



Workers' Compensation Claim Fraud

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Small businesses don't have to be insurance experts to realize the many potential benefits associated with

taking a strategic approach to workers' compensation and risk management. Loss control and a genuine commitment to workplace safety should be at the core of every comprehensive risk management program designed to keep employees healthy and productive. Unfortunately, there are instances when people try to take advantage of the system and commit workers' compensation fraud.

Workers' compensation claim fraud includes instances in which employees falsify or misrepresent workplace injuries to collect benefits for which they are not entitled. They may be in the form of a completely false injury, a legitimate injury sustained while away from the job, or a legitimate injury sustained at work, but exaggerated or prolonged to avoid returning to work.

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When discussing workers' compensation claim fraud, there are many reasons to stick to the criminal definition as defined in various workers' compensation fraud statutes. The elements of criminal workers' compensation fraud statutes are straightforward. Simply put, someone who "knowingly makes a material representation (a lie) in order to obtain a workers' compensation benefit," has violated the criminal statute, exposing themselves to potential criminal prosecution. Investigating a case of criminal workers' compensation claim fraud is no different than investigating any other property crime such as burglary, robbery, theft or embezzlement.

Workers' compensation claim fraud remains one of the insurance industry's biggest problems. To illustrate, during fiscal year 2008 – 2009, the California Department of Insurance identified and reported 5,174 suspected fraudulent workers' compensation claims, assigned 539 new cases, made 218 arrests and referred 327 submissions to prosecuting authorities. According to the Department, the potential loss amounted to more than \$205 million during that timeframe in California alone.¹

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When false claims are made, they result in higher insurance premiums for the business policyholders and thus increase the cost of doing business. The Coalition Against Insurance Fraud (CAIF) estimates that workers' compensation insurance fraud costs insurers and employers \$6 billion a year.² The National Insurance Crime Bureau (NICB) estimates that 10 percent, or \$1 out of every \$10, of the money spent on premiums to cover legitimate work-related injuries are lost due to workers' compensation fraud.³

Preventing Workers' Compensation Fraud



As part of a comprehensive risk management program, businesses should incorporate procedures to help identify potentially

fraudulent workers' compensation claims. First and foremost, the precedent must be set that workers' compensation fraud will not be tolerated. Each time a business communicates to employees its commitment to workplace safety, it should also clearly communicate a zero-tolerance policy for workers' compensation fraud.

The Coalition Against Insurance Fraud⁴ recommends businesses use the following steps to help combat workers' compensation fraud:

1. Examine an employment candidate's work history, background and references carefully. There actually are individuals who are serial perpetrators of workers' compensation fraud with a history of false or exaggerated workers compensation injury claims. Look for, question and verify gaps in employment or frequent job changes.
2. Educate your employees about the cost and impact of workers compensation insurance on the business. It's helpful for employees to understand that it's the business that ultimately pays the cost of fraudulent claims.
3. Educate managers and supervisors on accident procedures and claim policies. Just as with loss control measures, make anti-fraud measures a part of their performance evaluation.
4. Take complaints about working conditions seriously, and do what you can to address them. Disgruntled employees are a major source of workers' compensation fraud.
5. Take advantage of workplace safety training and awareness programs offered by your insurance carrier.
6. Implement safety management and loss control programs. Perform periodic reviews of the injury risks involved in workplace activities and correct safety concerns immediately.
7. Alert your insurance company's special investigations unit (SIU) to claims you suspect.
8. Publish the company's anti-fraud policy and prominently display the insurance carrier's fraud hotline number.

To reinforce the message, companies should make this communication a consistent component of both new employee orientation and ongoing workplace safety training. As part of the zero-tolerance-for-fraud aspect of the greater risk management program, a company's plan should include how it will work with its insurance carrier to pursue criminal and civil prosecution of fraud. For example, EMPLOYERS works with its small business policyholders to spot fraud, learn anti-fraud techniques, and offers printed materials to share with employees to help discourage fraud.

Identifying Workers' Compensation Claim Fraud



Experience shows that when two or more key warning signs (see sidebar) are present in a workers' compensation claim, there

is a chance the claim may be fraudulent. Remember, though, that these are simply indicators. Many perfectly legitimate claims are filed on Mondays and some accidents have no witnesses.

