NEWS YOU CAN USE
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WORKERS' COMP

Eight Common Return-to-work Mistakes to Avoid

ONE OF THE keys to reducing the cost of a workers' comp claim is to get the injured worker back on the job as soon as it is physically possible without endangering their recovery.

A solid, well-thought-out return-to-work (RTW) program can reduced workers' compensation, disability and medical insurance costs, as well as strengthen morale and productivity.

More recently, RTW programs have helped protect employers from lawsuits regarding regulatory non-compliance, particularly related to the ADAAA (Americans with Disabilities Act Amendments Act).

But there is a right way and a wrong way to return an injured worker back to the job, and many employers who wing it can end up making mistakes.

Kevin Ring, director of community growth for the Institute of WorkComp Professionals, says that whether the program is an integrated occupational/non-occupational RTW or a traditional RTW, the economic and legislative landscape poses challenging issues for employers.

Here are eight mistakes employers made:

1. Failure to effectively manage the increase in the number of employees covered by the ADAAA. The expanded definition of disability under the ADAAA has significantly increased the number of employees who are entitled to accommodations.

The definition is so broad that some labor and employment attorneys advise not to fight whether the employee is disabled, but to engage in a dialogue to find out the limitations and discuss accommodation possibilities.

As a federal law, the Americans with Disabilities Act (ADA) supersedes state workers' comp laws, and therefore, its directives provide the floor-level protection for disabled individuals. State workers' comp laws can provide more protection, but not less. Properly structured, a RTW program can decrease ADA exposure.

2. Insisting employees be released to "full duty" before returning to work. Insisting on a return to full duty increases workers' compensation costs and heightens the possibility that the injured employee will fall prey to "disability syndrome" – the failure to return to work when it is medically possible.

An individual's sense of self-worth and motivation often comes from the ability to be productive. Instead, find modified work for the injured worker who has not healed properly.

3. Failure to commit the necessary budget or resources. Some employers bring employees back to work as early as possible to reduce claim costs, but are not committed to a RTW program. Without a planned transition back to full productivity, employees will not build up the tolerance to resume full job duties.

Also, the plan needs to deal with potential failures; not every injured worker will return to the pre-injury occupation.

Your insurance carrier, agent and government agencies can usually help guide you through the process.

4. Shying away from transitional assignments because the employee "may get hurt again." Both employer and employee fear of re-injury often hampers RTW efforts. This of course is a risk, but an even greater one is having the employee stay at home and become disaffected, thereby extending absence and driving up costs. The right timeline and transitional process for an employee to return to work is best decided on a case-by-case basis. Employers who work and stay in touch with the employee,

(See 'Physician' on page 2)

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ACA RULES

Out-of-pocket Limits, Preventative Services Clarified

THE DEPARTMENT of Labor has issued new Affordable Care Act guidance on out-of-pocket limits and the law's requirement that all health plans provide preventative services.

The ACA requires that group health plans that do not have grandfathered status ensure that annual employee cost-sharing and out-of-pocket costs do not exceed certain levels.

For 2014, the annual limit on out-of-pocket costs is $6,350 for individual coverage and $12,700 for families. The Department of Health and Human Services earlier proposed that the annual limits for 2015 increase to $6,600 for individual coverage and $13,200 for family coverage.

Meanwhile, in a set of new frequently asked questions, the DOL states that plan sponsors may have separate out-of-pocket limits on different categories of benefits, like medical and prescription drugs, as long as the combined amount of all such limits does not exceed the allowed amount.

Also, the out-of-pocket limit applies to in-network expenses only.

With respect to non-covered items, the FAQs state that if an item or service is not covered by the plan, the plan does not have to include the cost of that service or item when doing the annual limits calculation.

The FAQs also state that plans do not have to count towards the out-of-pocket limit the additional amount enrollees pay for brand name drugs if alternative generic drugs are available.

The new guidance also covers the issue of preventative services being covered at no cost to health plan enrollees. Group health plans that begin on or after Sept. 24 must cover breast cancer risk-reducing medications, such as tamoxifen or raloxifene, without cost-sharing (which means no cost to the participant in most cases).

