24th Annual Missouri Division of Workers' Compensation Education Seminar

Workers' Compensation Fraud and Noncompliance

The Fraud and Noncompliance Unit

- In 1993, the FNU was created within the Missouri Department of Labor and Industrial Relations Division of Workers' Compensation to investigate allegations of fraud and failure to comply with the provisions of Chapter 287 RSMo.
  - § 287.128
- We have ten Investigators, two support staff and one Manager.
  - Our main office is in Jefferson City. We have one Investigator assigned to our St. Louis office and another Investigator assigned to our Kansas City office.
  - www.labor.mo.gov/573-526-6630/1-800-592-6003/FAX 573-526-1441
  - PO Box 1009, Jefferson City, Missouri 65102-1009

The Fraud and Noncompliance Unit

- The FNU typically conducts over 1,000 investigations annually.
- **Any person may file a complaint alleging fraud or noncompliance relevant to the Workers' Compensation Law.**
- *How does the FNU receive cases?*
  - Phone – (573) 526-6630 or (800) 592-6003
  - Electronic complaint form (DOLIR website)
  - Referral from the Division of Employment Security
  - Referral from the Department of Insurance
  - Mail - P.O. Box 1009, Jefferson City, MO 65102-1009
  - Referral from the Division of Workers' Compensation
  - Referral from the Workers' Compensation SIF
  - FNU inquiries
  - Other (DLS and FNU Self-initiated)

The Fraud and Noncompliance Unit

- *What does the FNU workflow look like and how are cases reviewed?*
- When a case is received in the FNU:
  - The Manager accepts or rejects it for investigation.
  - The case is forwarded to an Investigator III for assignment.
  - Support Staff enters a case number.
  - The Investigator II initiates the investigation.
  - The Investigator II completes the investigation by submitting a report to the Investigator III for approval with a recommendation for closure or referral.
  - The Investigator III submits the case to the Manager for review.

The Fraud and Noncompliance Unit

- All reports and records submitted or obtained to/by the FNU *shall be confidential* and not subject to the requirements of Chapter 610 RSMo the *Sunshine Law*.
- Cases closed by the FNU are typically archived after approximately six months.
- Cases recommended for referral are submitted to the DWC Director.
- Cases approved by the Director that substantiate a violation of the Workers' Compensation Law are referred to the Missouri Attorney General's Office or the local Prosecuting Attorney.

The Fraud and Noncompliance Unit

- Common cases the FNU investigates are:
  - Employers who fail to insure their liability by obtaining or maintaining workers' compensation insurance. § 287.128.7
  - Fictitious or modified certificates of insurance. § 287.128.5
  - Denials of prior injuries. § 287.128.3(6)
  - Insurance Companies intentionally refusing to comply with indisputable compensation obligations with intent to defraud. § 287.128.2
  - Providing false information to the medical service provider, employer or insurer regarding physical limitations or the degree of injury. § 287.128.3(6)
  - Claiming a non-work related injury as work-related. § 287.128.1 or § 287.128.3(6)
  - False information or statements related to entitlement to benefits, with intent to discourage an injured worker from making a legitimate claim. § 287.128.3(7)
  - Failure to report an injured worker. § 287.380

The Fraud and Noncompliance Unit

- The *Statute of Limitations* for prosecution of Workers' Compensation Law violations is **three years** from the date of discovery of the offense. § 287.128.11
- *Noncompliance* violations may result in fines up to three times the annual premium the employer would have paid had it been insured, or up to $50,000. § 287.128.7
- *Fraud* violations may result in fines up to $10,000. § 287.128.4
- Any of these violations are misdemeanor offenses. Subsequent violations may rise to felony offenses.
- Workers' Compensation Law violations are a crime!

The FNU and the AGO

- We recognize the Workers' Compensation Law was designed to create a safe, supportive, fair and equitable work environment.
- The FNU and the AGO – Labor Division strive to promote this standard created by law.
  - Our goal is to assist and prevent violations.
    - *Citizen's First* – Focus on serving the public. Investigation AND Prevention. Be Proactive AND Reactive.
    - *Stewardship* – Utilize our resources effectively and efficiently.
    - *Accountability* – EVERYONE does their job well.
- Our message to employees, employers, insurers and all stakeholders is to contact us and contact us early so we can help!

Who is affected by Workers' Compensation Law?