Know the Warning Signs:

- 1. Monday Morning Reports:** The alleged injury occurs first thing on Monday morning, or the injury occurs late on Friday afternoon but is not reported until Monday.
- 2. Suspicious Providers:** An employee's medical providers or legal consultants have a history of handling suspicious claims, or the same doctors and lawyers are used by groups of claimants.
- 3. Conflicting Descriptions:** The employee's description of the accident conflicts with the medical history or first report of injury.
- 4. Treatment is Refused:** The claimant refuses a diagnostic procedure to confirm the nature or extent of an injury.
- 5. Claimant is Hard to Reach:** The allegedly disabled claimant is hard to reach at home.
- 6. Employment Change:** The reported accident occurred immediately before or after a strike, job termination, layoff, end of a big project or at the conclusion of seasonal work.
- 7. No Witnesses:** There are no witnesses to the accident and the employee's own description does not logically support the cause of injury.
- 8. History of Claims:** The claimant has a history of a number of suspicious or litigated claims.
- 9. Late Reporting:** The employee delays reporting the claim without a reasonable explanation.
- 10. Changes:** The claimant has a history of frequently changing physicians, changing addresses and numerous past employment changes.

Reporting Suspected Fraudulent Claims



Whether a workers' compensation claim is suspected to be fraudulent or not, prompt reporting is an important step in proactively

managing workers' compensation claims costs. Multiple studies conducted in recent years demonstrate that on average, the sooner claims are reported, the lower their ultimate cost.⁵ Just as this is true for providing injured workers with the best care possible to get them back to work, it's also true for mitigating the cost of fraudulent claims.

When engaging with the claims management specialists from the insurance carrier, businesses should describe the injuries and any related events in as much detail as possible. Quick and detailed communication regarding the incident with the carrier will best enable the claims professionals to investigate the relevant facts and determine the compensability or validity of the claim. This information is key to making sure that invalid workers' compensation claims are not paid.



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To be considered compensable, an accident or illness must arise from or occur in the course of on-the-job activities, which are commonly referred to as Arising Out of Employment (AOE) and in the Course of Employment (COE). In order to ensure the claim is legitimately compensable, it is important to learn the details of the accident and determine if there were any witnesses. With the proper procedures in place, managers can quickly collect all the facts as described by the affected employee and communicate those details to the carrier's claims management professionals. The trained claims professionals will then be best suited to make final determinations of compensability.

Investigation



In the event the insurance carrier and business determine they have identified a potential case of workers' compensation claim fraud, the carrier will begin the process of investigating the case in order to ultimately seek criminal prosecution. While investigating a potential fraudulent claim, investigators must look for material misrepresentations and the first step is to document the claimant's "statements" or "representations."

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Investigators can achieve documentation through notes, claim forms, deposition/ testimony, telephone messages, hospital records, recorded statements, etc., made by the claimant to:

- The claims examiner
- A medical provider
- A vocational rehabilitation counselor
- Co-workers
- Neighbors or family members

Documentation



The next step is to document that the claimant's statements or representations are in fact misrepresentations. This can be accomplished through video, employment records, Insurance Services Office (ISO) or other public information records, witness testimony and Social Security records, etc. It is important to note that material omissions are considered material misrepresentations.

Determining the Extent of the Fraud



The last step in building a fraud case against a claimant is to determine the total workers' compensation benefits the claimant would have received because of their misrepresentation. This information can be provided by an experienced claims examiner, a treating physician or anyone else who makes a "determination" based upon the claimant's representations.

In a recent Nevada claim, the claimant sought permanent and total disability benefits based on a representation that she hurt her back, shoulders, legs and hips while lifting paint cans. The claimant informed her physician that she could not drive, stand or sit for more than two minutes or lift more than five pounds. Based on her presentation and existing medical records, the physician opined that the claimant was permanently and totally disabled, however surveillance video proved otherwise.

Surveillance video showed the claimant performing all these activities in public that she had told the physician she was physically unable to do, including her arrival at the doctor's office and the sudden onset of physical incapacitation. When shown the surveillance video evidence, the physician drastically changed his opinion in a second report, and the claimant was later convicted of workers' compensation fraud. The claimant received a criminal sentence and forfeited all future workers' compensation benefits.

Conclusion

Pursuing suspected workers' compensation claim fraud through the criminal justice system has several major benefits. Similar to reporting a burglary or vehicle theft, the cost of the criminal investigation and prosecution is not born by the victim because government resources are utilized. Additionally, many jurisdictions have statutes that make the fraudulent portion of the claim, or even the entire claim, "go away" upon criminal conviction.⁶

About EMPLOYERS®

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Sources

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⁴<http://www.insurancefraud.org/downloads/WC%20outreach.pdf>

⁵<http://www.libertymutualagency.com/omapps/ContentServer?pagename=ramInternet%2FPage%2FramStandard&cid=1057678045661>

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CONTACT INFORMATION:

Customer Service

888-682-6671

customersupport@employers.com

Fraud Investigations

800-750-3939

fraudfighters@employers.com

Loss Control

800-588-5200

losscontrol@employers.com

Claims: Reporting a Claim

Tel 800-232-3085 | Fax 877-329-2954

Audit/Collections

800-677-3252

customersupport@employers.com



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