical and supportive in ways that management tends to forget," Stasz affirms. Although at first the visitors were thought to be spies sent by the company, the approach has proved very effective in the long run.

The team members are usually volunteers, or they are elected by the employees. There should be a member from each department and for all shifts. The team selects a team leader and an assistant, as well as a secretary. Teams have from eight to 15 members.

The workers' compensation regional coordinator assisted by meeting with the team members to help them understand the mission and goals for the team. They also arranged for a third-party administrator representative to meet with the team and provide training about the specific state system. Then, they scheduled a date and time with the plant for a day-and-a-half training session and sent a letter with an agenda to each selected team member. The regional coordinator can invite team members from other plants where teams have previously been implemented to attend the training sessions.

The regional coordinator continues to work with the team when needed to ensure that they have the support necessary to accomplish their goals. Many times during a meeting, team members will call the regional coordinator to clarify issues that may arise.

According to International Paper Company, the team approach has worked very well. One of the more valuable aspects of a workers' compensation team is that they are very good at providing feedback about how an incident occurred and suggestions for how to avoid another one.

Overall, at the five plants where the system was initiated, there was a decrease in costs per employee, number of workers' compensation claims, number of disability claims, number of litigated claims, and the total expected cost.

Ergonomics Primer

Even though machines can do the same tasks repeatedly with little maintenance and without serious complications, human beings were not designed to do the same repetitive tasks day after day. Muscles will tire and tendons will stress. When this happens, injuries and illnesses can and will occur especially musculoskeletal disorders.

These musculoskeletal disorders (or MSDs) are caused by repetitive motions and improperly designed workstations costing employers billions of dollars annually in worker's compensation costs. MSDs constitute the largest job-related injury and illness problem in the United States today according to OSHA. Severe cases often prevent injured workers from returning to their jobs or handling simple, everyday tasks that we often take for granted.

These injuries are preventable by implementing sound ergonomic programs. Preventing or minimizing injuries results in fewer lost work days and lower worker's compensation costs.

Risk factors for MSD injuries include:

- excessive repetition/prolonged activities
- forceful exertions, usually with the hands
- prolonged stationary and awkward postures
- excessive bending or twisting of the wrist
- improper seating/support
- inappropriate or inadequate hand tools
- vibration from power tools

There are several methods for preventing MSDs:

- 1) Modification of workstations, tasks and equipment to correct faulty design;
- 2) Proper training of employees in task performance, exercising and stretching periodically to reduce fatigue;
- 3) Using the proper personal protective equipment.

Employers interested in establishing an ergonomic program should contact the State Accident Fund's Safety and Loss Control Division. You can reach someone by calling 803.896.5800. Our specialists can help you evaluate your work environment and offer suggestions for improvement.

Top Causes of Injury for State Accident Fund for 1999:

1. Struck by motor vehicle or other objects
2. Slips and falls
3. Strains
4. Motor vehicle accidents
5. Strike against or stepping on sharp object
6. Caught in or between
7. Cuts
8. Burns

Reducing Your Costs By Maximizing Recoveries

Last year the SAF lead all workers' compensation carriers in the state in the amount recovered from the Second Injury Fund for the fourth consecutive year.

Through the combined effort of our in-house staff, employers, and our contract partner, Reimbursement Consultants, Inc.(RCI) we were able to recover over \$7.2 million dollars for our policyholders.

RCI reviews claim files to identify reimbursement potential. Their consultants contact policyholders to verify prior knowledge of an employee's pre-existing condition. This knowledge is a key requirement in the reimbursement process.

Since the employer must have knowledge of the pre-existing condition, communication between the employer and employee is perhaps the single most important ingredient

necessary for successful SIF recoveries. The employer must develop a program to identify prior disabilities in newly hired personnel and those which develop in the current workforce.

It is also important to remember that, when filing a workers' compensation claim, the employer should advise SAF of any pre-existing conditions.

The money recovered, minus any administrative expenses, is credited directly to our policyholders' accounts to reduce the cost of their claims. This translates into lower claim costs and lower premiums for our policyholders.

For additional information on Second Injury Fund Recovery refer to Appendix C of your Employer Manual.

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STATE DOCUMENTS

Is Our **Mailing List** Information Correct? Should We Add Someone To Our List?

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