- *Every* employer and employee is subject to the provisions of this law and respectively furnish or accept compensation.
  - Examples of general exemptions to this law are:
    - Farm labor, domestic servants in private homes (chauffeurs, occasional house cleaning, lawn care, etc.), volunteers of a tax-exempt organization, certain religious organizations.
    - The FNU verifies employment and claims during our investigations with DES and DWC databases.
- Insurance providers authorized to write insurance under the provisions of this law shall file a memorandum with DWC (on a form provided DWC) on any WC policy issued, renewed or cancelled.
    - The FNU verifies proof of coverage through NCCI – the designated state advisory organization.

What is an "Employee"?

- Workers' Compensation Law defines an employee as a person in the service of an employer…under any contract of hire, express or implied, oral or written, or under any appointment or election. Also including all minors…
- Some issues that frequently occur with identifying employees are:
  - Misclassification of employees
  - Subcontractors vs. employees

What is an "Employer"?

- Workers' Compensation statute defines an employer as, "every person, partnership, association, corporation, limited liability partnership or company, trustee, receiver, the legal representatives of a deceased employer and every other person…using the services of another for pay.
- Regarding Workers' Compensation Law, an employer must have **five or more employees**…except that **construction** industry employers who erect, demolish, alter or repair improvements shall be deemed an employer if they have **one or more employees** (including themselves). An employers family member shall be counted in the determination of the total number of employees.

Employees and Employers

- All **corporation's** officers (corporate & executive officers) and all **Limited Liability (LLC's)** members count toward the total number of employees.
  - **Two-Owner Corporations** with no employees do not count as employees.
  - **Sole Proprietors** and **Partnerships** do not count as employees.
    - The FNU verifies business registration with the Missouri Secretary of State.

Certificates of Insurance & Notice

- Cities and counties that issue business licenses to contractors shall require a **Certificate of Insurance** (COI) for workers' compensation coverage or an affidavit that the contractor is exempt.
  - Applicants will be denied licenses without insurance coverage.
  - It is unlawful to provide fraudulent information in order to obtain a business license.
- Employers shall post a **notice** at their place of employment and/or notify each employee:
  - The employer is operating under the provisions of the WC Law.
  - Employees must report injuries immediately to the employer or they may lose their right to compensation if they fail to report within 30 days.
  - Insurer or self-insured or designated person contact info and the DWC 800#.
  - Fraudulent activity by an employer, employee or other person is unlawful.

What is Noncompliance?

- **Noncompliance** is defined as a failure to insure liability pursuant to the Workers' Compensation Law. § 287.128.7
- Failing to insure workers' compensation liability puts employees at risk of not receiving benefits that they are entitled to, employers are exposed to substantial liability risk and taxpayers are burdened with associated costs.
- Employers who do not provide workers' compensation insurance have an unfair economic advantage over employers who do provide the coverage

…and it's a violation of the law!

What is Fraud?

- Workers' Compensation Law defines **Fraud** as *knowingly* making or causing to be made any false or fraudulent *material* statement or *material* misrepresentation for the purpose of obtaining or denying any benefit. § 287.128.3.6
  - *Knowingly* is intentional statements or actions to obtain or deny a benefit.
  - *Material* is any statements, forms, claims, or actions that are made to purposely obtain or deny a benefit.

Failure to Report

- Every employer or insurer in this state, whether they accept or reject the provisions of the Workers' Compensation Law, **shall within 30 days** after knowledge of the injury, file with the DWC…a full and complete report of an injury or death to any employee for which the employer would be liable to furnish medical aid, treatment, lost time at work or compensation and furnish any supplemental reports as required. § 287.380
  - Employers **shall**, report the injury to their insurance carrier or third-party administrator, **within 5 days of the reported injury or within five days of the date on which the injury was reported to the employer by the employee, whichever is later.** The insurer or third-party administrator shall be responsible for filing the report of injury.
    - *Failure to Report* is a misdemeanor offense subject to a fine of not less than $50 and no more than $500, or by imprisonment in the county jail for not less than one week nor more than one year, or by both the fine and imprisonment.

      § 287.380.4

After Referral to the AGO

- The Labor Division of the Attorney General's Office began handling these files in March 2017.
  - Our office has two supervisors and ten lawyers who handle these claims throughout the state
  - Cases are received in our Jefferson City office after referral and sent to the corresponding outer office for resolution of the violation
  - Our office attempts to settle these issues via Deferred Prosecution Agreement (DPA)
    - These agreements toll the SOL.
    - The goal of these agreements is to recover the penalty amount and to make the injured worker whole.
    - In cases of fraud by an employee, the goal is recover restitution for the employer/insurer.
  - If our office can't make contact with the employer or employee or our offer to resolve the case via DPA is rejected, criminal charges are filed in the county that has jurisdiction over the violations.

