

GOSH Conference Workers' Compensation Live Ombudsman for Small Business

March 11, 2009

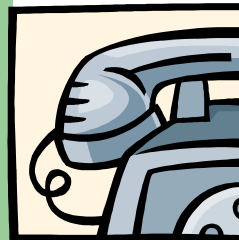
Agenda

- Ombudsman History
- Ombudsman Activity Report
- What you can expect
- A couple of tips
- Questions

Ombudsman History

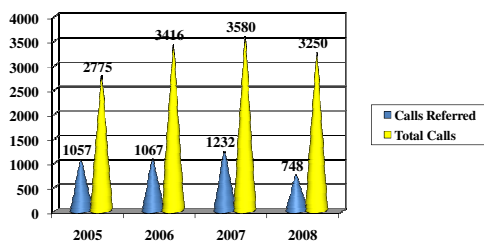


Who is Calling?



- Businesses of all types and sizes
- Entrepreneurs
- Accountants & book keepers
- Insurance Agents
- The Clueless

How Many Calls Do We Get?



Common Questions

- Is this the Small Business Administration?
- Do I need WC coverage?
- Where do I get workers compensation coverage?
- I got turned down for coverage, now what do I do?
- What do I do if I disagree with the insurer's audit?
- I'm thinking about starting a new business can you help?

What You Can Expect



- We will contact you within 24 hours
- We maintain complete confidentiality.
- We will gather facts from interested parties.
- We will try to resolve and mediate a fair solution.
- If no resolution, we will guide you through appeal process and provide a candid assessment of likely outcomes.

Outreach & Education



- Plan and participate in Small Business Fairs
- Provide education and training for various entities
- Build awareness through newspaper articles and presentations
- Participate in WCD projects & provide assistance with legislative issues

Business Tips

- Buy the business, buy the mod
- Request a copy of the experience modification rate sheet and loss runs prior to negotiating sales price
- Health insurance – workers compensation gap

What's New

- Elimination of the Guaranty Contract
- New 2009 Oregon Assigned Risk Servicing Carrier: Travelers Insurance
- Assigned Risk Plan loss sensitive rating plan

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WC Claim Rights & Responsibilities

Jennifer Flood, Ombudsman for Injured Workers
Lisa Wilch, Claims Director – SAIF Corporation

Today's Session

- Claim filing
- Claim decisions
- Medical treatment
- Time loss payments
- Reinstatement rights
- Appeal rights
- Cooperation
- Common questions of the Ombudsman for Injured Workers (OIW)

"Injury" claim filing requirements

- Found in 656.265
 - In writing (normally via F801 or F827)
 - Provide notice immediately or within 90 days
 - Notice must be given to supervisor or manager
 - Employers must file a claim on behalf of the worker if they have enough facts to reasonably conclude WC liability is possible

"Occupational disease" filing requirements

- Found in 656.802
 - Must file within one year of the following:
 - Injured worker first discovered the condition
 - Injured worker first became disabled
 - Injured worker was advised by his or her doctor of an occupational disease
 - Injured worker's beneficiary (in the event of a death) first discovers the injured worker died as a result of an occupational disease

Employer's Responsibilities

- File claim within 5 days of date of knowledge
- Early filing assists the insurer in meeting statutory responsibilities of compensating the injured worker and making a decision on the claim in a timely manner

Once a claim has been filed

- It is important for everyone to respond to the insurer's need to gather information regarding the accident
- The injured worker needs to keep all physician's appointments and follow medical advice
- The injured worker should review notices carefully and ask questions regarding information he or she does not understand

Important timelines

- Insurers should make a decision within 60 days of when the claim is reported to the employer
- Injured workers should mail or fax any receipts and supporting documentation on medications to the insurer for reimbursement. These must be submitted within 2 years of date of service
- Some insurers have a pharmacy benefit manager (PBM) where the worker will not have any out of pocket expense for medications related to the accepted condition(s)

Medical treatment

- Who can treat for an on the job injury?
 - Medical doctor (M. D.)
 - Doctor of osteopathy (D.O.)
 - Oral surgeon (D.D.S. or D.M.D.)
 - Authorized Nurse Practitioner – treat 90 days, authorize TD for 60 days
 - Physician Assistant, Chiropractor, Podiatrist or Naturopath who is authorized by WCD to treat Oregon injured workers for the first 60 days or 18 visits, can authorize time loss for first 30 days
 - Any other type of medical practitioner that is not included in the definition of an attending physician) can treat for 30 days or 12 visits on the initial claim
 - Any MCO designee

The injured worker has been enrolled in an MCO – is a change of physician required?

