

Workers Compensation Series – Legal Landscape 2024

You can also visit our website. <https://www.epicbrokers.com/insights/2023-workers-compensation-webinar-series/> for the recording and any future webinars with Epic Brokers.

- 1. Hoping you can speak some to best practices when we have concerns of fraud. We know we don't want to gatekeep when employees allege an onsite workplace injury, but we are also interested in ensuring that we don't overlook instances of fraudulent injuries.**

One of the best practices for dealing with concerns of fraud is to keep an eye out for red flags, such as: did the claim happen on a Friday or Monday or near a holiday? Do the complaints seem excessive, or is there excessive medical treatment or medication usage? You need to keep in mind that that fraud can come from many sources, not just claims by the injured worker. A provider could be committing fraud. You should work with the carrier/TPA to keep an eye on medical bills as medical billing fraud is not uncommon. You should also occasionally check if vendors have appropriate licensing. There was a recent carrier complaint that an interpreter vendor was utilizing non-licensed interpreters who were using stolen credentials. Fraud could come from court reporters as there have been complaints that court reporters on remote depositions were not licensed or even actually taking down testimony. We have even seen a recent criminal filing noting several felony charges against a vocational rehabilitation counseling provider.

Keep an open mind and open eye out for fraud from all sources and discuss any possible fraud with your supervisor or colleagues. Work collaboratively to take investigative steps as soon as you believe you have encountered any fraud, but allow the carrier/TPA's SIU (Special Investigations Unit) to report and take the lead.

- 2. Previously, we were required to document a positive case if the employee was in the workplace within the past 14 days. Is that still required under SB1159?**

Reporting of positive cases is no longer required under SB 1159 as this has been repealed and no longer has any force or effect. Please keep in mind that the repeal of LC 3212.86, 3212.87, and 3212.88 (SB 1159) has no impact on reporting requirements under Cal/OSHA.

- 3. Does this mean even if the drug result comes back positive for marijuana we still cannot take action because we cannot prove that they actively smoke or are high?**

This is a labor law issue and outside our expertise as workers' compensation practitioners. You should consult your labor law attorney for fact-specific guidance. From a workers' compensation perspective, if you believe an employee to be intoxicated, document the reasons why and obtain timely witness statements.

4. When did the Labor Code for thin skulled get changed?

There were a series of changes in workers' compensation after SB 899, which went into effect for some areas 4/19/04 and others on 1/1/05. With this, we got a new LC 4663 and 4664. These are the apportionment sections that provided that PD is based on causation and that the employer is only responsible for permanent disability caused by the industrial injury at their employment, among other things. These did away with the thin skulled plaintiff or applicant. However, this is only for Permanent Disability indemnity. For other issues such as Temporary Disability indemnity and medical treatment, the employer still takes the employee as they find them so if 1% of the need for time off work or for medical treatment is due to the industrial injury, then the employer/carrier is liable.

5. What can we do if we have an injured employee who has a medical release to work with limitations? however, when he arrives, he retreats to his vehicle to avoid doing any work. He retained an attorney, so he has that protection where we can't say anything, or can we? We feel like we're being held hostage by this employee.

You are not a hostage to this situation and can take action to resolve it. Don't let an employee bully you because they have an injury or an attorney. You should treat this employee just like you would any other employee who is avoiding their work duties, regardless of whether they are injured. Keep in mind, you should closely adhere to any work restrictions. That said, they should be doing their duties within those restrictions. The employee may complain that they cannot work even with the restrictions, is in too much pain, or needs to sit due to medications. In that case, they need to go back to their doctor for modified restrictions.

Be mindful that you cannot discriminate against any employee who has a workplace injury or has filed a workers' compensation claim (LC 132a). There are substantial penalties for this type of discrimination, and they are not covered by insurance. However, requesting that an employee actually do their job instead of retreating to their car is not discrimination. The key to defending a 132a claim is to prove that you treated the employee the same as you would every other employee or any similarly situated employee who had a non-workplace injury. And, document, document, document. Help your attorney build your defense should it come to that.