

How to Win the WC War, or At Least Feel Like You Have a Fighting Chance!

By Lisa Hale, Senior Vice President of Claims & Risk Control | April 24, 2020

Many of our clients find themselves in the unique position of having slowed or shutdown operations over the past month. This is expected to continue to for at least another month, and maybe several more months before things resume under the “new normal.”

Prior to March 16th, many of you had active WC claims. That is, injured employees who were out of work and actively treating for work injuries. Since that time, most non-emergent medical care has been placed on hold because of the pandemic. Those injured workers remain out of work and are getting weekly wage loss checks. Once doctors begin treating patients again, injured workers will need to be re-assessed and new treatment plans created. In addition to the treatment delays caused by COVID 19, it will take some more time for the employees to complete the treatment plan and ultimately get released to some type of duty.

Another scenario you may be faced with are those unwitnessed, post-layoff claims. You know, the ones that go like this: employee is a solid worker and never complains; several weeks/months after separation from the organization you receive an attorney letter or claim petition advising you that the employee is making a claim for injuries sustained during employment with your company. The radio commercials and highway billboards portraying employers and insurance companies as “bad” and advertising huge settlements for injured workers coupled with the fact that employees get 50% higher weekly wages on worker’s compensation vs. unemployment draws workers to these attorneys like moths to a flame.

These scenarios create situations in which employers could end up with expensive workers compensation claims. If you are in a captive or large deductible insurance program, paying more claims will just add to the other losses your organization has incurred during this time. If you are in a traditional or guaranteed cost insurance program, the impact will be felt via increased EMR’s and increased premiums at renewal.

Both situations may leave you feeling helpless against the mounting costs. There are things you can and should be doing now to put yourself in the best possible position to mitigate costs and defend against these claims.

1. **Keep a Logbook** at each job site and have your Foremen or Superintendents record noteworthy things that occur on the job each day. May include incidents, injuries, materials deliveries, requests for PTO, Site Visitors etc. This can be used to refresh memories on late reported claims and provide a credible source of evidence if a claim ends up in litigation.
2. **Perform a Detailed Accident Investigation** after each injury. We teach this to our clients but very few people do it. Like a logbook, a detailed accident investigation can be your friend if the claim ends up in litigation. The key is to make it detailed and consistent. Judges and Mediators like to see employer documents that memorialize an injury. A good accident investigation can be used to successfully challenge an injured worker’s version of events.

3. **Report All injuries Timely:** If you establish a strong timely reporting procedure and can show a Judge or Mediator that all claims are documented and reported, you increase your organization's credibility in situations where your first notice is a claim petition.
4. **Involve your Claim Consultant:** Let them do the heavy lifting for you while you concentrate on business issues. Your Claim Consultant should be doing things like running reports, contacting the carrier's adjuster, gathering updates, coordinating with risk control. They can assemble and bring you all the necessary information to make decisions and implement each claim's action plan.
5. **Make a list of your open lost time claims:** Work with your claim consultant to get updated statuses on each open claim and set an action plan in place. Notify the adjuster that you want appointments scheduled as soon as possible once the quarantine is lifted. Remember that there will be many people trying to get in to see the doctor once this is over so it's important to start having these discussions now. Assigning a nurse case manager to the more complex claims can help facilitate scheduling, coordinate care plans and enhance communication with the injured worker.
6. **Look for Modified Duty Work at each site:** Starting this process now will ensure that you are ready once the employee is released to work. Involve your risk control consultant. They can assist you with developing tasks and creating a plan that will minimize disruption at the jobsite. Remember that bringing an employee back to modified duty work limits the payment of indemnity benefits and immediately lowers your claim costs.
7. **Reach out to Injured Workers During this time:** Let them know you are thinking about them and concerned for their welfare. If appropriate, communicate that they will be welcomed back once work resumes. The person that reaches out should be the employee's direct Supervisor or someone in Management that has a relationship with the employee. This will help to keep your employees away from the "billboard" attorneys that promise huge cash awards.
8. **Consider Settlement of Existing Litigated Claims:** Courts in PA, NJ and DE are all currently closed due to the COVID crisis. It could be months before any litigated claims are back on an active court calendar. Discuss opportunities for discounted or leveraged settlements with your claim consultant and defense attorney. While courts are closed, many mediators are available via phone and many Judges are available to approve 'compromise and release' settlements. It is to your benefit to identify claims that could be resolved now at a lower cost.

In summary, using this downtime wisely and drawing upon the resources around you to create a solid game plan for managing claims and work injuries will pay dividends in lower claim costs once this pandemic created life pause is over. Please reach out to me, or anyone else on your Safeguard team for assistance in implementing the strategies discussed in this advisory.