- It depends...
 - Who is treating the injured worker?
 - Primary care credentialing
 - Where is the injured worker in his or her treatment and recovery process?
 - Post surgery
 - Medically detrimental

If the claim is accepted

- Read the acceptance notice carefully
- Injured workers should send a written request to the insurer if they believe additional conditions should be accepted
- Medical treatment relating to the accepted condition(s) is covered
- An injured worker should not incur any out of pocket expense for treatment
- If the injured worker is billed directly for treatment he or she believe is related to the accepted condition, contact with the physician and/or insurer may be necessary

Is the claim disabling or non-disabling?

- Non-disabling
 - Less than three days of time off work
 - No permanent disability
- Disabling
 - More than three days of disability or hospitalized as an inpatient
 - If no time missed beyond three days, may have a permanent disability

If the claim is denied

- Read the denial carefully
- If the injured worker does not agree with the denial, make sure an appeal is filed within 60 days
- If the insurer obtained an independent medical examination and the attending physician did not agree with the report, the injured worker may request another exam paid for by the insurer
- An attorney can assist with the appeals process at no charge for fees, however there may be some out-of-pocket cost for expenses.
- If the injured worker has health insurance, he or she may be entitled to "interim medical benefits" for certain types of medical services.

What if treatment isn't being covered?

- Review the acceptance notice(s) – is the treatment related to the accepted condition(s)?
- If the injured worker is being treated for something different and he or she believe it is related to the claim, the insurer will need a request in writing to claim a new or omitted condition

Time Loss

- Initial payment within 14 days of employer knowledge
- Must be authorized by the attending physician or authorized nurse practitioner
- If the injured worker is working two jobs he or she may be eligible for supplemental disability if unable to continue work at the non-injury employer(s)

Reinstatement Rights

- Right to reinstatement is contained in ORS 659A
- A WC insurer's obligation to notify of rights regarding reinstatement is contained in 656.340
- Notification of reinstatement rights should occur at three times in a WC claim
 - At time of claim acceptance
 - At time of first release for work
 - At time of vocational eligibility
- We cannot advise you regarding reinstatement rights – you may want to contact the Technical Assistance Unit at BOLI for advice

Appeal rights and notices

- Read all notices carefully
- Many have timeframes for taking action or responding to requests for information
- Failure to respond may affect benefits
- If questions, contact the insurer, the Ombudsman's Office, or WCD to determine next steps

Cooperation expectations

- Prompt receipt of information moves the claim along more quickly and facilitates benefit delivery and recovery process
- Failing to respond to requests for information may affect benefits
- Insurers have timeframes as well and could be penalized for failing to manage claims process in a timely manner

Employers -- contact your insurer when...

- The injured worker's employment status changes – return to work, change in work assignment or wages
- You have questions regarding the claim process
- Your employee has questions and you need information to assist them

Ombudsman for Injured Workers (OIW)

- Purpose is found in 656.709
- Selected by the director of DCBS and approved by the Governor
 - Is an independent advocate for Oregon injured workers
 - Provides information to protect their rights
 - Report to the Governor once per quarter on services provided and suggestions for improvements
- Cannot provide legal advice

Ombudsman for Injured Workers

- Ombudsman – Jennifer Flood
- One chief assistant ombudsman
- Five assistant ombudsmen
- Typical office hours 8am – 5pm
- Phone number: 503-378-3351 or toll free 1-800-927-1271
- E-mail questions to:
oiw.questions@state.or.us

What does the OIW do?

- In 2008, OIW received 11,388 inquiries
- 79% of the inquiries are resolved through listening and providing information
- 21% of the inquiries required OIW assistance – OIW contacted the insurer, employer, medical provider and advocated for the injured worker
- 92% of the inquiries were completed within two days – 82% within 8 hours
- 24% of the inquiries received bi-lingual services

Most common IW questions of Ombudsman's Office

- Medical treatment, prescriptions, IMEs
- Time loss benefits
- General claims processing... What next?
- Claim denial... What now?
- Litigation and settlements
- Continued medical services & claim 'aggravation'

Unrepresented Worker Settlements

- When a worker is not represented by an attorney and has entered into a Claims Disposition Agreement (CDA) with the insurer, OIW contacts the worker prior to the Board's final approval of the CDA.
- The purpose of the contact is to ensure the worker understands the impact the CDA has on current and future benefits.

Reminders

- Report the injury right away
- Make sure the physician or authorized nurse practitioner knows this has been filed as a WC claim
- Read all letters and notices carefully
- Encourage the injured worker to attend all medical appointments and follow medical provider's instructions
- Keep the insurer informed of medical status and return to work releases
- Don't be afraid to ask questions

Questions?

