

WC Employer Support in Defense Strategy

Practical steps for Strengthening Your WC Defense

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Disclaimer

- This presentation is provided for informational purposes only
- It is not intended as legal advice and should not be relied upon as such
- Every workers' compensation claim is fact-specific and may involve different legal and medical issues
- Employers should consult with defense counsel for guidance on particular cases



Agenda

- Role Of Employer Representative
- Claims Process
- 90 Day Timeline and Investigation
- Immediate Action & Scene Preservation
- Discovery and Deposition
- Early Settlement
- Defense Strategy and Affirmative Defenses
- 132a and S&W



Employer's Role

- Role of Employer Representatives in WC defense
- Support through reporting, evidence preservation and records



Employer's Role - DWC-1 Form

- Provide within **one (1)** working day of injury knowledge
- Early submission to insurer/ TPA to start investigation



WC Claim Process

- Injury occurs and is reported
- Claim filed and investigation begins
- Medical evaluation and benefit determination
- Resolution through settlement or decision



The 90-Day Timeline- Presumption & Investigation

- **90 –day** presumption if claim not denied timely
- Investigations: interviews, personnel files, surveillance, medical history



The 90-Day Timeline-Avoiding Delays

- Complete incident reports promptly
- Gather witness statements early
- Submit all forms without delay



Affirmative Defenses

What Are Affirmative Defenses?

- Legal arguments raised by the employer to limit or defeat liability
- Shift the burden to applicant to prove the injury is compensable
- Applied when evidence shows injury did not arise out of or occur in the course of employment
- Must be raised and supported early to preserve the defense



Common Affirmative Defenses

- **Post-Termination Defense:** Injury reported after employment ended
- **Intoxication Defense:** Injury caused primarily by drugs or alcohol
- **Initial Physical Aggressor:** Injury arose from fight started by applicant
- **Horseplay:** Injury occurred while engaging in non-work activity
- **Independent/Third-Party Cause:** Injury due to non-industrial event or activity

Strategic Value of Affirmative Defenses

- Can bar or reduce entitlement to temporary and permanent disability
- Limit exposure to medical treatment and lien claims
- Provide leverage in settlement negotiations
- Reinforce position in discovery and med-legal evaluations
- Effective use requires prompt factual investigation and documentation

Injury Documentation- Immediate Actions

- Document who, what, when, where and how
- Identify injured body parts and symptoms

what where
why
who how

Injury Documentation- Scene Preservation

- Preserve machinery or equipment if relevant
- Limit access to incident area until documented



Personnel File Materials- Performance Records

- Tardiness, missed deadlines, productivity issues
- Prior disciplinary write-ups



Personnel File Materials- Other Records

- Attendance history before injury
- Prior injury history
- Accommodations requests and ADA/FEHA compliance



Personnel File Materials-Job & Training Info

- Job descriptions with physical requirements
- Safety training and certification records



Assisting with Discovery- Employer Role

- Provide counsel with full records
- Conduct internal interviews and prepare memos



Assisting with Discovery- Deposition Process

- Topics: incident details, prior injuries, work history, job duties
- Use depositions to test credibility and clarify timelines



Early Settlement: Controlling Costs

- Settles exposure before temporary disability extends over months or years
- Limits permanent disability ratings before they escalate through med-legal reports
- Avoids obligation to reimburse EDD for overlapping wage loss benefits
- Provides predictable closure for budgeting and reserves



Med-legal and Litigation Costs



- Temporary disability payments continue until claim resolution
- Permanent disability ratings typically increase after med-legal evaluation
- EDD reimbursement demands increase overall claim costs

Med-Legal and Litigation Costs

- Costly medical-legal evaluations (AME/PQME fees, report reviews, depositions)
- Ongoing treatments costs, even on disputed or denied claims
- Exposure to treatment liens when liability is contested



Litigation Risks and Time

- Multiple hearings, depositions, and appeals prolong claim life
- Defense and applicant attorney fees increase with case duration
- Lien litigation on denied treatment drives additional expense
- Risk of penalties, sanctions, or vocational claims as case ages

Litigation Risks and Time

- Litigation path often extends several years before resolution
- Early settlement provides certainty, cost savings, and faster closure



Cost Comparison: Early Settlement vs Litigation

Early Settlement (Typical Range)

- Temporary Disability: **\$5,000 – \$15,000**
- Permanent Disability: **\$10,000 – \$30,000**
- Medical Costs (limited): **\$5,000 – \$15,000**
- Attorney Fees (defense + applicant): **\$5,000 – \$10,000**
- **Total: \$25,000 – \$70,000**



Litigation with Med-Legal Process (Typical Range)

- Temporary Disability: **\$20,000 – \$60,000**
- Permanent Disability (inflated by med-legal): **\$30,000 – \$100,000+**
- EDD Reimbursement: **\$10,000 – \$30,000**
- Medical-Legal Evaluations: **\$5,000 – \$15,000**
- Treatment Costs + Liens: **\$20,000 – \$50,000+**
- Attorney Fees (defense + applicant): **\$15,000 – \$30,000**
- **Total: \$100,000 – \$285,000+**



Key Takeaway

- Early settlement contains costs and provides certainty.
- Litigation path carries significantly higher exposure in time



Assisting with Discovery- Coordinating with Other Claims

- 132a or Serious & Willful counsel coordination for combined depositions



Employer's Role in Defense Strategy

- Maintain communication with adjuster and counsel
- Consistent internal documentation



Defense Strategy- Claim Evaluation

- Watch for red flags in medical treatment
- Settle high-exposure claims, allow low-value to lapse
- Affirmative defenses; intoxication, post-termination, fraud, SOL, horseplay, contractor status



132a and S&W Claims

- May not be covered by WC insurance
- Possible deposition coordination with these claims
- Potential dismissal as part of C&R- not guaranteed



Question & Answer Time



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