

# New York State Public Entities Safety Group 497

## Safety Agenda

\_\_\_ Chief, Fire Department  
\_\_\_ Site Administrators  
\_\_\_ Commissioners  
\_\_\_ Human Resources  
\_\_\_ Supt. Bldgs/Grounds  
\_\_\_ Elected Officials

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### Claims That Should Have Been Handled by Health Insurance

One potentially significant source of fraudulent Workers' Compensation (WC) claims comes from injuries that should rightly be taken care of through the employee's health insurance. The vast majority of employees are honest people who just want to have WC indemnify them for medical bills and lost wages caused by injuries that have occurred on the job. However, one out of five responders to a survey by the Insurance Research Council said that they were aware of WC fraud in their workplace.

Sometimes an employee will deliberately file an injury claim as work-related rather than have the claim paid by his (group) health plan. From this employee's viewpoint, WC is more lucrative than his health insurance - WC pays a portion of lost wages, it has the potential to pay better long-term disability payments and a permanent disability settlement, and he doesn't have to use his accumulated sick leave.

**The receipt of indemnity ("wage replacement") checks (non-taxable), even at a reduced WC rate, is a powerful incentive for the most honest employee to file a WC claim that should have been a health insurance claim.**

In fact, the most common type of WC fraud occurs when employees file claims for injuries that did not arise out of or in the course of employment. The employee may have injured himself over the weekend, or he may claim an injury from performing duties outside his job description. Managers need to pay attention to injuries that occur right after employees come to work, especially on Mondays. They should not be treated as routine -- they should be investigated and

documented immediately. The employee's statement and the statements of the witnesses should be taken immediately. Be wary of the injury that occurred without any witnesses. Pin down the time of the injury and other details. Inspect the location of the injury, equipment and conditions, and take pictures.

Take a picture of the injured body part(s). It takes time for trauma to cause the skin to turn black and blue and to swell up. If these conditions are present, there is a good chance the coloration, swelling and bruising happened sometime before the workday started.

***Pay special attention to these types of injuries when they are not clearly caused by a work-related accident:***

***Back injuries***

***Knee injuries***

***Strains and sprains of knees, ankles, or elbows***

***Shoulder injuries to the rotator cuff***

***Carpal tunnel syndrome***

### Fraud Prevention Strategies:

1. Analyze the data from WC and Group Health claims. Identify the types of injuries that occur both on and off the job and set up training programs that help employees avoid those injuries.
2. Pay attention to your hiring procedures. Learn as much as possible about prospective employees while complying with the Americans with Disabilities Act. Be an expert on the Act.

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3. Make all job offers contingent upon a medical examination and history. Require that this be completed and evaluated before the new employee assumes his duties.
4. Develop an accident/injury form and use it consistently to record the employee's statement about how the injury happened. (This is **in addition to the C-2** that is completed by the supervisor.) Make sure that all the details are there and that the employee signs the statement.
5. Require the immediate reporting of any and all work-related injuries, subject to disciplinary action (for failure to report, not for being injured).
6. Document, document, document. In addition to the completed employee accident report, keep printed e-mail and records of telephone conversations with injured employees. Record the date, time and content. People who file false claims often give inconsistent descriptions of how the injury occurred.
7. Contact your insurance company claims representative immediately.
8. Partner with the claims rep to investigate all claims. If you suspect fraud, tell your claims rep right away. The earlier he is involved with the case, the better the chances of proving fraud. Your suspicions, as well as anecdotal information that he may not uncover may make a big difference in the outcome of the investigation.
9. Educate your employees about the perils of fraudulently claiming or inflating WC claims. Explain that it's a crime that can lead to termination and possible legal prosecution.
10. Encourage employees to report fraud. Make anonymous reporting possible.
11. Be on the lookout for early warning signs -- employees whose relatives received a WC settlement, employees with financial hardships, and employees who are unhappy with their jobs.

12. However, don't let your vigilance destroy your good relationships with your employees. Demonstrate your compassion for all injured employees, whether their injuries are work-related or not.

### **From the Courts...**

An insurance company employee hurt herself when she slipped and fell on the stairs of the building in which her company was housed. She was returning from lunch break. She injured her knee and possibly aggravated a pre-existing back injury. She filed a claim for WC and the hearing officer determined that the outside staircase was part of the company's premises. Even though she was returning to work, her injury arose in the course of her employment, and she was entitled to compensation.

The company disagreed and appealed the decision, arguing in part before the Maine Supreme Judicial Court that an accident occurring off an employer's premises while the employee is on her way to or from work is not compensable. The company also argued that she was not entitled to benefits because her injury did not arise out of or in the course of her employment while she was on her lunch break.

However, the Court ruled that the employee was entitled to WC benefits because the injury occurred on the employer's premises...the staircase leading to the company's offices could be considered to be a part of its premises since it "constituted a kind of right of passage through which the employer had something equivalent to an easement".

Further, she was entitled to benefits because her lunch time activity that led to the injury was an insubstantial deviation from her employment that did not violate work rules and was not reckless.

***Of Note: Five self-insured WC groups in New York have been shut down or are shutting down this year, due to the enforcement of more strict financial standards. Of course, there are no such worries with the State Insurance Fund.***