

Taking Aim at Fraudulent Workers' Compensation Claims

Fraud in workers' compensation costs employers and insurers billions of dollars every year. But it's not just employers and their insurers that suffer the consequences of this crime; workers' compensation fraud undermines morale in the workplace and is unfair to both employees with legitimate claims and other employees who must work harder to cover for colleagues who file false claims. The perpetrators can be both employees and health care providers, making it even more crucial for employers to be on the lookout for fraud and take action to properly investigate and report suspicious claims.

Understanding Fraud

Fraudulent workers' compensation claims tend to take one of two forms:

- **Soft fraud:** Sometimes referred to as "opportunistic fraud" or "abuse," this type of deceit takes place when workers exaggerate what start as legitimate claims in an attempt to obtain more than they are owed for real injuries. This includes workers who embellish symptoms in order to remain out of work or on modified duty.
- **Hard fraud:** This is an intentional deception with the aim of obtaining payment that is unwarranted. Examples include a claim for an injury that happens outside the workplace but that the employee contends is work-related or a worker who receives benefits while employed elsewhere.

Although there is no single clear-cut reason behind fraudulent claims, workers who are on the verge of losing their jobs or have been disciplined in the past tend to commit fraud more often. But it's not only employees who can perpetrate fraud. Some medical professionals have contributed to the problem by delivering unnecessary treatments that are not in the best interests of injured workers but are instead aimed at making money. These providers tend to prescribe the same treatment or medication to all workers, irrespective of their specific injuries, and will sometimes bill for services that are not even provided. This questionable billing is often what triggers an investigation.



Identifying Red Flags

Although most workers' compensation claims are legitimate, employers should watch for some red flags. Consider these 10 major warning signs:

1. A disgruntled employee, perhaps someone who is facing disciplinary action or on the verge of being fired. This includes employees who have had numerous write-ups in their personnel files or are unhappy or unmotivated at work.
2. New hires or seasonal employees coming towards the end of their working agreements.
3. A worker who had an unexplained absence before the claimed injury took place, or injuries that happen on the first shift back following a work absence, including weekends.
4. Employees who have a history of filing claims or make subjective claims that have no specific diagnosis, such as a back injury that is not confirmed by medical tests.
5. Employees who miss multiple medical appointments or change treating physicians during the process.
6. Workers who have hobbies, or do other work, that might have caused the injury claimed to have happened on the job.
7. Employees who are uncooperative with investigators, seek quick settlements before completing treatment for alleged injuries, or retain attorneys at the outset of claims.
8. An injury that an employee reports unreasonably late or does not mention to coworkers on the day it happens. Injuries that are not witnessed or for which the injured employee's account is different from that of witnesses can also be problematic.
9. Employees who are being treated by doctors who appear frequently in questionable claims. Look out for injured workers receiving the same treatment or medication regardless of their injuries.
10. A claimant who is difficult to reach during the course of an investigation, especially because they have no permanent address or the address in the personnel file is found to be incorrect.

Positive relationships with providers can help reduce provider fraud by deterring excessive treatments. Further, when employers share job descriptions with physicians, the latter can better understand the physical requirements of particular jobs, making it more difficult for employees to embellish their injuries.

The Investigation Process

Even when employers are on the lookout for red flags, it's sometimes difficult to know if a claim is legitimate. That's why every claim must be investigated, which allows claim professionals at a third-party administrator or a carrier to determine whether the claim is compensable. An investigation is especially imperative in cases that are not clear cut — for example, when a legitimate injury leads to a fraudulent claim.

Aside from determining the facts pertaining to a claim, a thorough investigation can help employers rectify any problems and ensure a safer workplace and a workforce that is better informed on safety measures. The purpose of an investigation is not solely geared towards detecting fraud, but also to determine whether there are dangers that should be identified and addressed. It's vital that employers convey to employees that the primary goal of an investigation is to better ensure their safety and that of their coworkers.

Identifying fraudulent claims requires collaboration between employers and the claims teams investigating incidents. Once an employer becomes aware of an incident, an immediate and thorough investigation should kick off, including identifying and reporting all facts, taking note of witness names and witness comments, safeguarding all discovered information, and finding out as much as possible about the employee making the claim. All details should be transferred to the claim provider, including any red flags or suspicions (see sidebar) that the claim is fraudulent. One warning sign, for instance, is when injuries happen on an employee's first shift back from an absence — for example, on Monday morning.

It is essential for an employer to make a timely claim to its insurer. This not only allows the investigation to start sooner but can also help lower the total cost of risk by more quickly engaging medical and disability management resources. Further, employers must communicate to their employees that it's their duty to cooperate during investigations. Employers should also point out if cooperation is required by workers' compensation laws in an employee's state.

With these insights in hand, the claims provider can begin a multi-step process to validate a claim:

- 1. Speak with the injured employee:** Getting a statement from the injured worker immediately should be a priority, especially since employers may not have the opportunity to speak with an employee that seeks legal representation. The main questions that the claims provider is trying to answer are whether the incident resulted from employment and whether the employee was acting in the course and scope of his or her work. Recording statements can be particularly useful in case of conflicting information or changed versions.
- 2. Conduct interviews:** Any witnesses need to be contacted and questioned before their memory fades, and any divergences between witness accounts, especially if they conflict with those of the employee making the claim, should be investigated further.
- 3. Gather medical reports:** Reports related to the alleged incident are essential to completing an investigation. Further, claims providers can request a worker's authorization to access past medical reports to shed light onto an injured employee's medical history and underline potential causes for that injury that might not be related to his job.
- 4. Carry out Index Bureau checks:** This step will provide a history of any past claims filed by the worker, offering insight into past medical conditions and also identifying any instances where multiple claims were filed.
- 5. Commission independent medical exams:** These exams, which the injured worker is required to attend, allow for a third-party evaluation of the employee's medical conditions if an injury is in dispute or the hurt worker is not healing as expected.
- 6. Conduct social media checks:** Such investigations into an employee's social media activity can be used to confirm facts uncovered during the claims process.
- 7. Review surveillance footage:** An incident that is caught on tape can help investigators establish its veracity and whether it happened while the employee was carrying out his or her duties. Surveillance video from after the incident can help determine whether the injured employee was exhibiting any symptoms claimed to be caused by the incident.

An Employee-Centric Approach

It is imperative to keep the investigation as amicable as possible. Even if contradictions start to emerge, avoid confrontation and instead focus on clarifications. Conversations with the claimant should not feel like interrogations, and employees should not get the impression that their employers don't believe them or are trying to catch them in a lie. If handled poorly, investigations can backfire, causing injured workers to seek legal representation, which could hinder communications and escalate costs.

Taking a more employee-centric attitude that is less adversarial and litigious than the traditional cost-focused system can help reduce fraud. A **claims advocacy** approach focuses on educating workers about safety measures to avoid incidents, delivering information about medical management and return-to-work programs to injured employees, and keeping injured workers updated about their claims' progress.

Fraudulent claims can be a burden on both organizations and their other employees, which makes it essential they are identified and addressed. It is imperative that employers have a plan in place to flag potentially fraudulent claims and a clear investigation strategy that leads to resolving the issue at hand and also taking steps to address any dangers in the workplace.

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