Return-to-Work Programs

By Tim Kessel
Worksite Modification Consultant

State of Oregon
Workers' Compensation Division

Employer-at-Injury Program (EAIP)

Applicability of Rules

- (1) These rules apply to:
- (a) All individual Employer-at-Injury Programs begun on or after July 1, 2008
- (b) All reimbursement requests made to the Division in Accordance with OAR 436-105-0540(4) on or after July 1, 2008 regardless of the date an Employer-at-Injury Program began, unless the insurer requests that reimbursement be based on the rules in effect on the date an individual Program began.

Required Notices

- The insurer shall provide notice to worker and employer:
 - Upon claim acceptance or reopening
 - Within 5 days of worker's first release to work, unless it is a release for regular work.



OAR 436-105-0500(2)(3)

Insurer Responsibilities

- Assist the employer to:
 - Obtain medical releases
 - Identify transitional work
 - Process wage subsidy requests
 - Make worksite modification purchases
 - Make EAIP purchases
 - Request reimbursement from WCD

OAR 436-105-0500(4)

Medical Releases

- Restrictions must:
 - be from medical service provider or a referred medical service provider
 - state specific injury-caused restrictions or may indicate is not released to their regular job, but must be accompanied by a job description of the transitional work signed by the medical service provider

OAR 436-105-0500(5)

Medical Releases (cont.)

- Medical release remains in effect until another medical release is issued by a medical service provider
- The insurer can clarify an existing medical release, but cannot create restrictions

OAR 436-105-0500(6)

Records

- Insurer maintains EAIP record for 3 years
- EAIP records
 - Claim file
 - Documentation from medical provider
 - Payroll records and supplemental documentation
 - Invoices, proof of payment & proof of delivery date for EAIP & WSM purchases
 - Worksite modification justification

OAR 436-105-0500(6)

EAIP Eligibility - What Makes it Possible?

- Employer criteria
 - Employer at injury as defined in 436-105-0005
 - Workers' compensation coverage
 - Employer is re-employing an eligible worker while claim is open
 - Employer is not ineligible for Employer-at-Injury Program benefits

OAR 436-105-0510

EAIP Eligibility - What Makes it Possible?

- Worker criteria
 - The worker must have an accepted or deferred Oregon Workers' Compensation injury or occupational disease claim at the time of the Employer-At-Injury Program
 - The worker must not be covered by the Injured Inmate Law.

OAR 436-105-0511

What's Available

- Wage subsidy- 50% of gross wages for transitional work
 - Limited to 66 work days, within a 24 consecutive month period
 - May not start or end with paid leave
 - Paid leave limited for hourly restrictions

OAR 436-105-0520(1)

EAIP Purchases

- \$400 – clothing
- \$2,500 - tools & equipment
 - Hand Tools
 - Computer
 - Workstation
 - Chair – (may also be WSM)
- \$1,000 - tuition, books & fees

OAR 436-105-0520(3)

Employer-at-Injury Program “Skills Building” as Transitional Work

- The insurer determines the instruction will help the worker enhance an existing skill or develop a new skill, and documents its decision
- Up to \$1000 available for tuition, books and fees, whether for Skills Building or EAIP purchases 436-105-0520(3)(a)
- When used as transitional work, worker must agree in writing to take the class or course of instruction 436-105-0005(11)

Worksite Modification

- Up to \$2,500 for altering a work site (rent, purchase, modify or supplement)
- Must be ordered during EAIP
- Reimbursable if employer purchased in good faith and worker refuses to return to work

OAR 436-105-0520(2)

Worksite Modification (cont.)

- Property of the employer
- Insurer determines appropriate worksite modification for worker, must link the modification to the accepted condition
- Insurer documents reason for approval

OAR 436-105-0520(2)

EAIP Worksite Modification Example 1



EAIP Worksite Modification Example 2



Motorized Scissors Cart



Motorized Cart Side Drop



Motorized Cart Action



(WM) Case Example 1

Powered
scissors
lift



WM Case Example 1 (cont.)

Excellent
work
platform



WM Case Example 1 (cont.)

Mobile stock
ladder



WM Case Example 1 (cont.)

Excellent access
for upper
shelves



WM Case Example 1 (cont.)

Electric pallet jack



WM Case Example 1 (cont.)

Palletized load easily transferred



Ending Eligibility - When?

