



Maximizing Claim Outcomes Through Effective Incident Management

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Effective Incident Management

Workers' Compensation Best Practices & Procedures Meant to Maximize Overall Claim Outcomes:

- Improved Medical Treatment/Outcomes
- Reduced Medical Costs
- Improved eMod
- Reduced Insurance Costs
- “Other,” Non-Occupational Claim Cost Savings



Effective Incident Management

Incident Management Program

An effective Incident Management Program requires a partnership between all parties:

- Employer
- Insurance Carrier
- Medical Providers
- Injured Worker



Effective Incident Management

Incident Management Program

Direct, control and manage both the injury & accident scene as soon as the loss occurs or upon notification.



Effective Incident Management

Incident Management Program

A company-wide plan of action, in place before accidents occur, meant to manage on the job injuries. An effective Injury Management Program should include:

- Drug & Safety Policies
- Thorough Accident Scene Investigation & Documentation
- Post-Accident Communication Between all Parties
- Pre-planned Direction of Authorized Medical Care
- Early Return to Work Program



Effective Incident Management

Incident Management Program

Every Missouri Employee Deserves a Safe, Healthy,
Drug-Free & Injury-Free Workplace

Employer Obligation?



Effective Incident Management

Incident Management Program - Drug Free Workplace

Implement a substance abuse policy.

- Post-Offer Employment
- Random
- Probable Cause
- Post-Accident (workers' compensation)



Post-Accident Drug Testing

Section 287.120.6

- Reduces wc benefits by 50% in instances of positive post-accident drug tests for non-prescribed controlled drugs or the metabolites of such drugs, by presuming that the injury was sustained in conjunction with such drug use
- Denies benefits in cases where it is shown that the drug use was the proximate cause of the injury or when the employee refuses to submit to an employer requested drug test



Post-Accident Drug Testing

SB 66, effective 08/28/2017

Adds the metabolites of non-prescribed controlled drugs (287.120.6). Provides a rebuttable presumption that the injury was sustained in conjunction with drug use if...



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- ✓ Notice was given to the employee of the test results within 14 calendar days of the insurer receiving actual notice of the results



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- ✓ The employee was given an opportunity to perform a 2nd test of original sample
- ✓ The initial and any subsequent testing which forms the basis of the presumption was confirmed by mass spectrometry ...



Post-Accident Drug Testing

OSHA Challenges !

- Recent 2016 OSHA ruling prohibited “blanket” drug testing meant to deter accident reporting.....
 - Post-accident drug testing cannot be retaliatory in nature
 - Post-accident drug testing permitted when there is a *reasonable possibility* that substance use was a contributing factor to the employee’s injury or illness



Post-Accident Drug Testing

OSHA Challenges, however...

- Section 4(b)(4) of the Act prohibits OSHA from *superseding or affecting workers' compensation laws*.
29 U.S.C. 653(b)(4)
- If an Employer conducts drug testing to comply with the requirements of a state or federal law or regulation, the Employer's motive would not be retaliatory and the rule would not prohibit such testing.



Post-Accident Drug Testing

OSHA Challenges, cont.

Further, OSHA provided scenario:

- Employer drug tests all employees who report work-related injuries ... to get a 5% reduction ... under the state's voluntary Drug-Free Workplace program. Employer drug tests Employee when she reports a work-related injury that could not reasonably have been caused by drug use, such as a bee sting or carpal tunnel syndrome.
- Did Employer violate section 1904.35(b)(1)(iv) by drug testing Employee?

No, drug testing conducted pursuant to a state workers' compensation law, whether voluntary or mandatory, is not affected by new Rule.



Post-Accident Drug Testing

- ✓ Formalize a post-accident drug testing policy
- ✓ Test in all instances: Be consistent, not selective

5-Panel Drug Test

- Tests for marijuana, opiates, PCP, cocaine, and amphetamines

7-Panel Drug Test

- Tests for marijuana, opiates, PCP, cocaine, amphetamines, benzodiazepines, and barbiturates

10-Panel Drug Test

- Tests for marijuana, opiates, PCP, cocaine, amphetamines, benzodiazepines, barbiturates, methadone, methaqualone, and propoxyphene



Effective Incident Management

Safety Policies

- Safe Workplace, Implement a Safety Policy
- If the employee fails to use safety devices provided by the employer or fails to obey safety rules, compensation is reduced by 25 - 50%.

Section 287.120.5



Effective Incident Management

Safety Policies

- Recent Court of Appeals decisions reinforce the statutory burden of proof on an employer in showing they “...made a reasonable effort to cause its employees to obey the safety rule”
 - Initial Employee Orientation Training
 - Signed Receipt of Employee Manual
 - Ongoing Safety Training Logs



Effective Incident Management

Incident Management Program

- Accident Investigation & Documentation

It is vital for an employer to have an internal investigation process in place to collect incident details, in order to prevent future occurrences and provide their insurance carrier with sufficient information to assist in the claim investigation and compensability determination.



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Incident Management Program

- Accident Investigation & Documentation
 - *Supervisor Investigation Form* - Identify causes of accident, identify witnesses, verify facts & employee details, and determine any safety violation. Was the accident preventable? Does the accident description make sense?
 - *Employee Statement* - Signed & dated by the employee.
 - *Witness Statements* - To confirm accident details.
 - *Corrective Action Form* – Document steps taken to prevent future occurrences. Places “ownership” of safety with supervisor. Conduct root-cause analysis.