



Report Employee Injuries Immediately to Avoid Complications

By TDIC Risk Management Staff

Workers' compensation covers a broad and multifaceted legal spectrum, but a few essential practices can help dentists manage an employee injury at work.

Key considerations include reporting the injury right away, authorizing medical care, avoiding judgment about the injury, maintaining open communication with the injured employee and treating the injured employee fairly.

Some policyholders mistakenly believe that not reporting employee injuries to the insurance company is a good business decision.

"Many times employers do not report claims on a timely basis," said Deborah Boyd, workers' compensation claims manager with The Dentists Insurance Company. "The law requires industrial injuries to be reported as soon as the employer has knowledge of an injury."

When reporting an employee injury, be prepared with as much information as immediately possible, including the name of the employee, date, time and location of the injury as well as a description of what happened.

While workers' compensation laws vary from state to state, statutes generally require employers to give a workers' compensation claim form to the employee within one working day after the work-related injury or illness is reported. State-specific workers' compensation information is available on the U.S. Department of Labor's website at dol.gov/owcp/dfec/regs/compliance/wc.htm. Request immediate return of the form from the employee and forward the claim form, along with a report of occupational injury or illness, to the insurance claims representative within one working day. Employers are required to authorize appropriate medical treatment and make medical care available to injured employees.

TDIC advises dentists to report workers' compensation claims, even if they dispute the injury.

"TDIC only has 90 days to investigate and issue a denial, if appropriate, for a disputed claim," Boyd said, noting that it is not up to the dentist to discern if the injury is real or credible. "If an employee reports an injury, report the claim. You are required to make medical treatment available and provide a claim form to the employee."

If you dispute that an injury occurred, report the claim and tell the claims representative you are disputing the injury.

"We will conduct the appropriate investigation," Boyd said. "If our investigation reveals that no benefits are due, we will deny the claim. While the employee will have recourse to overturn the denial, a late report may preclude us from being able to defend a claim denial."

Similarly, employers are advised that workers' compensation is "no fault" and that an injured employee is covered even if the employer thinks the injury was caused by employee behavior. Generally, workers' compensation in all states provides coverage for medical bills and lost wages for workers who are injured on the job, regardless of fault. In exchange, workers are not able to sue an employer for a work-related injury.

After filing a workers' compensation claim, the insurance company will begin to administer benefits according to regulations. If an employee is off work due to the injury, TDIC recommends that dentists maintain communication during the period of disability. The employee should keep the dentist advised about the date that he or she expects to return to work.

TDIC recommends that dentists address "out-of-office" status in their office policy.

"In other words, have an office policy that is clear and tells the employee what is expected anytime they are out of the office on leave," Boyd said.

Fair and equal treatment of an injured employee is important to avoid allegations of retaliation or discrimination against the employee. Workers' compensation laws are state specific, but most jurisdictions have antidiscrimination laws protecting employees from retaliatory action when filing a workers' compensation claim.

For employers, the key to avoiding liability is to treat an employee filing a workers' compensation claim or returning to work after an injury the same as other employees. Boyd said to be aware of reprimands or disciplinary action to an employee with an open workers' compensation claim. A record of dates, times and a brief description of incidents will keep information straight in the event of a claim.

A reasonable effort needs to be made to accommodate temporary work restrictions and provide transitional work (light duty) while the employee heals from the injury, and employers are encouraged to document these efforts.

Termination of an employee with an open workers' compensation claim is risky and may cause the employee to file a claim seeking additional compensation for discrimination. Dentists are strongly advised to consult an attorney before any consideration of dismissing an employee who has filed a workers' compensation claim.

"While workers' compensation is the exclusive remedy for workplace injuries, and your employee can't sue you in civil court for damages, your employee can sue you in civil court for wrongful termination or disability discrimination," Boyd said. "Civil employment lawsuits are costly to defend. In addition to payment for damages, claimants can recover their attorneys' fees in these types of actions. Therefore plaintiffs' attorneys are often motivated to take these cases to trial even if the actual damages aren't particularly large."

Also important is that the defense of a workers' compensation discrimination claim and any associated penalties imposed by a judge are not covered by workers' compensation insurance policies. Some workers' compensation insurance policies explicitly exclude workers' compensation discrimination claims, and there is no duty to defend them.

TDIC's Risk Management Advice Line can be reached at 800.733.0634.

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