Also, since the ACA requires insurers to cover tobacco-use counseling and interventions, the FAQs state that a group health plan would be in compliance if the plan or issuer covers without cost-sharing:

- Screening for tobacco use; and,
- At least two tobacco-cessation attempts per year for users of tobacco products.

This means free coverage for four tobacco-cessation counseling sessions of at least 10 minutes each (including telephone counseling, group counseling and individual counseling) without prior authorization; and all Food and Drug Administration-approved tobacco-cessation medications (including both prescription and over-the-counter medications) for a 90-day treatment regimen when prescribed by a health care provider without prior authorization. ❖

KICKING THE HABIT: *Health plans are required to cover tobacco-use counseling and cessation services.*

(Continued from page 1)

Don't Rely on the Physician to Guide the RTW Process

the treating physician and supervisor are the most successful in getting injured workers back on the job.

5. Failure to distinguish "light duty" from "transitional work" and "reasonable accommodation." Occupational RTW assignments are best described as transitional tasks. Limited in duration, such tasks help the injured worker return to full productivity by being progressively adjusted in line with medically documented changes in the employee's ability.

Under the ADAAA, it is permissible for an employer to reserve less physically demanding or "light-duty" jobs for those with work-related disabilities, and these jobs should be distinct from transitional tasks.

6. Relying on the physician to guide the RTW process. While physicians are medical experts, they do not have essential information about workplace policies, job demands and the availability of transitional work. Also, if a physician's training is not specifically in the treatment of occupational injuries, they may not adhere to evidence-based guidelines.

7. Failing to stay focused on the goal and establish consequences. The ultimate goal of RTW is to transition workers back to their pre-injury job. Whether it's a result of a poorly managed program, lack of knowledge or fear of violating a law, some employees remain in a reduced-productivity position too long, or indefinitely.

An Integrated Benefits Institute survey revealed an RTW focus on the employee's own job, modified as necessary, ranked as the most important factor in successful RTW. Requiring mandatory participation was the second most important program feature affecting RTW success.

8. Believing workers' comp settlements resolve other liabilities. One size does not fit all. Obligations under the various laws are reconciled separately.

During settlement negotiations, close coordination is necessary between the company's legal, risk management and HR departments to ensure that each office is able to accomplish its mandate without compromising the employee's rights. ❖

RISK MANAGEMENT

Businesses Suffer as Employee Theft Grows

HERE'S A SCENARIO that you'd not want to see happen at your company: The owner of a motorcycle dealership is suing a former office manager for allegedly stealing nearly $100,000 during the course of her employment.

Crescent City Partners, which runs the Harley-Davidson dealership, filed suit against a former manager in the 24th Judicial District Court of Louisiana on April 28 after it discovered the extent of the alleged misappropriation of funds. According to the complaint, the dealership's general sales manager noticed that a cash payment of $4,000 was missing and questioned the defendant about where it was.

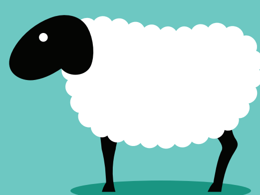
First she said she'd given it to the finance and insurance manager, but later changed her story, saying that she'd left it in an unlocked desk drawer over the weekend, states the complaint.

After conducting a forensic accounting, Crescent City Partners says it discovered that the employee was responsible for the missing cash and that $97,770 had gone missing from the dealership since she had begun working there.

An isolated incident? Not according to statistics.

The Association of Certified Fraud Examiners estimates that U.S. businesses lose some $50 billion a year to employee theft, and that 75% of employees have stolen at least once from their employer. It also estimates that about 33% of business bankruptcies are in part due to employee theft. Unfortunately, small businesses take the brunt of the damage, as they don't have the same resources to combat internal theft.

So, what can you do to avoid falling victim? The U.S. Small Business Administration recommends that companies:



Use pre-employment background checks – Making the right hiring decision can greatly reduce the risk of future heartache. Basic pre-employment background checks are a good business practice for any employer, especially for employees who will be handling cash, high-value merchandise, or having access to sensitive customer or financial data.