FAQ's

- *I have a video of an injured employee violating a doctor's restrictions. The video shows the employee building a barn on his property. Has the employee violated Missouri's Workers' Compensation Law?*
- **Maybe**. How was the injury documented in the medical record? Did the physician's office ask the employee, "How severe is your pain on a scale between 1-10"? Did the employee respond "8". The video shows the employee carrying roofing material on a ladder on the barn. How do you quantify that to prove a material misrepresentation in order to receive a benefit?
- What if the medical record documented information like, "How has your injury affected your ability to perform daily functions"? The employee responded, "I can't lift, bend or climb". THEN there is evidence that a fraudulent statement was made to someone (medical provider, employer, insurer) in a position to determine if a benefit is paid.

FAQ's

- *I have an injured employee who is collecting TTD (temporary, total disability) and working at another job. Isn't that fraud?*

- **It depends**. Collecting TTD and working at another job is not in and of itself fraud. If the employee's second job requires physical duties that are less stringent than the restrictions related to the work injury, he is likely not violating the statute or committing a fraud. One of the key, criminal elements of workers' compensation fraud is the misrepresentation of a material fact in order to obtain a benefit.
  - If the employee was performing work at the second job in excess of the current restrictions, or if the worker is not reporting their income from the second job while receiving TTD, then there COULD be a violation of the Missouri Workers' Compensation Law.

FAQ's

- *My employer's insurance company has not yet paid me the benefits I have been awarded. Is this fraud?*

- **Maybe**.
  - If an injured worker is awarded benefits, and the insurance company refuses to comply with a *known and legally indisputable compensation obligation*, they could be in violation of § 287.128.2.

FAQ's

- *My employer's insurance company requires that I get treatment from a doctor in Cape Girardeau, despite the fact that I live in St. Louis with similar specialists closer to my home. Is this fraud?*

- **Maybe**.
  - If an insurance company is *intentionally* creating a hardship for an injured worker by sending them to a treatment facility in area that is an unreasonable distance away, when the same or similar treatment could be provided at a closer facility, the insurer could be in violation of § 287.128.2.

FAQ's

- *A contractor hired a subcontractor to put a roof on a house that he was building. He obtained a copy of the COI from them. A worker of the subcontractor was injured and it was discovered that the COI was fraudulent. A claim is made against the contractor's workers' compensation policy and he ends up paying more in premiums because the subcontractors COI was no good. Is there anything the contractor can do about it?*
- **Yes**. The contractor can report this to the Fraud and Noncompliance Unit. An investigation will determine if the subcontractor had workers' compensation insurance, and if the subcontractor or their insurer provided a false/forged certificate of workers' compensation insurance. A forged/false COI is a felony offense.
  - By avoiding its obligation to provide coverage, the subcontractor is denying its employees workers' compensation benefits. The subcontractor is also making it more difficult for compliant employers to compete in the market, since they are able to under bid them on jobs by saving the cost of providing workers' compensation coverage.

FAQ's

- *I have a business in Missouri and Kansas. I have three employees in Missouri and five employees in Kansas. I don't have to have workers' compensation insurance in Missouri because I only have three employees there, right?*

- **No**. The law does not state five employees in Missouri. If the sum of all employees for the business is five or more (one or more for construction), then the employer must carry workers' compensation insurance. Missouri Workers' Compensation Law views this business to have eight employees.
  - Also, the Workers' Compensation Law does not differentiate between full-time or part-time employees.

FAQ's

- *I was looking at my pay stub and realized my employer is deducting money for workers' compensation insurance. Can they do that?*

- **No**. It is illegal for an employer (not a subcontractor) to charge you for workers' compensation insurance. The law states, "No part of the cost of such insurance shall be assessed against, collected from or paid by an employee".
  - Not only is it wrong to shift the burden of workers' compensation insurance onto employees, but it gives the employer an unfair economic advantage over their competitors.

Conclusion

- The FNU and the AGO-Labor Division focus on:
  - Outreach opportunities to provide education and awareness of the Workers' Compensation Law's requirements.
  - Allegations of Fraud relative to the Missouri Workers' Compensation Law.
  - Suspected Noncompliance relative to the Missouri Workers' Compensation Law.

- Call us to assist…and call us early so we can help!!
  - DOLIR/DWC/FNU: 573-526-6630 (1-800-592-6003)
    - www.labor.mo.gov
  - AGO/Labor Division: 573-751-1024
    - www.ago.mo.gov