- Claim is closed
- Worker or employer no longer eligible
- Sanctions Issued against an Employer
- Insurer ends EAIP at any time while claim is open
- * Requesting reimbursement is no longer a reason to end an EAIP

OAR 436-105-0512

Reimbursement Procedures

- Bulletin 260
- 1 year 30 days from end of the EAIP
- \$120 administrative fee (once/EAIP)
- \$100 minimum reimbursement
- May also submit multiple reimbursements

OAR 436-105-0540

Preferred Worker Program

Preferred Worker Program (PWP)

- History - 1990
 - Incentives to Oregon employers, for reemployment of Oregon injured workers
- Purpose
 - Return-to-Work Assistance
 - Rule changes effective 7/1/2008

PWP Eligibility

- Employer:
 - Subject Oregon employer
 - Compliant with WC law- active coverage
 - Leasing company — licensed

OAR 436-110-0310

PWP Eligibility

- Worker:
 - The worker has an accepted disabling Oregon compensable injury or occupational disease;
 - because of injury caused limitations, medical evidence indicates the worker will not be able to return to the job at injury.
 - Must be authorized to work in the U.S.
 - Subject Oregon worker

PWP Eligibility

- If the worker is not eligible under the most recent claim or aggravation claim opening:
 - Eligibility will be based on the most recent disabling claim closure where injury-caused permanent restrictions prevented the worker from returning to regular work
 - Once eligibility is established, no eligibility will arise from a prior claim or claim opening.

Date of Hire

- **Definition:** date the worker started work in the job for which benefits are requested
- If worker **eligible:** Premium Exemption (PE) / Claim Cost Reimbursement (CCR), automatically effective the date PW starts the job
- If worker **eligibility not known:** PWP determines eligibility; PE/CCR commences on the date of eligibility or date the PW starts the job, whichever is later

OAR 436-110-0005(3)

Premium Exemption

- Premium exemption- automatic from the date of hire or date of eligibility
 - No premium for three years
 - Must pay cents per hour – WBF Assessment
 - Can use PE for multiple jobs with the same employer
- Claim cost reimbursement- effective for three years

OAR 436-110-0325; 436-110-0330

Wage Subsidy

- May use twice
 - Same Employer new job
 - New Employer
- 183 calendar days
 - 365 days — exceptional disability
- 50% of gross wage
 - 75% — exceptional disability

Employment Purchases

- Clothing- \$400
- Tools & equipment- \$2,500
- Tuition, books & fees- \$1,000
 - \$500 for travel expenses
- Occupational Certification - \$500
- Union Dues
- Moving expenses- one time per eligibility
 - Household goods up to 10,000 lbs.
 - Mileage for one vehicle (one way)
 - Rental allowance
 - Temporary lodging & food

OAR 436-110-0345

Employment Purchases

- **Worksite creation- \$5,000**
 - Equipment, furnishings and other things the employer needs to create a new job for the worker
- **Miscellaneous- \$2,500 max. per eligibility**
 - Purchases that don't fit in any other EP category
 - Purchases necessary to help find, accept or retain employment
 - Does not include vehicles
 - Based on discretion of PWP

OAR 436-110-0345

PWP Activation

- **Worker use**
 - Presents Preferred Worker Identification Card to employer
 - 3 years from date of hire to request most services

PWP Activation

- **Employer at Injury use**
 - Must send request within 180 days of claim closure
 - Job Offer letter
 - Start date
 - Wage & hours
 - Jobsite location
 - Description of job duties

OAR 436-110-0290

Worksite Modification

- Definition – Altering a worksite to overcome injury-caused limitations
- Work-site in Oregon
- Modifications may be done before all permanent restrictions are known

WSM continued

- Provided within 3 years of hire date
- Two WSM's per eligibility period, can be with the same employer
- \$25,000 max per claim
- Exceptional disability can exceed \$25,000

WSM continued

- \$1,000 - to prevent worsening of accepted condition
- \$2,500 - for OJT at new employer
- Vehicles
- Don't create work-site

WSM continued

- \$3,500 feasibility
 - Rental
 - Consultative services
- \$2,500 to protect the modification
- Who owns equipment ?
- AFP or reimbursement





Eugene School District Preferred Worker Program Results

- Total Preferred Worker Benefits since 1990
 - Wage Subsidy - \$249,050
 - Premium Exemption - \$128,514
 - Modifications - \$481,939
 - New Claim Cost Reimb - \$214,700
 - Total - \$1,074,203

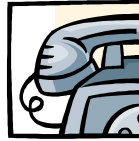
Eugene School District Preferred Worker Program Results (cont)

❖Custodial Staff

- 1992-1993: \$162,000 / 36 claims / 237 time loss days
- 2001-2002: \$57,000 / 19 claims / 10 time loss days
- 2003-2004: \$25,000 / 3 claims / 14 time loss days
- 2004-2005: \$13,802 / 11 claims 54 time loss days

Eugene School District Claim History

Policy Year		PPD Claims		Custodial
02/03		12		2
03/04		6		2
04/05		3		0
05/06	(Projected)	7		0
	Totals	28		4



Contact Us!!

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