But be aware that laws on background checks vary from state to state and if you go too far in your check, you risk being sued. Know the law before conducting a criminal check.

Check candidate references – Make a practice of calling all references, particularly if they are former employers or supervisors. If your candidate has a history of fraudulent behavior, then you'll want to know about it before you offer them a job.

Implement a fraud hotline – Occupational fraud is far more likely to be detected by a tip than by any other method. More than 40% of all cases are detected by a tip – with the majority of them coming from employees of the victim organization. There are several providers of hotline services that can help implement an anonymous tip-reporting system for businesses of all sizes and industries.

Conduct regular audits – Regular audits can help you detect theft and fraud, and can be a significant deterrent to fraud or criminal activity because many perpetrators of workplace fraud seize opportunity where weak internal controls exist. Items to look at include business expense reports, cash and sales reconciliation, vacation and sick day reports, and violations of e-mail/social media or Web-use policies.

Recognize the signs – Studies show that perpetrators of workplace crime or fraud do so because they are either under pressure, feel underappreciated, or perceive that management is unethical or unfair.

Some of the potential red flags to look out for include:

- Not taking vacations. Many violations are discovered while the perpetrator is on vacation.
- Being overly protective or exclusive about their workspace.
- Employees that prefer to be unsupervised by working after hours or taking work home.
- Financial records sometimes disappearing.
- Unexplained debt.
- Employee living beyond his means.

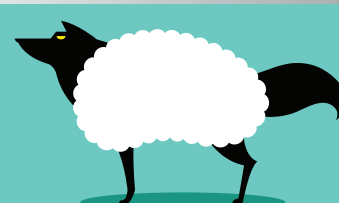
Set the right management tone – One of the best techniques for preventing and combating employee theft or fraud is to create and communicate a business climate that shows that you take it seriously. You may want to consider:

- Reconciling statements regularly to check for fraud.
- Holding regular one-on-one review meetings with employees.
- Offering to assist employees who are experiencing stress or difficult times.
- Having an open-door policy that encourages employees to speak freely and share their concerns about potential violations.
- Creating strong internal controls.
- Requiring employees to take vacations.
- Treating unusual transactions with suspicion. ❖

Employee Dishonesty Insurance

Employee dishonesty insurance coverage – sometimes referred to as fidelity bond, crime coverage or crime fidelity insurance – protects a small business employer from a financial loss as a result of fraudulent acts by employees.

The financial loss can be caused by an employee's theft of property, money or securities owned by the small business.



COMPLIANCE DECISION TREE

Penalties for Not Offering Affordable Coverage

QUESTION 1

Does your firm have at least 50 full-time employees?

NO →

Penalties do not apply to small employers.*

* If the employer has 25 or fewer employees and has an average wage up to $50,000, it may be eligible for a health insurance tax credit if it pays for employee health coverage.

YES ↓

QUESTION 2

Do you offer coverage to your workers?

NO →

Did at least one employee receive a premium tax credit or cost-sharing subsidy in a health insurance exchange?

YES →

You must pay a penalty for not offering coverage

The penalty is $2,000 annually times the number of full-time employees minus 30. The penalty is increased each year by the growth in insurance premiums.

YES ↓

QUESTION 3

Does insurance pay for at least 60% of covered health care expenses for a typical population?

NO →

Employees can choose to buy coverage in an exchange and receive a premium tax credit and, the employer must pay a penalty for not offering affordable coverage.

→

The employer must pay a penalty for not offering affordable coverage

The penalty is $3,000 annually for each full-time employee receiving a tax credit, up to a maximum of $2,000 times the number of full-time employees minus 30. The penalty is increased each year by the growth in insurance premiums.

YES ↓

QUESTION 4

Do any employees have to pay more than 9.5% of family income for the employer coverage?

YES →

Those staff can opt to buy coverage in a health insurance exchange and receive a premium tax credit, and the employer must pay a penalty for not offering affordable coverage.

NO →

There is no penalty payment required of the employer since it offers affordable coverage.